

2024 Regular Session

SENATE BILL NO. 23

BY SENATOR MILLER (On Recommendation of the Louisiana State Law Institute)

IMMOVABLE PROPERTY. Provides for the Planned Community Act. (See Act)

1 AN ACT
2 To amend and reenact Civil Code Art. 783 and Part II-B of Chapter 1 of Code Title I of
3 Code Book II of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised
4 of R.S. 9:1141.1 through 1141.50, Part III of Chapter 1 of Code Title I of Code Book
5 II of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
6 9:1145 through 1148, and R.S. 9:2792.7(B)(3) and 3132(1)(g), relative to common
7 interest ownership property; to provide for the Planned Community Act; to provide
8 for definitions; to provide for the creation, alteration, and termination of a planned
9 community; to provide for the contents of a declaration; to provide for the allocation
10 of expenses; to provide for voting interests; to provide development rights; to
11 provide for lot boundaries; to provide for rights of secured parties; to provide for
12 owners associations; to provide for association powers and duties; to provide for a
13 board of directors and officers; to provide for declarant control; to provide for the
14 transfer of rights; to provide for bylaws; to provide for meetings of the association;
15 to provide for insurance; to provide for assessments; to provide for privileges; to
16 provide for notice to lot owners; to provide consumer protections; to provide for a
17 public offering statement; to provide for warranties; to provide for a purchaser's right

1 to cancel; to provide for attorney fees; to provide for an effective date; and to provide
2 for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. Civil Code Art. 783 is hereby amended and reenacted to read as follows:

5 Art. 783. Matters of interpretation and application

6 Doubt as to the existence, validity, or extent of building restrictions is
7 resolved in favor of the unrestricted use of the immovable. The provisions of the
8 Louisiana Condominium Act, the Louisiana Timesharing Act, and the Louisiana
9 ~~Homeowners Association~~ **Planned Community** Act shall supersede any and all
10 provisions of this Title in the event of a conflict.

11 Section 2. Part II-B of Chapter 1 of Code Title I of Code Book II of Title 9 of the
12 Louisiana Revised Statutes of 1950, comprised of R.S. 9:1141.1 through 1141.50, Part III
13 of Chapter 1 of Code Title I of Code Book II of Title 9 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 9:1145 through 1148, and R.S. 9:2792.7(B)(3) and 3132(1)(g) are
15 hereby amended and reenacted to read as follows:

16 PART II-B. LOUISIANA HOMEOWNERS ASSOCIATION

17 **PLANNED COMMUNITY ACT**

18 SUBPART A. **DEFINITIONS AND GENERAL PROVISIONS**

19 §1141.1. Short title

20 This Part shall be known **and may be cited** as the "Louisiana ~~Homeowners~~
21 ~~Association~~ **Planned Community** Act".

22 §1141.2. Definitions

23 As used in this Part, ~~unless the context clearly indicates otherwise~~ **the**
24 **following terms have the meanings indicated below:**

25 (1) ~~"Association property" means all the property either held by the~~
26 ~~association or commonly held by the members of the association, or both, and lots~~
27 ~~privately held by members of the association.~~ **"Affiliate of the declarant" means**
28 **any person who controls, is controlled by, or is under common control with a**
29 **declarant. For purposes of this Paragraph:**

1 (a) A person controls a declarant if the person satisfies any of the
2 following:

3 (i) The person is a general partner, officer, director, employer, or
4 manager of the declarant.

5 (ii) The person directly or indirectly or acting in concert with one or
6 more other persons, or through one or more subsidiaries, owns, controls, holds
7 the power to vote, or holds proxies representing, more than twenty percent of
8 the voting interest in the declarant.

9 (iii) The person controls in any manner the election of a majority of the
10 directors of the declarant.

11 (iv) The person has contributed more than twenty percent of the capital
12 of the declarant.

13 (b) A person is controlled by a declarant if the declarant satisfies any of
14 the following:

15 (i) The declarant is a general partner, officer, director, employer, or
16 manager of the person.

17 (ii) The declarant directly or indirectly or acting in concert with one or
18 more other persons, or through one or more subsidiaries, owns, controls, holds
19 the power to vote, or holds proxies representing, more than twenty percent of
20 the voting interest in the person.

21 (iii) The declarant controls in any manner the election of a majority of
22 the directors of the person.

23 (iv) The declarant has contributed more than twenty percent of the
24 capital of the person.

25 (c) Control does not exist if the powers described in this Paragraph are
26 held solely as security for an obligation and are not exercised.

27 (2) "Assessment" means the sum allocable to each lot and due to the
28 association pursuant to R.S. 9:1141.32.

29 (3) "Association" or "lot owners association" means the lot owners

1 association organized pursuant to R.S. 9:1141.19.

2 (4) "Board of directors" means the body, regardless of name, designated
3 in the declaration or bylaws to conduct and supervise the affairs of the
4 association.

5 (5) "Bylaws" means a written instrument that meets the requirements
6 of R.S. 9:1141.25 and contains the procedures for the conduct of the affairs of
7 the association, including any amendments to the instrument.

8 ~~(2)~~ (6) "Common area" means any immovable property owned or otherwise
9 maintained, repaired, or administered by the association located within a planned
10 community and designated as such on a recorded plat for the benefit, use, and
11 enjoyment of its members or use by lot owners and their invitees.

12 (7) "Common expense liability" means the liability for common expenses
13 allocated to each lot pursuant to R.S. 9:1141.6.

14 (8) "Common expenses" means expenditures made by, or financial
15 liabilities of, the association, together with any allocations to reserves for the
16 benefit and use of the planned community.

17 ~~(3)~~ (9) "Community document or documents" means the articles of
18 incorporation, bylaws, plat, declarations, covenants, conditions, building restrictions,
19 rules and regulations, or other written instruments, including any amendment thereto,
20 by which the association has the authority to exercise any of its powers to manage,
21 maintain, or otherwise affect the association planned community or any
22 immovable property or which otherwise govern the use of association property
23 located therein.

24 (10) "Complete property description" means any description of
25 immovable property that, if contained in a mortgage of the immovable property
26 filed for registry, would be sufficient for the mortgage to be effective against
27 third persons.

28 (11) "Declarant" means the person designated as such in the declaration
29 or, in the absence of a designation, the owner of the immovable property or the

1 **ground lessee who executes the declaration to establish the planned community.**

2 ~~(4)~~**(12)** "Declaration" means any instrument, however denominated, that
3 establishes or regulates, or both, a residential **creates a** planned community, and
4 **including** any amendment thereto **amendments to the instrument.**

5 ~~(5)~~ "Homeowners association" or "association" means a nonprofit
6 corporation, unincorporated association, or other legal entity, which is created
7 pursuant to a declaration, whose members consist primarily of lot owners, and which
8 is created to manage or regulate, or both, the residential planned community.

9 **(13) "Development right" means any right or combination of rights**
10 **reserved by a declarant in the declaration to do any of the following:**

11 **(a) Add immovable property to a planned community.**

12 **(b) Create lots, common areas, or limited common areas within a**
13 **planned community.**

14 **(c) Subdivide lots or convert lots into common areas.**

15 **(d) Withdraw immovable property from a planned community.**

16 **(14) "Director" means a person who serves on the board of directors**
17 **elected or appointed to conduct and supervise the affairs of the association.**

18 **(15) "Electronic means" includes any form of communication that does**
19 **not directly involve the physical transmission of paper and that creates a record**
20 **capable of being retrieved, reviewed, and retained by a recipient of the**
21 **communication. A meeting conducted by electronic means includes a meeting**
22 **conducted by teleconference, videoconference, internet exchange, or other**
23 **electronic methods. Any term used in this Paragraph that is defined in R.S.**
24 **9:2601 et seq., the Louisiana Uniform Electronic Transactions Act, shall have**
25 **the meaning set forth in that Act.**

26 **(16) "Electronic transmission" or "electronically transmitted" means**
27 **any form or process of communication, not directly involving the physical**
28 **transfer of paper or another tangible medium, that is both of the following:**

29 **(a) Suitable for the retention, retrieval, and reproduction of information**

1 by the recipient.

2 (b) Retrievable in paper form by the recipient through an automated
3 process used in conventional commercial practice, provided that this
4 requirement shall not apply if both of the following conditions are met:

5 (i) The electronic transmission is otherwise retrievable in perceivable
6 form.

7 (ii) The sender and the recipient have consented in writing to the use of
8 the form of electronic transmission.

9 (17) "Leasehold planned community" means a planned community in
10 which all or a portion of the immovable property is subject to a lease the
11 expiration or termination of which will terminate the planned community or
12 reduce its size.

13 (18) "Limited common areas" means a portion of the common areas
14 allocated by the declaration or by operation of R.S. 9:1141.8 for the exclusive
15 use of one or more but fewer than all of the lot owners and their invitees.

16 ~~(6)(19)~~ "Lot" means any plot or parcel of land designated for separate
17 ownership shown on a recorded subdivision plat for a residential development or the
18 boundaries of which are otherwise described in a recorded instrument immovable
19 property within a planned community designated for separate ownership on a
20 recorded plat, other than common area, within the jurisdiction of the residential
21 community as such area is described in the community documents areas.

22 (20) "Lot owner" means a person appearing as an owner of a lot in the
23 conveyance records of the parish where the lot is located.

24 (21) "Majority vote" means the vote cast through a method permitted
25 by R.S. 9:1141.28 by more than fifty percent of the voting interest present at a
26 duly called meeting of the association.

27 (22) "Member" or "membership" means all lot owners, as well as
28 former lot owners entitled to distributions of proceeds pursuant to R.S.
29 9:1141.15, or their heirs, successors, or assigns.

1 **(23) "Nonresidential use" means any commercial, office, retail, or**
2 **similar type of use, or any other use that is not a residential use.**

3 **(24) "Occupant" means any person occupying a lot, including persons**
4 **occupying by permission or accommodation of the owner, former owner, or**
5 **another occupant, whether expressed or implied.**

6 **(25) "Person" means both natural persons and juridical persons as**
7 **defined in Civil Code Article 24, unless otherwise indicated.**

8 ~~(7)~~**(26) "Residential planned community" or "planned **Planned** community"**
9 ~~means a real estate development, used primarily for residential purposes, in which~~
10 ~~the owners of separately owned lots are mandatory members of an association by~~
11 ~~virtue of such ownership~~ **immovable property described in a declaration that**
12 **obligates lot owners to pay assessments related to common areas, to other lots,**
13 **or to other property described in the declaration. A planned community shall**
14 **not include condominium property subject to the Louisiana Condominium Act.**

15 **(27) "Record", used as a noun, means information that is inscribed on**
16 **a tangible medium or that is stored in an electronic or other medium and is**
17 **retrievable in perceivable form.**

18 **(28) "Residential use" means the use of a lot as a residence, including the**
19 **use of a multi-unit building as a residence, provided that the building contains**
20 **four or fewer separate housing units, the building is located on a single lot, and**
21 **the entirety of the building is owned by the same person or persons.**

22 **(29) "Restriction" means an obligation imposed on a lot, whether**
23 **affirmative or negative, by the declaration.**

24 **(30) "Rule" means a policy, guideline, restriction, procedure, or**
25 **regulation of an association, however denominated, that is not set forth in the**
26 **declaration or bylaws and that governs the conduct of persons or the use or**
27 **appearance of property.**

28 **(31) "Security right" means any form of security as defined in Civil Code**
29 **Article 3136.**

1 **(32) "Special declarant rights" means rights reserved for the benefit of**
2 **a declarant to do any of the following:**

3 **(a) Complete improvements indicated on plats filed with the declaration.**

4 **(b) Exercise any development right.**

5 **(c) Exercise sales and marketing rights in accordance with R.S.**
6 **9:1141.12.**

7 **(d) Establish any servitudes through the common areas for making**
8 **improvements within the planned community or within immovable property**
9 **that may be added to the planned community.**

10 **(e) Make the planned community subject to a master association.**

11 **(f) Combine a planned community with another planned community.**

12 **(g) Appoint or remove any officer of the association or any master**
13 **association or any director during any period of declarant control.**

14 **(h) Control any construction, design review, or aesthetic standards**
15 **committee or process.**

16 **(i) Attend meetings of the lot owners and, except during an executive**
17 **session, the board of directors.**

18 **(j) Have access to the records of the association to the same extent as a**
19 **lot owner.**

20 **(k) Set the number of directors and officers of the association.**

21 **(33) "Supermajority vote" means the vote cast through a method**
22 **permitted by R.S. 9:1141.28 by more than eighty percent of the voting interest**
23 **in the association.**

24 **(34) "Two-thirds vote" means the vote cast through a method permitted**
25 **by R.S. 9:1141.28 by at least two-thirds of the voting interest present at a duly**
26 **called meeting of the association.**

27 **(35) "Unrelated purchaser" means a person who purchases a lot and**
28 **who is not any of the following:**

29 **(a) The declarant or an affiliate of the declarant.**

1 **planned communities.**

2 C. This Part shall not impair any right that is guaranteed or protected by the
3 constitution of this state or the United States, nor shall this Part be construed to affect
4 any act done, offense or violation committed, or right accrued.

5 D. This Part shall not be construed to impair or cast a cloud upon the titles
6 of common areas or lots within a residential planned community.

7 **E. The existence, validity, or extent of a building restriction affecting any**
8 **association property shall be liberally construed to give effect to its purpose and**
9 **intent.**

10 **F. This Part shall not affect the ownership of common areas or limited**
11 **common areas in a planned community in existence prior to the effective date**
12 **of this Act.**

13 **G. This Part shall not require an association existing prior to the**
14 **effective date of this Act to amend or change its organizational structure or its**
15 **community documents.**

16 **H. Nothing in this Part shall require a planned community in existence**
17 **prior to the effective date of this Act to alter its previously established method**
18 **of amending community documents or calculating and voting on assessments.**

19 Revision Comments – 2024

20 This Act applies to newly formed planned communities. This Act is not
21 intended to require existing planned communities to alter their community
22 documents, their method of preparing budgets, or their method of allocating
23 assessments. This Act applies to existing planned communities only if, and to the
24 extent that, their community documents fail to address matters covered by this Act.
25 Existing planned communities may nevertheless amend their community documents
26 to conform with the provisions of this Act.

27 SUBPART B. BUILDING RESTRICTIONS CREATION,
28 AMENDMENT, AND TERMINATION

29 §1141.4. Building restrictions; matters of interpretation

30 ~~The existence, validity, or extent of a building restriction affecting any~~
31 ~~association property shall be liberally construed to give effect to its purpose and~~
32 ~~intent.~~

1 ~~§1141.5. Building restrictions, generally, affirmative duty, and common areas~~

2 A. ~~Building restrictions affecting the building standards, specified uses, or~~
3 ~~improvements of association property may be established, amended, or terminated~~
4 ~~in accordance with the provisions of this Part.~~

5 B. ~~Such building restrictions may include the imposition of an affirmative~~
6 ~~duty, including the affirmative duty to pay monthly or periodic dues or fees, or~~
7 ~~assessments for a particular expense or capital improvement, that are reasonable for~~
8 ~~the maintenance, improvement, or safety, or any combination thereof, of the planned~~
9 ~~community.~~

10 C. ~~Such building restrictions may also regulate the building standards,~~
11 ~~specified uses, and improvements of common areas of a homeowners association,~~
12 ~~including but not limited to the regulation of passage, ingress, and egress upon~~
13 ~~common areas, streets, and street rights-of-way.~~

14 ~~§1141.6. Establishment, amendment, or termination of building restrictions~~

15 A. ~~Building restrictions affecting association property, including lots or~~
16 ~~common areas, or those imposing an affirmative duty may be established, amended,~~
17 ~~or terminated in accordance with the terms of the applicable community document.~~

18 B. ~~In the absence of a provision for the establishment, amendment, or~~
19 ~~termination of such building restrictions in the community documents:~~

20 (1) ~~Building restrictions may be established by agreement of three-fourths of~~
21 ~~the lot owners.~~

22 (2) ~~Existing building restrictions may be made more onerous or increased by~~
23 ~~agreement of two-thirds of the lot owners.~~

24 (3) ~~Existing building restrictions may be made less onerous, reduced, or~~
25 ~~terminated by agreement of more than one-half of the lot owners.~~

26 C. ~~(1) Once established, or amended to be more onerous, building restrictions~~
27 ~~become a charge on the property and affect all current owners and, once recorded in~~
28 ~~the public records, affect all subsequent owners. Except for building restrictions~~
29 ~~relating to assessments or common areas, no new or more onerous building~~

1 ~~restriction shall impose a duty on the current owner to act affirmatively or remove~~
2 ~~or renovate any existing structure. All new or replacement structures, however, shall~~
3 ~~be subject to the new or more onerous building restriction.~~

4 ~~(2) Once amended to be less onerous, the building restriction constitutes a~~
5 ~~reduction of the charge on the property, and once terminated, the property is released~~
6 ~~of its former charge, affecting all current and subsequent owners.~~

7 ~~D.(1) When building restrictions are established under the provisions of~~
8 ~~Subsection B of this Section, rather than by the community documents, an owner~~
9 ~~may file with the association and the clerk of court a statement declining to be~~
10 ~~covered by the building restrictions. Such document must be filed within thirty days~~
11 ~~of the establishment of such building restrictions.~~

12 ~~(2) When building restrictions relative to set-backs or minimum square~~
13 ~~footage requirements are established or made more onerous under the provisions of~~
14 ~~Subsection B of this Section, rather than the community documents, the owner of an~~
15 ~~unimproved lot is exempt from complying with such new or more onerous~~
16 ~~restrictions.~~

17 ~~(3) An "owner" under the provisions of this Subsection means the owner or~~
18 ~~owners at the time the restriction was established or made more onerous and the~~
19 ~~waivers of compliance provided in this Subsection are personal to that owner.~~

20 ~~§1141.7. Agreement of owners; voting~~

21 ~~A. Each lot represents a single vote which can be exercised by the signature~~
22 ~~or other indication of the registered lot owner or of a single co-owner, the latter of~~
23 ~~which is presumed to be acting on behalf of the other co-owners. A plot or parcel of~~
24 ~~unimproved land which is substantially larger than a majority of other lots in the~~
25 ~~association, however, shall be treated as separate lots, the number of which to be~~
26 ~~roughly determined by the size of the land in relation to other lots. The ownership~~
27 ~~interest in common areas, streets, or street rights-of-way does not constitute a voting~~
28 ~~interest.~~

29 ~~B. For purposes of this Subpart, an agreement of lot owners may be obtained~~

1 by any of the following methods, or a combination thereof:

2 (1) ~~By a written ballot that states the substance of the issue before the owners~~
3 ~~and specifies the date by which the return ballot must be received to be counted. The~~
4 ~~ballot shall be accompanied by the full text of the building restriction being~~
5 ~~established, amended, or terminated and shall be mailed to the owner by certified~~
6 ~~mail not less than thirty days prior to the date by which the return ballot must be~~
7 ~~received.~~

8 (2) ~~At a meeting of the owners if written notice of the meeting stating the~~
9 ~~purpose of the meeting is delivered to each lot owner. The notice shall be~~
10 ~~accompanied by an agenda of the meeting and the full text of the building restriction~~
11 ~~being established, amended, or terminated. Such notice shall be mailed to the owner,~~
12 ~~by certified mail, not less than thirty days prior to the date of the meeting.~~

13 **§1141.4. Creation, alteration, and termination of a planned community**

14 **A. A planned community is established by the execution of a declaration**
15 **by all owners of the immovable property to be affected or by the lessee in the**
16 **case of a leasehold planned community. The declaration shall be effective when**
17 **filed for registry in the conveyance records of each parish in which any portion**
18 **of the immovable property is situated.**

19 **B. All provisions of the declaration are severable. The effectiveness of the**
20 **declaration is not affected by an insubstantial failure of the declaration to**
21 **comply with this Part.**

22 **C. If a conflict exists between the declaration and any other community**
23 **document, the declaration shall prevail.**

24 **D.(1)(a) The recorder shall index the initial declaration and plat in the**
25 **conveyance records in the names of the declarant, the planned community, each**
26 **owner of the immovable property subject to the declaration, and the association.**

27 **(b) The recorder shall index an amendment to the declaration or the plat**
28 **or a termination of the declaration in the index of the conveyance records in the**
29 **names of the declarant, the planned community, and the association. If an**

1 amendment relocates the boundary of a lot, incorporates common areas into a
2 lot, adds additional property, or withdraws a lot from the community, the
3 recorder shall also index the amendment in the name of each owner of each lot
4 affected by the amendment.

5 (c) An indexing error shall not impair the effect of recordation of the
6 document.

7 (2) The grant of a security right by the association shall comply with
8 registry requirements of law, including filings in accordance with the Uniform
9 Commercial Code - Secured Transactions.

10 §1141.5. Contents of the declaration

11 A. The declaration shall contain all of the following:

12 (1) A statement submitting the immovable property to a planned
13 community.

14 (2) The name by which the planned community is to be identified, which
15 shall include the phrase "planned community" or be followed by the words "a
16 planned community".

17 (3) A complete property description of all of the immovable property
18 within the planned community.

19 (4) An identification of each lot by letter, name, or number, or a
20 combination thereof, so that no lot bears the same identification as any other
21 lot.

22 (5) A written description and plat, meeting the requirements of R.S.
23 9:1141.9, delineating the precise boundaries of each lot and designating any
24 common areas and limited common areas appurtenant thereto.

25 (6) The manner of allocating common expense liabilities, common
26 surpluses, and voting interest in the association, in accordance with R.S.
27 9:1141.6.

28 (7) A description of any development right or other special declarant
29 right reserved by the declarant, a complete property description of any

1 immovable property within the planned community to which each right applies,
2 a general schematic map of any immovable property that may be added to the
3 planned community pursuant to a development right, and the term within
4 which the rights may be exercised.

5 (8) All matters required by R.S. 9:1141.6 in the event the declarant
6 reserves the right to change the allocations to lots of common expense liabilities,
7 common surpluses, and voting interest in the association.

8 (9) The name of the association formed in accordance with R.S.
9 9:1141.19.

10 (10) The rights and responsibilities for the maintenance and repair of
11 association property and for the maintenance, repair, and replacement of any
12 improvements thereon.

13 (11) Any building restrictions and servitudes affecting the association
14 property.

15 (12) Identification of lots as intended for residential or nonresidential
16 use.

17 (13) The name of all natural persons who control the declarant, if the
18 declarant is not a natural person.

19 **B. The declaration may contain any of the following:**

20 (1) The purpose for which the association property is intended.

21 (2) Procedures whereby a lot owner may transfer his lot to the
22 association and thereby release himself from any further obligation for common
23 expense liabilities.

24 (3) The method of amendment of the declaration, subject to the
25 limitations provided in R.S. 9:1141.14.

26 (4) The method for making assessments and the procedure for collecting
27 from the lot owners their respective assessments.

28 **C. When additional immovable property is added to the planned**
29 **community, an amendment to the declaration shall be executed and filed for**

1 registry and indexed in accordance with R.S. 9:1141.4(D). The amendment shall
2 be effective when filed for registry in the conveyance records of the parish in
3 which the additional immovable property is situated.

4 D. The community documents of a planned community restricted to a
5 residential use shall not:

6 (1) Reduce the voting interest required in R.S. 9:1141.14.

7 (2) Vary any requirement, procedure, or other provision of this Part
8 pertaining to the mandatory requirements of the declaration in accordance with
9 this Section or the provisions of Subpart D of this Part.

10 §1141.6. Allocation of common expense liabilities, common surpluses, and
11 voting interest in the association

12 A. The declaration shall allocate to each lot a fraction or percentage of
13 the common expense liabilities, common surpluses, and voting interest in the
14 association and shall state the formulas or methods used to establish the
15 allocations.

16 B. If lots may be added to or withdrawn from the planned community,
17 or if boundaries between adjoining lots may be relocated, the declaration shall
18 state the formulas or methods to be used to reallocate the common expense
19 liabilities, common surpluses, and voting interest in the association among all
20 lots included in the planned community after the addition, withdrawal, or
21 relocation.

22 C.(1) The declaration may provide for the following:

23 (a) Different allocations to lots of voting interest on particular matters
24 specified in the declaration.

25 (b) Cumulative voting only for electing directors.

26 (c) Class voting on specified issues affecting the class if necessary to
27 protect valid interests of the class.

28 (2) A declarant may not utilize cumulative or class voting to avoid any
29 limitation imposed on declarants by this Part, nor may lots constitute a class

1 because they are owned by a declarant.

2 D. Except for minor variations due to rounding, the sum of the common
3 expense liabilities, common surpluses, or voting interest in the association
4 allocated at any time to all of the lots shall equal one if stated as a fraction or
5 one hundred percent if stated as a percentage.

6 E. The transfer, encumbrance, judicial sale, or other voluntary or
7 involuntary transfer of an ownership interest in a lot includes membership in
8 the association and any other rights in the association appurtenant to that lot.

9 F. Nothing in this Section shall require a planned community in existence
10 prior to the effective date of this Act to amend its method of calculating or
11 allocating assessments.

12 §1141.7. Exercise of development rights

13 A. To exercise any development right reserved in R.S. 9:1141.5(A)(7), the
14 declarant shall prepare, execute, and file for registry an amendment to the
15 declaration in accordance with R.S. 9:1141.4(D). The amendment to the
16 declaration shall assign an identifying number to each new lot created, and,
17 except in the case of subdivision or conversion of lots described in Subsection
18 D of this Section, reallocate the common expense liabilities, common surpluses,
19 and voting interest in the association among all lots. The amendment shall
20 describe any common areas and any limited common areas created and, in the
21 case of limited common areas, designate the lots by letter, name, or number, or
22 a combination thereof to which each is appurtenant.

23 B. Development rights may be reserved within any immovable property
24 added to the planned community if the amendment adding that immovable
25 property includes or incorporates by reference all matters required by R.S.
26 9:1141.5.

27 C. Development rights to add additional immovable property may be
28 exercised only within seven years after the date of the filing of the initial
29 declaration. The submission of an application for approval of a plat of

1 subdivision pursuant to R.S. 33:113 shall suspend the running of the seven-year
2 period, except that the suspension is considered never to have occurred if the
3 application is denied and any appeal period has expired, or if the declarant
4 voluntarily withdraws or abandons the application or a plat of subdivision that
5 is the subject of the application prior to filing the plat for registry. If a plat is
6 approved, the seven-year period shall be interrupted and shall commence to run
7 anew on the date on which the plat of subdivision is filed for registry. This
8 Section does not extend the term for the exercise of development rights imposed
9 by the declaration pursuant to R.S. 9:1141.5(A)(7).

10 D. When a declarant exercises a development right to subdivide or
11 convert a lot previously created into additional lots, common areas, limited
12 common areas, or any combination thereof, the following apply:

13 (1) If the declarant converts the lot entirely to a common area or limited
14 common area, the amendment to the declaration shall reallocate all of the
15 common expense liabilities, common surpluses, and voting interest in the
16 association of that lot among the other lots by the same method provided in R.S.
17 9:1141.6, or as otherwise provided in the community documents.

18 (2) If the declarant subdivides the lot into two or more lots or if the
19 declarant combines two or more lots into a single lot, regardless of whether any
20 part of the lot is converted into a common area or a limited common area, the
21 amendment to the declaration shall reallocate all of the common expense
22 liabilities, common surpluses, and voting interest in the association of the lot
23 among the lots created by the subdivision in the manner prescribed in the
24 declaration.

25 E. If, pursuant to R.S. 9:1141.5(A)(7), the declaration provides that all
26 or any portion of the immovable property within the planned community is
27 subject to a right of withdrawal by the declarant, none of the immovable
28 property may be withdrawn after a lot has been transferred to an unrelated
29 purchaser except upon a supermajority vote of the association. A declarant may

1 not withdraw all or any portion of immovable property that has been
2 transferred to the association.

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4 If the association owns the immovable property sought to be withdrawn, R.S.
5 9:1141.15 applies.

6 **§1141.8. Limited common areas**

7 **A. The declaration shall specify to which lot each limited common area**
8 **is allocated. An allocation may not be altered without the consent of all of the**
9 **lot owners whose lots are directly affected.**

10 **B. A limited common area may be reallocated upon request to the board**
11 **of directors by all of the lot owners between or among whose lots the**
12 **reallocation is to be made. When a request is made, an amendment to the**
13 **declaration containing the name of the requesting lot owners shall be executed**
14 **by an authorized officer or agent of the association and shall be filed for registry**
15 **in accordance with R.S. 9:1141.4(D). Any expenses incurred by the association**
16 **in accordance with this Section shall be borne by the requesting lot owners.**

17 **§1141.9. Plats**

18 **A. Each plat shall be clear and legible and shall show all of the following:**

19 **(1) The name and a survey of the entire planned community, including**
20 **the designation of all lots, commons areas, and limited common areas.**

21 **(2) The extent of any encroachments by or upon any portion of the**
22 **planned community.**

23 **(3) A depiction of all servitudes benefiting or burdening any portion of**
24 **the planned community, to the extent plottable.**

25 **(4) In the case of a leasehold planned community, a complete property**
26 **description of all immovable property subject to a lease.**

27 **(5) The distance between noncontiguous parcels of immovable property**
28 **comprising the planned community.**

29 **(6) All other matters required by R.S. 33:5051.**

30 **B. Upon exercising any development right to add immovable property**

1 to the planned community, the declarant shall file for registry, in accordance
2 with R.S. 9:1141.4(D), a new plat of the additional immovable property
3 conforming to the requirements of Subsection A of this Section.

4 C. The ownership interest of the declarant in the common areas and
5 limited common areas is transferred to the association when the declaration and
6 plat have been filed for registry and the incorporation of the association has
7 occurred.

8 D. Each plat shall be made by a professional land surveyor.

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10 Upon the filing of the declaration and plat and the incorporation of the
11 association, the transfer of ownership of the common areas occurs by operation of
12 law without the necessity of filing a separate act translative of ownership in the
13 public records. The rules set forth in Subpart D of this Part determine the transferor's
14 warranties of ownership and condition of the common areas.

15 §1141.10. Relocation of lot boundaries

16 A. The boundaries between adjoining lots may be relocated upon the
17 request of the lot owners of the affected lots if the relocation does not alter the
18 size of a lot by more than ten percent.

19 B. Boundaries between lots and common areas may be relocated to
20 incorporate common areas into a lot upon the request of the affected lot owner
21 and with the approval of a supermajority vote.

22 C. Upon the request and approval as provided in Subsections A and B
23 of this Section, an amendment to the declaration shall be executed by an
24 authorized officer or agent of the association and filed for registry in
25 accordance with R.S. 9:1141.4(D). In addition, the requesting lot owners and
26 officer or agent of the association shall execute an act translative of ownership,
27 and if applicable, an amended plat. Any expenses incurred by the association
28 in accordance with this Section shall be borne by the requesting lot owners.

29 §1141.11. Subdivision of lots

30 A. A lot may be subdivided into two or more lots upon the request of the
31 lot owner and with the approval of a supermajority vote.

1 **B. Upon approval of the subdivision, an amendment to the declaration**
2 **shall include the plat subdividing that lot; assign an identifying letter, name, or**
3 **number to each lot created and reallocate to each lot created, in any reasonable**
4 **manner prescribed by the association or on any other basis the declaration**
5 **requires, the common expense liabilities, common surpluses, and voting interest**
6 **in the association formerly allocated to the subdivided lot.**

7 **C. The amendment to the declaration shall be executed by an authorized**
8 **officer or agent of the association and filed for registry in accordance with R.S.**
9 **9:1141.4(D). Any expenses incurred by the association in accordance with this**
10 **Section shall be borne by the requesting lot owner.**

11 **§1141.12. Use for sales purposes**

12 **Subject to other provisions of law and local ordinances, a declarant may**
13 **maintain sales offices, management offices, and models on lots that the**
14 **declarant owns and may erect signs advertising the planned community on the**
15 **common areas.**

16 **§1141.13. Servitude and use rights**

17 **A. A declarant has a personal servitude of right of use on and through**
18 **the common areas as may be reasonably necessary for the purpose of**
19 **discharging obligations or exercising special declarant rights, whether in**
20 **accordance with this Part or reserved in the declaration.**

21 **B. Lot owners have a right to use, for the purposes for which they were**
22 **intended, all common areas and all immovable property that shall become**
23 **common areas, other than limited common areas.**

24 **§1141.14. Amendment to declaration; community documents; use restrictions**

25 **A. Except as otherwise provided in this Section or R.S. 9:1141.7, the**
26 **declaration may be amended only by the vote requirement provided in the**
27 **declaration. If a voting requirement is not provided in the declaration, the**
28 **declaration may be amended by a majority vote, except as required in**
29 **Subsection B or C of this Section.**

1 **B. Approval by a supermajority vote is required to amend the**
2 **declaration to create or increase special declarant rights; increase the number**
3 **of lots not otherwise reserved or permitted by the community documents;**
4 **change the allocation of common expense liabilities, common surpluses, or**
5 **voting interest in the association for a lot; extend the time limitations specified**
6 **in R.S. 9:1141.7(C); or create additional development rights.**

7 **C.(1) The declaration may be amended only by a supermajority vote, or**
8 **any greater vote required by the community documents, to do any of the**
9 **following:**

10 **(a) Prohibit or materially restrict the uses of a lot or the number or other**
11 **qualifications of persons who may occupy a lot.**

12 **(b) Impose more burdensome restrictions, except as provided in**
13 **Paragraph (6) of this Subsection.**

14 **(2) An existing occupancy or use of a lot shall not be prohibited by an**
15 **amendment to the community documents if that occupancy or use has**
16 **commenced prior to the filing of the amendment for registry, except as provided**
17 **in Paragraph (3) of this Subsection.**

18 **(3) If an existing occupancy or use has ceased for twelve consecutive**
19 **months after the date the amendment is filed for registry, and the period is not**
20 **extended as provided in Paragraph (4) of this Subsection, the lot shall become**
21 **subject to the prohibition on the existing occupancy or use contained in the**
22 **amended declaration.**

23 **(4) A lot owner may submit a request to the board of directors to extend**
24 **the time period in Paragraph (3) of this Subsection when an existing occupancy**
25 **or use is discontinued due to a fortuitous event. The board of directors shall**
26 **grant or deny the request using reasonable discretion.**

27 **(5) A use restriction establishing or increasing the minimum term for the**
28 **lease of a lot or prohibiting the rental of less than the entirety of the lot shall be**
29 **considered a more burdensome restriction.**

1 **(6) Unless a greater percentage is required in the community documents,**
2 **an association may adopt by two-thirds vote more burdensome restrictions**
3 **governing construction, design criteria, and aesthetic standards, subject to the**
4 **following limitations:**

5 **(a) No more burdensome restriction governing construction, design**
6 **criteria, aesthetic standards, set backs, or square footage requirements shall**
7 **impose a duty on a lot owner to act affirmatively or remove or renovate any**
8 **existing improvements, but more burdensome standards shall apply to new**
9 **exterior renovations, repairs, or reconstructions as provided in Subparagraph**
10 **(b) of this Paragraph.**

11 **(b) Only those new exterior renovations, repairs, or reconstructions that**
12 **increase the value of the improvements on the lot by more than forty percent**
13 **are required to comply with the more burdensome construction, design criteria,**
14 **and aesthetic standards. Unless the lot owner agrees in writing to comply with**
15 **the more burdensome standards, the lot owner shall submit to the association,**
16 **prior to the start of renovation, repair, or reconstruction, an estimate of the**
17 **increase in value of the improvements as determined by a qualified appraiser.**

18 **D. A provision in the declaration modifying special declarant rights that**
19 **have not expired may not be amended without the consent of the declarant.**

20 **E. If any provision of the declaration requires the consent of a holder of**
21 **a security right in a lot as a condition to the effectiveness of an amendment to**
22 **the declaration, and the declaration does not otherwise provide the method for**
23 **obtaining consent, consent is deemed granted if a record refusing consent is not**
24 **received by the association within sixty days after the association delivers notice**
25 **of the proposed amendment to the holder of the security right at an address for**
26 **notice provided by the holder. If the holder of the security right has not**
27 **provided to the association an address for notice, the association shall provide**
28 **notice to the address of the holder stated in the recorded security right.**

29 **F. Amendments to the declaration adopted pursuant to this Section shall**

1 be prepared, executed, and filed for registry on behalf of the association by an
2 authorized officer or agent of the association in accordance with R.S.
3 9:1141.4(D). Any amendment shall contain a certification that the minimum
4 voting requirements have been met.

5 G. An action to challenge the validity of an amendment adopted in
6 accordance with this Section shall be brought within a preemptive period of one
7 year from the date the amendment is filed for registry.

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9 This Act seeks to protect purchasers who acquired a lot in reliance on the
10 community documents in effect at the time of acquisition of the lot, provided an
11 active use has been made of the lot. A lot purchaser is required to comply with
12 amendments to the community documents if an active use has not commenced, or
13 if a previously active use has ceased for twelve months, subject to the rules of
14 fortuitous events.

15 §1141.15. Termination of the planned community

16 A. A planned community may be terminated only by a two-thirds vote,
17 or any greater percentage that the declaration specifies, and with any other
18 approvals required by the declaration.

19 B. A termination agreement shall be prepared and executed on behalf of
20 the association by an authorized officer or agent of the association and filed for
21 registry in accordance with R.S. 9:1141.4(D). A termination agreement shall
22 contain a certification that the minimum voting requirements have been met.

23 C. If a termination agreement provides for the transfer of ownership of
24 all or a portion of the common areas and limited common areas, the association,
25 on behalf of the lot owners, may contract for the transfer of ownership of
26 common areas and limited common areas, but the contract is not binding on the
27 lot owners until the termination agreement is approved and filed for registry
28 pursuant to this Section. As long as the association owns the common areas and
29 limited common areas, the lot owners and their successors continue to have the
30 right to use and enjoy the areas in accordance with their intended purpose and
31 remain liable for all assessments and other obligations imposed on lot owners
32 by this Part or the declaration.

1 **D. The existence of the association is not affected by the termination**
 2 **agreement. Until the common areas and limited common areas within the**
 3 **planned community are transferred following termination, ownership of the**
 4 **common areas and limited common areas remains with the association.**

5 **E. Following termination of the planned community, the proceeds from**
 6 **any transfers of ownership of common areas, limited common areas, and other**
 7 **property of the association shall be paid to the association for the benefit of the**
 8 **lot owners and holders of security rights in the property, as their interests may**
 9 **appear. Proceeds available to lot owners and holders of security rights in lots**
 10 **shall be distributed in accordance with R.S. 9:1141.6.**

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12 (a) Termination of a planned community requires the support of two-thirds
 13 of the votes in the association, or such greater percentage as the community
 14 documents may require.

15
 16 (b) Title to common areas is vested in the association. The association is a
 17 separate legal entity. The termination of the planned community does not serve to
 18 terminate the association. Rather, the association is terminated and liquidated in
 19 accordance with the Nonprofit Corporation Law, R.S. 12:201 et seq.

20
 21 (c) This Section is intended to apply to a complete termination of a planned
 22 community. A termination affecting only a portion of the community is governed by
 23 the rules applicable to the withdrawal of a lot or common area. See R.S. 9:1141.6,
 24 1141.7, and 1141.29.

25 **§1141.16. Rights of secured parties**

26 **A. The declaration may require that specified actions of the lot owners**
 27 **or the association shall be approved by creditors who hold security rights in the**
 28 **lots or who have extended credit to the association, but no requirement for**
 29 **approval may operate to do any of the following:**

30 **(1) Deny or delegate control over the general administrative affairs of the**
 31 **association by the lot owners or the board of directors.**

32 **(2) Control the establishment or imposition of assessments except as**
 33 **provided in Subsection C of this Section.**

34 **(3) Prevent the association or the board of directors from commencing,**
 35 **intervening in, or settling any litigation or proceeding.**

1 **(4) Prevent the association from receiving and distributing any insurance**
2 **proceeds to make necessary repairs as a result of a casualty.**

3 **B. A lender who has extended credit to an association secured by a**
4 **security right to the income of the association or a security right in the common**
5 **areas or limited common areas may enforce the security right in accordance**
6 **with its terms, subject to the requirements of this Part or other provisions of**
7 **law. Requirements that the association deposit with the lender the association's**
8 **periodic income in which the lender holds a security right does not violate**
9 **Subsection A of this Section.**

10 **C. If approved by an association in accordance with R.S. 9:1141.28, the**
11 **holder of a security right may require that assessments shall not be decreased**
12 **without its approval.**

13 **§1141.17. Master associations**

14 **A. If any of the powers in R.S. 9:1141.20 are to be exercised by or**
15 **delegated to a corporation that exercises powers on behalf of planned**
16 **communities or for the benefit of the lot owners, all provisions of this Part**
17 **applicable to lot owners' associations shall apply to the corporation, except as**
18 **provided by this Section.**

19 **B. Unless it is acting in the capacity of an association as provided in R.S.**
20 **9:1141.19, a master association may exercise the powers provided in R.S.**
21 **9:1141.20(A)(2) only to the extent expressly permitted in the declaration of the**
22 **planned community that is part of the master association or expressly described**
23 **in the delegation of power to the master association.**

24 **C. If the declaration of any planned community provides that the board**
25 **of directors may delegate powers to a master association, the directors have no**
26 **liability for the acts or omissions of the master association following delegation.**

27 **D. The rights and responsibilities of lot owners with respect to the**
28 **association as provided in R.S. 9:1141.21, 1141.26, 1141.27, 1141.28, and 1141.29**
29 **apply in the conduct of the affairs of a master association only to those persons**

1 who elect the board of directors of a master association, regardless of whether
2 those persons are otherwise lot owners.

3 E. Even if a master association is also an association as provided in R.S.
4 9:1141.19, the articles of incorporation or other instrument creating the master
5 association and the declaration of each planned community, the powers of
6 which are assigned by the declaration or delegated to the master association,
7 shall provide that the board of directors of the master association shall be
8 elected after the period of declarant control in any of the following ways:

9 (1) All lot owners of each planned community subject to the master
10 association may elect all directors of the master association.

11 (2) All directors of each planned community subject to the master
12 association may elect all directors of the master association.

13 (3) All lot owners of each planned community subject to the master
14 association may elect specified directors of the master association.

15 (4) All directors of each planned community subject to the master
16 association may elect specified directors of the master association.

17 §1141.18. Combining planned communities

18 A. Any two or more planned communities may be combined into a single
19 planned community upon approval by the lot owners in each planned
20 community by the same vote required to terminate that planned community. If
21 the planned communities to be combined are managed by more than one
22 association, the associations shall be combined into one association in
23 accordance with the applicable provisions of law.

24 B. The agreement to combine shall not be effective until it is filed for
25 registry in accordance with R.S. 9:1141.4(D) in every parish in which a portion
26 of the combined planned community is situated and, if associations are
27 combining, until the articles of merger or consolidation of the associations are
28 filed with the secretary of state.

29 C. Every agreement to combine shall provide for the reallocation of

1 common expense liabilities, common surpluses, and voting interest to each lot
2 by either stating the reallocations or the formulas upon which they are based
3 or stating the percentage allocated to all of the lots comprising each of the
4 preexisting planned communities.

5 SUBPART C. ~~ENFORCEMENT~~ MANAGEMENT OF THE PLANNED
6 COMMUNITY

7 ~~§1141.8. Community documents; force of law~~

8 ~~The community documents of residential planned communities shall have the~~
9 ~~force of law between the homeowners association and the individual lot owners and~~
10 ~~as between individual lot owners. The remedies for breach of any obligation imposed~~
11 ~~on lot owners or the association shall include damages, injunctions, or such other~~
12 ~~remedies as are provided by law.~~

13 ~~§1141.9. Homeowners association privilege~~

14 ~~In addition to any other remedies provided by law or by the community~~
15 ~~documents for nonpayment of assessments, a homeowners association as defined in~~
16 ~~this Part may utilize the provisions of Part III of this Chapter establishing a privilege~~
17 ~~on lots of delinquent owners for nonpayment of assessments.~~

18 §1141.19. Organization of lot owners association

19 A lot owners association shall be organized as a nonprofit corporation
20 authorized to do business in Louisiana and shall have the authority to impose
21 assessments on its members. The membership of the association at all times
22 consists exclusively of all lot owners or, following termination of the planned
23 community, of all former lot owners entitled to distributions of proceeds in
24 accordance with R.S. 9:1141.15 or their heirs, successors, or assigns. The
25 association shall have a board of directors. The association shall be formed
26 prior to filing the declaration for registry.

27 §1141.20. Powers and duties of the lot owners association

28 A.(1) Except as otherwise provided in this Part, the association shall do
29 the following:

- 1 (a) Adopt bylaws.
- 2 (b) Adopt budgets as provided in R.S. 9:1141.34.
- 3 (c) Establish reasonable procedures for addressing and resolving written
4 complaints from lot owners. The procedures may include any of the following:
- 5 (i) A sample form for lodging the written complaint.
- 6 (ii) A description of the manner in which complaints are to be delivered
7 to the association.
- 8 (iii) Written acknowledgement of receipt of the complaint.
- 9 (iv) The inclusion of specific related documentation including the
10 applicable law or regulation.
- 11 (v) The requested action or resolution.
- 12 (vi) The manner in which additional information may be requested.
- 13 (vii) The time period for responding.
- 14 (viii) Disposition of the complaint for lack of information.
- 15 (ix) Notice of the date, time, and location the complaint will be
16 considered.
- 17 (x) Written notice of the final determination.
- 18 (xi) Contents of the final determination including the date of issuance
19 and any applicable citations, laws, or regulations.
- 20 (2) Except as otherwise provided in this Part, the association may do the
21 following:
- 22 (a) Amend bylaws and adopt and amend rules.
- 23 (b) Amend budgets, collect assessments for common expenses from lot
24 owners, and invest funds of the association.
- 25 (c) Hire and discharge managing agents and other employees, agents,
26 and independent contractors.
- 27 (d) Institute, defend, or intervene in litigation or in arbitration,
28 mediation, or administrative proceedings in its own name on behalf of itself or
29 any lot owner or occupant on matters affecting the common interest of the

1 planned community.

2 (e) Enter into contracts and incur liabilities.

3 (f) Regulate the use, maintenance, repair, replacement, and modification
4 of common areas.

5 (g) Cause additional improvements to be made as a part of the common
6 areas.

7 (h) Acquire, hold, encumber, and transfer in its own name any right,
8 title, or interest to immovable or movable property, whether corporeal or
9 incorporeal, but common areas may be transferred or subjected to a security
10 right only pursuant to R.S. 9:1141.29.

11 (i) Grant servitudes, leases, and licenses through or over the common
12 areas.

13 (j) Impose and receive any payments, fees, or charges for the use, rental,
14 or operation of the common areas and for services provided to lot owners or
15 occupants.

16 (k) Impose charges, including interest and attorney fees, against lot
17 owners for late payment of assessments.

18 (l) Impose reasonable fines, including interest and attorney fees, against
19 lot owners and occupants for violations of the community documents in
20 accordance with Part III of this Chapter.

21 (m) Impose reasonable charges, including interest and attorney fees, for
22 the preparation and recordation of amendments to the declaration or
23 statements of privilege.

24 (n) Provide for the indemnification of its officers and board of directors
25 and maintain directors and officers liability insurance.

26 (o) Exercise any other powers conferred by the community documents.

27 (p) Exercise any other powers that may be exercised by organizations of
28 the same type.

29 (q) In addition to the rights of the association provided in R.S. 9:1141.32,

1 suspend any right or privilege of a lot owner or occupant who fails to pay an
2 assessment or who violates any provision of the community documents,
3 provided that the association shall not do either of the following:

4 (i) Deny a lot owner access to the lot owner's lot.

5 (ii) Withhold services provided by the association to a lot, a lot owner,
6 or an occupant if the effect of withholding the service would endanger the
7 health, safety, or property of any person.

8 B. An association may require that an occupant execute and file with the
9 association a lease or other occupancy agreement containing mandatory
10 language for the benefit of the association. Any occupant who fails to comply
11 with the provisions of this Subsection may be denied access to a lot.

12 C. If an occupant violates the provisions of the community documents,
13 the association may, in addition to exercising any of its powers against the lot
14 owner, enforce against the occupant mandatory provisions required to be
15 contained in the lease or other occupancy agreement.

16 D. The association may determine whether to take enforcement action
17 by imposing sanctions or commencing an action for a violation of the provisions
18 of the community documents, including whether to compromise any claim for
19 unpaid assessments or other claim made by or against the association or to seek
20 eviction consistent with Part III of this Chapter.

21 E. The association has discretion in pursuing or declining enforcement
22 depending on each set of circumstances.

23 F. The association shall not be arbitrary or capricious in its decision to
24 pursue or decline enforcement in accordance with Subsections D and E of this
25 Section.

26 G. The board of directors shall establish a reasonable method for lot
27 owners and occupants to communicate, which may include by electronic
28 transmission, with the board of directors on matters concerning the association.

29 H. In the event that the community documents fail to provide for a

1 certain action or procedure, the general provisions of this Part and of the
2 Nonprofit Corporation Law, R.S. 12:201 et seq., shall govern.

3 §1141.21. Board of directors and officers of the association

4 A. The board of directors shall consist of at least three natural persons,
5 each of whom shall be a lot owner or a representative of a lot owner if the lot is
6 owned by a juridical person. If the planned community consists of fewer than
7 three lots, the board of directors shall consist of the same number of persons as
8 there are lots. Except as otherwise provided in R.S. 9:1141.17(E), a special
9 meeting of the association shall be held for the purpose of electing the board of
10 directors at least thirty days prior to the termination of the period of declarant
11 control. The meeting notice shall be given, in accordance with R.S. 9:1141.38,
12 no more than sixty days and no fewer than thirty days before the date of the
13 meeting. If a quorum is not present at the meeting, then it may be adjourned
14 and reconvened by the association at the place and time declared at the meeting,
15 at which time those lot owners who are present shall constitute a quorum for
16 purposes of electing the board of directors. Unless the community documents
17 provide for the election of officers by the lot owners, the board of directors shall
18 be entitled to elect the officers. The directors and officers shall take office upon
19 the termination of the period of declarant control.

20 B. Directors of the board of directors and officers of the association shall
21 exercise the degree of care and loyalty required of a director or officer and are
22 subject to the conflict of interest rules and limitations of liability governing
23 directors and officers in accordance with the Nonprofit Corporation Law, R.S.
24 12:201 et seq. Nevertheless, no director or officer shall be liable to the
25 association or its members for money damages for any action taken, or any
26 failure to act, as a director or officer, except as provided in R.S. 9:2792.7 or as
27 otherwise provided by law.

28 C. The protection against liability of a director or officer for conduct
29 described in Subsection B of this Section may be modified in the community

1 documents. The association may purchase insurance against liability as
2 provided in R.S. 12:1-857.

3 D. The board of directors shall not do any of the following:

4 (1) Amend the declaration.

5 (2) Amend the bylaws.

6 (3) Terminate the planned community.

7 (4) Elect directors, but the board of directors may fill vacancies in its
8 membership for the unexpired portion of any term or, if earlier, until the next
9 regularly scheduled election of directors.

10 (5) Determine the qualifications, powers, duties, or terms of office of
11 directors.

12 (6) Impose any rules or regulations inconsistent with the declaration.

13 E. The board of directors shall propose a budget to be approved in
14 accordance with R.S. 9:1141.34.

15 §1141.22. Declarant control of the association

16 A. The declaration may provide for a period of declarant control of the
17 association, during which a declarant, or persons designated by the declarant,
18 may appoint and remove the officers and directors. A declarant may voluntarily
19 surrender the right to appoint and remove officers and directors before the
20 period ends. In that event, the declarant may require, during the remainder of
21 the period, that specified actions of the association or board of directors as
22 described in a recorded instrument executed by the declarant be approved by
23 the declarant before becoming effective.

24 B. Regardless of the period provided in the declaration, a period of
25 declarant control terminates as follows:

26 (1) If the right to add additional immovable property to the planned
27 community was not reserved in the declaration, one hundred twenty days after
28 the date that seventy-five percent of the total number of lots in the planned
29 community are transferred to unrelated purchasers.

1 **(2) If the right to add additional immovable property to the planned**
2 **community was reserved in the declaration, upon the expiration of the time**
3 **period provided in R.S. 9:1141.7(C), as that period may be extended by the**
4 **declarant's timely exercise of the right to add additional immovable property.**

5 **C. Notwithstanding the provisions of this Section, in no event shall the**
6 **period of declarant control of a master association terminate until all periods**
7 **of declarant control for all planned communities subject to the master**
8 **association have terminated.**

9 **§1141.23. Transfer of special declarant rights**

10 **A. Special declarant rights may be transferred only by an instrument**
11 **evidencing the transfer recorded in every parish in which any portion of the**
12 **planned community is situated. Upon transfer of special declarant rights, the**
13 **transferor is not relieved of any obligation or liability arising before the**
14 **transfer. A transferor has no liability for any act or omission of, or any breach**
15 **of a contractual obligation arising from the exercise of a special declarant right**
16 **by, a successor declarant.**

17 **B. In the event of partial transfer of special declarant rights, except in**
18 **the event of a collateral assignment pursuant to the granting of a security**
19 **interest, those special declarant rights not transferred terminate on the effective**
20 **date of the transfer. The transferee of partial rights is responsible for only those**
21 **obligations related to the special declarant rights that are transferred. A**
22 **collateral assignment pursuant to the granting of a security interest is not a**
23 **transfer until the secured party exercises its right to seize the rights in**
24 **accordance with law.**

25 **C. A person who succeeds to special declarant rights is subject to the**
26 **obligations and liabilities imposed by this Part or the community documents**
27 **with respect to those special declarant rights transferred, except for any of the**
28 **following:**

29 **(1) Misrepresentations by a previous declarant.**

1 (2) Breach of any fiduciary obligation owed to the board of directors by
2 a previous declarant or his appointees.

3 (3) Any liability or obligation imposed on the transferor as a result of his
4 acts or omissions after the transfer.

5 D. Nothing in this Section subjects any successor to a special declarant
6 right to any claims against or other obligations of a transferor declarant, other
7 than claims and obligations in accordance with this Part or the community
8 documents.

9 §1141.24. Termination of contracts

10 A. During the first two years after the board of directors elected by the
11 lot owners pursuant to R.S. 9:1141.22(C) takes office, the following contracts
12 entered into by the association may be terminated without penalty, provided
13 that at least ninety days' notice is given to the other party and the contract was
14 entered into before the board of directors took office:

15 (1) Any management, maintenance, or employment contract.

16 (2) Any other contract with the declarant or an affiliate of the declarant
17 that is unconscionable to the lot owners at the time the contract was entered
18 into.

19 B. The provisions of this Section do not apply to a lease that, if
20 terminated, would terminate the planned community or reduce its size.

21 C. Nothing in this Section shall impair the ability of the association to
22 rescind or annul a contract in accordance with other provisions of law.

23 §1141.25. Bylaws

24 A. The bylaws of the association shall provide for all of the following:

25 (1) The number of members of the board of directors.

26 (2) The method of electing a president, treasurer, secretary, and any
27 other officers specified.

28 (3) The qualifications, powers and duties, terms of office, and manner of
29 electing and removing directors and officers and filling vacancies.

1 **(4) The powers that the board of directors or officers may delegate to**
2 **other persons or to a managing agent.**

3 **(5) The officers who may prepare, execute, certify, and record**
4 **amendments to the community documents on behalf of the association.**

5 **(6) Any provision necessary to satisfy requirements in this Part or the**
6 **community documents concerning meetings, voting, quorums, and other**
7 **activities of the association.**

8 **B. The bylaws may provide for any other necessary or appropriate**
9 **matters, including matters that may be adopted as rules, relative to managing**
10 **the business and regulating the affairs of the association and the planned**
11 **community.**

12 **§1141.26. Meetings**

13 **A. The following requirements apply to association meetings:**

14 **(1) The association shall hold an annual meeting in accordance with the**
15 **bylaws. In the absence of a provision in the bylaws, an annual meeting shall be**
16 **held upon the giving of not more than sixty days' nor less than thirty days'**
17 **notice in accordance with R.S. 9:1141.38.**

18 **(2) The association shall hold a special meeting to address any matter**
19 **affecting the planned community or the association if its president, a majority**
20 **of the board of directors, or lot owners having at least twenty percent, or any**
21 **lower percentage specified in the bylaws, of the voting interest in the association**
22 **demand that the secretary call a meeting. The secretary shall call the meeting**
23 **within thirty days after receiving notice of the lot owners' demand. Only**
24 **matters described in the meeting notice required by Paragraph (3) of this**
25 **Subsection shall be considered at a special meeting.**

26 **(3) The association shall notify lot owners of the time, date, and place of**
27 **each annual and special meeting not more than sixty days nor fewer than thirty**
28 **days before the meeting date. Notice may be given by any means provided in**
29 **R.S. 9:1141.38. The notice shall state the items on the agenda, including the**

1 **following:**

2 **(a) The general nature and text of any proposed amendment to the**
3 **community documents.**

4 **(b) Any budget changes.**

5 **(c) Any proposal to remove a director or an officer elected by the**
6 **association.**

7 **(4) The minimum amount of time in which notice shall be given in**
8 **accordance with Paragraph (3) of this Subsection may be reduced or waived by**
9 **the board of directors for a meeting called to address an emergency.**

10 **(5) At the meeting, lot owners shall be given a reasonable opportunity to**
11 **comment regarding any matter affecting the planned community or the**
12 **association.**

13 **(6) The community documents may allow for meetings of the association**
14 **to be conducted by electronic means if the meeting notice states the electronic**
15 **means to be used.**

16 **(7) Meetings of the association shall take place at the planned community**
17 **or at a place convenient to it.**

18 **(8) Except as otherwise provided in the community documents, all**
19 **meetings of the association shall be conducted in accordance with the most**
20 **recent edition of Robert's Rules of Order.**

21 **B. The following requirements apply to meetings of the board of**
22 **directors and committees of the association authorized to act for the association:**

23 **(1) Meetings shall be open to the lot owners except during executive**
24 **sessions. The board of directors and committees may hold an executive session**
25 **only during a regular or special meeting of the board or committee. No final**
26 **vote or action shall be taken during an executive session. An executive session**
27 **shall be held only to do the following:**

28 **(a) Consult with an attorney concerning legal matters.**

29 **(b) Discuss existing or potential litigation, mediation, arbitration, or**

1 administrative proceedings.

2 (c) Discuss labor or personnel matters.

3 (d) Discuss contracts, leases, and other commercial transactions to
4 purchase or provide goods or services currently being negotiated, including the
5 review of bids or proposals, if premature general knowledge of those matters
6 would place the association at a disadvantage.

7 (e) Prevent public knowledge of a matter if the board of directors or
8 committee determines that public knowledge would violate the privacy of any
9 person.

10 (2) For purposes of this Section, a gathering of the board of directors at
11 which the directors do not conduct association business is not a meeting of the
12 board. The board of directors shall not use incidental or social gatherings or
13 any other method to evade the open meeting requirements of this Section.

14 (3) During the period of declarant control, the board of directors shall
15 meet at least two times per year. At least one of those meetings shall be held at
16 the planned community or at a place convenient to it.

17 (4) The board of directors shall establish procedural rules to permit
18 participation by a lot owner in the event that the lot owner is directly impacted
19 by an agenda item or is requested to attend by the board of directors.

20 (5) Unless the meeting is included in a schedule previously provided to
21 the lot owners or the meeting is called to address an emergency, the secretary
22 or other officer specified in the bylaws shall give notice of each board of
23 directors meeting to each director and to the lot owners. The notice shall be
24 given at least thirty days before the meeting and shall state the time, date, place,
25 and agenda of the meeting.

26 (6) If any materials are distributed to the board of directors before the
27 meeting, copies of those materials shall be reasonably available to lot owners,
28 including by posting on the association's website, except that the board need not
29 make available copies of unapproved minutes or materials that are to be

1 considered in executive session.

2 (7) The board of directors may meet by electronic means if the meeting
3 notice states the electronic means to be used.

4 (8) Except as provided in Paragraph (3) of this Subsection, in lieu of
5 meeting, the board of directors may act by unanimous consent as documented
6 in a record signed by all directors. The secretary shall promptly give notice to
7 all lot owners of any action taken by unanimous consent. After termination of
8 the period of declarant control, the board of directors may act by unanimous
9 consent only to undertake ministerial actions or to implement actions previously
10 taken at a board meeting.

11 (9) All actions taken by the board of directors that do not comply with
12 this Section are nevertheless deemed valid unless and until set aside by a court.
13 A challenge to the validity of an action of the board of directors for failure to
14 comply with this Section shall not be brought more than sixty days after the
15 minutes of the meeting at which the action was taken are approved or notice of
16 that action is provided to lot owners, whichever is later.

17 (10) Except as otherwise provided in the community documents, all
18 meetings of the board of directors and the committees of the association shall
19 be conducted in accordance with the most recent edition of Robert's Rules of
20 Order.

21 §1141.27. Quorum

22 A. Unless the bylaws provide otherwise, a quorum is present throughout
23 any meeting of the association if lot owners holding twenty percent of the voting
24 interest in the association are present in person or by proxy at the beginning of
25 the meeting, have cast absentee ballots that were solicited in accordance with
26 R.S. 9:1141.28(D)(3) and delivered to the secretary in a timely manner, or are
27 present by any combination thereof.

28 B. Voting interest allocated to lots owned by the association shall be
29 counted toward a quorum.

1 C. Unless this Part or the community documents specify a greater
2 number, a quorum of the board of directors is present for purposes of
3 determining the validity of any action taken at a meeting if individuals entitled
4 to cast a majority of the votes on that board are present at the time a vote
5 regarding that action is taken. If a quorum is present when a vote is taken, the
6 affirmative vote of a majority of the directors present is the act of the board of
7 directors unless a greater vote is required by this Part or the community
8 documents.

9 D. Notwithstanding any other Subsection of this Section and provided
10 that notice is given as required by R.S. 9:1141.38, in the event of an emergency,
11 a quorum is present if lot owners holding at least ten percent of the voting
12 interest are present in person, by proxy, or by electronic means.

13 §1141.28. Voting; proxies; ballots

14 A. Directors may not vote by proxy at any meeting of the board of
15 directors or at any committee thereof.

16 B. Lot owners may vote at a meeting of the association in person, by
17 absentee ballot, by proxy or, when a vote is conducted without a meeting, by
18 electronic transmission or paper ballot.

19 C. The voting interest allocated to lots owned by the association shall be
20 cast in the same proportion as the votes cast on the matter by lot owners other
21 than the association.

22 D. At a meeting of the association at which a quorum is present, the
23 following requirements apply:

24 (1) Lot owners who are present may cast a vote in person by voice, show
25 of hands, standing, or any other method for determining votes, as designated by
26 the association.

27 (2) Unless a greater number of the votes in the association is required,
28 a majority of the voting interest cast is required for the approval of any action
29 of the association.

1 **(3) A lot owner may vote by absentee ballot without being present at the**
2 **meeting. The association shall promptly deliver an absentee ballot to a lot owner**
3 **upon request made at least three days before the scheduled meeting.**

4 **(4) Except as provided in Subsection E of this Section, if the name signed**
5 **on a vote, consent, waiver, ballot, or proxy appointment corresponds to the**
6 **name of a lot owner as indicated in the records of the association, the**
7 **association, if acting in good faith, is entitled to accept the vote, consent, waiver,**
8 **ballot, or proxy appointment and give it full effect as the act of the lot owner.**

9 **E. If only one of several owners of a lot owned in indivision votes, that lot**
10 **owner has the right to cast the voting interest allocated to that lot. If more than**
11 **one of the lot owners vote, the voting interest allocated to that lot shall be cast**
12 **only in accordance with the agreement of a majority in interest of the lot**
13 **owners. There is agreement of a majority in interest if any one of the lot owners**
14 **casts the voting interest allocated to the lot without any of the other lot owners**
15 **promptly protesting to the association. In the event that there is disagreement**
16 **among the owners of a lot as to their interests, the association, acting in good**
17 **faith, is entitled to rely upon what is evidenced in its records as to that lot. In the**
18 **event that the records do not indicate the allocation of interests in a lot, the**
19 **association is entitled to treat the multiple lot owners as having equal shares. If**
20 **a lot or an undivided interest in a lot is subject to a usufruct, the usufructuary**
21 **shall be deemed the owner of that lot or the undivided interest of the lot for**
22 **purposes of this Section.**

23 **F. The following requirements apply to proxy voting:**

24 **(1) A lot owner may appoint a proxy to vote or otherwise act by signing**
25 **a written appointment or by making an electronic transmission. An electronic**
26 **transmission shall contain or be accompanied by information from which it can**
27 **be determined that the lot owner authorized the transmission.**

28 **(2) The appointment of a proxy is effective when a signed written**
29 **appointment or an electronic transmission of the appointment is received by the**

1 officer or agent of the association authorized to tabulate votes. A proxy is valid
2 only for the meeting for which it is cast and any recessed session of that meeting
3 and is subject to any limitation contained therein.

4 (3) The appointment of a proxy is revocable.

5 (4) The revocation of a proxy appointment, the death of the lot owner,
6 or the appointment of a curator for the lot owner appointing a proxy does not
7 affect the right of the association to accept the proxy's authority unless notice
8 of the revocation, death, or appointment of a curator is received by the officer
9 or agent authorized to tabulate votes before the proxy exercises authority
10 pursuant to the appointment.

11 G. Unless prohibited or limited by the community documents, when an
12 association conducts a vote without a meeting, the following requirements
13 apply:

14 (1) The association shall notify the lot owners that the vote will be taken
15 by ballot.

16 (2) The association shall deliver a paper or electronic ballot in
17 accordance with R.S. 9:1141.38.

18 (3) The ballot shall set forth each proposed action and provide an
19 opportunity to vote for or against each action.

20 (4) The ballot shall also contain all of the following:

21 (a) The number of responses needed to meet the quorum requirements.

22 (b) The voting interest necessary to approve each matter other than the
23 election of directors.

24 (c) The time and date by which a ballot shall be delivered to the
25 association to be counted, which shall be no fewer than seven days after the date
26 the association delivers the ballot.

27 (5) After delivery to the association, a ballot is not invalidated by death,
28 disability, or attempted revocation by the person who cast the ballot.

29 (6) A vote conducted pursuant to this Subsection is valid only if the

1 number of votes cast on an item equals or exceeds the requirement to authorize
2 each proposed action.

3 H. If the declaration requires that votes on specified matters affecting the
4 planned community be cast by lessees of leased lots rather than by lot owners,
5 this Section applies to lessees as if they were lot owners. Lot owners who lease
6 their lots to other persons may not cast votes on those specified matters.

7 §1141.29. Transfer or encumbrance of common areas or right to income

8 A. All or portions of the common areas may be transferred or subjected
9 to a security right by a two-thirds vote or such greater vote required by the
10 declaration. Any limited common area may be transferred or subjected to a
11 security right with the consent of all owners of lots to which any limited
12 common area is allocated. Nevertheless, if all of the lots in a planned community
13 are restricted exclusively to nonresidential uses, the declaration may provide
14 that all or portions of the common areas may be transferred or subjected to a
15 security right by a vote that is less than two-thirds or that limited common areas
16 may be transferred or subjected to a security right upon the consent of fewer
17 than all the owners of lots to which the limited common area is allocated.

18 B. An agreement to transfer common areas or limited common areas or
19 to subject them to a security right shall be prepared and executed by an
20 authorized officer or agent of the association and shall contain a certification
21 that the minimum voting requirements have been met. The agreement, and all
22 ratifications thereof, shall be filed for registry in accordance with R.S.
23 9:1141.4(D) and is effective only upon registry. An agreement subjecting
24 property of the association to a security right shall be created and made
25 effective against third persons as required by law.

26 C. The association, on behalf of the lot owners, may contract to transfer
27 or encumber a right in a planned community, or to grant a security right in the
28 association's right to receive assessments or other income, but the contract is
29 not enforceable against the association until approved pursuant to Subsections

1 A and B of this Section. Thereafter, the association has all powers necessary and
2 appropriate to effect the transfer or encumbrance.

3 D. Unless the security right is effective and filed for registry prior to the
4 filing of the declaration, neither the transfer or encumbrance of any portion of
5 a common area, nor the foreclosure upon such an encumbrance, shall release
6 that common area from the burdens and restrictions imposed by the
7 declaration. Subject to the rights of a holder of a security right in a common
8 area, proceeds from the sale of the common areas are an asset of the association,
9 but the proceeds from the sale of limited common areas shall be distributed
10 equitably among the owners of the lots to which the limited common areas were
11 allocated. If any common areas are transferred to a creditor pursuant to a
12 giving in payment in accordance with Civil Code Article 2655, the transferee
13 acquires the common areas subject to the burdens and restrictions imposed by
14 the declaration.

15 E. Proceeds of loans made to the association shall be used only for the
16 purposes approved by the association.

17 §1141.30. Insurance

18 A. Commencing not later than the time of the first transfer of a lot to an
19 unrelated purchaser, the association shall maintain, to the extent reasonably
20 available and subject to reasonable deductibles, commercial general liability
21 insurance, in an amount determined by the board of directors, but not less than
22 any amount specified in the declaration, covering all occurrences commonly
23 insured against for bodily injury, death, and property damage arising out of or
24 in connection with the use, ownership, or maintenance of the common areas.
25 The declaration may require the association to carry any other insurance, and
26 the association may carry any other insurance it considers appropriate to
27 protect the association or the lot owners.

28 B. If the insurance required in Subsection A of this Section is not
29 reasonably available, the association shall promptly notify all lot owners.

1 C. The issuance of an insurance policy to the association does not prevent
2 a lot owner from obtaining insurance for the lot owner's own benefit.

3 §1141.31. Surplus funds

4 Any surplus funds of the association remaining after payment of or
5 provision for common expenses and any prepayment of reserves shall be paid
6 annually to the lot owners in proportion to their common expense liabilities or
7 credited to the lot owners to reduce their future common expense assessments.

8 §1141.32. Assessments

9 A. Until the association authorizes an assessment, the declarant shall pay
10 all common expenses. After the initial assessment has been made by the
11 association, assessments shall be made at least annually, based on a budget
12 adopted by the association. The association shall not incur expenses except for
13 the benefit of the planned community.

14 B. Except for assessments made in accordance with Subsections C, D, or
15 E of this Section or as otherwise provided in this Part, all common expenses
16 shall be assessed against all of the lots in accordance with the allocations set
17 forth in the declaration pursuant to R.S. 9:1141.6. The owner of a lot shall be
18 personally liable for the payment of all assessments levied against the lot during
19 the period of his ownership. The association may charge late fees and interest
20 on any past due assessment or portion thereof at the rate established by the
21 association, which shall not exceed the rate established in Part III of this
22 Chapter.

23 C. If the lot owner fails to timely pay the assessments for common areas
24 for a period of three months or more during any eight-month period after the
25 association has provided notice of delinquency, the association may accelerate
26 the assessment on the common areas for a twelve-month period and file a
27 statement of privilege for the accelerated sums. The preservation and
28 enforcement of the privilege shall be governed by Part III of this Chapter.

29 D. To the extent required by the declaration:

1 (1) A common expense associated with the maintenance, repair, or
2 replacement of a limited common area shall be assessed against the lots to which
3 that limited common area is allocated equally or in any other proportion the
4 declaration provides.

5 (2) A common expense benefiting fewer than all of the lots or their
6 owners may be assessed exclusively against the lots or lot owners benefitted.

7 (3) The costs of insurance may be assessed in proportion to risk, and the
8 costs of utilities may be assessed in proportion to usage.

9 E. If damage to a lot or other part of the planned community or any
10 other common expense is caused by the willful misconduct of any lot owner or
11 occupant, or a guest or invitee of a lot owner, the association may assess that
12 damage or common expense exclusively against that owner's lot, even if the
13 association maintains insurance with respect to that damage or common
14 expense.

15 F. If common expense liabilities are reallocated, future assessments and
16 any installment thereof not yet due shall be recalculated in accordance with the
17 reallocated common expense liabilities.

18 §1141.33. Upkeep of the planned community

19 Except as otherwise provided by the community documents, the
20 association is responsible for maintenance, repair, and replacement of the
21 common areas and limited common areas, and each lot owner is responsible for
22 the maintenance of his lot and the maintenance, repair, and replacement of any
23 improvements located thereon. Each lot owner shall afford to the association,
24 and to its agents or employees, access through his lot that is reasonably
25 necessary for those purposes.

26 §1141.34. Adoption of budgets; special assessments

27 A.(1) For planned communities consisting of more than twenty-five lots,
28 the association shall submit, at least annually, a proposed budget for the
29 planned community for consideration by the lot owners at a duly called meeting

1 of the association. Not later than thirty days after adoption of a proposed
2 budget, the board of directors shall provide to all lot owners a summary of the
3 budget, including any reserves, and a statement of the basis on which any
4 reserves are calculated and funded. Simultaneously, the board shall set a date,
5 which shall be no fewer than ten days nor more than sixty days after the
6 summary is provided, for a meeting of the association to consider ratification
7 of the budget. A majority vote, or any greater vote specified in the declaration,
8 is required to ratify the budget. If a proposed budget is not ratified, the budget
9 last ratified at a meeting of the association continues until a subsequent budget
10 is ratified.

11 (2) Nothing in this Subsection requires a certain format for the annual
12 submission of the proposed budget.

13 B. The board of directors may propose a special assessment at any time.
14 Except as otherwise provided in Subsection C of this Section, the assessment is
15 effective only if the board of directors follows the procedures for ratification of
16 a budget provided in Subsection A of this Section and the lot owners ratify the
17 proposed assessment at a meeting of the association as provided in Subsection
18 A of this Section.

19 C. If the board of directors, by a vote of two-thirds of directors present
20 and voting, determines that a special assessment is necessary to respond to an
21 emergency:

22 (1) The emergency special assessment becomes effective immediately in
23 accordance with the terms of the vote.

24 (2) Notice of the emergency special assessment shall be provided
25 promptly to all lot owners.

26 (3) The board of directors shall spend the emergency special assessment
27 funds only for the purposes described in the vote.

28 D. If the association has accumulated a surplus from prior years, the
29 budget may propose any of the following:

1 **(1) The refund to the unit owners contributing to the surplus if created**
2 **by a special assessment.**

3 **(2) A reduction of assessments prospectively in the amount of the**
4 **surplus.**

5 **(3) The establishment of a reserve for future repairs, replacements, or**
6 **operating expenses.**

7 **§1141.35. Privileges for sums due to the association; enforcement**

8 **A. A privilege in favor of the association shall arise on a lot for any**
9 **assessment attributable to that lot or any fines imposed against the lot owner.**

10 **B. The time period, rank, and method to enforce and preserve a privilege**
11 **in favor of the association shall be governed by Part III of this Chapter.**

12 **§1141.36. Association records**

13 **A. An association shall retain all of the following, which may be**
14 **maintained in an electronic format:**

15 **(1) Appropriate accounting records concerning the operation and**
16 **administration of the association.**

17 **(2) Minutes of all meetings of the lot owners and board of directors other**
18 **than executive sessions, a record of all actions taken by the lot owners or board**
19 **of directors without a meeting, and a record of all actions taken by a committee**
20 **in place of the board of directors on behalf of the association.**

21 **(3) The names of lot owners in a form that permits preparation of a list**
22 **of the names of all lot owners and the addresses at which the association**
23 **communicates with them, in alphabetical order showing the voting interest each**
24 **lot owner is entitled to cast.**

25 **(4) Its original or restated organizational documents and all amendments**
26 **to them, and all rules currently in effect.**

27 **(5) All financial statements and tax returns of the association for the past**
28 **three years.**

29 **(6) A list of the names and addresses of its current directors and officers.**

1 **(7) The most recent annual report delivered to the secretary of state.**

2 **(8) Financial and other records sufficiently detailed to enable the**
3 **association to comply with R.S. 9:1141.43(B).**

4 **(9) Copies of current contracts to which the association is a party.**

5 **(10) Records of board of directors or committee actions to approve or**
6 **deny any requests for design or architectural changes from lot owners.**

7 **(11) Ballots, proxies, and other records related to voting by lot owners**
8 **for one year after the election, action, or vote to which they relate.**

9 **B. Upon receipt of a request for specific records, the association shall**
10 **make the records available for examination and copying by a lot owner or the**
11 **lot owner's agent. An inspection shall occur during reasonable business hours**
12 **or at a mutually convenient time and location.**

13 **C. Records retained by an association may be withheld from inspection**
14 **and copying to the extent that they concern any of the following:**

15 **(1) Personnel and medical records relating to specific individuals.**

16 **(2) Contracts and other commercial transactions to purchase or provide**
17 **goods or services that are currently being negotiated.**

18 **(3) Existing or potential litigation or mediation, arbitration, or**
19 **administrative proceedings.**

20 **(4) Communications with the association's attorney that are protected**
21 **by the attorney-client privilege or the work-product rule.**

22 **(5) Information the disclosure of which would violate law.**

23 **(6) Records of an executive session of the board of directors.**

24 **(7) Individual lot files other than those of the requesting lot owner.**

25 **D. An association may charge a reasonable fee for providing copies of**
26 **any records in accordance with this Section and for supervising the lot owner's**
27 **inspection.**

28 **E. A right to copy records in accordance with this Section includes the**
29 **right to receive copies by photocopying or other means, including receipt of**

1 copies through an electronic transmission, if available, upon request by the lot
2 owner.

3 F. An association is not obligated to compile or synthesize information.

4 G. Information provided pursuant to this Section shall not be used for
5 commercial or other improper purposes, and the association may deny access
6 to information if the association has a good faith belief that the information is
7 being requested for such purposes. If an action is filed regarding the production
8 of information, the court may order that the association's expenses be
9 reimbursed upon determining that the information was used for commercial or
10 other improper purposes.

11 §1141.37. Rules

12 A. Before adopting, amending, or repealing any rule, the board of
13 directors shall give all lot owners notice of the proposed action and provide the
14 text of the rule or the proposed change and the date on which the board of
15 directors will act after considering comments from lot owners.

16 B. Following the adoption, amendment, or repeal of a rule, the board of
17 directors shall notify the lot owners of its action and provide a copy of the text
18 of the rule if it is different from that stated in the notice given in accordance
19 with Subsection A of this Section.

20 C. The board of directors shall establish procedures for the enforcement
21 of standards adopted in accordance with R.S. 9:1141.14(C) and for approval of
22 construction applications, including a reasonable time within which the board
23 of directors shall act after an application is submitted and the consequences of
24 its failure to act.

25 D. A rule regulating display of the flag of the United States shall be
26 consistent with federal law.

27 E. The board of directors may adopt rules that affect the use of or
28 behavior on lots that may be used for residential purposes only to implement a
29 provision of the declaration or to regulate any behavior in or occupancy of a lot

1 that violates the declaration or adversely affects the use and enjoyment of other
2 lots or the common areas by other lot owners.

3 F. Every rule adopted pursuant to this Section is required to be
4 reasonable.

5 §1141.38. Notice to lot owners

6 A. An association shall deliver any notice required pursuant to this Part
7 by any of the following methods:

8 (1) United States mail postage paid, or commercial courier as defined in
9 Code of Civil Procedure Article 1313(D), to the mailing address designated by
10 the lot owner.

11 (2) Electronic mail to the address designated by the lot owner.

12 (3) Hand delivery to the physical location of each lot, if neither a mailing
13 address nor an electronic mail address has been designated by the lot owner.

14 (4) United States mail postage paid, or commercial courier as defined in
15 Code of Civil Procedure Article 1313(D), to the mailing address of each lot.

16 (5) Any other method reasonably calculated to provide notice to the lot
17 owner.

18 B. The ineffectiveness of a good faith effort to deliver notice by an
19 authorized means does not invalidate action taken at or without a meeting.

20 C. In the event of an emergency, notice may be given by any method that
21 the association deems appropriate to provide reasonable notice to the lot
22 owners, regardless of the provisions of Subsection A of this Section. The notice
23 shall state the nature of the emergency.

24 §1141.39. Removal of directors and officers

25 A. Notwithstanding any provision of the community documents to the
26 contrary, lot owners at any meeting of the association at which a quorum is
27 present and for which notice of removal was given may by majority vote remove
28 any director of the board of directors and any officer of the association elected
29 by the lot owners, with or without cause. However, a director appointed by the

1 declarant may not be removed during the period of declarant control.

2 B. At any meeting at which a vote to remove a director or an officer is to
3 be taken, the director or officer being considered for removal shall have a
4 reasonable opportunity to speak before the vote.

5 §1141.40. Incorporation

6 A. When immovable property is acquired by one or more persons acting
7 in any capacity for and in the name of an association that is not duly
8 incorporated, and the association is subsequently duly incorporated, the
9 corporate existence of the association shall be retroactive to the date of
10 acquisition of an interest in the immovable property, but the retroactive
11 existence shall be without prejudice to rights validly acquired by third persons
12 in the interim between the date of acquisition and the date that the association
13 is duly incorporated.

14 B. The effect of the revocation and reinstatement of an association shall
15 be in accordance with law.

16 SUBPART D. CONSUMER PROTECTIONS

17 §1141.41. Applicability; waiver

18 This Subpart applies to all lots except as modified or waived by
19 agreement of purchasers of lots in a planned community in which all lots are
20 restricted to nonresidential use.

21 Revision Comments – 2024

22 Commercial and industrial purchasers are assumed to be more sophisticated
23 and better able to bargain for necessary protections. At the same time, the cost of
24 protection may be substantial. Accordingly, this Section permits waiver or
25 modification of the protections in this Subpart only where all lots are restricted to
26 nonresidential use. The rights provided by this Subpart may not be waived or
27 modified in the case of residential purchasers or in mixed-use planned communities.

28 §1141.42. Public offering statement

29 A. A declarant, before offering any interest in a lot to the public, shall
30 prepare a public offering statement in accordance with R.S. 9:1141.43.

31 B. A declarant who offers a lot to a purchaser shall deliver a public
32 offering statement in accordance with this Section and R.S. 9:1141.48. The

1 declarant is liable in accordance with R.S. 9:1141.44 and 1141.48 for any false
2 or misleading statement in the public offering statement and for any omission
3 of a material fact therefrom.

4 C. If a lot in a planned community is also part of any other regime in
5 which the delivery of a public offering statement is required by law, a single
6 public offering statement conforming to the requirements of R.S. 9:1141.43 as
7 related to each regime in which the lot is located may be prepared and delivered
8 in lieu of providing two or more public offering statements.

9 §1141.43. Public offering statement; requirements

10 A. A public offering statement shall contain and fully and accurately
11 disclose all of the following:

12 (1) The name and principal address of the declarant and of the planned
13 community, and a statement that the planned community is a planned
14 community.

15 (2) A general description of the planned community, including, to the
16 extent possible, the declarant's schedule of commencement and completion of
17 construction of common areas and limited common areas disclosed in
18 promotional or marketing materials as "SHALL BE BUILT". Any promotional
19 or marketing materials that show the intended location and dimensions of any
20 contemplated improvement to be constructed anywhere within the planned
21 community or on any immovable property to be added to the planned
22 community shall be labeled either "SHALL BE BUILT" or "NEED NOT BE
23 BUILT".

24 (3) A copy of the declaration meeting the requirements of R.S. 9:1141.5.

25 (4) Copies of any other recorded covenants, conditions, restrictions, and
26 reservations affecting the planned community; the bylaws and any rules of the
27 association; and a brief description of any contracts or occupancy agreements
28 that may be subject to termination pursuant to R.S. 9:1141.24.

29 (5) The financial information required by Subsection B of this Section.

1 (6) Any services not reflected in the budget that the declarant provides
2 or expenses that the declarant pays that may become a common expense
3 liabilities of the association, and the projected common expense assessment
4 attributable to each of those services or expenses for the association and for
5 each type of lot.

6 (7) Any initial or special fee due from the purchaser or seller at the time
7 of sale, together with a description of the purpose and method of calculating the
8 fee.

9 (8) A narrative description of any liens, defects, or encumbrances that
10 are revealed in a title policy or title opinion affecting the ownership of the
11 immovable and movable property forming the planned community as of the
12 date of the declaration or that are otherwise known by the declarant.

13 (9) The terms and significant limitations of any warranties provided by
14 the declarant, including statutory warranties and limitations on the
15 enforcement thereof or on damages.

16 (10) A statement that within fifteen days after receipt of a public offering
17 statement, a purchaser, before transfer, may cancel any contract to sell.

18 (11) A statement of any unsatisfied judgment or pending action against
19 the association, and the status of any pending action material to the planned
20 community of which a declarant has actual knowledge.

21 (12) Any restrictions on use, occupancy, and alienation of the lots and
22 any restrictions on the amount for which a lot may be sold.

23 (13) A description of and the amount of the premiums for the insurance
24 coverage provided for the benefit of the association and lot owners.

25 (14) Any current or expected fees or charges to be paid by lot owners for
26 the use of the common areas, limited common areas, and other facilities related
27 to the planned community.

28 (15) The extent to which financial arrangements have been provided for
29 completion of all common areas and limited common areas that the declarant

1 is obligated to build pursuant to R.S. 9:1141.46.

2 (16) The zoning classification and any other land use designation
3 affecting the planned community.

4 (17) Any other material circumstances, features, and characteristics of
5 the planned community and the lots.

6 (18) A description of any financial arrangement that is not otherwise
7 disclosed and contained in the budget and that is binding on the association.

8 (19) A narrative description of all special declarant rights retained by the
9 declarant.

10 B. The public offering statement shall contain a current balance sheet
11 and a projected budget for the association for one year after the date of the first
12 transfer of a lot to an unrelated purchaser, and thereafter the current budget
13 of the association, a statement of who prepared the budget, and a statement of
14 the assumptions concerning occupancy and inflation factors. The budget shall
15 include the following:

16 (1) A statement of the amount included as a reserve for repairs and
17 replacements.

18 (2) A statement of any other reserves.

19 (3) The projected common expense assessment by category of
20 expenditures.

21 (4) The projected monthly common expense assessment for each lot.

22 C. The declarant shall be required to provide a supplement to the public
23 offering statement containing the information required in Subsection B of this
24 Section on an annual basis until all of the lots are owned by unrelated
25 purchasers.

26 D. The declarant shall promptly amend the public offering statement to
27 report any material change in the information required by this Section.

28 E.(1) A public offering statement is not required in any of the following
29 circumstances:

1 **(a) A gratuitous disposition of a lot.**

2 **(b) A disposition of a lot pursuant to court order.**

3 **(c) A disposition of a lot by a governmental agency.**

4 **(d) A disposition of a lot by foreclosure or giving in payment.**

5 **(e) A disposition of a lot restricted to nonresidential uses in a wholly**
6 **nonresidential community.**

7 **(2) A public offering statement is not required when a planned**
8 **community contains fewer than seventy-five lots based on the total number of**
9 **anticipated lots after all development rights to add additional immovable**
10 **property have been exercised in accordance with R.S. 9:1141.7.**

11 **(3) When a lot is subject to a contract to sell and is owned by a person**
12 **other than the declarant, the association shall be required to provide to the**
13 **purchaser all information required in this Section within ten days of a request**
14 **for the information.**

15 **§1141.44. Purchaser's right to cancel**

16 **A. The person required to deliver a public offering statement shall**
17 **provide a purchaser with a copy of the public offering statement and all**
18 **amendments thereto at least fifteen days before transfer of the lot. A purchaser**
19 **shall not be required to acquire a lot unless fifteen days have elapsed from the**
20 **date of the delivery of the public offering statement. A purchaser, before**
21 **transfer, may cancel the contract within fifteen days after first receiving the**
22 **public offering statement.**

23 **B. If a purchaser does not receive a public offering statement as required**
24 **by this Subpart, the purchaser may cancel any contract to sell any time prior**
25 **to the transfer, and, upon doing so, shall be entitled to recover actual damages.**

26 **C. A purchaser may cancel a contract pursuant to Subsection A or B of**
27 **this Section by hand delivering or mailing notice thereof by prepaid United**
28 **States mail to the seller or his agent for service of process. Cancellation is**
29 **without penalty. All payments made by the purchaser to the seller before**

1 cancellation shall be promptly refunded.

2 D. If a purchaser does not receive a public offering statement as required
3 by this Subpart prior to or at the time of the execution of the contract to sell, the
4 purchaser may recover all costs and expenses incurred if the purchaser elects
5 to cancel the contract to sell prior to acquisition of the lot.

6 §1141.45. Express warranties of declarant

7 A. Express warranties made by a declarant to an unrelated purchaser,
8 if relied upon by the unrelated purchaser, regardless of the delivery or receipt
9 of a public offering statement, are created as follows:

10 (1) Any affirmation of fact or promise by the declarant that relates to the
11 lot, its use, or rights appurtenant thereto; area improvements to the planned
12 community that would directly benefit the lot; or the right to use or have the
13 benefit of facilities not located in the planned community creates an express
14 warranty that the lot and related rights and uses will conform to the affirmation
15 or promise.

16 (2) A provision that a purchaser may put a lot only to a specified use is
17 an express warranty that the specified use is lawful at the time that the
18 warranty was made.

19 B. Neither formal words, such as "warranty" or "guarantee", nor a
20 specific intention to make a warranty are necessary to create an express
21 warranty of quality, but a statement purporting to be merely an opinion or
22 commendation of the immovable property or its value does not create a
23 warranty.

24 §1141.46. Implied warranties

25 Any limitation, modification, or exclusion of implied warranties shall be
26 as provided by law.

27 §1141.47. Warranties

28 A. Except as provided in Subsection G of this Section, the warranty
29 period provided by law shall apply to this Part.

1 **B. The association may assert a claim to enforce any express or implied**
2 **warranty involving the common areas and limited common areas that is either**
3 **made by the declarant or could have been asserted by the declarant against a**
4 **third party in any manner provided by law.**

5 **C. If, during the period of declarant control, the association fails to**
6 **enforce a claim that it could have asserted in accordance with Subsection B of**
7 **this Section, a lot owner who wishes to assert the claim shall first provide notice**
8 **to the association by the methods provided in R.S. 9:1141.38 of the lot owner's**
9 **intention to do so. The association shall have thirty days from the date that**
10 **notice was sent to assert the claim.**

11 **D. If the association fails to assert the claim within the thirty-day period,**
12 **the lot owner who provided notice may assert the claim of the association to**
13 **enforce any express or implied warranty involving the common areas and**
14 **limited common areas, whether made by the declarant or a third party.**

15 **E. A lot owner's monetary recovery related to a claim asserted in**
16 **accordance with this Section shall be limited to the lot owner's damage caused**
17 **by the breach of warranty involving the common areas and limited common**
18 **areas. A lot owner may also seek any other relief as provided by law.**

19 **F. A compromise made by the lot owner asserting a claim in accordance**
20 **with this Section or any judgment resulting from the enforcement thereof does**
21 **not preclude the assertion of a claim by the association or another lot owner.**

22 **G. A claim to enforce an express or implied warranty made by the**
23 **declarant involving the common areas and limited common areas in accordance**
24 **with this Section shall be asserted within forty days following the expiration of**
25 **the time period of declarant control or within the time period otherwise**
26 **provided by law to assert the claim, whichever period expires later.**

27 Revision Comments – 2024

28 (a) The right of the association to assert a claim in accordance with this
29 Section is not barred by the lack of privity between the association and a third party.
30 This Act grants the association standing to maintain an action to enforce an
31 obligation owed to the declarant. See R.S. 9:1141.48. For example, in the event that

1 the declarant entered into a contract with another person who agreed to construct
 2 improvements on common areas, the association would be subrogated to the rights
 3 of the declarant to enforce a claim for failure to construct the improvement or for
 4 damages caused by defective construction. This Section grants the association the
 5 right to assert a claim. These examples are illustrative and do not limit the rights
 6 created by this Section.
 7

8 (b) This Section further provides that, during the period of declarant control,
 9 the lot owner may assert a claim of the association in the event that the association
 10 fails to assert its claim within thirty days after the lot owner gives notice of his
 11 intention to do so. The assertion of the claim by the association may represent a
 12 conflict of interest for the declarant during the period of declarant control of the
 13 association. The rights granted to a lot owner to assert a claim of the association are
 14 intended to address this conflict.
 15

16 (c) In the event that a lot owner asserts a claim of the association, the lot
 17 owner's recovery is limited to loss, injury, or damage suffered by the lot owner from
 18 the damage to the common areas and limited common areas. Nothing in this Section
 19 impacts the rights of other individual lot owners. This Section does not preclude the
 20 ability of a lot owner asserting a claim under this Section to also assert claims under
 21 other provisions of law, including claims in redhibition.

22 **§1141.48. Effect of violations on rights of action; attorney fees**

23 **A declarant, association, lot owner, or any other person who has suffered**
 24 **actual damages may bring an action to enforce a right granted or obligation**
 25 **imposed by this Subpart. The court may award reasonable costs and attorney**
 26 **fees to the prevailing party.**

27 **§1141.49. Declarant's obligation to complete and restore**

28 **A. Except for improvements labeled "NEED NOT BE BUILT" in any**
 29 **promotional materials or on a plat, the declarant shall complete all**
 30 **improvements depicted on any site plan or other graphic representation**
 31 **prepared by or at the direction of the declarant or the party responsible for the**
 32 **preparation of a public offering statement, including any plats or plans**
 33 **prepared pursuant to R.S. 9:1141.9.**

34 **B. The declarant is subject to liability for the prompt repair and**
 35 **restoration, to a condition compatible with the remainder of the planned**
 36 **community, of any portion of the planned community affected by the exercise**
 37 **of rights reserved pursuant to or created by R.S. 9:1141.7 or 1141.12.**

38 **C. Any description of the quantity or extent of the immovable property**
 39 **comprising the planned community, including plats or surveys or improvements**

1 indicated as "SHALL BE BUILT", creates an express warranty that the
2 planned community will conform to the description, with the amenities
3 provided by the declarant subject to customary tolerances.

4 Revision Comments – 2024

5 (a) The duty imposed by Subsection A of this Section is a fundamental
6 obligation of the declarant and is one that a successor declarant is obligated to
7 perform under R.S. 9:1141.23.

8
9 (b) This Section requires the declarant to repair and restore the planned
10 community following the exercise of any rights reserved or created to exercise a
11 development right, alter lots, relocate the boundaries between adjoining lots,
12 subdivide lots, use lots or common areas for sales purposes, or exercise servitude and
13 use rights. Plainly, this obligation of the declarant exists only if the declarant
14 exercises these rights. If any right to, for example, alter lots is exercised by another
15 lot owner, that lot owner, and not the declarant, would be responsible for the
16 consequences of those acts.

17 **§1141.50. Substantial completion of lots**

18 **A. In the case of a sale of a lot for which delivery of a public offering**
19 **statement is required, a contract to sell may be executed, but the declarant shall**
20 **transfer no interest in the lot until the declaration is filed for registry, the**
21 **requirements of R.S. 33:114 et seq. have been met, and all other required**
22 **governmental approvals have been obtained.**

23 **B. When a declarant has transferred an interest in a lot in a planned**
24 **community in violation of Subsection A of this Section, the purchaser shall have**
25 **the right to rescind the transfer or demand specific performance that the**
26 **declarant take the actions described in Subsection A of this Section and to**
27 **pursue any other remedy provided by law for the declarant's failure to comply**
28 **with the provisions of Subsection A of this Section.**

29 Revision Comments – 2024

30 The purpose of this Section is to allow a declarant to "pre-sell" a
31 development. This frequently is required to obtain financing. The declarant is
32 prohibited, however, from the actual sale of lots until all governmental requirements
33 have been satisfied.

34 * * *

35 PART III. PRIVILEGES ON IMMOVABLES FOR CHARGES OR DUES OF
36 **ASSOCIATION OF OWNERS ASSOCIATIONS**

1 §1145. **Privileges; enforcement**

2 **A. This Part authorizes associations, including associations organized in**
 3 **accordance with R.S. 9:1123.101 or 1141.19, to enforce the payment of**
 4 **assessments authorized in the community documents. A privilege in favor of the**
 5 **association shall arise on a lot or unit for any assessment attributable to that lot**
 6 **or unit or any fines imposed against the owner.**

7 **B. For the purposes of this Part, an association refers to a nonprofit**
 8 **corporation, partnership, association, or other legal entity whose members are**
 9 **owners of lots subject to community documents or units in a condominium**
 10 **regime that maintains certain portions of the land or improvements for the use**
 11 **and benefit of the owners and that has the right to impose assessments.**

12 **C. This Part does not affect the personal liability of an owner for the**
 13 **payment of past due sums for which R.S. 9:1146 grants a privilege or prevent**
 14 **an association from acquiring a lot or unit through a giving in payment.**

15 **D. Within ten business days after receipt of a request made in a record,**
 16 **the association shall furnish to the owner a statement of the amount of any**
 17 **unpaid assessments against the owner's lot or unit. The statement shall be**
 18 **binding on the association.**

19 **E. With approval from the board of directors, an association may**
 20 **commence an action to enforce a privilege in accordance with this Part.**

21 **§1146. Association of owners Demand; privilege; notice to owner; definition**

22 A. ~~(1) If an individual lot~~ **When an** owner has failed to pay the charges,
 23 expenses, or dues imposed upon his lot **or unit** ~~by the association of owners of lots~~
 24 ~~in a residential or commercial subdivision, the association shall deliver a~~ **make**
 25 written demand for past due charges, expenses, or dues owed to the association to the
 26 owner by certified or registered mail, by **any of the following methods:**

27 **(1) United States mail postage paid, or** commercial courier as defined in
 28 Code of Civil Procedure Article 1313**(D)**, ~~or at the address and method on file with~~
 29 ~~the association~~ **to the mailing address designated by the owner.**

1 (2) Electronic mail to the address designated by the owner.

2 (3) Hand delivery to the physical location of the lot or unit, if neither a
3 mailing address nor an electronic mail address has been designated by the
4 owner.

5 (4) United States mail postage paid, or commercial courier as defined in
6 Code of Civil Procedure Article 1313(D), to the mailing address of each lot or
7 unit.

8 (5) Any other method reasonably calculated to provide notice to the
9 owner.

10 ~~(2) B. (1)~~ The individual lot owner shall have thirty days after delivery of the
11 written demand to deliver payment for the amount owed to the association.

12 (2) The association shall apply any sums paid by the owner following
13 delivery of the written demand in the following order:

14 (a) Unpaid assessments.

15 (b) Late charges.

16 (c) Reasonable attorney fees, costs, and other collection charges.

17 (d) All other unpaid fees, charges, fines, penalties, and interest.

18 ~~(3)~~ After the thirty days has run expiration of the thirty-day period, the
19 association may file a sworn detailed statement of privilege in accordance with this
20 Part.

21 B: C. Upon the filing of a sworn detailed statement ~~in accordance with this~~
22 ~~Part, an~~ of privilege, the association of owners of lots in a residential or commercial
23 subdivision shall have a privilege upon the lot or unit and improvements thereon of
24 an owner in the subdivision who fails to pay charges, expenses, or dues imposed
25 upon such lot and improvements thereon in accordance with recorded restrictions,
26 servitudes, or obligations affecting such subdivision. The privilege shall secure
27 unpaid charges, expenses, or dues imposed by the association of owners, together
28 with interest thereon at the rate provided in the declaration or, in the absence
29 thereof, at the legal interest rate from the date due and ~~reasonable attorney fees~~ any

1 **amount awarded in accordance with Subsection D of this Section.**

2 ~~€. D.~~ For actions brought pursuant to this Section, the court may award the
3 prevailing party costs of court, reasonable attorney fees, and other related costs, as
4 well as any other sanctions and relief requested pursuant to Code of Civil Procedure
5 Article 863.

6 ~~D.~~ For the purposes of this Part, an association of owners refers to a nonprofit
7 corporation, partnership, association, or other legal entity whose members are
8 owners of lots in the subdivision, and which maintains certain portions of the land
9 or improvements in such subdivision for the use and benefit of the owners of lots in
10 such subdivision.

11 ~~§1146.~~ **§1147. Privilege; sworn Sworn** detailed statement; filing

12 ~~A.~~ The sworn detailed statement shall contain the nature and amount of the
13 unpaid charges, expenses, or dues, a description of the lot or lots on which behalf the
14 charges, expenses, or dues have been assessed; **of privilege** shall be signed and
15 verified by an officer or agent of the association; and shall be filed for registry in the
16 mortgage records **in of** the parish in which the residential subdivision **lot or unit** is
17 located. **The statement of privilege shall include a complete property description**
18 **of the lot or unit, the name of the record owner, the date the assessment became**
19 **delinquent, a statement of the amount assessed relative to periodic dues**
20 **including any accelerated amount, a statement relative to the amount assessed**
21 **relative to fines and any late fees, and the date written demand was made upon**
22 **the owner.**

23 ~~B.~~ The association shall, commensurate with **Upon** the filing for registry of
24 the **statement of** privilege, serve upon **the association shall deliver a copy thereof**
25 **to** the delinquent owner a sworn detailed statement of the claim by certified mail,
26 registered mail or personal delivery **any method provided in R.S. 9:1146(A).**

27 ~~§1147.~~ **§1148. Privilege; time periods; rank**

28 A. (1) A recorded sworn statement shall preserve the privilege against the lot
29 or lots and improvements thereon for charges assessed to the owner **Except as**

1 **provided in Subsection B of this Section, if the assessment is imposed** for alleged
2 violations of community documents, ~~for a period of one year after the date of~~
3 recordation. The ~~the~~ effect of recordation shall cease and the privilege preserved by
4 this recordation shall preempt unless a suit to enforce the privilege is filed within one
5 year after the date of its recordation and a notice of the filing of such suit is filed in
6 the mortgage records of the parish in which the subdivision is located **of a statement**
7 **of privilege shall cease and the privilege preserved by it shall be extinguished**
8 **as to third persons unless a notice of pendency of action in accordance with**
9 **Code of Civil Procedure Article 3752, identifying the suit required to be filed in**
10 **accordance with this Subsection, is filed for registry in the mortgage records of**
11 **the parish where the lot or unit is located within one year after the statement of**
12 **privilege was filed. In addition to the requirements of Code of Civil Procedure**
13 **Article 3752, the notice of pendency of action shall contain a reference to the**
14 **recorded statement of privilege. If the effect of recordation of a statement of**
15 **privilege has ceased for lack of timely filing of a notice of pendency of action,**
16 **the recorder of mortgages, upon receipt of a written signed application, shall**
17 **cancel the recordation of the statement of privilege.**

18 (2) This Subsection shall not apply to **If the assessment is imposed to**
19 **enforce** the affirmative duty of a ~~homeowner~~ **an owner** to pay monthly or periodic
20 dues or fees, or assessments for particular expenses or capital improvements that are
21 reasonable for the maintenance, improvement, or safety, or any combination thereof,
22 of the ~~planned community~~ **then the effect of recordation of a statement of**
23 **privilege shall cease and the privilege preserved by it shall be extinguished as**
24 **to third persons unless a notice of pendency of action in accordance with Code**
25 **of Civil Procedure Article 3752, identifying the suit required to be filed in**
26 **accordance with this Subsection, is filed for registry in the mortgage records of**
27 **the parish where the lot or unit is located within five years after the statement**
28 **of privilege is filed. In addition to the requirements of Code of Civil Procedure**
29 **Article 3752, the notice of pendency of action shall contain a reference to the**

1 recorded statement of privilege. If the effect of recordation of a statement of
2 privilege has ceased for lack of timely filing of a notice of pendency of action,
3 the recorder of mortgages, upon receipt of a written signed application, shall
4 cancel the recordation of the statement of privilege.

5 B. ~~A recorded sworn statement shall preserve the privilege against the lot or~~
6 ~~lots and improvements thereon for dues, fees, or assessments as provided in~~
7 ~~Paragraph (A)(2) of this Section for a period of five years after the date of~~
8 ~~recordation. The effect of recordation shall cease and the privilege preserved by this~~
9 ~~recordation shall preempt unless a suit to enforce the privilege is filed within five~~
10 ~~years after the date of its recordation and a notice of the filing of such suit is filed in~~
11 ~~the mortgage records of the parish in which the subdivision is located. A privilege~~
12 pursuant to this Part is effective against third persons from the time the
13 statement of privilege is filed for registry in the mortgage records and, except
14 as otherwise provided in the Private Works Act, R.S. 9:4801 et seq., is preferred
15 in rank to all mortgages, privileges, and other rights in the lot or unit that
16 become effective against third persons after that time.

17 C. In the absence of a contrary provision in the declaration authorizing
18 two or more associations, privileges in favor of those associations for
19 assessments have equal priority regardless of the date on which the associations
20 file statements of privilege unless there is an intervening encumbrance, in which
21 event this Subsection does not apply.

22 Revision Comments – 2024

23 For the effectiveness of privileges against third persons, see Civil Code
24 Articles 3273 and 3274.

25 ~~§1148. Privilege; ranking~~

26 ~~The privilege provided in this Part shall be ranked according to its time of~~
27 ~~recordation.~~

28 * * *

29 §2792.7. Limitation of liability of director, officer, or trustee of certain homeowners
30 associations

* * *

B. For purposes of this Section, "homeowners association" means any of the following:

* * *

(3) A ~~homeowners~~ **lot owners** association as defined in the Louisiana ~~Homeowners Association~~ **Planned Community** Act, R.S. 9:1141.1 et seq.

* * *

§3132. Definitions

As used in this Chapter:

(1) "Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in an immovable, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the immovable, the purchase price, or other consideration given for the transfer. "Private transfer fee" shall not include the following:

* * *

(g) Any fee, charge, assessment, fine, or other amount authorized ~~under~~ **by** ~~the~~ Louisiana Condominium Act, R.S. 9:1121.101 et seq.; the Louisiana Timesharing Act, R.S. 9:1131.1 et seq.; or the Louisiana ~~Homeowners Association~~ **Planned Community** Act, R.S. 9:1141.1 et seq.

* * *

Section 3. (A) This Act shall become effective on January 1, 2025, except as otherwise provided by this Section, and shall apply to declarations establishing planned communities filed for registry on or after that date.

(B) For planned communities established by a declaration or similar document filed for registry on or before December 31, 2024, this Act shall become effective on January 1, 2026.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Hanna Gettys.

DIGEST

SB 23 Original 2024 Regular Session Miller

Present law (C.C. Art. 783) provides that the Louisiana Homeowners Association Act shall supersede the building restriction articles of the Civil Code in the event of a conflict.

Proposed law retains present law but changes the reference from the Homeowners Association Act to the Planned Community Act.

Present law (R.S. 9:1141.1-1141.9) provides for the Louisiana Homeowners Association Act.

Proposed law (R.S. 9:1141.1-1141.50) creates the Louisiana Planned Community Act modeled after the 2008 Uniform Common Interest Ownership Act.

Present law (R.S. 9:1141.1-1141.3) provides general provisions such as a short title, definitions, and applicability.

Proposed law retains a short title, adds several defined terms, and provides for applicability.

Proposed law provides that proposed law shall only apply to associations that are organized for planned communities and does not require existing associations prior to the effective date of proposed law to amend or change its organization or community documents.

Present law (R.S. 9:1141.4-1141.7) provides for the creation, amendment, and termination of building restrictions and also provides voting procedures.

Proposed law (R.S. 9:1141.4) provides for the creation of a planned community by executing a declaration that is filed for registry.

Proposed law (R.S. 9:1141.5) provides for the contents of the declaration to identify the planned community and describe development rights and other special declarant rights. Proposed law further provides that the declaration may contain the method to amend and make assessments.

Proposed law (R.S. 9:1141.6) provides for the allocation and reallocation of common expense liabilities, common surpluses, and voting interests in the association. Proposed law further provides that nothing in proposed law requires an existing planned community to amend its method of allocating assessments.

Proposed law (R.S. 9:1141.7) provides procedures for a declarant to exercise or transfer any reserved development rights. Proposed law provides for a seven year period to add additional immovable property to the planned community.

Proposed law (R.S. 9:1141.8) requires the declaration to provide for the ownership of limited common areas.

Proposed law (R.S. 9:1141.9) sets forth what information is required to be on the plat including such items as the name of the community, any encroachments, and all servitudes. Proposed law also requires the plat to be made a professional land surveyor.

Proposed law (R.S. 9:1141.10 and 1141.11) authorizes the relocation of lot boundaries and the subdivision of lots upon the request of lot owners and with the proper approval.

Proposed law (R.S. 9:1141.12 and 1141.13) allows the declarant to maintain a sales office and models on lots owned by the declarant and grants the declarant a personal servitude of use on the common areas to discharge obligations or exercise special declarant rights.

Proposed law (R.S. 9:1141.14) requires certain voting procedures to amend the declaration and restricts certain types of actions from being taken by amendment, such as prohibiting an existing use of a lot. Proposed law authorizes the adoption of more burdensome restrictions when special conditions are met.

Proposed law further provides that an association may adopt by two-thirds vote more burdensome restrictions governing construction, design criteria, and aesthetic standards, but existing improvements do not have to comply with new restrictions.

Proposed law (R.S. 9:1141.15) provides that a community may be terminated by a two-thirds vote and that the existence of the association is not affected by termination. Proposed law further provides that all proceeds from transfers of ownership of common areas and other property shall be paid to the association for the benefit of lot owners.

Proposed law (R.S. 9:1141.16) provides for the rights of secured parties to approve certain actions of the lot owners but does not allow creditors to control the association's general affairs, establish or impose assessments, prevent the settlement of litigation, or prevent the distribution of insurance proceeds.

Proposed law (R.S. 9:1141.17 and 1141.18) provides for master associations and combining planned communities.

Present law (R.S. 9:1141.8-1141.9) provides for the enforcement of the community documents and the establishment of a homeowners association privilege.

Proposed law (R.S. 9:1141.19 and 1141.20) provides for the organization of a lot owners association as a nonprofit corporation and provides for the powers and duties of the association, including adopting bylaws, preparing a yearly budget, entering into contracts, receiving assessments, imposing fees and fines, and indemnifying officers and the board of directors.

Proposed law prohibits the association from denying a lot owner access to his property or withholding services necessary for the owner's health, safety, or property.

Proposed law (R.S. 9:1141.21) provides for the powers and duties of the board of directors and the officers of the association. Proposed law prohibits the board from amending the declaration or the bylaws and from terminating the planned community.

Proposed law (R.S. 9:1141.22) provides for the period of declarant control of the association and the termination thereof.

Proposed law (R.S. 9:1141.23) provides for the transfer of special declarant rights and the transferor's and transferee's obligations and liabilities.

Proposed law (R.S. 9:1141.24) provides for the termination of contracts entered into by the association while under declarant control.

Proposed law (R.S. 9:1141.25) provides for the bylaws of the association to address the number of members on the board, the method of electing officers and the required qualifications, and their powers.

Proposed law (R.S. 9:1141.26-1141.28) provides requirements for association meetings including proper notice, quorums, opportunities for comments, location, executive sessions, emergency meetings, availability of materials, quorum requirements, voting procedures, and

access to association records.

Proposed law (R.S. 9:1141.29) provides for the transfer or encumbrance of common areas and the right to receive assessments or other income.

Proposed law (R.S. 9:1141.30) provides insurance requirements for the planned community.

Proposed law (R.S. 9:1141.31 and 1141.32) provides for the assessment procedure and the distribution of any surplus funds. Proposed law provides for the acceleration of assessments for the failure to timely pay and enforcement of the privilege.

Proposed law (R.S. 9:1141.33) provides for the upkeep of the community and access for maintenance and repairs.

Proposed law (R.S. 9:1141.34) requires the annual adoption of a budget for communities with 25 lots or more, but it does not require a specific format. Proposed law provides for special assessments and emergency special assessments.

Proposed law (R.S. 9:1141.35) provides for privileges in favor of the association for any assessments and fines imposed against lot owners.

Proposed law (R.S. 9:1141.36) requires the association to maintain certain records such as meeting minutes, financial statements, and annual reports, and provide access to records to lot owners.

Proposed law (R.S. 9:1141.37) authorizes the adoption, amendment, or repeal of association rules.

Proposed law (R.S. 9:1141.38) provides that notice to lot owners may be achieved by U.S. mail, electronic mail, hand delivery, or any other method that will provide reasonable notice.

Proposed law (R.S. 9:1141.39) provides for the removal of officers and directors by majority vote.

Proposed law (R.S. 9:1141.40) provides for the retroactivity of the corporate existence of an association.

Proposed law (R.S. 9:1141.41-1141.50) provides consumer protections through the requirement of a public offering statement, granting the purchaser a right to cancel, express and implied warranties, and authorizing the court to award attorney fees for violations.

Proposed law (R.S. 9:1141.49) requires the declarant to complete all improvements depicted on any site plan, other than those labeled "NEED NOT BE BUILT" and makes the declarant liable for the repair and restoration of the community affected by the exercise of special declarant rights.

Proposed law (R.S. 9:1141.50) provides for the substantial completion of lots prior to the transfer of interest.

Present law (R.S. 9:1145-1148) provides for privileges on immovables for charges or dues of any associations.

Proposed law (R.S. 9:1145) authorizes associations to enforce the payment of assessments and grants a privilege in favor of associations for any assessments and fines imposed against an owner. Proposed law requires associations to provide owners with a statement of the amount owed.

Proposed law (R.S. 9:1146) reorganizes present law regarding written demand for past due

charges, expenses, or dues owed and adds the proper method to give notice thereof. Proposed law further provides for the privilege against the lot or unit.

Proposed law (R.S. 9:1147) retains present law regarding a sworn detailed statement of privilege and requires more detailed information to be contained therein.

Proposed law (R.S. 9:1148) provides for the extinguishment of the privilege for violations of community documents unless notice of the pendency of action is filed within one year and the cancellation of the recordation of the statement of privilege.

Proposed law further provides for the extinguishment of the privilege for the payment of dues or fees unless notice of the pendency of action is filed within five years after becoming effective.

Proposed law provides for the rank and priority of privileges.

Present law (R.S. 9:2792.7(B)(3) and 3132(1)(g)) includes references to the Louisiana Homeowners Association Act and homeowners associations.

Proposed law corrects cross references and terminology for consistency with the Planned Community Act.

Proposed law provides for special effective dates.

(Amends C.C. Art. 783, R.S. 9:1141.1-1141.50, 1145-1148, 2792.7(B)(3), and 3132(1)(g))