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

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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))