

Regular Session, 2014

SENATE BILL NO. 397

BY SENATOR MILLS

CONDOMINIUMS. Provides relative to the Louisiana Condominium Act. (8/1/14)

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AN ACT

To amend and reenact R.S. 9:1123.106(A) and (B) and 1123.108 and to enact R.S. 9:1122.109, relative to the Louisiana Condominium Act; to provide for transfer of association control; to provide for the association; to provide for the adoption of bylaws; to provide for records; to provide for certain procedures, terms, and conditions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:1123.106(A) and (B) and 1123.108 are hereby amended and reenacted and R.S. 9:1122.109 is hereby enacted to read as follows:

§1122.109. Transfer of association control

A. If unit owners other than the developer own fifteen percent or more of the units in a condominium, such unit owners are entitled to elect at least one-third of the persons who shall manage and regulate the condominium. Unit owners other than the developer are entitled to elect at least a majority of the persons who shall manage and regulate the condominium, when any one of the following events occur:

(1) The passage of three years after fifty percent of the units have been

1 **conveyed to purchasers.**

2 **(2) The passage of three months after ninety percent of the units have**
3 **been conveyed to purchasers.**

4 **(3) When all the units have been completed, and more than one has been**
5 **conveyed to purchasers, and none of the others are being offered for sale by the**
6 **developer in the ordinary course of business.**

7 **(4) When more than one unit has been conveyed to purchasers and none**
8 **of the others are being constructed or offered for sale by the developer in the**
9 **ordinary course of business.**

10 **(5) When the developer files a petition seeking protection in bankruptcy.**

11 **B. At the time that unit owners other than the developer elect a majority**
12 **of the persons to manage and regulate the condominium, the developer shall**
13 **relinquish control of the association, and the unit owners shall accept control.**
14 **Within ninety days of such election, the developer shall deliver to the**
15 **association, at the developer's expense, all property of the unit owners and of**
16 **the association that is held or controlled by the developer, including but not**
17 **limited to the following items, if applicable:**

18 **(1)(a) The original or a copy of the recorded declaration and all**
19 **amendments thereto. If a copy is provided, it shall be certified by affidavit of the**
20 **developer or an officer or agent of the developer as being a complete copy of the**
21 **actual recorded declaration.**

22 **(b) A certified copy of the articles of incorporation of the association.**

23 **(c) A copy of the bylaws.**

24 **(d) A copy of all minutes and all books and records of the association,**
25 **if any.**

26 **(e) Any rules adopted by the association.**

27 **(2) The financial records, including financial statements of the**
28 **association, and source documents from the incorporation or establishment of**
29 **the association through the date of turnover.**

- 1 **(3) Association funds or control thereof.**
- 2 **(4) All tangible personal property that is property of the association,**
3 **which is represented by the developer to be part of the common elements or**
4 **which is ostensibly part of the common elements, and an inventory of that**
5 **property.**
- 6 **(5) A copy of the plans and specifications utilized in the construction or**
7 **remodeling of improvements, the supplying of equipment to the condominium,**
8 **and the construction and installation of all mechanical components serving the**
9 **improvements and the site, together with an affidavit from the developer or the**
10 **developer's agent or an architect or engineer authorized to practice in this state**
11 **that such plans and specifications represent, to the best of his knowledge and**
12 **belief, the actual plans and specifications utilized in the construction and**
13 **improvement of the condominium and for the construction and installation of**
14 **the mechanical components serving the improvements.**
- 15 **(6) A list of the names and addresses of all contractors, subcontractors,**
16 **and suppliers utilized in the construction or remodeling of the improvements**
17 **and in the landscaping of the condominium or association property which the**
18 **developer had knowledge of at any time in the development of the**
19 **condominium.**
- 20 **(7) Insurance policies.**
- 21 **(8) Copies of any certificates of occupancy that may have been issued for**
22 **the condominium property.**
- 23 **(9) Any other permits applicable to the condominium property which**
24 **have been issued by governmental bodies and are in force or were issued within**
25 **one year prior to the date the unit owners other than the developer took control**
26 **of the association.**
- 27 **(10) All written warranties of the contractor, subcontractors, suppliers,**
28 **and manufacturers, if any, that are still effective.**
- 29 **(11) A roster of unit owners and their addresses and telephone numbers,**

1 if known, as shown on the developer's records.

2 (12) Leases of the common elements and other leases to which the
3 association is a party.

4 (13) Employment contracts or service contracts in which the association
5 is one of the contracting parties or service contracts in which the association or
6 the unit owners have an obligation or responsibility, directly or indirectly, to
7 pay some or all of the fee or charges of the person or persons performing the
8 service.

9 (14) All other contracts to which the association is a party.

10 (15) A report included in the official records, under seal of an architect
11 or engineer authorized to practice in this state, attesting to required
12 maintenance, useful life, and replacement costs of the following applicable
13 common elements:

14 (a) Roof.

15 (b) Structure.

16 (c) Fireproofing and fire protection systems.

17 (d) Elevators.

18 (e) Heating and cooling systems.

19 (f) Plumbing.

20 (g) Electrical systems.

21 (h) Swimming pool or spa and equipment.

22 (i) Seawalls.

23 (j) Pavement and parking areas.

24 (k) Drainage systems.

25 (l) Painting.

26 (m) Irrigation systems.

27 C. During the period prior to the time that the developer relinquishes
28 control of the association pursuant to Subsection B of this Section, if any
29 provision of this Part is violated by the association, the developer shall be

1 responsible for such violation and shall be liable to third parties.

2 D. In any claim against a developer by an association alleging a defect
3 in design, structural elements, construction, or any mechanical, electrical, fire
4 protection, plumbing, or other element that requires a licensed professional for
5 design or installation, such defect must be examined and certified by an
6 appropriately licensed engineer, design professional, contractor, or otherwise
7 licensed individual or entity.

8 * * *

9 §1123.106. Bylaws

10 A. The administration and operation of the condominium shall be governed
11 by the bylaws.

12 B. The bylaws shall ~~provide for the~~ include but not be limited to the
13 following:

14 (1) The form and manner of administration of the condominium.

15 (2) The percentage of voting interests required to constitute a quorum
16 at a meeting.

17 (3) Public meetings of the association if a quorum is required. However,
18 a meeting shall not be public for any of the following reasons:

19 (a) To seek legal advice from the association's attorney.

20 (b) For legal advice to be rendered by the association's attorney.

21 (c) To discuss personnel matters.

22 (4) Adequate notice of all association meetings, which shall identify all
23 agenda items, shall be posted conspicuously on the condominium's property at
24 least forty-eight hours before the meeting except in an emergency.

25 (5) An annual meeting of the unit owners.

26 (6) The election of persons to manage and regulate the condominium.

27 * * *

28 §1123.108. Association records; required records; inspection

29 A. The association shall keep financial records sufficiently detailed to enable

1 the association to comply with Section 1124.107. ~~All financial and other records~~
2 ~~shall be made reasonably available for examination by any unit owner and his~~
3 ~~authorized agents.~~

4 **B. From the inception of the association, the association shall maintain**
5 **all of the following items, if applicable, which shall constitute the official records**
6 **of the association:**

7 **(1) A copy of the plans, permits, warranties, and other items provided**
8 **by the developer pursuant to R.S. 9:1122.109.**

9 **(2) A photocopy of the recorded condominium declaration and each**
10 **amendment to each declaration.**

11 **(3) A photocopy of the recorded bylaws of the association and each**
12 **amendment to the bylaws.**

13 **(4) A certified copy of the articles of incorporation of the association and**
14 **each amendment to the articles of incorporation.**

15 **(5) A copy of all minutes of each meeting of the association and the unit**
16 **owners. Such minutes shall be retained for at least seven years.**

17 **(6) A current roster of all unit owners and their mailing addresses, unit**
18 **identifications, voting rights, and if known, telephone numbers.**

19 **(7) All current insurance policies of the association and condominium**
20 **operated by the association.**

21 **(8) A current copy of any management agreement, lease, or other**
22 **contract to which the association is a party or under which the association or**
23 **the unit owners have an obligation or responsibility.**

24 **(9) Bills of sale or transfer for all property owned by the association.**

25 **(10) Accounting records for the association and separate accounting**
26 **records for the condominium. All accounting records shall be maintained for**
27 **at least seven years. The accounting records shall include but are not limited**
28 **to the following:**

29 **(a) Accurate, itemized, and detailed records of all receipts and**

1 expenditures.

2 (b) A current account and a monthly, bimonthly, or quarterly statement
3 of the account for each unit designating the name of the unit owner, the due
4 date and amount of each assessment, the amount paid upon the account, and the
5 balance due.

6 (c) All audits, reviews, accounting statements, and financial reports of
7 the association or condominium.

8 (d) All contracts for work to be performed. Bids for work to be
9 performed shall also be considered official records and shall be maintained for
10 a period of one year.

11 (11) Ballots, sign-in sheets, voting proxies, and all other papers relating
12 to voting by unit owners, which shall be maintained for a period of one year
13 from the date of the election, vote, or meeting to which the document relates.

14 (12) All rental records, when the association is acting as the agent for the
15 rental of a unit.

16 (13) A copy of the current rules of the association.

17 (14) All other records of the association that related to the operation of
18 the association.

19 C. (1) The official records of the association shall be maintained within
20 the state.

21 (2) All financial records and other records of the association shall be
22 made available to a unit owner or authorized representative for inspection
23 within five business days after receipt of written request by the association. The
24 right to inspect the records of the association includes the right to make or
25 obtain copies at the expense to the unit owner or authorized representative.

26 D. Within ninety days after the end of the fiscal year, or annually on a
27 date provided in the bylaws, the association shall prepare and complete, or
28 cause to be prepared and completed by a third party, a financial report for the
29 preceding fiscal year. Within twenty-one days after the financial report is

1 completed or received by the association from the third party, but not later than
 2 one hundred and twenty days after the end of the fiscal year or other date as
 3 provided in the bylaws, the association shall mail to each unit owner at the
 4 address last furnished to the association by the unit owner, or hand deliver to
 5 each unit owner, a copy of the financial report, or a notice that a copy of the
 6 financial report will be mailed or hand delivered to the unit owner, without
 7 charge, upon receipt of a written request from the unit owner.

8 E. All funds collected by an association shall be maintained separately
 9 in the association's name. For investment purposes only, reserve funds may be
 10 commingled with operating funds of the association. Commingled operating
 11 and reserve funds shall be accounted for separately, and a commingled account
 12 shall not, at any time, be less than the amount identified as reserve funds.

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

DIGEST

Mills (SB 397)

Present law provides relative to the La. Condominium Act.

Proposed law provides for transfer of control of the association from the developer to the unit owners.

Proposed law provides that if unit owners other than the developer own 15% or more of the units in a condominium, the unit owners other than the developer are entitled to elect at least one-third of the persons to manage and regulate the condominium.

Proposed law provides that unit owners other than the developer are entitled to elect at least a majority of the persons to manage and regulate the condominium when any of the following events occur:

- (1) Three years after 50% of the units have been conveyed to purchasers.
- (2) Three months after 90% of the units have been conveyed to purchasers.
- (3) When all the units have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business.
- (4) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business.
- (5) When the developer files a petition seeking protection in bankruptcy.

Proposed law provides that at the time that unit owners other than the developer elect a majority of the persons authorized to manage the affairs of the association, the developer shall relinquish control of the association, and the unit owners shall accept control. Within 90 days of such election, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including but not limited to the following items, if applicable:

- (1)
 - (a) The original or a copy of the recorded declaration and all amendments thereto. If a copy is provided, it shall be certified by affidavit of the developer or an officer or agent of the developer as being a complete copy of the actual recorded declaration.
 - (b) A certified copy of the articles of incorporation of the association.
 - (c) A copy of the bylaws.
 - (d) A copy of all minutes and all books and records of the association, if any.
 - (e) Any rules and regulations that have been adopted by the association.
- (2) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover.
- (3) Association funds or control thereof.
- (4) All tangible personal property that is property of the association, which is represented by the developer to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.
- (5) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with an affidavit from the developer or the developer's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements.
- (6) A list of the names and addresses of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer had knowledge of at any time in the development of the condominium.
- (7) Insurance policies.
- (8) Copies of any certificates of occupancy that may have been issued for the condominium property.
- (9) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within one year prior to the date the unit owners other than the developer took control of the association.
- (10) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.
- (11) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

- (12) Leases of the common elements and other leases to which the association is a party.
- (13) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
- (14) All other contracts to which the association is a party.
- (15) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the common elements.

Proposed law provides that if, during the period prior to the time that the developer relinquishes control of the association, certain provisions of law are violated by the association, the developer is responsible for such violation and shall be liable for such violation or violations to third parties.

Proposed law provides that in any claim against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation, such defect must be examined and certified by an appropriately licensed engineer, design professional, contractor, or otherwise licensed individual or entity.

Present law provides that the administration and operation of the condominium shall be governed by the bylaws.

Present law provides that the bylaws shall provide for the administration of the condominium.

Proposed law retains present law and adds that the bylaws shall include but not be limited to the following:

- (1) The form and manner of administration of the condominium.
- (2) The percentage of voting interests required to constitute a quorum at a meeting.
- (3) Public meetings of the association if a quorum is required. However, a meeting shall not be public for any of the following reasons:
 - (a) To seek legal advice from the association's attorney.
 - (b) For legal advice to be rendered by the association's attorney.
 - (c) To discuss personnel matters.
- (4) Adequate notice of all association meetings, which shall identify all agenda items, shall be posted conspicuously on the condominium's property at least forty-eight hours before the meeting except in an emergency.
- (5) An annual meeting of the unit owners.
- (6) The election of persons to manage and regulate the condominium.

Present law provides that the association shall keep financial records sufficiently detailed to enable the association to comply with the law concerning resale of units.

Proposed law provides that from the inception of the association, the association shall maintain the following items, if applicable, which shall constitute the official records of the association:

- (1) A copy of the plans, permits, warranties, and other items provided by the developer.
- (2) A photocopy of the recorded condominium declaration and each amendment to each declaration.
- (3) A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
- (4) A certified copy of the articles of incorporation of the association and each amendment to the articles of incorporation.
- (5) A copy of all minutes of each meeting of the association. Such minutes shall be retained for at least seven years.
- (6) A current roster of all unit owners and their mailing addresses, unit identifications, voting rights, and if known, telephone numbers.
- (7) All current insurance policies of the association and condominium operated by the association.
- (8) A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
- (9) Bills of sale or transfer for all property owned by the association.
- (10) Financial records for the association and separate accounting records for the condominium. All accounting records shall be maintained for at least seven years. The accounting records shall include but are not limited to the following:
 - (a) Accurate, itemized, and detailed records of all receipts and expenditures.
 - (b) A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
 - (c) All audits, reviews, accounting statements, and financial reports of the association or condominium.
 - (d) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one year.
- (11) Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of one year from the date of the election, vote, or meeting to which the document relates.
- (12) All rental records, when the association is acting as the agent for the rental of a unit.
- (13) A copy of the current rules of the association.
- (14) All other records of the association that related to the operation of the association.

Proposed law provides that the official records of the association shall be maintained within the state.

Proposed law provides that all financial records and other records of the association shall be made available to a unit owner or authorized representative for inspection within five business days after receipt of written request by the association. The right to inspect the records of the association includes the right to make or obtain copies at the expense to the unit owner or authorized representative.

Proposed law provides that within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or cause to be prepared and completed by a third party, a financial report for the preceding fiscal year. Within 21 days after the financial report is completed or received by the association from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

Proposed law provides that all funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds.

Effective August 1, 2014.

(Amends R.S. 9:1123.106(A) and (B) and 1123.108; adds R.S. 9:1122.109)