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COMMERCE, REGULATION & LABOR

HOUSE FILE 52
BY MURPHY

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to homeowners' associations.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 52

1 Section 1. NEW SECTION. 557D.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Assessment" or "amenity fee" means a sum of money
5 payable to the association, to the developer or other owner of
6 common areas, or to recreational facilities and other
7 properties serving the parcels by the owners of one or more
8 parcels as authorized in the governing documents, which, if
9 not paid by the owner of a parcel, can result in a lien
10 against the parcel.

11 2. "Association" means an Iowa corporation responsible for
12 the operation of a community in which the voting membership is
13 made up of parcel owners or their agents, or a combination
14 thereof, and in which membership is a mandatory condition of
15 parcel ownership, and which is authorized to impose
16 assessments that, if unpaid, may become a lien on the parcel.
17 "Association" does not include a special district created
18 pursuant to chapters 357 through 357H, 358, and 358C.

19 3. "Common area" means all real property within a
20 community which is owned or leased by an association or
21 dedicated for use or maintenance by the association or its
22 members, including, regardless of whether title has been
23 conveyed to the association, any of the following:

24 a. Real property, the use of which is dedicated to the
25 association or its members by a recorded plat.

26 b. Real property committed by a declaration of covenants
27 to be leased or conveyed to the association.

28 4. "Community" means the real property that is or will be
29 subject to a declaration of covenants which is recorded in the
30 county where the property is located.

31 5. "Declaration of covenants" or "declaration" means a
32 recorded written instrument in the nature of covenants running
33 with the land which subjects the land comprising the community
34 to the jurisdiction and control of an association in which the
35 owners of the parcels, or their association representatives,

1 must be members.

2 6. "Developer" means a person or entity that does either
3 of the following:

4 a. Creates the community served by the association.

5 b. Succeeds to the rights and liabilities of the person or
6 entity that created the community served by the association,
7 if the succession is evidenced in writing.

8 7. "Governing documents" means both of the following:

9 a. The recorded declaration of covenants for a community,
10 and all duly adopted and recorded amendments, supplements, and
11 recorded exhibits to the declaration.

12 b. The articles of incorporation and bylaws of the
13 association, and any duly adopted amendments to them.

14 8. "Member" means a member of an association, and may
15 include, but is not limited to, a parcel owner or an
16 association representing parcel owners or a combination of
17 each.

18 9. "Parcel" means a platted or unplatted lot, tract, unit,
19 or other subdivision of real property within a community, as
20 described in the declaration and to which all of the following
21 apply:

22 a. Is capable of separate conveyance.

23 b. The parcel owner or an association in which the parcel
24 owner must be a member is obligated as follows:

25 (1) By the governing documents to be a member of an
26 association that serves the community.

27 (2) To pay to the association assessments that, if not
28 paid, may result in a lien.

29 10. "Parcel owner" means the record owner of legal title
30 to a parcel.

31 11. "Voting interest" means the voting rights distributed
32 to the members of the association, pursuant to the governing
33 documents.

34 Sec. 2. NEW SECTION. 557D.2 PURPOSES, SCOPE, AND
35 APPLICATION.

1 1. The purposes of this chapter are to give statutory
2 recognition to corporations that operate residential
3 communities in this state, to provide procedures for operating
4 associations, and to protect the rights of association members
5 without unduly impairing the ability of these associations to
6 perform their functions.

7 2. The general assembly recognizes that it is not in the
8 best interest of associations or the individual association
9 members to create or require a department or other agency of
10 state government to regulate the affairs of homeowners'
11 associations. Further, the general assembly recognizes that
12 certain contract rights have been created for the benefit of
13 associations and members thereof before the effective date of
14 this Act and that this chapter is not intended to impair such
15 contract rights, including, but not limited to, the rights of
16 the developer to complete the community as initially
17 contemplated.

18 3. This chapter does not apply to any of the following:

19 a. A community that is composed of property primarily
20 intended for commercial, industrial, or other nonresidential
21 use.

22 b. The commercial or industrial parcels in a community
23 that contains both residential parcels and parcels intended
24 for commercial or industrial use.

25 4. This chapter does not apply to any association or
26 similar entity that is formed by or for owners or residents of
27 a manufactured home community or mobile home park, as both are
28 defined in section 435.1, a residential cooperative under
29 chapter 499A, a horizontal property regime under chapter 499B,
30 or a time-share project under chapter 557A.

31 Sec. 3. NEW SECTION. 557D.3 ASSOCIATION POWERS AND
32 DUTIES -- MEETINGS -- RECORDS -- BUDGETS.

33 1. POWERS AND DUTIES. On or after July 1, 2003, an
34 association which operates a community in this state must be
35 an Iowa corporation. The association must be incorporated and

1 the initial governing documents must be recorded in the
2 official records of the county in which the community is
3 located. An association may operate more than one community.
4 The officers and directors of an association have a fiduciary
5 relationship to the members who are served by the association.
6 The powers and duties of an association include those set
7 forth in this chapter and, except as expressly limited or
8 restricted in this chapter, those set forth in the governing
9 documents. A member does not have authority to act for the
10 association by virtue of being a member. An association may
11 have more than one class of members and may issue membership
12 certificates.

13 2. BOARD MEETINGS. A meeting of the board of directors of
14 an association occurs whenever a quorum of the board gathers
15 to conduct association business. All meetings of the board
16 must be open to all members except for meetings between the
17 board and its attorney with respect to proposed or pending
18 litigation where the contents of the discussion would
19 otherwise be governed by the attorney-client privilege.
20 Notices of all board meetings must be posted in a conspicuous
21 place in the community at least forty-eight hours in advance
22 of a meeting, except in an emergency. In the alternative, if
23 notice is not posted in a conspicuous place in the community,
24 notice of each board meeting must be mailed or delivered to
25 each member at least seven days before the meeting, except in
26 an emergency. Notwithstanding this general notice
27 requirement, for communities with more than one hundred
28 members, the bylaws may provide for a reasonable alternative
29 to posting or mailing of notice for each board meeting,
30 including publication of notice or provision of a schedule of
31 board meetings. An assessment shall not be levied at a board
32 meeting unless the notice of the meeting includes a statement
33 that assessments will be considered and the nature of the
34 assessments. Directors shall not vote by proxy or by secret
35 ballot at board meetings, except that secret ballots may be

1 used in the election of officers. This subsection also
2 applies to the meetings of any committee or other similar
3 body, when a final decision will be made regarding the
4 expenditure of association funds, and to any body vested with
5 the power to approve or disapprove architectural decisions
6 with respect to a specific parcel of residential property
7 owned by a member of the community.

8 3. MINUTES. Minutes of all meetings of the members of an
9 association and of the board of directors of an association
10 must be maintained in written form or in another form that can
11 be converted into written form within a reasonable time. A
12 vote or abstention from voting on each matter voted upon for
13 each director present at a board meeting must be recorded in
14 the minutes.

15 4. OFFICIAL RECORDS. The association shall maintain each
16 of the following items, when applicable, which constitute the
17 official records of the association:

18 a. Copies of any plans, specifications, permits, and
19 warranties related to improvements constructed on the common
20 areas or other property that the association is obligated to
21 maintain, repair, or replace.

22 b. A copy of the bylaws of the association and of each
23 amendment to the bylaws.

24 c. A copy of the articles of incorporation of the
25 association and of each amendment to the articles.

26 d. A copy of the declaration of covenants and a copy of
27 each amendment to the declaration.

28 e. A copy of the current rules of the association.

29 f. The minutes of all meetings of the board of directors
30 and of the members, which minutes must be retained for at
31 least seven years.

32 g. A current roster of all members and their mailing
33 addresses and parcel identifications.

34 h. All of the association's insurance policies or a copy
35 of the policies, which policies must be retained for at least

1 seven years.

2 i. A current copy of all contracts to which the
3 association is a party, including, without limitation, any
4 management agreement, lease, or other contract under which the
5 association has any obligation or responsibility. Bids
6 received by the association for work to be performed must also
7 be considered official records and must be kept for a period
8 of one year.

9 j. The financial and accounting records of the
10 association, kept according to generally accepted accounting
11 principles. All financial and accounting records must be
12 maintained for a period of at least seven years. The
13 financial and accounting records must include all of the
14 following:

15 (1) Accurate, itemized, and detailed records of all
16 receipts and expenditures.

17 (2) A current account and a periodic statement of the
18 account for each member, designating the name and current
19 address of each member who is obligated to pay assessments,
20 the due date and amount of each assessment or other charge
21 against the member, the date and amount of each payment on the
22 account, and the balance due.

23 (3) All tax returns, financial statements, and financial
24 reports of the association.

25 (4) Any other records that identify, measure, record, or
26 communicate financial information.

27 5. INSPECTION AND COPYING OF RECORDS. The official
28 records shall be maintained within the state and must be open
29 to inspection and available for photocopying by members or
30 their authorized agents at reasonable times and places within
31 ten business days after receipt of a written request for
32 access. This subsection may be complied with by having a copy
33 of the official records available for inspection or copying in
34 the community.

35 a. The failure of an association to provide access to the

1 records within ten business days after receipt of a written
2 request creates a rebuttable presumption that the association
3 willfully failed to comply with this subsection.

4 b. A member who is denied access to official records is
5 entitled to the actual damages or minimum damages for the
6 association's willful failure to comply with this subsection.
7 The minimum damages are to be fifty dollars per calendar day
8 up to ten days, the calculation to begin on the eleventh
9 business day after receipt of the written request.

10 c. The association may adopt reasonable written rules
11 governing the frequency, time, location, notice, and manner of
12 inspections, and may impose fees to cover the costs of
13 providing copies of the official records, including, without
14 limitation, the costs of copying. The association shall
15 maintain an adequate number of copies of the recorded
16 governing documents, to ensure their availability to members
17 and prospective members, and may charge only its actual costs
18 for reproducing and furnishing these documents to those
19 persons who are entitled to receive them.

20 6. BUDGETS. The association shall prepare an annual
21 budget. The budget must reflect the estimated revenues and
22 expenses for that year and the estimated surplus or deficit as
23 of the end of the current year. The budget must set out
24 separately all fees or charges for recreational amenities,
25 whether owned by the association, the developer, or another
26 person. The association shall provide each member with a copy
27 of the annual budget or a written notice that a copy of the
28 budget is available upon request at no charge to the member.
29 The copy must be provided to the member within the time limits
30 set forth in subsection 5.

31 7. FINANCIAL REPORTING. The association shall prepare an
32 annual financial report within sixty days after the close of
33 the association's fiscal year. The association shall, within
34 the time limits set forth in subsection 5, provide each member
35 with a copy of the annual financial report or a written notice

1 that a copy of the financial report is available upon request
2 at no charge to the member. The financial report must consist
3 of either of the following:

4 a. Financial statements presented in conformity with
5 generally accepted accounting principles.

6 b. A financial report of actual receipts and expenditures,
7 cash basis, which report must show both of the following:

8 (1) The amount of receipts and expenditures by
9 classification.

10 (2) The beginning and ending cash balances of the
11 association.

12 8. ASSOCIATION FUNDS -- COMMINGLING.

13 a. All association funds held by a developer shall be
14 maintained separately in the association's name. Reserve and
15 operating funds of the association shall not be commingled
16 prior to turnover except the association may jointly invest
17 reserve funds. However, these jointly invested funds must be
18 accounted for separately.

19 b. A developer in control of an association shall not
20 commingle any association funds with the developer's funds or
21 with the funds of any other homeowners' association or
22 community association.

23 Sec. 4. NEW SECTION. 557D.4 RIGHT OF OWNERS TO PEACEABLY
24 ASSEMBLE.

25 1. All common areas and recreational facilities serving
26 any association shall be available to parcel owners in the
27 association served thereby and their invited guests for the
28 use intended for these common areas and recreational
29 facilities. The entity or entities responsible for the
30 operation of the common areas and recreational facilities may
31 adopt reasonable rules and regulations pertaining to the use
32 of these common areas and recreational facilities. An entity
33 shall not unreasonably restrict any parcel owner's right to
34 peaceably assemble or right to invite public officers or
35 candidates for public office to appear and speak in common

1 areas and recreational facilities.

2 2. An owner prevented from exercising rights guaranteed by
3 subsection 1 may bring an action in the district court of the
4 county in which the alleged infringement occurred and, upon
5 favorable adjudication, the court shall enjoin the enforcement
6 of any provision contained in any association document or rule
7 that operates to deprive the owner of such rights.

8 Sec. 5. NEW SECTION. 557D.5 OBLIGATIONS OF MEMBERS --
9 REMEDIES, PENALTIES, AND BOARD VACANCIES.

10 1. Each member and the member's tenants, guests, and
11 invitees, and each association, are governed by, and must
12 comply with, this chapter, the governing documents of the
13 community, and the rules of the association. Actions at law
14 or in equity, or both, to redress alleged failure or refusal
15 to comply with these provisions may be brought by the
16 association or by any member against any of the following:

17 a. The association.

18 b. A member.

19 c. Any director or officer of an association who willfully
20 and knowingly fails to comply with these provisions.

21 d. Any tenants, guests, or invitees occupying a parcel or
22 using the common areas.

23 The prevailing party in any litigation is entitled to
24 recover reasonable attorney fees and costs. This section does
25 not deprive any person of any other available right or remedy.

26 2. If the governing documents so provide, an association
27 may suspend, for a reasonable period of time, the rights of a
28 member or a member's tenants, guests, or invitees, or both, to
29 use common areas and recreational facilities and may levy
30 reasonable penalties, not to exceed one hundred dollars per
31 violation, against any member or any tenant, guest, or
32 invitee. A penalty may be levied on the basis of each day of
33 a continuing violation, with a single notice and opportunity
34 for hearing, except that the penalty shall not exceed one
35 thousand dollars in the aggregate unless otherwise provided in

1 the governing documents.

2 a. A penalty or suspension shall not be imposed without
3 notice of at least fourteen days to the person sought to be
4 penalized or suspended and an opportunity for a hearing before
5 a committee of at least three members appointed by the board
6 who are not officers, directors, or employees of the
7 association, or the spouse, parent, child, or sibling of an
8 officer, director, or employee. If the committee, by majority
9 vote, does not approve a proposed penalty or suspension, it
10 shall not be imposed.

11 b. The requirements of this subsection do not apply to the
12 imposition of penalties or suspensions upon any member because
13 of the failure of the member to pay assessments or other
14 charges when due if that action is authorized by the governing
15 documents.

16 c. Suspension of common-area-use rights shall not impair
17 the right of an owner or tenant of a parcel to have vehicular
18 and pedestrian ingress to and egress from the parcel,
19 including, but not limited to, the right to park.

20 3. If the governing documents so provide, an association
21 may suspend the voting rights of a member for the nonpayment
22 of regular annual assessments that are delinquent in excess of
23 ninety days.

24 4. If an association fails to fill vacancies on the board
25 of directors sufficient to constitute a quorum in accordance
26 with the bylaws, any member may petition the district court
27 that has jurisdiction over the community served by the
28 association for the appointment of a receiver to manage the
29 affairs of the association. At least thirty days before
30 applying to the district court, the member shall mail to the
31 association, by certified mail or restricted certified mail,
32 and post, in a conspicuous place on the property of the
33 community served by the association, a notice describing the
34 intended action, giving the association thirty days to fill
35 the vacancies. If during such time the association fails to

1 fill a sufficient number of vacancies so that a quorum can be
2 assembled, the member may proceed with the petition. If a
3 receiver is appointed, the association shall be responsible
4 for the salary of the receiver, court costs, attorney fees,
5 and all other expenses of the receivership. The receiver has
6 all the powers and duties of a duly constituted board of
7 directors and shall serve until the association fills a
8 sufficient number of vacancies on the board so that a quorum
9 can be assembled.

10 Sec. 6. NEW SECTION. 557D.6 MEETINGS OF MEMBERS --
11 VOTING AND ELECTION PROCEDURES -- AMENDMENTS.

12 1. QUORUM -- AMENDMENTS.

13 a. Unless a lower number is provided in the bylaws, the
14 percentage of voting interests required to constitute a quorum
15 at a meeting of the members shall be thirty percent of the
16 total voting interests. Unless otherwise provided in this
17 chapter or in the articles of incorporation or bylaws,
18 decisions that require a vote of the members must be made by
19 the concurrence of at least a majority of the voting interests
20 present, in person or by proxy, at a meeting at which a quorum
21 has been attained.

22 b. Unless otherwise provided in the governing documents or
23 required by law, and other than those matters set forth in
24 paragraph "c", any governing document of an association may be
25 amended by the affirmative vote of two-thirds of the voting
26 interests of the association.

27 c. Unless otherwise provided in the governing documents as
28 originally recorded, an amendment shall not affect vested
29 rights unless the record owner of the affected parcel and all
30 record owners of liens on the affected parcel joins in the
31 execution of the amendment.

32 2. ANNUAL MEETING. The association shall hold a meeting
33 of its members annually for the transaction of any and all
34 proper business at a date, time, and place stated in, or fixed
35 in accordance with, the bylaws. The election of directors, if

1 one is required to be held, must be held at, or in conjunction
2 with, the annual meeting or as provided in the governing
3 documents.

4 3. SPECIAL MEETINGS. Special meetings must be held when
5 called by the board of directors or, unless a different
6 percentage is stated in the governing documents, by at least
7 ten percent of the total voting interests of the association.
8 Business conducted at a special meeting is limited to the
9 purposes described in the notice of the meeting.

10 4. CONTENT OF NOTICE. Unless law or the governing
11 documents require otherwise, notice of an annual meeting need
12 not include a description of the purposes for which the
13 meeting is called. Notice of a special meeting must include a
14 description of the purpose for which the meeting is called.

15 5. RECESS. Unless the bylaws require otherwise, recess of
16 an annual or special meeting to a different date, time, or
17 place must be announced at that meeting before a recess is
18 taken, or notice must be given of the new date, time, or place
19 pursuant to section 557D.3, subsection 2. Any business that
20 might have been transacted on the original date of the meeting
21 may be transacted at the recessed meeting.

22 6. PROXY VOTING. The members have the right, unless
23 otherwise provided in this subsection or in the governing
24 documents, to vote in person or by proxy. To be valid, a
25 proxy must be dated, must state the date, time, and place of
26 the meeting for which it was given, and must be signed by the
27 authorized person who executed the proxy. A proxy is
28 effective only for the specific meeting for which it was
29 originally given, as the meeting may lawfully be recessed and
30 reconvened from time to time, and automatically expires ninety
31 days after the date of the meeting for which it was originally
32 given. A proxy is revocable at any time at the pleasure of
33 the person who executes it. If the proxy form expressly so
34 provides, any proxy holder may appoint, in writing, a
35 substitute to act in the proxy holder's place.

1 7. ELECTIONS. Elections of directors must be conducted in
2 accordance with the procedures set forth in the governing
3 documents of the association. All members of the association
4 shall be eligible to serve on the board of directors, and a
5 member may nominate the member's self as a candidate for the
6 board at a meeting where the election is to be held. Except
7 as otherwise provided in the governing documents, boards of
8 directors must be elected by a plurality of the votes cast by
9 eligible voters.

10 8. RECORDING. A parcel owner may audiotape or videotape
11 meetings of the board of directors and meetings of the
12 members. The board of directors of the association may adopt
13 reasonable rules governing the taping of meetings of the board
14 and of the members.

15 Sec. 7. NEW SECTION. 557D.7 TRANSITION OF ASSOCIATION
16 CONTROL IN A COMMUNITY.

17 With respect to associations, all of the following apply:

18 1. Members other than the developer are entitled to elect
19 at least a majority of the members of the board of directors
20 of the association when the earlier of the following events
21 occurs:

22 a. Three months after ninety percent of the parcels in all
23 phases of the community that will ultimately be operated by
24 the association have been conveyed to members.

25 b. Another percentage of the parcels has been conveyed to
26 members, or another date or event has occurred, as is set
27 forth in the governing documents in order to comply with the
28 requirements of any governmentally chartered entity with
29 regard to the mortgage financing of the parcels.

30 For purposes of this section, the term "members other than
31 the developer" shall not include builders, contractors, or
32 others who purchase a parcel for the purpose of constructing
33 improvements on the parcel for resale.

34 2. The developer is entitled to elect at least one member
35 of the board of directors of the association as long as the

1 developer holds for sale in the ordinary course of business at
2 least five percent of the parcels in all phases of the
3 community. After the developer relinquishes control of the
4 association, the developer may exercise the right to vote any
5 developer-owned voting interests in the same manner as any
6 other member, except for purposes of reacquiring control of
7 the association or selecting the majority of the members of
8 the board of directors.

9 3. At the time the members are entitled to elect at least
10 a majority of the board of directors of the association, the
11 developer shall, at the developer's expense, within no more
12 than ninety days deliver all of the following to the board:

13 a. All deeds to common property owned by the association.

14 b. The original of the association's declarations of
15 covenants and restrictions.

16 c. A certified copy of the articles of incorporation of
17 the association.

18 d. A copy of the bylaws.

19 e. The minute books, including all minutes.

20 f. The books and records of the association.

21 g. Policies, rules, and regulations, if any, which have
22 been adopted.

23 h. Resignations of directors who are required to resign
24 because the developer is required to relinquish control of the
25 association.

26 i. The financial records of the association from the date
27 of incorporation through the date of turnover.

28 j. All association funds and control of them.

29 k. All tangible property of the association.

30 l. A copy of all contracts which may be in force with the
31 association as one of the parties.

32 m. A list of the names and addresses and telephone numbers
33 of all contractors, subcontractors, or others in the current
34 employ of the association.

35 n. Any and all insurance policies in effect.

1 o. Any permits issued to the association by governmental
2 entities.

3 p. All warranties in effect.

4 q. A roster of current members and their addresses and
5 telephone numbers and section and lot numbers.

6 r. Employment and service contracts in effect.

7 4. This section does not apply to an association in
8 existence on the effective date of this Act.

9 Sec. 8. NEW SECTION. 557D.8 PROHIBITED CLAUSES IN
10 ASSOCIATION DOCUMENTS.

11 1. It is declared that the public policy of this state
12 prohibits the inclusion or enforcement of certain types of
13 clauses in association documents, including declaration of
14 covenants, articles of incorporation, bylaws, or any other
15 document of the association which binds members of the
16 association, which either have the effect of or provide that:

17 a. A developer has the unilateral ability and right to
18 make changes to the association documents after the transition
19 of association control in a community from the developer to
20 the nondeveloper members, as set forth in section 557D.7, has
21 occurred.

22 b. An association is prohibited or restricted from filing
23 a lawsuit against the developer, or the association is
24 otherwise effectively prohibited or restricted from bringing a
25 lawsuit against the developer.

26 c. After the transition of association control in a
27 community from the developer to the nondeveloper members, as
28 set forth in section 557D.7, has occurred, a developer is
29 entitled to cast votes in an amount that exceeds one vote per
30 residential lot.

31 The clauses in this subsection are declared null and void
32 as against the public policy of this state.

33 2. Association documents, including declarations of
34 covenants, articles of incorporation, bylaws, or any other
35 document of the association that binds members of the

1 association, shall not preclude the display of one United
2 States flag by property owners. However, the flag must be
3 displayed in a respectful way and may be subject to reasonable
4 standards for size, placement, and safety, as adopted by the
5 association, consistent with federal law and any local
6 ordinances.

7 Sec. 9. NEW SECTION. 557D.9 ASSESSMENTS AND CHARGES.

8 For any community created on or after July 1, 2003, the
9 governing documents must describe the manner in which expenses
10 are shared and specify the member's proportional share of
11 them. Assessments levied pursuant to the annual budget or
12 special assessment must be in the member's proportional share
13 of expenses as described in the governing document, which
14 share may be different among classes of parcels based upon the
15 state of development of the parcels, levels of services
16 received by the applicable members, or other relevant factors.
17 While the developer is in control of the association, the
18 developer may be excused from payment of its share of the
19 operating expenses and assessments related to its parcels for
20 any period of time for which the developer has, in the
21 declaration, obligated itself to pay any operating expenses
22 incurred that exceed the assessments receivable from other
23 members and other income of the association.

24 Sec. 10. NEW SECTION. 557D.10 AGREEMENTS ENTERED INTO BY
25 THE ASSOCIATION.

26 Any grant or reservation made by any document, and any
27 contract with a term in excess of ten years made by an
28 association before control of the association is turned over
29 to the members other than the developer, which provide for
30 operation, maintenance, or management of the association or
31 common areas must be fair and reasonable.

32 Sec. 11. NEW SECTION. 557D.11 RECREATIONAL LEASEHOLDS --
33 RIGHT TO ACQUIRE -- ESCALATION CLAUSES.

34 1. A lease of recreational or other commonly used
35 facilities serving a community, which lease is entered into by

1 the association or its members before control of the
2 association is turned over to the members other than the
3 developer, must provide as follows:

4 a. That the facilities shall not be offered for sale
5 unless the association has the option to purchase the
6 facilities, provided the association meets the price and terms
7 and conditions of the facility owner by executing a contract
8 with the facility owner within ninety days, unless agreed to
9 otherwise, from the date of mailing of the notice by the
10 facility owner to the association. If the facility owner
11 offers the facilities for sale, the owner shall notify the
12 association in writing stating the price and the terms and
13 conditions of sale.

14 b. If a contract between the facility owner and the
15 association is not executed within the ninety-day period,
16 unless extended by mutual agreement, then, unless the facility
17 owner thereafter elects to offer the facilities at a price
18 lower than the price specified in the owner's notice to the
19 association, the owner has no further obligations under this
20 subsection, and the owner's only obligation shall be as set
21 forth in subsection 2.

22 c. If the facility owner thereafter elects to offer the
23 facilities at a price lower than the price specified in the
24 owner's notice to the association, the association shall have
25 an additional ten days to meet the price and terms and
26 conditions of the facility owner by executing a contract.

27 2. If a facility owner receives a bona fide offer to
28 purchase the facilities that the owner intends to consider or
29 make a counteroffer to, the owner's only obligations shall be
30 to notify the association that the owner has received an
31 offer, to disclose the price and material terms and conditions
32 upon which the owner would consider selling the facilities,
33 and to consider any offer made by the association. The
34 facility owner shall be under no obligation to sell to the
35 association or to interrupt or delay other negotiations, and

1 the owner shall be free at any time to execute a contract for
2 sale of the facilities to a party or parties other than the
3 association.

4 3. a. As used in subsections 1 and 2, the term "notify"
5 means the placing of a notice in the United States mail
6 addressed to the president of the association. Each notice
7 shall be deemed to have been given upon the deposit of the
8 notice in the United States mail.

9 b. As used in subsection 1, the term "offer" means any
10 solicitation by the facility owner directed to the general
11 public.

12 4. This section does not apply to any of the following:

13 a. A sale or transfer to a person who would be included
14 within the table of descent and distribution if the facility
15 owner were to die intestate.

16 b. A transfer by gift, devise, or operation of law.

17 c. A transfer by a corporation to an affiliate. As used
18 in this paragraph, "affiliate" means a shareholder of the
19 transferring corporation; a corporation or entity owned or
20 controlled, directly or indirectly, by the transferring
21 corporation; or another corporation or entity owned or
22 controlled, directly or indirectly, by a shareholder of the
23 transferring corporation.

24 d. A transfer to a governmental or quasi-governmental
25 entity.

26 e. A conveyance of an interest in the facilities
27 incidental to the financing of the facilities.

28 f. A conveyance resulting from the foreclosure of a
29 mortgage, deed of trust, or other instrument encumbering the
30 facilities or a deed given in lieu of the foreclosure.

31 g. A sale or transfer between or among joint tenants in
32 common owning the facilities.

33 h. The purchase of the facilities by a governmental entity
34 under its powers of eminent domain.

35 5. a. The general assembly declares that the public

1 policy of this state prohibits the inclusion or enforcement of
2 escalation clauses in land leases or other leases for
3 recreational facilities, land, or other commonly used
4 facilities that serve residential communities, and those
5 clauses are declared void. For purposes of this subsection,
6 "escalation clause" means any clause in a lease which provides
7 that the rental rate under the lease or agreement is to
8 increase at the same percentage rate as any nationally
9 recognized and conveniently available commodity or consumer
10 price index.

11 b. This public policy prohibits the inclusion of the
12 escalation clauses in leases entered into on or after July 1,
13 2003.

14 c. This section is inapplicable to any of the following:

15 (1) If the lessor is the federal government, this state,
16 any political subdivision of this state, or any agency of a
17 political subdivision of this state.

18 (2) To an association that is in existence before July 1,
19 2003.

20 Sec. 12. NEW SECTION. 557D.12 DISPUTE RESOLUTION.

21 The general assembly finds that alternative dispute
22 resolution often reduces court dockets and trials and offers a
23 more efficient, cost-effective option to litigation. At any
24 time after the filing in a court of competent jurisdiction of
25 a complaint relating to a dispute under this chapter, the
26 court may order that the parties enter into mediation or
27 arbitration.

28 Sec. 13. NEW SECTION. 557D.13 DECLARATION OF COVENANTS
29 AND SURVIVAL AFTER TAX DEED OR FORECLOSURE.

30 All provisions of a declaration of covenants relating to a
31 parcel that has been sold for taxes or special assessments
32 survive and are enforceable after the issuance of a tax deed,
33 or upon the foreclosure of an assessment, a certificate or
34 lien, a tax deed, tax certificate, or tax lien, to the same
35 extent that the provisions would be enforceable against a

1 voluntary grantee of title to the parcel immediately before
2 the delivery of the tax deed or immediately before the
3 foreclosure.

4

EXPLANATION

5 This bill provides statutory recognition to corporations
6 that operate residential communities in this state, to provide
7 procedures for operating homeowners' associations, and to
8 protect the rights of association members without unduly
9 impairing the ability of these homeowners' associations to
10 perform their functions. The bill does not apply to a
11 community that is composed of property primarily intended for
12 commercial, industrial, or other nonresidential use and does
13 not apply to commercial or industrial parcels in a community
14 that has both residential parcels and parcels intended for
15 commercial and industrial use. In addition, the bill does not
16 apply to associations formed by owners or residents of a
17 manufactured home community, mobile home park, residential
18 cooperative, horizontal property regime (condominiums), and a
19 time-share project.

20 The bill provides the following:

21 That the association has broad powers limited only by the
22 new Code chapter in the bill and the initial governing
23 documents. Meetings of the board of directors of the
24 association, which must be established as an Iowa corporation,
25 must be open to all owners of parcels in the community and
26 general notice must be provided of the meeting dates. No
27 assessment may be adopted at a meeting unless the notice of the
28 meeting provides that an assessment will be considered.
29 Minutes of each meeting shall be available to members and
30 include all matters voted upon. Official records of the
31 association shall be kept and made available to members.
32 These include: plans for the community, bylaws, articles of
33 incorporation, minutes, list of members, insurance policies,
34 and financial and accounting records.

35 That the parcel owners have a right to use the common areas

1 and recreational facilities of the community and the right of
2 the parcel owners to peaceably assemble is not to be
3 restricted. Penalties are assessed for failure to follow the
4 rules of the association or pay assessments.

5 That meetings of the members of the association be held
6 annually for the election of directors of the association and
7 the transaction of any other proper business. Proxy voting is
8 allowed at these meetings.

9 That the control of the association is turned over to the
10 members other than the developer when at least 90 percent of
11 the parcels are owned by such members and all documents
12 relating to and personal property and funds of the association
13 are turned over to the members.

14 That the governing documents must describe the manner in
15 which expenses are shared and the member's proportional share
16 of them. Assessments shall be levied pursuant to an annual
17 budget and must be in the member's proportional share.
18 However, the share may be different among classes of parcels,
19 services rendered, or other relevant factors.

20 That recreational facilities or other common facilities
21 that are leased by the association prior to control of the
22 association being turned over to the members must provide that
23 the facility shall not be offered for sale unless the
24 association has the option to purchase the facility. In
25 addition, escalation clauses in leases are void. These
26 clauses provide that the rental rate of the recreational
27 facilities, land, or other common facilities increase at the
28 same percentage rate as any nationally recognized and
29 conveniently available commodity or consumer price index.
30 These provisions relating to leases only apply to those
31 entered into on or after July 1, 2003.

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