

**Senate File 493 - Introduced**

SENATE FILE 493  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1160)

**A BILL FOR**

1 An Act relating to the operations of certain common interest  
2 communities.

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

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DIVISION I

UNIFORM COMMON INTEREST OWNERSHIP ACT

Section 1. NEW SECTION. 499C.101 Title.

This chapter shall be known and cited as the "*Uniform Common Interest Ownership Act*".

Sec. 2. NEW SECTION. 499C.102 Public policy.

The general assembly declares that it is the public policy of the state that the management and affairs of common interest communities be conducted openly, and this chapter shall be construed, to provide open access to the management of the common interest community to the unit owners.

Sec. 3. NEW SECTION. 499C.103 Definitions.

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

1. "*Assessment*" means a sum attributable to each unit and due to the unit owners association as may be provided in a declaration or in the bylaws.

2. "*Bylaws*" means the instruments, however denominated, that contain the procedures for conducting the affairs of the unit owners association or the executive board regardless of the form in which the association is organized, including any amendments to such instruments.

3. "*Common element*" means:

a. For a cooperative under chapter 499A or a horizontal property regime under chapter 499B, all portions of the common interest community other than the units.

b. For a planned community, any real estate within the planned community which is owned or leased by the unit owners association, other than a unit.

c. For all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration.

4. "*Common expense liability*" means the liability for common expenses allocated to each unit pursuant to a declaration or bylaws.

1 5. "*Common expenses*" means expenditures made by, or  
2 financial liabilities of, the unit owners association or the  
3 executive board, together with any allocations to reserves.

4 6. a. "*Common interest community*" means real estate  
5 described in a declaration with respect to which a person,  
6 by virtue of the person's ownership of a unit, is obligated  
7 to pay for a share of real estate taxes, insurance premiums,  
8 maintenance, or improvement of, or services or other expenses  
9 related to, common elements, other units, or other real estate  
10 described in the declaration. "*Common interest community*"  
11 includes a cooperative under chapter 499A and a horizontal  
12 property regime under chapter 499B.

13 b. Common interest community does not include:

14 (1) A covenant that requires the owners of separate parcels  
15 of real estate to share costs or other obligations related to a  
16 wall, driveway, well, or other similar structure, unless all  
17 such owners consent in writing to the creation of a common  
18 interest community.

19 (2) Real estate described in paragraph "a" if all units are  
20 owned by a single unit owner.

21 7. "*Declarant*" means any person or group of persons who,  
22 as the record title owner of real estate, by a declaration,  
23 initially creates a common interest community.

24 8. "*Declaration*" means the instrument, however denominated,  
25 that creates a common interest community, including any  
26 amendments to the instrument.

27 9. "*Executive board*" means the body, regardless of name,  
28 designated in the declaration or bylaws to act on behalf of the  
29 unit owners association.

30 10. "*Planned community*" means a common interest community  
31 that is not a cooperative under chapter 499A or a horizontal  
32 property regime under chapter 499B, and includes property  
33 owner or homeowner associations. However, a cooperative under  
34 chapter 499A or a horizontal property regime under chapter 499B  
35 may be part of a planned community.

1 11. *“Rule”* means a policy, guideline, restriction,  
2 procedure, or regulation, however denominated, which is not set  
3 forth in the declaration or bylaws.

4 12. *“Unit”* means a physical portion of the common interest  
5 community designated for separate ownership or occupancy or  
6 as otherwise defined in the statute under which the common  
7 interest community is organized.

8 13. *“Unit owner”* means a declarant or other person that owns  
9 a unit, but does not include a person having an interest in a  
10 unit solely as security for an obligation. In a horizontal  
11 property regime under chapter 499B or a planned community, the  
12 declarant is the owner of any unit created by the declaration.  
13 In a cooperative under chapter 499A, the declarant is the owner  
14 of any unit to which an interest has been allocated until that  
15 unit has been conveyed to another person.

16 14. *“Unit owners association”* means a unit owners  
17 association organized under section 499C.201.

18 Sec. 4. NEW SECTION. 499C.104 **Variation by agreement.**

19 Except as expressly provided in this chapter, the provisions  
20 of this chapter may not be varied by agreement, and rights  
21 conferred by it may not be waived.

22 Sec. 5. NEW SECTION. 499C.105 **Applicability.**

23 Unless otherwise provided by law:

24 1. This chapter applies to all common interest communities  
25 established within this state on or after July 1, 2011.

26 2. This chapter does not apply to common interest  
27 communities of three or fewer units.

28 3. Sections 499C.301, 499C.302, 499C.401, 499C.402,  
29 499C.403, and 499C.501 apply to common interest communities  
30 established before July 1, 2011. Any portion of a declaration,  
31 bylaws, covenant, or other contractual provision existing prior  
32 to July 1, 2011, that violates section 499C.301, 499C.302,  
33 499C.401, 499C.402, or 499C.403 is not enforceable. However,  
34 nothing in this chapter shall be construed to invalidate other  
35 provisions of the declaration, bylaws, plats, or plans of those

1 common interest communities established before July 1, 2011.

2 Sec. 6. NEW SECTION. **499C.201 Unit owners association.**

3 1. A unit owners association shall be organized not later  
4 than the date the first unit in the common interest community  
5 is conveyed.

6 2. Membership of a unit owners association shall at all  
7 times consist exclusively of all unit owners except following  
8 termination of the common interest community, at which time  
9 the unit owners association shall consist of all former unit  
10 owners entitled to distributions of proceeds or their heirs,  
11 successors, or assigns.

12 3. A unit owners association shall have an executive board.

13 4. A unit owners association shall be organized as a  
14 profit or nonprofit corporation, trust, limited liability  
15 company, partnership, unincorporated association, or any other  
16 form of organization authorized by the law of this state.  
17 The requirements of this chapter relating to a unit owners  
18 association shall preempt any conflicting provision of the  
19 statute under which the unit owner association is organized.

20 Sec. 7. NEW SECTION. **499C.202 Unit owners association —**  
21 **powers and duties.**

22 1. Except as otherwise provided in this chapter, a unit  
23 owners association shall do all of the following:

24 a. Adopt bylaws which may be amended subject to the  
25 provisions of section 499C.301.

26 b. Adopt budgets, collect assessments for common expenses  
27 from unit owners, and invest funds of the association, if  
28 applicable.

29 2. Unless otherwise limited by a declaration or bylaws, a  
30 unit owners association shall have authority to do any of the  
31 following:

32 a. Adopt and amend rules for operation of the unit owners  
33 association.

34 b. Hire, employ, and discharge employees, agents, and  
35 independent contractors.

- 1     *c.* Institute, defend, or intervene in litigation,  
2 arbitration, mediation, or administrative proceedings on behalf  
3 of the unit owners association or for two or more unit owners  
4 on matters affecting the common interest community.
- 5     *d.* Make contracts and incur liabilities.
- 6     *e.* Regulate the use, maintenance, repair, replacement, and  
7 modification of common elements.
- 8     *f.* Cause additional improvements to be made to the common  
9 elements of the common interest community.
- 10    *g.* Acquire, hold, encumber, and convey any right, title, or  
11 interest to real estate or personal property.
- 12    *h.* Grant easements, leases, licenses, and concessions  
13 through or over the common elements of the common interest  
14 community.
- 15    *i.* Impose and receive any payments, fees, or charges for the  
16 use, rental, or operation of the common elements, other than  
17 limited common elements as defined in section 499B.2, and for  
18 services provided to unit owners.
- 19    *j.* Impose charges for late payment of assessments and,  
20 after notice and an opportunity to be heard, impose reasonable  
21 monetary penalties for violations of the declaration, bylaws,  
22 and rules of the association.
- 23    *k.* Impose reasonable charges for the preparation and  
24 recording of statements of unpaid assessments.
- 25    *l.* Provide for the indemnification of its officers and  
26 executive board, including maintenance of liability insurance  
27 for directors and officers of the unit owners association.
- 28    *m.* Assign its right to future income, including the right  
29 to receive assessments.
- 30    *n.* Exercise powers conferred by the declaration or bylaws.
- 31    *o.* Exercise all other powers that may be exercised in this  
32 state by organizations of the same type as the unit owners  
33 association.
- 34    *p.* Suspend any right or privilege of a unit owner who fails  
35 to pay an assessment. The unit owners association shall not,

1 however, deny a unit owner or other occupant access to the  
2 owner's unit, suspend a unit owner's right to vote, prevent a  
3 unit owner from seeking election as a director or officer of  
4 the association, or withhold services provided to a unit or a  
5 unit owner by the association if the effect of withholding the  
6 service would be to endanger the health, safety, or property  
7 of any person.

8 *g.* Exercise any other powers necessary and proper for the  
9 governance and operation of the association.

10 3. If a tenant of a unit owner violates the declaration,  
11 bylaws, or rules of the association, in addition to exercising  
12 any of its powers against the unit owner, the association may  
13 do any of the following:

14 *a.* Exercise the powers described in subsection 2, paragraph  
15 "j", against the offending tenant.

16 *b.* After giving notice to the tenant and the unit owner  
17 and providing each an opportunity to be heard, levy reasonable  
18 monetary penalties against the tenant for the violation.

19 *c.* Take other action against the tenant for the violation in  
20 the same manner as the unit owner, acting as landlord, could  
21 have exercised under the lease or in the manner that the unit  
22 owners association could lawfully have taken action directly  
23 against the unit owner, or both. Action under this paragraph  
24 may only be taken if the tenant or unit owner fails to remedy  
25 the violation within ten days after notification by the unit  
26 owners association of the violation.

27 4. Unless a lease of a unit otherwise provides, this section  
28 does not do any of the following:

29 *a.* Affect rights that the unit owner possesses to enforce  
30 the lease or that the unit owners association has under other  
31 provisions of law.

32 *b.* In the absence of a violation of the declaration, bylaws,  
33 or rules, authorize the unit owners association to enforce a  
34 lease to which the unit owners association is not a party.

35 5. An executive board may determine whether to exercise

1 the association's power to impose sanctions or commence an  
2 action for a violation of the declaration, bylaws, or rules,  
3 including whether to settle any claim for unpaid assessments or  
4 other claim made by or against the unit owners association. An  
5 executive board does not have a duty to take enforcement action  
6 if the executive board determines, following consideration of  
7 the facts and circumstances presented, any of the following:

8     *a.* The association's legal position does not justify taking  
9 any or further enforcement action.

10    *b.* The covenant, restriction, or rule being enforced is, or  
11 is likely to be construed as, inconsistent with law.

12    *c.* Despite the existence of a violation, the violation is  
13 nonmaterial and does not justify expenditure of the unit owners  
14 association resources.

15    *d.* It is not in the unit owners association's best interests  
16 to pursue an enforcement action.

17    6. The failure of an executive board to take action pursuant  
18 to subsection 5 shall not prevent the executive board from  
19 taking enforcement action under a similar set of circumstances  
20 or facts. The authority of an executive board to take action  
21 under this chapter shall not, however, be exercised in a  
22 arbitrary or capricious manner.

23    Sec. 8. NEW SECTION. 499C.203 **Executive board.**

24    1. Except as otherwise provided in the declaration, the  
25 bylaws, subsection 2, or provisions of the statute under which  
26 the common interest community is organized, an executive  
27 board acts on behalf of the unit owners association. In  
28 the performance of their duties, officers and members of the  
29 executive board appointed by the declarant shall exercise the  
30 degree of care and loyalty to the unit owners association  
31 required of a trustee. Officers and members of an executive  
32 board not appointed by the declarant shall exercise the degree  
33 of care and loyalty to the unit owners association required  
34 of an officer or director of a corporation organized under  
35 chapter 504, and such officers and members are subject to the



1 conflict of interest rules governing directors and officers  
2 under chapter 504.

3 2. An executive board shall not act on behalf of the unit  
4 owners association to amend the declaration, to terminate the  
5 common interest community, to elect members of the executive  
6 board, or determine the qualifications, powers and duties, or  
7 terms of office of executive board members. An executive board  
8 may fill vacancies in its membership for the unexpired portion  
9 of any term.

10 3. *a.* Subject to subsection 4, the declaration may  
11 provide for a period of declarant control of the unit owners  
12 association, during which a declarant, or persons designated by  
13 the declarant, may appoint and remove the officers and members  
14 of the executive board. In no case, however, shall a period of  
15 declarant control continue upon the occurrence of any of the  
16 following:

17 (1) Sixty days after the conveyance of seventy-five percent  
18 of all units in the common interest community to unit owners  
19 other than a declarant.

20 (2) Two years after all declarants have ceased to offer  
21 units for sale in the ordinary course of business.

22 (3) Two years after the addition of any number of new units  
23 to the common interest community.

24 (4) The date the declarant, after giving written notice  
25 to all unit owners, records an instrument voluntarily  
26 surrendering all rights to control activities of the unit  
27 owners association.

28 *b.* A declarant may voluntarily surrender the right to  
29 appoint and remove officers and members of the executive board  
30 before termination of the period under paragraph "a". However,  
31 the declarant may retain, for the duration of the period of  
32 declarant control, approval authority for specified actions of  
33 the unit owners association or executive board, as described in  
34 a recorded instrument executed by the declarant.

35 4. *a.* Not later than sixty days after conveyance of

1 twenty-five percent of the units to unit owners other than a  
2 declarant, at least one member and not less than twenty-five  
3 percent of the members of the executive board must be elected  
4 by unit owners other than the declarant.

5     *b.* Not later than sixty days after conveyance of fifty  
6 percent of the units to unit owners other than a declarant, not  
7 less than one-third of the members of the executive board must  
8 be elected by unit owners other than the declarant.

9     5. Following the termination of any period of declarant  
10 control under this section, the unit owners shall elect an  
11 executive board of at least three members, at least a majority  
12 of whom must be unit owners. The executive board members shall  
13 elect officers of the executive board. The executive board  
14 members and officers shall take office upon election. This  
15 subsection shall not apply to a common interest community if  
16 all the units of the community are owned by one owner.

17     6. Notwithstanding any provision of the declaration or  
18 bylaws to the contrary, the unit owners, by a two-thirds vote  
19 of all persons present and entitled to vote at any meeting of  
20 the unit owners at which a quorum is present, may remove any  
21 member of the executive board with or without cause, other than  
22 a member appointed by the declarant.

23     Sec. 9. NEW SECTION. **499C.301 Amendments to governing**  
24 **instruments.**

25     1. Except as otherwise provided in this section:

26     *a.* The declaration, bylaws, or plans of a common interest  
27 community established before July 1, 2011, may be amended upon  
28 approval of two-thirds of the unit owners or as otherwise  
29 provided in the declaration or bylaws.

30     *b.* The declaration, bylaws, or plans of a common interest  
31 community created on or after July 1, 2011, may be amended by  
32 two-thirds of the unit owners unless the declaration or bylaws  
33 expressly require a greater or lesser percentage.

34     2. Notwithstanding any provision of law to the contrary, a  
35 declaration may expressly reserve authority to the executive

1 board, with or without the consent of unit owners, to amend the  
2 declaration, bylaws, or plans of a common interest community to  
3 add land, buildings, or both.

4 3. a. Following adoption of an amendment to a declaration,  
5 bylaws, or plans, the amendment or a copy of the amended  
6 declaration, bylaws, or plan shall be recorded with the county  
7 recorder of the county where the property is located.

8 b. An amendment may be recorded on behalf of the required  
9 number of unit owners by the officers of the association if the  
10 officers verify under oath that the proceedings to approve the  
11 amendment satisfied the requirements of this chapter.

12 4. An amendment to a declaration, the bylaws, or plans to  
13 prohibit or materially restrict the permitted uses of a unit,  
14 the permitted uses of a common element, or the number or other  
15 qualifications of persons who may occupy units shall only be  
16 approved upon the affirmative vote of unit owners equal in  
17 number to at least eighty percent of the total unit owner votes  
18 in the association, unless the declaration requires a larger  
19 percentage. An amendment approved under this subsection shall  
20 provide reasonable protection for a use or occupancy permitted  
21 prior to adoption of the amendment.

22 5. a. If a declaration, the bylaws, or a plan requires  
23 the consent of a holder of a security interest in a unit as a  
24 condition to the adoption or implementation of an amendment,  
25 consent is deemed provided if a written refusal to consent  
26 is not received by the association within sixty days after  
27 the association delivers notice of the proposed amendment to  
28 the holder of the security interest at an address provided by  
29 the holder or after the association mails the notice of the  
30 proposed amendment to the holder by certified mail, return  
31 receipt requested, at the address provided. If the holder of  
32 a security interest has not provided to the association an  
33 address for notice, the association shall provide notice to the  
34 address in the security interest of record, if available.

35 b. Notwithstanding any provision of this section to the

1 contrary, an amendment to the declaration, bylaws, or plans  
2 that affects the priority of a holder's security interest or  
3 the ability of a holder to foreclose a security interest may  
4 not be adopted without the security holder's written consent if  
5 the declaration, bylaws, or plans requires that consent as a  
6 condition to the adoption or implementation of the amendment.

7 6. If a declaration requires that amendments, including  
8 amendments under subsection 4, to the declaration, bylaws, or  
9 plans be adopted only upon the affirmative vote of unit owners  
10 equal in number to at least eighty percent of the total unit  
11 owner votes in the association, the amendment is approved if  
12 one of the following is met:

13 a. A number of unit owners comprising at least eighty  
14 percent of the total unit owner votes in the association votes  
15 affirmatively for the proposed amendment, no owner votes  
16 against the proposed amendment, all required notices of the  
17 proposed amendment are delivered to each unit owner as required  
18 under this chapter, and the association does not receive a  
19 written objection to the proposed amendment within sixty days  
20 after delivery of the notice.

21 b. A number of unit owners comprising at least eighty  
22 percent of the total unit owner votes in the unit owners  
23 association votes affirmatively for the proposed amendment  
24 unit, one or more owner votes against the proposed amendment,  
25 and pursuant to an action brought by the association in the  
26 district court of the county where the property is located  
27 against all objecting unit owners, the court finds that the  
28 objecting unit owners do not have an interest different in kind  
29 from the interests of the other unit owners that the voting  
30 requirement of the declaration, bylaws, or plans was intended  
31 to protect.

32 7. An action challenging the validity of an amendment  
33 adopted pursuant to this chapter shall not be brought more than  
34 one year after the amendment is recorded.

35 Sec. 10. NEW SECTION. **499C.302 Rules.**

1 1. Unless otherwise limited by a declaration or bylaws, an  
2 executive board may adopt and amend rules for the operation  
3 of the executive board or other matters authorized in the  
4 declaration or bylaws. Before adopting, amending, or repealing  
5 a rule, the executive board shall give each unit owner a notice  
6 that states the executive board's intention to adopt, amend,  
7 or repeal a rule, provides the text of the rule or the proposed  
8 change, and states the date the executive board intends to act  
9 on the proposed rule or amendment following consideration of  
10 comments from unit owners.

11 2. A unit owners association may adopt rules to establish  
12 and enforce construction and design criteria and aesthetic  
13 standards if the declaration so provides. In accordance  
14 with the declaration, a unit owners association shall adopt  
15 procedures for enforcement of those standards and for approval  
16 of construction applications, including a timeline within which  
17 the unit owners association must act on an application and the  
18 consequences of a unit owners association's failure to act.

19 3. Following adoption, amendment, or repeal of a rule, the  
20 officers of the unit owners association or executive board,  
21 as applicable, shall notify each unit owner of the action and  
22 provide a copy of any new or revised rule.

23 4. A rule regulating display of the flag of the United  
24 States shall be consistent with federal law. A unit owners  
25 association shall not prohibit on a unit or on a limited  
26 common element, as defined in section 499B.2, adjoining a unit  
27 the display of the flag of this state, or signs regarding  
28 candidates for public office or unit owners association  
29 office or public measures, but the association may adopt rules  
30 governing the time, place, size, number, and manner of those  
31 displays.

32 5. Unit owners may peacefully assemble on common elements to  
33 consider matters related to the common interest community, but  
34 the unit owners association may adopt rules governing the time,  
35 place, and manner of such assemblies.

1 6. A unit owners association may adopt rules that restrict  
2 the use of unit or behavior within units that may be used for  
3 residential purposes, but only to do the following:

4 a. Implement a provision of the declaration.

5 b. Regulate a behavior in or the occupancy of a unit that  
6 violates the declaration or adversely affects the use and  
7 enjoyment of other units or the common elements by other unit  
8 owners.

9 c. Restrict the leasing of residential units to the  
10 extent the rules are reasonably designed to meet underwriting  
11 requirements of institutional lenders that regularly make  
12 loans secured by first mortgages on units in common interest  
13 communities or regularly purchase such mortgages.

14 7. A unit owners association's internal business operating  
15 procedures are exempt from the requirements of this section.

16 8. Each rule adopted by a unit owners association or  
17 executive board shall be reasonable in nature and scope.

18 Sec. 11. NEW SECTION. **499C.401 Meetings.**

19 1. Meetings of a unit owners association, whether such  
20 association is incorporated or unincorporated, shall comply  
21 with all of the following:

22 a. A unit owners association shall hold a meeting of  
23 unit owners annually at a time, date, and place stated in or  
24 determined in accordance with the declaration or bylaws.

25 b. A unit owners association shall hold a special meeting  
26 of unit owners to address any matter affecting the unit owners  
27 association if the association's president, a majority of the  
28 executive board, or an amount of unit owners comprising at  
29 least twenty percent of all votes in the association, unless a  
30 different percentage is specified in the bylaws, request that  
31 the secretary call the meeting. If the unit owners association  
32 does not notify unit owners of a special meeting within thirty  
33 days after the required number of unit owners has requested the  
34 secretary to call a special meeting, the requesting members may  
35 directly notify all unit owners of the meeting. Only matters

1 described in the meeting notice may be considered at a special  
2 meeting.

3     *c.* A unit owners association shall notify each unit owner  
4 of the time, date, and place of each annual and special unit  
5 owners meeting not less than ten days and not more than sixty  
6 days before the meeting date. Notice may be by any means  
7 described in section 499C.403. Each meeting notice shall state  
8 the time, date, and place of the meeting and the items on the  
9 agenda in a manner reasonably calculated to apprise the unit  
10 owners of that information, including but not limited to:

11     (1) A statement of the general nature of any proposed  
12 amendment to the declaration or bylaws.

13     (2) A statement describing any budget changes.

14     (3) Any proposal to remove an officer or member of the  
15 executive board.

16     *d.* The requirements relating to the timing of meeting  
17 notices under paragraph "*c*" may be reduced or waived for a  
18 meeting called to address an emergency. A meeting called to  
19 address an emergency shall be limited to matters arising out of  
20 the emergency. The decision of an officer of the unit owners  
21 association to convene a meeting for an emergency shall be  
22 ratified by a majority of unit owners required by the bylaws to  
23 conduct the business of the unit owners association.

24     *e.* Each unit owner shall be given a reasonable opportunity  
25 at any meeting to comment on any matter affecting the common  
26 interest community or the unit owners association.

27     *f.* The declaration or bylaws may allow for meetings of  
28 unit owners to be conducted by telephonic, video, or other  
29 conferencing method, if such method is consistent with  
30 subsection 2, paragraph "*g*".

31     2. Meetings of the executive board and committees of the  
32 unit owners association, authorized to act for the unit owners  
33 association, shall comply with all of the following:

34     *a.* Meetings shall be open to the unit owners except during  
35 executive sessions. The executive board and committees of

1 the unit owners association may hold an executive session  
2 only during a regular or special meeting of the board or the  
3 committee. No final vote or action may be taken during an  
4 executive session. An executive session may only be held for  
5 the following reasons:

6 (1) To consult with the unit owners association's attorney  
7 concerning legal matters governed by attorney-client privilege.

8 (2) To discuss existing or potential litigation or  
9 mediation, arbitration, or governmental administrative  
10 proceedings.

11 (3) To discuss matters relating to the job performance,  
12 compensation, or health records of an individual employee or  
13 specific complaints against an individual employee of the unit  
14 owners association or an independent contractor employed by the  
15 unit owners association.

16 (4) To discuss contracts, leases, and other commercial  
17 transactions for goods or services that are under negotiation,  
18 including the review of bids or proposals, if public disclosure  
19 of such matters would place the unit owners association at a  
20 disadvantage.

21 (5) To discuss personal, health, or financial information  
22 relating to a unit owner, a specific employee of the unit  
23 owners association, or a specific employee of an independent  
24 contractor retained by the unit owners association, including  
25 any records of the unit owners association relating to such  
26 information.

27 *b.* For purposes of this section, a gathering of board  
28 members at which the board members do not conduct unit owners  
29 association business is not a meeting of the executive board.  
30 Executive board members shall not use incidental or social  
31 gatherings of board members or any other method to evade the  
32 meeting and notice requirements of this section.

33 *c.* During a period of declarant control, the executive board  
34 shall meet at least four times a year. At least one of the  
35 meetings shall be held at the common interest community or at



1 a place convenient to the unit owners of the common interest  
2 community. After termination of the period of declarant  
3 control, all executive board meetings shall be at the common  
4 interest community or at a place convenient to the unit owners  
5 of the common interest community unless the unit owners amend  
6 the bylaws to vary the location of such meetings.

7 *d.* At each executive board meeting, the executive board  
8 shall provide a reasonable opportunity for unit owners to  
9 comment on any matter affecting the common interest community  
10 and the unit owners association.

11 *e.* Unless the meeting is included in a schedule given to the  
12 unit owners or the meeting is called to address an emergency,  
13 the secretary or other officer specified in the bylaws shall  
14 give notice of each executive board meeting to each executive  
15 board member and to each unit owner. Such notice shall be  
16 given at least ten days before the meeting and shall state the  
17 time, date, place, and agenda of the meeting.

18 *f.* If any materials are distributed to the executive board  
19 before a meeting, the executive board, upon receipt of the  
20 materials, shall make copies reasonably available to unit  
21 owners, except that the executive board is not required to make  
22 available copies of unapproved minutes or materials that are to  
23 be considered during an executive session.

24 *g.* Unless otherwise provided in the declaration or bylaws,  
25 the executive board may conduct a meeting by telephonic, video,  
26 or other conferencing method if all of the following conditions  
27 are met:

28 (1) The meeting notice states the conferencing method to  
29 be used and provides information explaining how unit owners  
30 may participate in the conference directly or by meeting at a  
31 central location or conference connection.

32 (2) The process provides all unit owners the opportunity  
33 to hear or perceive the discussion and to comment on matters  
34 before the executive board.

35 *h.* Following termination of the period of declarant control,

1 unit owners may amend the bylaws to vary the procedures for  
2 meetings described in paragraph "g".

3 *i.* In lieu of a meeting, the executive board may act by  
4 unanimous consent if such action is documented in a record  
5 authenticated by all executive board members. The secretary  
6 shall give prompt notice to all unit owners of any action  
7 taken by unanimous consent. After termination of the period  
8 of declarant control, an executive board may act by unanimous  
9 consent only to undertake ministerial actions or to implement  
10 actions previously taken at a meeting of the executive board.

11 *j.* Unless otherwise restricted by this chapter or the common  
12 interest community's bylaws, an executive board may determine  
13 rules of procedure for the executive board.

14 *k.* An executive board may remove any person from a meeting  
15 of the executive board upon a finding by a majority of the  
16 board members that the person is being disruptive to the  
17 meeting. An executive board may bar any person from meetings  
18 of the executive board or other meetings of the common interest  
19 community for a period of up to one year if the person has  
20 been twice removed from a meeting within the preceding twelve  
21 months.

22 *l.* An action by an executive board that is not in compliance  
23 with this section is valid unless invalidated by a court. A  
24 challenge to the validity of an action of the executive board  
25 for failure to comply with this section shall not be brought  
26 more than sixty days after the minutes of the executive board  
27 of the meeting at which the action was taken are approved  
28 or the record of that action is distributed to unit owners,  
29 whichever is later. In any judicial action, the executive  
30 board shall have the burden of proving by a preponderance of  
31 the evidence that the requirements of this section have been  
32 met.

33 **Sec. 12. NEW SECTION. 499C.402 Association records.**

34 1. A unit owners association shall retain all of the  
35 following:

- 1     *a.* Detailed records of receipts and expenditures relating to  
2 the operation and administration of the unit owners association  
3 and other appropriate accounting records.
- 4     *b.* Minutes of all unit owners meetings and executive board  
5 meetings, a record of all actions taken by the unit owners or  
6 the executive board without a meeting, and a record of all  
7 actions taken by a committee in place of the executive board on  
8 behalf of the unit owners association. The minutes retained  
9 by the unit owners association shall indicate the date, time,  
10 and place of the meeting, the names of all persons present  
11 at the meeting, and each action taken at the meeting. The  
12 minutes shall also include the results of each vote taken at  
13 the meeting, including information indicating the vote of each  
14 executive board member present at the meeting. The vote of  
15 each executive board member present shall be made public at the  
16 open session.
- 17     *c.* The names of all unit owners in a form that permits  
18 preparation of a list of the names of all owners and the  
19 regular mail and electronic mail addresses at which the unit  
20 owners association communicates with them, the records shall  
21 indicate the number of votes each unit owner is entitled to  
22 cast.
- 23     *d.* The unit owners association's original and amended  
24 organizational documents, bylaws including all amendments to  
25 the bylaws, and all rules of the common interest community  
26 currently in effect.
- 27     *e.* All financial statements and tax returns of the unit  
28 owners association for the past three years.
- 29     *f.* A list of the names and addresses of the current  
30 executive board members and officers.
- 31     *g.* The unit association's most recent annual report  
32 delivered to the secretary of state, if applicable.
- 33     *h.* Copies of each contract to which the unit owners  
34 association is currently a party.
- 35     *i.* Records of executive board or committee actions relating

1 to requests for design or architectural approval from unit  
2 owners.

3 *j.* Ballots, proxies, and other records related to voting by  
4 unit owners for one year after the election, action, or vote.

5 2. Except as provided under subsections 3 and 4, all records  
6 retained by a unit owners association must be available for  
7 examination and copying by a unit owner or the unit owner's  
8 authorized agent during reasonable business hours or at a  
9 mutually convenient time and location upon providing a five  
10 days' notice that reasonably identifies the specific records  
11 that are being requested.

12 3. Records retained by a unit owners association may be  
13 withheld from inspection and copying to the extent that they  
14 concern:

15 *a.* Personally identifiable information, salary, and medical  
16 records relating to specific individuals.

17 *b.* Information relating to contracts, leases, and other  
18 commercial transactions to purchase or provide goods or  
19 services, currently under negotiation.

20 *c.* Information relating to existing or potential litigation,  
21 mediation, arbitration, or governmental administrative  
22 proceedings.

23 *d.* Information relating to existing or potential matters  
24 involving governmental administrative proceedings or other  
25 proceedings before a government tribunal for enforcement of the  
26 declaration, bylaws, or rules.

27 *e.* Communications with the unit owners association attorney  
28 which are otherwise protected by the attorney-client privilege  
29 or the attorney work-product doctrine.

30 *f.* Information that if disclosed would violate another  
31 provision of law.

32 *g.* Records of an executive session of the executive board.  
33 However, upon the completion of a matter that is the subject of  
34 an executive session held under section 499C.401, subsection  
35 2, paragraph "a", subparagraphs (1) through (4), such records

1 of the executive session shall be available for inspection as  
2 provided in this section.

3 *h.* Records directly related to the personal, health, or  
4 financial information of a unit owner, if the person requesting  
5 the records is not the unit owner that is the subject of the  
6 records.

7 4. A unit owners association may charge a reasonable fee  
8 for providing copies of any records under this section and for  
9 supervising the inspection of such records.

10 5. The right to inspect records under this section includes  
11 the right to copy records by photocopying or other means  
12 including copies through an electronic transmission, if  
13 available, upon request of the requester.

14 6. A unit owners association is not obligated to compile or  
15 synthesize information or records under this section.

16 7. Information or records obtained under this section shall  
17 not be used for commercial purposes.

18 Sec. 13. NEW SECTION. 499C.403 Notice to unit owners.

19 1. A unit owners association or an executive board, as  
20 applicable, shall deliver each notice required to be given by  
21 the association or board under this chapter to the regular mail  
22 address or electronic mail address provided by each unit owner.  
23 If a regular mail address or electronic mail address is not  
24 provided by the unit owner, the notice may be delivered using  
25 any of the following methods:

26 *a.* Hand delivery to the unit owner.

27 *b.* Mailing by regular mail or certified mail, as defined in  
28 section 618.15, to the address of the unit.

29 *c.* Any other method reasonably calculated to provide notice  
30 to the unit owner.

31 2. The ineffectiveness of a good-faith effort to deliver  
32 notice under subsection 1 does not invalidate an action taken  
33 at a meeting or an action taken by other means.

34 3. In any judicial action, the unit owners association  
35 or executive board, as applicable, shall have the burden

1 of proving by a preponderance of the evidence that the  
2 requirements for notice under this section have been met.

3 Sec. 14. NEW SECTION. **499C.501 Cause of action — attorney**  
4 **fees.**

5 A declarant, unit owners association, unit owner, or any  
6 other person subject to this chapter may bring an action to  
7 enforce a right granted or obligation imposed by this chapter,  
8 the declaration, or the bylaws. In any action under this  
9 chapter, the court may award reasonable attorney fees to the  
10 prevailing party.

11 DIVISION II

12 ADDITIONAL PROVISIONS AND  
13 CORRESPONDING CHANGES

14 Sec. 15. NEW SECTION. **499A.1A Applicability.**

15 This chapter shall apply to cooperatives established under  
16 this chapter unless otherwise provided in chapter 499C.

17 Sec. 16. NEW SECTION. **499B.1A Applicability.**

18 This chapter applies to horizontal property regimes  
19 established under this chapter unless otherwise provided in  
20 chapter 499C.

21 Sec. 17. Section 499B.2, Code 2011, is amended by adding the  
22 following new subsection:

23 NEW SUBSECTION. 1A. *"As-built certificate"* means a  
24 certificate and any accompanying documentation from a competent  
25 licensed professional engineer, licensed land surveyor, or  
26 registered architect, that certifies that such individual has  
27 examined the plan filed with the declaration and that the plan  
28 does diagrammatically represent, insofar as may be reasonably  
29 determined through the use of nondestructive measurement  
30 techniques, the building, the general common elements, and the  
31 limited common elements that have been constructed on the real  
32 estate described in the declaration and plans.

33 Sec. 18. Section 499B.6, Code 2011, is amended to read as  
34 follows:

35 **499B.6 Copy of ~~the floor~~ plans to be filed.**



1 open access to the management of the common interest community  
2 to the unit owners.

3 New Code chapter 499C defines "common interest community"  
4 to mean real estate described in a declaration with respect  
5 to which a person, by virtue of the person's ownership of a  
6 unit, is obligated to pay for a share of real estate taxes,  
7 insurance premiums, maintenance, or improvement of, or services  
8 or other expenses related to, common elements, other units, or  
9 other real estate described in the declaration. Cooperatives  
10 under Code chapter 499A and horizontal property regimes under  
11 Code chapter 499B are also defined to be common interest  
12 communities. The bill specifies that a common interest  
13 community does not include a covenant that requires the owners  
14 of separate parcels of real estate to share certain costs or  
15 other obligations, unless all such owners consent in writing  
16 to the creation of a common interest community, and does not  
17 include community where all units are owned by a single unit  
18 owner.

19 The bill does not allow for the provisions of new Code  
20 chapter 499C to be varied by agreement, and rights conferred by  
21 new Code chapter 499C may not be waived.

22 The bill specifies that unless otherwise provided by law new  
23 Code chapter 499C applies to all common interest communities  
24 established within this state on or after July 1, 2011. New  
25 Code chapter 499C does not apply to common interest communities  
26 of three or fewer units. The bill provides that new Code  
27 sections 499C.301 (amendments to governing instruments),  
28 499C.302 (rules), 499C.401 (meetings), 499C.402 (records),  
29 499C.403 (notices), and 499C.501 (enforcement actions) apply to  
30 common interest communities established before July 1, 2011,  
31 and any portion of a declaration, bylaws, covenant, or other  
32 contractual provision existing prior to July 1, 2011, that  
33 violates Code section 499C.301, 499C.302, 499C.401, 499C.402,  
34 or 499C.403 is not enforceable.

35 The bill establishes requirements and procedures for common



1 interest communities, unit owners associations, and executive  
2 boards relating to amending governing instruments, including  
3 declarations, bylaws, and plans. The bill also establishes  
4 requirements and procedures for the adoption of rules by  
5 executive boards and unit owners associations.

6 New Code section 499C.201 establishes requirements for unit  
7 owners associations, as defined in the bill. A unit owners  
8 association must be organized not later than the date the first  
9 unit in the common interest community is conveyed. The bill  
10 provides that the membership of a unit owners association shall  
11 at all times consist exclusively of all unit owners except  
12 following termination of the common interest community, at  
13 which time the unit owners association shall consist of all  
14 former unit owners entitled to distributions of proceeds or  
15 their heirs, successors, or assigns. The bill requires each  
16 unit owners association to have an executive board. A unit  
17 owners association must be organized as a profit or nonprofit  
18 corporation, trust, limited liability company, partnership,  
19 unincorporated association, or any other form of organization  
20 authorized by the laws of this state. The bill provides that  
21 the requirements of new Code chapter 499C relating to a unit  
22 owners association preempt any conflicting provision of the  
23 statute under which the unit owners association is organized.

24 The bill specifies the duties and powers of a unit owners  
25 association, including powers of the unit owners association  
26 for enforcement of the provisions of declaration, bylaws, or  
27 rules.

28 The bill specifies the duties and powers of an executive  
29 board. An executive board, except as otherwise provided in the  
30 declaration, the bylaws, or other provision of law, acts on  
31 behalf of the unit owners association. The bill specifies the  
32 duty of care required for members and officers of the executive  
33 board.

34 The bill establishes requirements relating to meetings of  
35 unit owners associations, executive boards, and committees

1 of such entities including requirements for the contents  
2 of meeting notices, allowable actions during meetings,  
3 requirements relating to unit owner comments, and the manner  
4 in which meetings may be conducted. The bill also specifies  
5 the manner and the reasons for which certain meetings may be  
6 called.

7 The bill enacts requirements relating to the retention of  
8 records by unit owners associations and specifies the records  
9 retained by a unit owners association which may be withheld  
10 from inspection and copying.

11 The bill requires a unit owners association or executive  
12 board, as applicable, to deliver each notice required to be  
13 given by the association under new Code chapter 499C to the  
14 regular mail address or electronic mail address provided by  
15 each unit owner. If a regular mail or electronic mail address  
16 is not provided by the unit owner, the unit owners association  
17 may deliver the notice by a different method specified in  
18 the bill. The bill provides that the ineffectiveness of a  
19 good-faith effort to deliver notice does not invalidate an  
20 action taken at a meeting or an action taken by other means.

21 The bill provides that a declarant, unit owners association,  
22 unit owner, or any other person subject to new Code chapter  
23 499C may bring an action to enforce a right granted or  
24 obligation imposed by the Code chapter, the declaration, or the  
25 bylaws. In any such action, the court may award reasonable  
26 attorney fees to the prevailing party.

27 Division II of the bill amends provisions relating to  
28 certain plans and documents filed with a declaration of a  
29 horizontal property regime and makes corresponding changes  
30 relating to the enactment of new Code chapter 499C.