

Senate Study Bill 1160 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON FRAISE)

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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

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, including but not limited to:

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

12 (2) A statement describing any budget changes.

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

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

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

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

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

33 *a.* Meetings shall be open to the unit owners except during
34 executive sessions. The executive board and committees of
35 the unit owners association may hold an executive session

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

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

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

9 (3) To discuss labor or personnel matters.

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

15 (5) To prevent public knowledge of a matter if the executive
16 board or the committee determines that public disclosure would
17 violate the privacy of any person.

18 *b.* For purposes of this section, a gathering of board
19 members at which the board members do not conduct unit owners
20 association business is not a meeting of the executive board.
21 Executive board members shall not use incidental or social
22 gatherings of board members or any other method to evade the
23 meeting and notice requirements of this section.

24 *c.* During a period of declarant control, the executive board
25 shall meet at least four times a year. At least one of the
26 meetings shall be held at the common interest community or at
27 a place convenient to the unit owners of the common interest
28 community. After termination of the period of declarant
29 control, all executive board meetings shall be at the common
30 interest community or at a place convenient to the unit owners
31 of the common interest community unless the unit owners amend
32 the bylaws to vary the location of such meetings.

33 *d.* At each executive board meeting, the executive board
34 shall provide a reasonable opportunity for unit owners to
35 comment on any matter affecting the common interest community

1 and the unit owners association.

2 e. Unless the meeting is included in a schedule given to the
3 unit owners or the meeting is called to address an emergency,
4 the secretary or other officer specified in the bylaws shall
5 give notice of each executive board meeting to each executive
6 board member and to each unit owner. Such notice shall be
7 given at least ten days before the meeting and shall state the
8 time, date, place, and agenda of the meeting.

9 f. If any materials are distributed to the executive board
10 before a meeting, the executive board, upon receipt of the
11 materials, shall make copies reasonably available to unit
12 owners, except that the executive board is not required to make
13 available copies of unapproved minutes or materials that are to
14 be considered during an executive session.

15 g. Unless otherwise provided in the declaration or bylaws,
16 the executive board may conduct a meeting by telephonic, video,
17 or other conferencing method if all of the following conditions
18 are met:

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

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

26 h. Following termination of the period of declarant control,
27 unit owners may amend the bylaws to vary the procedures for
28 meetings described in paragraph "g".

29 i. In lieu of a meeting, the executive board may act by
30 unanimous consent if such action is documented in a record
31 authenticated by all executive board members. The secretary
32 shall give prompt notice to all unit owners of any action
33 taken by unanimous consent. After termination of the period
34 of declarant control, an executive board may act by unanimous
35 consent only to undertake ministerial actions or to implement

1 actions previously taken at a meeting of the executive board.

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

5 *k.* An executive board may remove any person from a meeting
6 of the executive board upon a finding by a majority of the
7 board members that the person is being disruptive to the
8 meeting. An executive board may bar any person from meetings
9 of the executive board or other meetings of the common interest
10 community for a period of up to one year if the person has
11 been twice removed from a meeting within the preceding twelve
12 months.

13 *l.* An action by an executive board that is not in compliance
14 with this section is valid unless invalidated by a court. A
15 challenge to the validity of an action of the executive board
16 for failure to comply with this section shall not be brought
17 more than sixty days after the minutes of the executive board
18 of the meeting at which the action was taken are approved
19 or the record of that action is distributed to unit owners,
20 whichever is later.

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

22 1. A unit owners association shall retain all of the
23 following:

24 *a.* Detailed records of receipts and expenditures relating to
25 the operation and administration of the unit owners association
26 and other appropriate accounting records.

27 *b.* Minutes of all unit owners meetings and executive board
28 meetings other than executive sessions, a record of all actions
29 taken by the unit owners or the executive board without a
30 meeting, and a record of all actions taken by a committee in
31 place of the executive board on behalf of the unit owners
32 association.

33 *c.* The names of all unit owners in a form that permits
34 preparation of a list of the names of all owners and the
35 addresses at which the unit owners association communicates

1 with them, the records shall indicate the number of votes each
2 unit owner is entitled to cast.

3 *d.* The unit owners association's original and amended
4 organizational documents, bylaws including all amendments to
5 the bylaws, and all rules of the common interest community
6 currently in effect.

7 *e.* All financial statements and tax returns of the unit
8 owners association for the past three years.

9 *f.* A list of the names and addresses of the current
10 executive board members and officers.

11 *g.* The unit association's most recent annual report
12 delivered to the secretary of state, if applicable.

13 *h.* Copies of each contract to which the unit owners
14 association is currently a party.

15 *i.* Records of executive board or committee actions relating
16 to requests for design or architectural approval from unit
17 owners.

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

20 2. Except as provided under subsections 3 and 4, all records
21 retained by a unit owners association must be available for
22 examination and copying by a unit owner or the unit owner's
23 authorized agent during reasonable business hours or at a
24 mutually convenient time and location upon providing a five
25 days' notice that reasonably identifies the specific records
26 that are being requested.

27 3. Records retained by a unit owners association may be
28 withheld from inspection and copying to the extent that they
29 concern:

30 *a.* Personally identifiable information, salary, and medical
31 records relating to specific individuals.

32 *b.* Information relating to contracts, leases, and other
33 commercial transactions to purchase or provide goods or
34 services, currently under negotiation.

35 *c.* Information relating to existing or potential litigation,

1 mediation, arbitration, or administrative proceedings.

2 *d.* Information relating to existing or potential matters
3 involving federal, state, or local administrative proceedings
4 or other proceedings before a government tribunal for
5 enforcement of the declaration, bylaws, or rules.

6 *e.* Communications with the unit owners association attorney
7 which are otherwise protected by the attorney-client privilege
8 or the attorney work-product doctrine.

9 *f.* Information that if disclosed would violate another
10 provision of law.

11 *g.* Records of an executive session of the executive board.

12 *h.* Records relating to a specific unit owner, if the person
13 requesting the records is not the unit owner that is the
14 subject of the records.

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

18 5. The right to inspect records under this section includes
19 the right to copy records by photocopying or other means
20 including copies through an electronic transmission, if
21 available, upon request of the requester.

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

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

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

27 1. A unit owners association or an executive board, as
28 applicable, shall deliver each notice required to be given by
29 the association or board under this chapter to the regular mail
30 address or electronic mail address provided by each unit owner.
31 If a regular mail address or electronic mail address is not
32 provided by the unit owner, the notice may be delivered using
33 any of the following methods:

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

35 *b.* Mailing by regular mail or certified mail, as defined in

1 section 618.15, to the address of the unit.

2 c. Any other method reasonably calculated to provide notice
3 to the unit owner.

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

7 Sec. 14. NEW SECTION. **499C.501 Cause of action — attorney**
8 **fees.**

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

15 DIVISION II

16 ADDITIONAL PROVISIONS AND

17 CORRESPONDING CHANGES

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

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

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

22 This chapter applies to horizontal property regimes
23 established under this chapter unless otherwise provided in
24 chapter 499C.

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

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

1 estate described in the declaration and plans.

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

4 **499B.6 Copy of ~~the floor~~ plans to be filed.**

5 1. There shall be attached to the declaration, at the time
6 it is filed, a full and an exact copy of the plans of the
7 building, ~~which copy shall be entered of record along with~~
8 ~~the declaration~~ or buildings and an as-built certificate or a
9 certificate described in subsection 2, paragraph "a".

10 2. a. If a portion of the horizontal property regime
11 is not completed at the time the declaration is filed, the
12 declaration may be filed, in lieu of an as-built certificate,
13 with a certification that the plans diagrammatically represent,
14 insofar as reasonably ascertainable, the buildings the
15 declarant intends to construct.

16 b. Upon completion of all buildings of a horizontal property
17 regime, for which a certificate under paragraph "a" was filed,
18 the declarant shall file for recording an as-built certificate.

19 c. Upon completion of a discrete portion of a horizontal
20 property regime project, a declarant may file an as-built
21 certificate for the portion then completed.

22 d. The absence of a certificate described in this subsection
23 for a declaration recorded before July 1, 2011, shall not
24 affect the marketability of title.

25 3. The plans described in subsection 1 shall show
26 graphically all particulars of the building, including, but
27 not limited to, the dimensions, area, and location of common
28 elements affording access to each apartment. Other common
29 elements, both limited and general, shall be shown graphically
30 insofar as possible and shall be certified to by an engineer,
31 architect, or land surveyor, who is registered or licensed to
32 practice that profession in this state.

33 Sec. 19. Section 499B.15, subsection 2, Code 2011, is
34 amended by striking the subsection.

35

EXPLANATION

1 Division I of this bill creates a uniform common interest
2 ownership Act, new Code chapter 499C. The bill provides that
3 it is the public policy of the state that the management and
4 affairs of common interest communities be conducted to provide
5 open access to the management of the common interest community
6 to the unit owners.

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

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

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

1 contractual provision existing prior to July 1, 2011, that
2 violates Code section 499C.301, 499C.302, 499C.401, 499C.402,
3 or 499C.403 is not enforceable.

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

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

28 The bill specifies the duties and powers of a unit owners
29 association, including powers of the unit owners association
30 for enforcement of the provisions of declaration, bylaws, or
31 rules.

32 The bill specifies the duties and powers of an executive
33 board. An executive board, except as otherwise provided in the
34 declaration, the bylaws, or other provision of law, acts on
35 behalf of the unit owners association. The bill specifies the

1 duty of care required for members and officers of the executive
2 board.

3 The bill establishes requirements relating to meetings of
4 unit owners associations, executive boards, and committees
5 of such entities including requirements for the contents
6 of meeting notices, allowable actions during meetings,
7 requirements relating to unit owner comments, and the manner
8 in which meetings may be conducted. The bill also specifies
9 the manner and the reasons for which certain meetings may be
10 called.

11 The bill enacts requirements relating to the retention of
12 records by unit owners associations and specifies the records
13 retained by a unit owners association which may be withheld
14 from inspection and copying.

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

25 The bill provides that a declarant, unit owners association,
26 unit owner, or any other person subject to new Code chapter
27 499C may bring an action to enforce a right granted or
28 obligation imposed by the Code chapter, the declaration, or the
29 bylaws. In any such action, the court may award reasonable
30 attorney fees to the prevailing party.

31 Division II of the bill amends provisions relating to
32 certain plans and documents filed with a declaration of a
33 horizontal property regime and makes corresponding changes
34 relating to the enactment of new Code chapter 499C.