

**House File 122 - Introduced**

HOUSE FILE 122

BY ISENHART and HIGHFILL

**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 Section 1. NEW SECTION. **499A.1A Applicability.**

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

4 Sec. 2. NEW SECTION. **499B.1A Applicability.**

5 This chapter shall apply to horizontal property regimes  
6 established under this chapter unless otherwise provided in  
7 chapter 499C.

8 Sec. 3. Section 499B.15, subsection 2, Code 2013, is amended  
9 by striking the subsection.

10 Sec. 4. NEW SECTION. **499B.21 Board of administration —**  
11 **meetings and records.**

12 1. For horizontal property regimes with eight or more  
13 apartments, if the form of administration is a board of  
14 administration, the board of administration shall comply with  
15 the requirements of chapter 499C.

16 2. For horizontal property regimes with seven or less  
17 apartments, if the form of administration is a board of  
18 administration, the board of administration shall comply  
19 with the requirements of section 499C.401, subsection 2, and  
20 sections 499C.402 and 499C.403.

21 Sec. 5. NEW SECTION. **499C.101 Title.**

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

24 Sec. 6. NEW SECTION. **499C.102 Public policy.**

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

30 Sec. 7. NEW SECTION. **499C.103 Definitions.**

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

33 1. "*Bylaws*" means the instruments, however denominated,  
34 that contain the procedures for conducting the affairs of the  
35 unit owners association or the executive board regardless of

1 the form in which the association is organized, including any  
2 amendments to such instruments.

3 2. "*Common element*" means:

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

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

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

13 3. a. "*Common interest community*" means real estate  
14 described in a declaration with respect to which a person,  
15 by virtue of the person's ownership of a unit, is obligated  
16 to pay for a share of real estate taxes, insurance premiums,  
17 maintenance, or improvement of, or services or other expenses  
18 related to, common elements, other units, or other real estate  
19 described in the declaration. "*Common interest community*"  
20 includes a cooperative under chapter 499A and a horizontal  
21 property regime under chapter 499B.

22 b. Common interest community does not include:

23 (1) A covenant that requires the owners of separate parcels  
24 of real estate to share costs or other obligations related to a  
25 wall, driveway, well, or other similar structure, unless all  
26 such owners consent in writing to the creation of a common  
27 interest community.

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

30 4. "*Declarant*" means any person or group of persons who,  
31 as the record title owner of real estate, by a declaration,  
32 initially creates a common interest community.

33 5. "*Declaration*" means the instrument, however denominated,  
34 that creates a common interest community, including any  
35 amendments to the instrument.

1 6. "*Executive board*" means the body, regardless of name,  
2 designated in the declaration or bylaws to act on behalf of the  
3 unit owners association.

4 7. "*Planned community*" means a common interest community  
5 that is not a cooperative under chapter 499A or a horizontal  
6 property regime under chapter 499B, and includes property  
7 owner or homeowner associations. However, a cooperative under  
8 chapter 499A or a horizontal property regime under chapter 499B  
9 may be part of a planned community.

10 8. "*Rule*" means a policy, guideline, restriction, procedure,  
11 or regulation, however denominated, which is not set forth in  
12 the declaration or bylaws.

13 9. "*Unit*" means a physical portion of the common interest  
14 community designated for separate ownership or occupancy or  
15 as otherwise defined in the statute under which the common  
16 interest community is organized.

17 10. "*Unit owner*" means a declarant or other person that owns  
18 a unit, but does not include a person having an interest in a  
19 unit solely as security for an obligation. In a horizontal  
20 property regime under chapter 499B or a planned community, the  
21 declarant is the owner of any unit created by the declaration.  
22 In a cooperative under chapter 499A, the declarant is the owner  
23 of any unit to which an interest has been allocated until that  
24 unit has been conveyed to another person.

25 11. "*Unit owners association*" means an association,  
26 regardless of name, organized as a for-profit or nonprofit  
27 corporation, trust, limited liability company, partnership,  
28 unincorporated association, or any other form of organization  
29 authorized by the laws of this state, the membership of  
30 which consists solely of unit owners except following  
31 termination of the common interest community, at which time the  
32 association shall consist of all former unit owners entitled  
33 to distributions of proceeds or their heirs, successors, or  
34 assigns.

35 Sec. 8. NEW SECTION. 499C.104 Variation by agreement.

1 Except as expressly provided in this chapter, the provisions  
2 of this chapter may not be varied by agreement, and rights  
3 conferred by it may not be waived.

4 Sec. 9. NEW SECTION. **499C.105 Applicability.**

5 Unless otherwise provided by law:

6 1. This chapter applies to common interest communities  
7 within this state having eight or more units.

8 2. Any portion of a declaration, bylaws, covenant, or  
9 other contractual provision existing prior to July 1, 2013,  
10 that violates or is inconsistent with this chapter is not  
11 enforceable. However, nothing in this chapter shall be  
12 construed to invalidate other provisions of the declaration,  
13 bylaws, plats, or plans of those common interest communities  
14 established before July 1, 2013.

15 3. The provisions of this chapter shall prevail over any  
16 conflicting provision of law under which a common interest  
17 community or unit owners association is organized.

18 Sec. 10. NEW SECTION. **499C.201 Unit owners association —**  
19 **executive board.**

20 1. A unit owners association shall have an executive board.

21 2. Except as otherwise provided in the declaration,  
22 the bylaws, subsection 3 of this section, or provisions of  
23 the statute under which the common interest community is  
24 organized, an executive board acts on behalf of the unit owners  
25 association.

26 3. An executive board shall not act on behalf of the unit  
27 owners association to amend the declaration, to terminate the  
28 common interest community, to elect members of the executive  
29 board, or determine the qualifications, powers and duties, or  
30 terms of office of executive board members. An executive board  
31 may fill vacancies in its membership for the unexpired portion  
32 of any term.

33 4. A declaration may provide for a period of declarant  
34 control of the unit owners association, during which a  
35 declarant, or persons designated by the declarant, may appoint

1 and remove the officers and members of the executive board.  
2 For declarations filed on or after July 1, 2013, a period of  
3 declarant control shall be clearly defined in the declaration.

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

5 1. Meetings of a unit owners association, whether such  
6 association is incorporated or unincorporated, shall comply  
7 with all of the following:

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

11 b. A unit owners association shall hold a special meeting  
12 of unit owners to address any matter affecting the unit owners  
13 association if the association's president, a majority of the  
14 executive board, or a number of unit owners comprising at  
15 least forty percent of all votes in the association, unless a  
16 different percentage is specified in the bylaws, request that  
17 the secretary call the meeting. If the unit owners association  
18 does not notify unit owners of a special meeting within thirty  
19 days after the required number of unit owners has requested the  
20 secretary to call a special meeting, the requesting members may  
21 directly notify all unit owners of the meeting. Only matters  
22 described in the meeting notice may be considered at a special  
23 meeting.

24 c. A unit owners association shall notify each unit owner  
25 of the time, date, and place of each annual and special unit  
26 owners meeting not less than ten days and not more than sixty  
27 days before the meeting date. Notice may be by any means  
28 described in section 499C.403. Each meeting notice shall state  
29 the time, date, and place of the meeting and the items on the  
30 agenda in a manner reasonably calculated to apprise the unit  
31 owners of that information, including but not limited to:

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

34 (2) A statement describing any budget changes.

35 (3) Any proposal to remove an officer or member of the

1 executive board.

2 *d.* The requirements relating to the timing of meeting  
3 notices under paragraph "*c*" may be reduced or waived for a  
4 meeting called to address an emergency. A meeting called to  
5 address an emergency shall be limited to matters arising out  
6 of the emergency.

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

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

14 2. Meetings of the executive board and committees of the  
15 unit owners association, authorized to act for the unit owners  
16 association, shall comply with all of the following:

17 *a.* Meetings shall be open to the unit owners except during  
18 executive sessions. The executive board and committees of  
19 the unit owners association may hold an executive session  
20 only during a regular or special meeting of the board or the  
21 committee. No final vote or final action may be taken during  
22 an executive session. An executive session may only be held  
23 for the following reasons:

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

26 (2) To discuss existing or potential litigation or  
27 mediation, arbitration, or governmental administrative  
28 proceedings.

29 (3) To discuss matters relating to the job performance,  
30 compensation, or health records of an individual employee or  
31 specific complaints against an individual employee of the  
32 unit owners association or against an independent contractor  
33 employed by the unit owners association.

34 (4) To discuss contracts, leases, and other commercial  
35 transactions for goods or services that are under negotiation,

1 including the review of bids or proposals, if public disclosure  
2 of such matters would place the unit owners association at a  
3 disadvantage.

4 (5) To discuss personal, health, or financial information  
5 relating to a unit owner, a specific employee of the unit  
6 owners association, or a specific employee of an independent  
7 contractor retained by the unit owners association, including  
8 any records of the unit owners association relating to such  
9 information.

10 *b.* For purposes of this section, a gathering of board  
11 members at which the board members do not conduct unit owners  
12 association business is not a meeting of the executive board.  
13 Executive board members shall not use incidental or social  
14 gatherings of board members or any other method to evade the  
15 meeting and notice requirements of this section.

16 *c.* During a period of declarant control, the executive board  
17 shall meet at least one time each year. At least one of the  
18 meetings shall be held at the common interest community or at  
19 a place convenient to the unit owners of the common interest  
20 community. After termination of the period of declarant  
21 control, all executive board meetings shall be at the common  
22 interest community or at a place convenient to the unit owners  
23 of the common interest community unless the unit owners amend  
24 the bylaws to vary the location of such meetings.

25 *d.* At each executive board meeting, the executive board  
26 shall provide a reasonable opportunity for unit owners to  
27 comment on any matter affecting the common interest community  
28 and the unit owners association.

29 *e.* Unless the meeting is included in a schedule given to the  
30 unit owners or the meeting is called to address an emergency,  
31 the secretary or other officer specified in the bylaws shall  
32 give notice of each executive board meeting to each executive  
33 board member and to each unit owner. Such notice shall be  
34 given at least ten days before the meeting and shall state the  
35 time, date, place, and agenda of the meeting.



1     *f.* If any materials are distributed to the executive board  
2 before a meeting, the executive board, upon receipt of the  
3 materials, shall make copies reasonably available to unit  
4 owners, except that the executive board is not required to make  
5 available copies of unapproved minutes or materials that are to  
6 be considered during an executive session.

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

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

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

18     *h.* Following termination of the period of declarant control,  
19 unit owners may amend the bylaws to vary the procedures for  
20 meetings described in paragraph "*g*".

21     *i.* In lieu of a meeting, the executive board may act by  
22 unanimous consent if such action is documented in a record  
23 authenticated by all executive board members. The secretary  
24 shall give prompt notice to all unit owners of any action  
25 taken by unanimous consent. After termination of the period  
26 of declarant control, an executive board may act by unanimous  
27 consent only to undertake ministerial actions or to implement  
28 actions previously taken at a meeting of the executive board.

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

32     *k.* An executive board may remove any person from a meeting  
33 of the executive board upon a finding by a majority of the  
34 board members that the person is being disruptive to the  
35 meeting. An executive board may bar any person from meetings

1 of the executive board or other meetings of the common interest  
2 community for a period of up to one year if the person has  
3 been twice removed from a meeting within the preceding twelve  
4 months.

5 1. An action by an executive board that is not in compliance  
6 with this section is valid unless invalidated by a court. A  
7 challenge to the validity of an action of the executive board  
8 for failure to comply with this section shall not be brought  
9 more than sixty days after the minutes of the executive board  
10 of the meeting at which the action was taken are approved  
11 or the record of that action is distributed to unit owners,  
12 whichever is later.

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

14 1. A unit owners association shall retain all of the  
15 following:

16 a. Detailed records of receipts and expenditures relating to  
17 the operation and administration of the unit owners association  
18 and other appropriate accounting records.

19 b. Minutes of all unit owners meetings and executive board  
20 meetings, a record of all actions taken by the unit owners or  
21 the executive board without a meeting, and a record of all  
22 actions taken by a committee in place of the executive board on  
23 behalf of the unit owners association. The minutes retained  
24 by the unit owners association shall indicate the date, time,  
25 and place of the meeting, the names of all persons present  
26 at the meeting, and each action taken at the meeting. The  
27 minutes shall also include the results of each vote taken at  
28 the meeting, including information indicating the vote of each  
29 executive board member present at the meeting. The vote of  
30 each executive board member present shall be made public at the  
31 open session.

32 c. The names of all unit owners in a form that permits  
33 preparation of a list of the names of all owners and the  
34 regular mail or electronic mail address at which the unit  
35 owners association communicates with them, and the number of

1 votes each unit owner is entitled to cast.

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

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

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

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

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

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

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

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

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

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

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

34 *c.* Information relating to existing or potential litigation,  
35 mediation, arbitration, or governmental administrative

1 proceedings.

2 *d.* Information relating to existing or potential matters  
3 involving governmental administrative proceedings or other  
4 proceedings before a government tribunal for enforcement of the  
5 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 However, upon the completion of a matter that is the subject of  
13 an executive session held under section 499C.401, subsection  
14 2, paragraph "a", subparagraphs (1) through (4), such records  
15 of the executive session shall be available for inspection as  
16 provided in this section.

17 *h.* Records directly related to the personal, health, or  
18 financial information of a unit owner, if the person requesting  
19 the records is not the unit owner that is the subject of the  
20 records.

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

24 5. The right to inspect records under this section includes  
25 the right to copy records by photocopying or other means  
26 including copies through an electronic transmission, if  
27 available, upon request of the requester.

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

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

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

33 1. A unit owners association or an executive board, as  
34 applicable, shall deliver each notice required to be given by  
35 the association or board under this chapter to the regular mail

1 address or electronic mail address provided by each unit owner.  
2 If a regular mail address or electronic mail address is not  
3 provided by the unit owner, the notice may be delivered using  
4 any of the following methods:

5 a. Hand delivery to the unit owner.

6 b. Mailing by regular mail or certified mail, as defined in  
7 section 618.15, to the address of the unit.

8 c. Any other method reasonably calculated to provide notice  
9 to the unit owner.

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

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

15 A declarant, unit owners association, unit owner, or any  
16 other person subject to this chapter may bring an action to  
17 enforce a right granted or obligation imposed by this chapter,  
18 the declaration, or the bylaws. In any action brought under  
19 this chapter, the court may award reasonable attorney fees to  
20 the prevailing party.

21

EXPLANATION

22 This bill creates the "Iowa Common Interest Ownership Act,"  
23 new Code chapter 499C. The bill provides that it is the  
24 public policy of the state that the management and affairs of  
25 common interest communities be conducted openly and that the  
26 new Code chapter is to be construed to provide open access to  
27 the management of the common interest community for the unit  
28 owners.

29 New Code chapter 499C defines "common interest community"  
30 to mean real estate described in a declaration with respect to  
31 which a person, by virtue of the person's ownership of a unit,  
32 is obligated to pay for a share of real estate taxes, insurance  
33 premiums, maintenance, or improvement of, or services or other  
34 expenses related to, common elements, other units, or other  
35 real estate described in the declaration. The bill specifies

1 that a common interest community does not include a covenant  
2 that requires the owners of separate parcels of real estate  
3 to share certain costs or other obligations, unless all such  
4 owners consent in writing to the creation of a common interest  
5 community, and does not include community where all units are  
6 owned by a single unit owner.

7 The bill defines cooperatives under Code chapter 499A and  
8 horizontal property regimes under Code chapter 499B to be  
9 common interest communities. The bill specifies that unless  
10 otherwise provided by law new Code chapter 499C applies to  
11 all common interest communities established within this state  
12 having eight or more units. However, the bill provides that  
13 for horizontal property regimes with seven or less apartments,  
14 if the form of administration is a board of administration, the  
15 board of administration must comply with the requirements of  
16 new Code section 499C.401(2), regarding meeting requirements,  
17 and new Code sections 499C.402 and 499C.403, relating to  
18 records and notice.

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

23 The bill also provides that any portion of a declaration,  
24 bylaws, covenant, or other contractual provision existing  
25 prior to July 1, 2013, that violates or is inconsistent with  
26 new Code chapter 499C is not enforceable. However, nothing in  
27 new Code chapter 499C shall be construed to invalidate other  
28 provisions of the declaration, bylaws, plats, or plans of those  
29 common interest communities established before July 1, 2013.  
30 The bill specifies that the provisions of new Code chapter  
31 499C shall prevail over any conflicting provision of law under  
32 which a common interest community or unit owners association  
33 is organized.

34 The bill requires each unit owners association, as defined  
35 in the bill, to have an executive board. The bill defines an

1 executive board as the body, regardless of name, designated  
2 in the declaration or bylaws to act on behalf of the unit  
3 owners association. However, the bill provides that an  
4 executive board shall not act on behalf of the unit owners  
5 association to amend the declaration, to terminate the common  
6 interest community, to elect members of the executive board, or  
7 determine the qualifications, powers and duties, or terms of  
8 office of executive board members. The bill provides, however,  
9 that an executive board may fill vacancies in its membership  
10 for the unexpired portion of any term.

11 The bill provides that a declaration (the instrument that  
12 creates the common interest community) may provide for a period  
13 of declarant control of the unit owners association, during  
14 which a declarant (the person or group of persons who creates  
15 the common interest community), or persons designated by the  
16 declarant, may appoint and remove the officers and members of  
17 the executive board. The bill specifies that for declarations  
18 filed on or after July 1, 2013, a period of declarant control  
19 shall be clearly defined in the declaration.

20 The bill establishes requirements relating to meetings of  
21 unit owners associations, executive boards, and committees  
22 of such entities including requirements for the contents  
23 of meeting notices, allowable actions during meetings,  
24 requirements relating to unit owner comments, and the manner  
25 in which meetings may be conducted. The bill also specifies  
26 the manner and the reasons for which certain meetings may be  
27 called.

28 The bill enacts requirements relating to the retention of  
29 records by unit owners associations and specifies the records  
30 retained by a unit owners association that may be withheld from  
31 inspection and copying.

32 The bill requires a unit owners association or executive  
33 board, as applicable, to deliver each notice required to be  
34 given by the association under new Code chapter 499C to the  
35 regular mail address or electronic mail address provided by

1 each unit owner. If a regular mail or electronic mail address  
2 is not provided by the unit owner, the unit owners association  
3 may deliver the notice by a different method specified in  
4 the bill. The bill provides that the ineffectiveness of a  
5 good-faith effort to deliver notice does not invalidate an  
6 action taken at a meeting or an action taken by other means.

7 The bill provides that a declarant, unit owners association,  
8 unit owner, or any other person subject to new Code chapter  
9 499C may bring an action to enforce a right granted or  
10 obligation imposed by the Code chapter, the declaration, or the  
11 bylaws. In any such action, the court may award reasonable  
12 attorney fees to the prevailing party.