

AN ACT TO CREATE CONSISTENT LAW REGARDING THE FORMATION AND LEGAL ADMINISTRATION OF HOMEOWNERS' ASSOCIATIONS; TO ENACT DEFINITIONS; TO PROVIDE GUIDELINES FOR MEMBERSHIP AND ORGANIZATION OF ASSOCIATIONS; TO PROVIDE GUIDELINES FOR DEVELOPERS' RETAINING AN INTEREST; TO SPECIFY THE ASSOCIATION FORMATION AND POWERS; TO PROVIDE FOR A BOARD OF DIRECTORS; TO INVALIDATE UNCONSTITUTIONAL RESTRICTIONS IN GOVERNING DOCUMENTS; TO PROVIDE FOR BYLAWS; TO CREATE DEVELOPER LIABILITY FOR MISAPPROPRIATION OF ASSOCIATION FUNDS; TO CREATE A LIEN FOR UNPAID ASSESSMENTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Intent. That it is the policy of this state to give developers flexible development rights, but subject to local governing authorities ability to establish specific obligations within a uniform structure of development that extends through the transition from developer to owner control. Thus, the intent of this act is to provide consistent laws regarding the formation and legal administration of Homeowners' associations.

SECTION 2. Definitions. For purposes of this act:

- (a) "Assessment" means all sums chargeable to an owner by an association.
- (b) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.
- (c) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.
- (d) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this act.
- (e) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this act or to manage, maintain, or otherwise affect the property under its jurisdiction.
- (f) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, composed of members which are owners of residential reserve property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property are obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of common areas or other real property within the association's jurisdiction other than that which is owned by the member.
- (g) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.
- (h) "Owner" means the title holder of a lot, but does not include a person who has an interest in a lot solely as security for an obligation.

(i) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its 77 original functional condition.

(j) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(k) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(l) "Significant assets" means that the current replacement value of the major reserve components which are seventy-five percent (75%) or more of the gross budget of the association, excluding the association's reserve account funds.

SECTION 3. Association membership. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped.

SECTION 4. Organization of associations. (1) For the purpose of promoting the general welfare of the community and to accomplish the legitimate purposes of organized community growth, development and aesthetics, while fostering the public welfare, the governing authority of any county or municipality, in its discretion, is empowered to adopt by order spread upon its minutes, the homeowners association regulations set forth herein, or sections thereof. Within one hundred eighty (180) days after adoption of these regulations, or sections thereof, all preexisting homeowners associations will come into compliance therewith. Notwithstanding the foregoing, after adoption of the regulations set forth herein, or sections thereof, the governing authorities may waive application of the adopted regulations as part of the approval of any development of land.

(2) When homeowners' association are required by a governing authority as a condition of the approval for development of land, such association shall be organized by the developer no later than the date the first lot in the subdivision is conveyed to a purchaser. The membership of the association at all times shall consist exclusively of all owners or their heirs, personal representatives, successors, or assigns. The association shall be organized as a nonprofit, not-for-profit, or for-profit corporation or as a limited liability company in accordance with the laws of the State of Mississippi, with approved written bylaws; except that the failure of the association to incorporate or organize as a limited liability company will not adversely affect either the existence of the subdivision for purposes of this act or the rights of persons acting in reliance upon such existence. Neither the choice of entity nor the organizational structure of the association shall be deemed to affect its substantive rights and obligations under this act.

(2) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the lots that may be created within the subdivision to owners other than the developer, a board of directors of the association shall be established with at least one (1) member and not less than twenty-five percent (25%) of the members of a board of directors who must be elected by the owners other than the developer.

(3) Not later than sixty (60) days after conveyance of fifty percent (50%) of the lots that may be created within the subdivision to owners other than the developer, not less than fifty percent (50%) of the members of the board of directors must be elected by the owners other than the

developer. Thereafter, the procedure for electing the board of directors shall be as set forth in the bylaws of the association.

SECTION 5. Contracts voidable. The following contracts and leases, if entered into before the board of directors elected by the owners pursuant to Section 4 of this act takes office, may be terminated without penalty by the association, at any time after the board of directors elected by the owners pursuant to Section 4 of this act takes office, upon not less than ninety (90) days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(b) Any other contract or lease between the association, the developer or an affiliate of the developer; or

(c) Any contract or lease that is not bona fide or was unconscionable to the owners at the time entered into under the circumstances then prevailing.

SECTION 6. Association formation and powers. Unless otherwise provided in this act or the governing documents, an association :

(a) Shall adopt and amend bylaws, rules, and regulations;

(b) May adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

(c) May hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(d) May institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;

(e) May make contracts and incur liabilities;

(f) May regulate the use, maintenance, repair, replacement, and modification of common areas;

(g) May cause additional improvements to be made as a part of the common areas;

(h) May acquire, hold, encumber, and convey in its own name any right, chapter, or interest to real or personal property that it possesses;

(i) May grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(j) May impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(k) May impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and

regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(l) May exercise any other powers conferred by the bylaws;

(m) May exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(n) May exercise any other powers necessary and proper for the governance and operation of the association.

(o) Shall properly maintain in good and safe condition all drainage, public structures and common areas required by the local governmental entity as a condition of development of the property, which are subject are within the association's jurisdiction, as required by section 29.

SECTION 7. Board of directors; standard of care; restrictions; budget; removal from board.

(1) except as provided in the association's governing documents or this act, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty (30) days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall mail to all homeowners a summary of the budget and set a date for a meeting of the owners to consider ratification of the budget, which meeting shall be not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to a reserve account, the recommended contribution rate, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study, if any, and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty (30) years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty (30) years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended to be held in the reserve account at the end of the current fiscal year based on current and projected demands and the most recent reserve study, if any are performed, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended to be held in the reserve account based upon the most recent reserve study, if any are performed, at the end of each of the next five (5) budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

SECTION 8. Removal of discriminatory provisions in governing documents; procedure. (1) The association, acting through a simple majority vote of its board of directors, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or the use of a trained guide dog or service animal by a person with a physical disability or who is blind or deaf; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status, unless the lot is part of an age restricted community under the Housing for Older Persons Act of 1995; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf.

(2) Upon the board of directors' receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the association's records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under Section 8 of this act. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf."

(5) Board action under this section does not require the vote or approval of the owners.

(6) Any owner, occupant, or tenant in the association or board may bring an action in chancery court to have any provision of a written instrument that is void pursuant to Section 8 of this act stricken from the public records.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 USC Section 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, Public Law 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 USC Section 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, Public Law 104-76, as enacted on December 28, 1995.

(8) Nothing in this section: (a) creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section.

SECTION 9. Unconscionable agreement or term of contract. The court, upon finding as a matter of law that a clause within the governing documents is unconscionable, may refuse to enforce the clause, enforce the remainder of the governing documents without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

SECTION 10. Association bylaws. Every association shall adopt bylaws of the association which shall, at a minimum, provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing the board of directors subsequent to the election set forth in Section 4 of this act, the manner of removing the board of directors, the manner of electing and removing officers and the method of filling vacancies;

(b) Manner of election by the board of directors of the officers of the association;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(e) The method of amending the bylaws; and

(f) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate.

SECTION 11. Flag of the United States; outdoor display; governing documents. (1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 USC Section 1 et seq., the governing documents may include reasonable rules and regulations, consistent with 4 USC Section 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 USC Section 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

SECTION 12. Unreasonable restrictions on energy efficiency measures. (1) (a) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit the installation or use of an energy efficiency measure.

(b) As used in this section, "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(i) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(ii) A garage or attic fan and any associated vents or louvers;

(iii) An evaporative cooler;

(iv) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and

(2) Subsection (1) of this section shall not apply to:

(a) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, 398 associations shall consider:

(i) The impact on the purchase price and operating costs of the energy efficiency measure;

(ii) The impact on the performance of the energy efficiency measure; and

(iii) The criteria contained in the governing documents of the property within the association's jurisdiction.

(b) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

(3) This section shall not be construed to confer upon any owner the right to place an energy efficiency measure on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of property within the association's jurisdiction.

SECTION 13. Association meetings; notice; board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent (10%) of the votes in the association. Not less than fourteen (14) nor more than sixty (60) days in advance of any meeting, the secretary or other officers of the board of directors specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the date, time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall not take up for consideration any matter not set forth in the notice of meeting. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only

to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure.

SECTION 14. Quorum for meeting. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent (34%) of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

SECTION 15. Proxy voting. Votes allocated to an owner may be cast pursuant to a proxy duly executed by the owner and presented at the meeting or meetings for which the proxy is designated. A proxy shall not be valid if obtained through fraud or misrepresentation.

SECTION 16. Financial and other records; property of association; copies; examination; annual financial statement; accounts. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including, but not limited to, checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association's managing agent is entitled to keep copies of association records. All records that the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of Fifty Thousand Dollars (\$50,000.00) or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent (67%) of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be comingled with the funds of any other association, nor with the funds of any manager of the association, nor any member of the association or members of the board of directors, nor any other person responsible for the custody of such funds.

SECTION 17. Disclosure of association information. (1) The association shall annually provide the following information to all owners and the designated office of the governing authority:

- (a) The name of the association;
- (b) The name of the association's designated agent or management company, if any;
- (c) A valid physical address and telephone number for the association, its board of directors and the designated agent or management company, if any.

In addition, if the association's address, designated agent, or management company changes, the association shall make updated information available within ninety (90) days after the change.

(2) The association shall make the following information available to owners, within a reasonable time upon request made:

- (a) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed;
- (b) All the association's bylaws, articles, and rules and regulations;
- (c) The minutes of the executive board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (d) The association's responsible governance policies.

(3) Every prospective purchaser of a Lot must be presented with an Association disclosure summary buy the seller of the Lot before the contract for sale is executed. The disclosure summary must be in a form substantially similar to the following form:

DISCLOSURE SUMMARY FOR (NAME OF COMMUNITY); DEVELOPER (NAME, ADDRESS)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION. THE BYLAWS OF THE HOMEOWNERS' ASSOCIATION ARE PROVIDED HEREWITH.
2. THERE HAVE BEEN RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY, WHICH MAY BE FOUND IN THE LAND RECORDS OF THE CHANCERY CLERK'S OFFICE OF _____ COUNTY RECORDED IN BOOK _____ PAGE _____; A COPY OF WHICH IS PROVIDED HEREWITH.
3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.

4. YOUR FAILURE TO PAY ASSESSMENTS OR SPECIAL ASSESSMENTS LEVIED BY THE HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.

5. THE HOMEOWNERS' ASSOCIATION MAY HAVE THE RIGHT TO AMEND CERTAIN RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

6. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE CHANERY CLERK'S OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER WHOSE ADDRESS IS

_____.

DATE: _____

SELLER: _____

PURCHASER: _____

The disclosure, association bylaws and restrictive covenants must be supplied by the developer, or by the lot owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by this section.

(b) Each contract entered into for the sale of property governed by covenants subject to disclosure required by this section must contain in conspicuous type a clause that states:

IF THE DISCLOSURE SUMMARY, ASSOCIATION BYLAWS AND RESTRICTIVE COVENANTS REQUIRED BY MISS. CODE ANN. § _____, HAVE NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

(c) If the disclosure summary is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property governed by covenants that are subject to disclosure pursuant to this section, the purchaser may void the contract by delivering to the seller or the seller's agent or representative written notice canceling the contract within 3 days after receipt of the disclosure summary or prior to closing, whichever occurs first. This right may not be waived by the purchaser but terminates at closing.

SECTION 18. Violation; remedy; attorneys' fees. Any violation of the provisions of this act entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

SECTION 19. Reserve account. (1) An association shall, unless doing so would impose an unreasonable hardship, establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty (30) years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

SECTION 20. Reserve study; requirements. (1) A reserve study is supplemental to the association's operating and maintenance budget. The association shall prepare a reserve study not less frequently than every three (3) years. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget, and shall include any reserve component that would cost more than five percent (5%) of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement

SECTION 21. Reserve study; demand for preparation and inclusion in budget. (1) When more than three (3) years have passed since the date of the last reserve study, the owners to which at least thirty-five percent (35%) of the votes are allocated may demand, in writing, to the board of directors that the study be prepared by the end of that budget year. The board of directors shall, upon receipt of the written demand, provide the owners reasonable assurance that the board will include a reserve study in the next budget and will arrange for the completion of a reserve study.

(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent (5%) of the association's annual budget.

(3) An owner's duty to pay for common expenses is not excused because of the board of directors' failure to comply with this section or this act. A budget ratified by the owners is not invalidated because of the board of directors' failure to comply with this section or this act.

SECTION 22. Reserve account; withdrawals. An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four (24) months unless it determines that repayment within twenty-four (24) months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.

SECTION 23. Reserve account and study; liability. Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this act; or make the reserve disclosures in accordance with this act.

SECTION 24. Reserve study; exemptions. An association is not required to follow the reserve study requirements under Section 19 of this act if the cost of the reserve study exceeds five percent (5%) of the association's annual budget, the association does not have significant assets, or there are ten (10) or fewer homes in the association.

SECTION 25. Good faith. Every contract or duty governed by this act imposes an obligation of good faith in its performance or enforcement.

SECTION 26. Limitation of enforcement. (1) Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the governing documents or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one (1) year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

(2) The governing documents of an association must be recorded in the land records of every county in which any portion of the property subject to the association's jurisdiction is located and must be indexed in the grantee's index in the name of the development making up the property subject to the association's jurisdiction and in the name of the association and in the grantor's index.

SECTION 27. Inapplicability of rule against perpetuities. The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, or rules and regulations.

SECTION 28. Limitations on owners fines. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any owner for an alleged violation unless:

(a) The association has adopted, and follows, a written policy governing the imposition of fines; and

(b) The policy includes a fair and impartial fact finding process concerning whether the alleged violation actually occurred and whether the owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the owner notice and an opportunity to be heard before an impartial decision maker.

SECTION 29. Drainage and public structures. Maintenance, repair, or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the property subject to the association's jurisdiction or any part thereof shall be the responsibility of the association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or

replacement has been authorized by law to be performed by a special district or other body politic.

(2) Until such time as a board of directors is established with not less than twenty-five percent (25%) of the members who are elected by owners other than the developer, the developer alone is liable for all expenses in connection with maintaining, repairing and replacing all existing drainage structures, public structures and common areas and no other owner is subject to a claim for payment of those expenses. Thereafter the association shall assume the responsibilities of maintaining, repairing and replacing all existing and completed drainage structures, public structures and common areas.

If the developer fails to pay all expenses in connection with maintaining, repairing and replacing all drainage structures, public structures and common areas, the association may pay such expenses, and such expenses shall be assessed as a lien against all property in the development owned by the developer, and the association may enforce the assessment in the same manner set forth in section 32.

Upon establishment of a board of directors comprised of not less than twenty-five percent (25%) of the members who are elected by the owners other than the developer, the board of directors shall, within 60 days, review the established budget of the association and amend the same as determined appropriate for the association to meet its obligations of maintaining, repairing and replacing property for which it is responsible, and shall follow the procedures of section 7 in adopting such budgetary amendments. Upon approval of the budget, as may be amended, the board shall approve a schedule of assessments to satisfy budgetary needs and the association shall begin collecting such assessments no less frequently than annually.

(3) Upon the election of a board of directors consisting of a members with not less than fifty percent (50%) elected by owners other than the developer, as set forth in Section 4(3), the developer and the association shall negotiate and enter into a contract setting out the rights and obligations of each relating to the completion of the common areas, and the transfer of title thereto from the developer to the association. Such contract shall establish the manner and time of: (i) the conveyance of title to the common area in a manner providing for good and marketable title; (ii) completion of each common area to be within the association jurisdiction; (iii) the release of any funds held by the developer for maintenance of common areas to the association; (iv) establishing the manner and time of transfer of title, possession, warranties of all amenities within the common area and; (v) reserving the beneficial interest of any mortgagee or holder of any debt or lien secured by the common area. (3) The developer shall not transfer title of the common area to the association prior to entering into the contract described in this subsection 3. Further, The developer shall not unreasonably refuse to transfer title of the common area to the association, and the association shall not unreasonably refuse to accept transfer of title from the developer(4) No transfer of title of common area to the association, prior to the contract required by this subsection 3 being been entered into, shall relieve the developer from the duty, obligation and responsibility to ensure completion of the common areas according to the standards and conditions imposed by the governing authority as a part of

the subdivision approval, or as set forth in the final recorded plat or covenants for the subdivision.

SECTION 30. Actions against association. Neither the association nor any owner except the developer is liable for any cause of action based upon the developer's acts or omissions in connection with any part of the common areas which that developer has the responsibility to maintain. Otherwise, any action alleging an act or omission by the association must be brought against the association and not against any owner. If the act or omission occurred during any period of developer control and the association gives the developer reasonable notice of and an opportunity to defend against the action, the developer is liable to the association or to any owner for all tort losses not covered by insurance suffered by the association or that owner and all costs that the association would not have incurred but for such act or omission. Whenever the developer is liable to the association or owner under this section, the developer is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the association or owner. Any statute of limitation affecting the association's right of action under this section is tolled until the period of developer control terminates. An owner is not precluded from maintaining an action contemplated by this section by being a member or officer of the association.

SECTION 31. Developer liability for accounts. The developer is liable to the association for all funds of the association collected during the period of developer control which were not expended for the benefit of the association or the property that is the subject of the association's concern.

SECTION 32. Lien for assessments. (1) The association, if the association is incorporated or organized as a limited liability company, has a statutory lien on a lot for any assessment levied against that lot. The amount of the lien shall include all those items set forth in this act from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid association's acceleration of installment obligations.

(2) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(3) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due.

(4) The association shall be entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action or suit brought by the association under this section.

(5) The association shall furnish to an owner or such owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the association, the board of directors, and every owner. If no statement is furnished to the owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to

the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(6) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the owner to collect all sums alleged to be due from the owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(7) The association's lien against an owner may be foreclosed in like manner as a mortgage on real estate.

SECTION 33. This act shall take effect and be in force from and after its passage.