

2022 Regular Session

SENATE BILL NO.

BY SENATOR

(On Recommendation of the Louisiana State Law Institute)

PROPERTY: Provides for the Planned Community Act

1 AN ACT
2 To amend and reenact Civil Code Article 783 and Part II-B of Chapter 1 of Code Title I of Code
3 Book II of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
4 9:1141.1 through 1141.50, and R.S. 9:2792.7(B)(3) and 3132(1)(g), relative to common
5 interest ownership property; to provide for the Planned Community Act; to provide for
6 definitions; to provide for the creation, alteration, and termination of a planned
7 community; to provide for the contents of a declaration; to provide for the allocation of
8 expenses; to provide for voting interests; to provide development rights; to provide for lot
9 boundaries; to provide for rights of secured parties; to provide for owners associations; to
10 provide for association powers and duties; to provide for a board of directors and officers;
11 to provide for declarant control; to provide for the transfer of rights; to provide for
12 bylaws; to provide for meetings of the association; to provide for insurance; to provide
13 for assessments; to provide for privileges; to provide for notice to lot owners; to provide
14 consumer protections; to provide for a public offering statement; to provide for
15 warranties; to provide for a purchaser's right to cancel; to provide for attorney fees; and to

1 provide for related matters.

2 Be it enacted by the Legislature of Louisiana:

3 Section 1. Civil Code Article 783 is hereby amended and reenacted to read as follows:

4 Art. 783. Matters of interpretation and application

5 Doubt as to the existence, validity, or extent of building restrictions is resolved in
6 favor of the unrestricted use of the immovable. The provisions of the Louisiana
7 Condominium Act, the Louisiana Timesharing Act, and the Louisiana ~~Homeowners~~
8 ~~Association~~ Planned Community Act shall supersede any and all provisions of this Title
9 in the event of a conflict.

10 Section 2. Part II-B of Chapter 1 of Code Title I of Code Book II of Title 9 of the
11 Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:1141.1 through 1141.50, and R.S.
12 9:2792.7(B)(3) and 3132(1)(g) are hereby amended and reenacted to read as follows:

13 PART II-B. LOUISIANA ~~HOMEOWNERS ASSOCIATION~~ PLANNED COMMUNITY ACT

14 SUBPART A. DEFINITIONS AND GENERAL PROVISIONS

15 §1141.1. Short title

16 This Part shall be known and may be cited as the "Louisiana ~~Homeowners~~
17 ~~Association~~ Planned Community Act".

18 §1141.2. Definitions

19 As used in this Part, ~~unless the context clearly indicates otherwise~~ the following
20 terms have the meanings indicated below:

21 (1) "~~Association property~~" means ~~all the property either held by the association~~

1 ~~or commonly held by the members of the association, or both, and lots privately held by~~
2 ~~members of the association.~~ "Affiliate of the declarant" means any person who controls,
3 is controlled by, or is under common control with a declarant. For purposes of this

4 Paragraph:

5 (a) A person controls a declarant if the person satisfies any of the following:

6 (i) The person is a general partner, officer, director, employer, or manager of the
7 declarant.

8 (ii) The person directly or indirectly or acting in concert with one or more other
9 persons, or through one or more subsidiaries, owns, controls, holds the power to vote, or
10 holds proxies representing, more than twenty percent of the voting interest in the
11 declarant.

12 (iii) The person controls in any manner the election of a majority of the directors
13 of the declarant.

14 (iv) The person has contributed more than twenty percent of the capital of the
15 declarant.

16 (b) A person is controlled by a declarant if the declarant satisfies any of the
17 following:

18 (i) The declarant is a general partner, officer, director, employer, or manager of
19 the person.

20 (ii) The declarant directly or indirectly or acting in concert with one or more
21 other persons, or through one or more subsidiaries, owns, controls, holds the power to

1 vote, or holds proxies representing, more than twenty percent of the voting interest in the
2 person.

3 (iii) The declarant controls in any manner the election of a majority of the
4 directors of the person.

5 (iv) The declarant has contributed more than twenty percent of the capital of the
6 person.

7 (c) Control does not exist if the powers described in this Paragraph are held solely
8 as security for an obligation and are not exercised.

9 (2) "Assessment" means the sum allocable to each lot and due to the association
10 pursuant to R.S. 9:1141.32.

11 (3) "Association" or "lot owners association" means the lot owners association
12 organized pursuant to R.S. 9:1141.19.

13 (4) "Board of directors" means the body, regardless of name, designated in the
14 declaration or bylaws to conduct and supervise the affairs of the association.

15 (5) "Bylaws" means a written instrument that meets the requirements of R.S.
16 9:1141.25 and contains the procedures for the conduct of the affairs of the association,
17 including any amendments to the instrument.

18 ~~(2)~~ (6) "Common area" means any immovable property ~~owned or otherwise~~
19 ~~maintained, repaired, or administered by the association~~ located within a planned
20 community and designated as such on a recorded plat for the benefit, ~~use, and enjoyment~~
21 of ~~its members~~ or use by lot owners.

1 (7) "Common expense liability" means the liability for common expenses
2 allocated to each lot pursuant to R.S. 9:1141.6.

3 (8) "Common expenses" means expenditures made by, or financial liabilities of,
4 the association, together with any allocations to reserves for the benefit and use of the
5 planned community.

6 ~~(3)~~ (9) "Community document or documents" means the articles of incorporation,
7 bylaws, ~~plat,~~ declarations, ~~covenants—conditions,~~ building restrictions, rules and
8 regulations, or other written instruments, including any amendment thereto, by which the
9 association has the authority to exercise any of its powers to manage, maintain, or
10 otherwise affect the ~~association~~ planned community or any immovable property or which
11 ~~otherwise govern the use of association property~~ located therein.

12 (10) "Complete property description" means any description of immovable
13 property that, if contained in a mortgage of the immovable property filed for registry,
14 would be sufficient for the mortgage to be effective against third persons.

15 (11) "Declarant" means the person designated as such in the declaration or, in the
16 absence of such a designation, the owner of the immovable property or the ground lessee
17 who executes the declaration to establish the planned community.

18 ~~(4)~~ (12) "Declaration" means any instrument, however denominated, that
19 ~~establishes or regulates, or both, a residential~~ creates a planned community, and including
20 any ~~amendment thereto~~ amendments to the instrument.

21 ~~(5) "Homeowners association" or "association" means a nonprofit corporation,~~

1 ~~unincorporated association, or other legal entity, which is created pursuant to a~~
2 ~~declaration, whose members consist primarily of lot owners, and which is created to~~
3 ~~manage or regulate, or both, the residential planned community.~~

4 (13) "Development right" means any right or combination of rights reserved by a
5 declarant in the declaration to do any of the following:

6 (a) Add immovable property to a planned community.

7 (b) Create lots, common areas, or limited common areas within a planned
8 community.

9 (c) Subdivide lots or convert lots into common areas.

10 (d) Withdraw immovable property from a planned community.

11 (14) "Director" means a person who serves on the board of directors elected or
12 appointed to conduct and supervise the affairs of the association.

13 (15) "Electronic transmission" or "electronically transmitted" means any form or
14 process of communication, not directly involving the physical transfer of paper or another
15 tangible medium, that is both of the following:

16 (a) Suitable for the retention, retrieval, and reproduction of information by the
17 recipient.

18 (b) Retrievable in paper form by the recipient through an automated process used
19 in conventional commercial practice, provided that this requirement shall not apply if
20 both of the following conditions are met:

21 (i) The electronic transmission is otherwise retrievable in perceivable form.

1 (ii) The sender and the recipient have consented in writing to the use of such
2 form of electronic transmission.

3 (16) "Leasehold planned community" means a planned community in which all
4 or a portion of the immovable property is subject to a lease the expiration or termination
5 of which will terminate the planned community or reduce its size.

6 (17) "Limited common areas" means a portion of the common areas allocated by
7 the declaration or by operation of R.S. 9:1141.8 for the exclusive use of one or more but
8 fewer than all of the lot owners.

9 ~~(6) (18)~~ "Lot" means any plot or parcel of land designated for separate ownership
10 shown on a recorded subdivision plat for a residential development or the boundaries of
11 which are otherwise described in a recorded instrument immovable property within a
12 planned community designated for separate ownership on a recorded plat, other than
13 common area, within the jurisdiction of the residential community as such area is
14 described in the community documents areas.

15 (19) "Lot owner" means a person appearing as an owner of a lot in the
16 conveyance records of the parish where the lot is located.

17 (20) "Majority vote" means the vote cast through a method permitted by R.S.
18 9:1141.28 by more than fifty percent of the voting interest present at a duly called
19 meeting of the association.

20 (21) "Member" or "membership" means all lot owners, as well as former lot
21 owners entitled to distributions of proceeds pursuant to R.S. 9:1141.15, or their heirs,

1 successors, or assigns.

2 (22) "Nonresidential use" means any commercial, office, retail, or similar type of
3 use, or any other use that is not a residential use.

4 (23) "Occupant" means any person occupying a lot, including persons occupying
5 by permission or accommodation of the owner, former owner, or another occupant,
6 whether express or implied.

7 (24) "Person" means both natural persons and juridical persons as defined in
8 Civil Code Article 24, unless otherwise indicated.

9 ~~(7) (25) "Residential planned community" or "planned~~ Planned community"
10 ~~means a real estate development, used primarily for residential purposes, in which the~~
11 ~~owners of separately owned lots are mandatory members of an association by virtue of~~
12 ~~such ownership~~ immovable property described in a declaration that obligates lot owners
13 to pay assessments related to common areas, to other lots, or to other property described
14 in the declaration. A planned community shall not include condominium property subject
15 to the Louisiana Condominium Act.

16 (26) "Record", used as a noun, means information that is inscribed on a tangible
17 medium or that is stored in an electronic or other medium and is retrievable in
18 perceivable form.

19 (27) "Residential use" means the use of a lot as a residence, including the use of a
20 multi-unit building as a residence, provided the building contains four or fewer separate
21 housing units, the building is located on a single lot, and the entirety of the building is

1 owned by the same person or persons.

2 (28) "Restriction" means an obligation imposed on a lot, whether affirmative or
3 negative, by the declaration.

4 (29) "Rule" means a policy, guideline, restriction, procedure, or regulation of an
5 association, however denominated, that is not set forth in the declaration or bylaws and
6 that governs the conduct of persons or the use or appearance of property.

7 (30) "Security right" means any form of security as defined in Civil Code Article
8 3136.

9 (31) "Special declarant rights" means rights reserved for the benefit of a declarant
10 to do any of the following:

11 (a) Complete improvements indicated on plats filed with the declaration.

12 (b) Exercise any development right.

13 (c) Exercise sales and marketing rights in accordance with R.S. 9:1141.12.

14 (d) Establish any servitudes through the common areas for making improvements
15 within the planned community or within immovable property that may be added to the
16 planned community.

17 (e) Make the planned community subject to a master association.

18 (f) Combine a planned community with another planned community.

19 (g) Appoint or remove any officer of the association or any master association or
20 any director during any period of declarant control.

21 (h) Control any construction, design review, or aesthetic standards committee or

1 process.

2 (i) Attend meetings of the lot owners and, except during an executive session, the
3 board of directors.

4 (j) Have access to the records of the association to the same extent as a lot owner.

5 (k) Set the number of directors and officers of the association.

6 (32) "Supermajority vote" means the vote cast through a method permitted by
7 R.S. 9:1141.28 by more than eighty percent of the voting interest in the association.

8 (33) "Two-thirds vote" means the vote cast through a method permitted by R.S.
9 9:1141.28 by at least two-thirds of the voting interest present at a duly called meeting of
10 the association.

11 (34) "Unrelated purchaser" means a person who purchases a lot and who is not
12 any of the following:

13 (a) The declarant or an affiliate of the declarant.

14 (b) An individual, trust, or other person that directly or indirectly owns twenty
15 percent or more of the declarant.

16 (c) An immediate family member of a person described in Subparagraph (a) or (b)
17 of this Paragraph.

18 (35) "Vote" means consent, waiver, ballot, or proxy by a method permitted by
19 R.S. 9:1141.28.

20 (36) "Voting interest" or "voting power" means the votes allocated to a lot in the
21 declaration.

(a) The actions of the association are intended to follow corporate governance rules, rather than compliance with rules for the imposition of building restrictions in accordance with property law. Matters of routine administration and governance are undertaken by the required vote at a meeting at which a quorum is present. Matters requiring a supermajority vote, such as adding or removing property from the planned community or imposing more burdensome restrictions, are undertaken by a supermajority vote of the total membership of the planned community. The distinction is intentional.

(b) See R.S. 1:7, which provides that words used in the singular number include the plural.

(c) In Paragraph (27), housing units owned by spouses, whether pursuant to a community or separate property regime, are considered owned by the same person.

§1141.3. Applicability

A. The provisions of this Part shall be applicable to existing and future ~~residential~~ planned communities whose declarations have been duly executed and filed for registry. However, this Part shall not be construed to affect the validity or superiority of any provision of a community document filed for registry prior to the effective date of this Act. ~~Only to the extent the community documents are silent shall the provisions of this Part apply.~~

B.(1) This Part shall not apply to condominium property governed by the provisions of Part II of this Chapter.

(2) The provisions of Part II-A of this Chapter shall be applicable to an ownership timeshare interest created in a lot within a planned community to the extent that those provisions do not conflict with the provisions of this Part.

C. This Part shall not impair any right that is guaranteed or protected by the

1 constitution of this state or the United States, nor shall this Part be construed to affect any
2 act done, offense or violation committed, or right accrued.

3 D. This Part shall not be construed to impair or cast a cloud upon the titles of
4 common areas or lots within a ~~residential~~-planned community.

5 SUBPART B. ~~BUILDING RESTRICTIONS~~ CREATION, AMENDMENT,
6 AND TERMINATION

7 ~~§1141.4. Building restrictions; matters of interpretation~~

8 ~~The existence, validity, or extent of a building restriction affecting any association~~
9 ~~property shall be liberally construed to give effect to its purpose and intent.~~

10 ~~§1141.5. Building restrictions; generally, affirmative duty, and common areas~~

11 ~~A. Building restrictions affecting the building standards, specified uses, or~~
12 ~~improvements of association property may be established, amended, or terminated in~~
13 ~~accordance with the provisions of this Part.~~

14 ~~B. Such building restrictions may include the imposition of an affirmative duty,~~
15 ~~including the affirmative duty to pay monthly or periodic dues or fees, or assessments for~~
16 ~~a particular expense or capital improvement, that are reasonable for the maintenance,~~
17 ~~improvement, or safety, or any combination thereof, of the planned community.~~

18 ~~C. Such building restrictions may also regulate the building standards, specified~~
19 ~~uses, and improvements of common areas of a homeowners association, including but not~~
20 ~~limited to the regulation of passage, ingress, and egress upon common areas, streets, and~~
21 ~~street rights of way.~~

1 ~~§1141.6. Establishment, amendment, or termination of building restrictions~~

2 A. ~~Building restrictions affecting association property, including lots or common~~
3 ~~areas, or those imposing an affirmative duty may be established, amended, or terminated~~
4 ~~in accordance with the terms of the applicable community document.~~

5 B. ~~In the absence of a provision for the establishment, amendment, or termination~~
6 ~~of such building restrictions in the community documents:~~

7 (1) ~~Building restrictions may be established by agreement of three fourths of the~~
8 ~~lot owners.~~

9 (2) ~~Existing building restrictions may be made more onerous or increased by~~
10 ~~agreement of two thirds of the lot owners.~~

11 (3) ~~Existing building restrictions may be made less onerous, reduced, or~~
12 ~~terminated by agreement of more than one half of the lot owners.~~

13 C.(1) ~~Once established, or amended to be more onerous, building restrictions~~
14 ~~become a charge on the property and affect all current owners and, once recorded in the~~
15 ~~public records, affect all subsequent owners. Except for building restrictions relating to~~
16 ~~assessments or common areas, no new or more onerous building restriction shall impose~~
17 ~~a duty on the current owner to act affirmatively or remove or renovate any existing~~
18 ~~structure. All new or replacement structures, however, shall be subject to the new or~~
19 ~~more onerous building restriction.~~

20 (2) ~~Once amended to be less onerous, the building restriction constitutes a~~
21 ~~reduction of the charge on the property, and once terminated, the property is released of~~

1 its former charge, affecting all current and subsequent owners.

2 ~~D.(1) When building restrictions are established under the provisions of~~
3 ~~Subsection B of this Section, rather than by the community documents, an owner may file~~
4 ~~with the association and the clerk of court a statement declining to be covered by the~~
5 ~~building restrictions. Such document must be filed within thirty days of the~~
6 ~~establishment of such building restrictions.~~

7 ~~(2) When building restrictions relative to set backs or minimum square footage~~
8 ~~requirements are established or made more onerous under the provisions of Subsection B~~
9 ~~of this Section, rather than the community documents, the owner of an unimproved lot is~~
10 ~~exempt from complying with such new or more onerous restrictions.~~

11 ~~(3) An "owner" under the provisions of this Subsection means the owner or~~
12 ~~owners at the time the restriction was established or made more onerous and the waivers~~
13 ~~of compliance provided in this Subsection are personal to that owner.~~

14 ~~§1141.7. Agreement of owners; voting~~

15 ~~A. Each lot represents a single vote which can be exercised by the signature or~~
16 ~~other indication of the registered lot owner or of a single co-owner, the latter of which is~~
17 ~~presumed to be acting on behalf of the other co-owners. A plot or parcel of unimproved~~
18 ~~land which is substantially larger than a majority of other lots in the association, however,~~
19 ~~shall be treated as separate lots, the number of which to be roughly determined by the~~
20 ~~size of the land in relation to other lots. The ownership interest in common areas, streets,~~
21 ~~or street rights of way does not constitute a voting interest.~~

1 ~~B. For purposes of this Subpart, an agreement of lot owners may be obtained by~~
2 ~~any of the following methods, or a combination thereof:~~

3 ~~(1) By a written ballot that states the substance of the issue before the owners and~~
4 ~~specifies the date by which the return ballot must be received to be counted. The ballot~~
5 ~~shall be accompanied by the full text of the building restriction being established,~~
6 ~~amended, or terminated and shall be mailed to the owner by certified mail not less than~~
7 ~~thirty days prior to the date by which the return ballot must be received.~~

8 ~~(2) At a meeting of the owners if written notice of the meeting stating the purpose~~
9 ~~of the meeting is delivered to each lot owner. The notice shall be accompanied by an~~
10 ~~agenda of the meeting and the full text of the building restriction being established,~~
11 ~~amended, or terminated. Such notice shall be mailed to the owner, by certified mail, not~~
12 ~~less than thirty days prior to the date of the meeting.~~

13 §1141.4. Creation, alteration, and termination of a planned community

14 A. A planned community is established by the execution of a declaration by all
15 owners of the immovable property to be affected or by the lessee in the case of a
16 leasehold planned community. The declaration shall be effective when filed for registry
17 in the conveyance records of each parish in which any portion of the immovable property
18 is situated.

19 B. All provisions of the declaration are severable. The effectiveness of the
20 declaration is not affected by an insubstantial failure of the declaration to comply with
21 this Part.

1 C. If a conflict exists between the declaration and any other community
2 document, the declaration shall prevail.

3 D.(1)(a) The recorder shall index the initial declaration and plat in the
4 conveyance records in the names of the declarant, the planned community, each owner of
5 the immovable property subject to the declaration, and the association.

6 (b) The recorder shall index an amendment to the declaration or the plat in the
7 conveyance records in the names of the declarant, the planned community, and the
8 association. If an amendment relocates the boundary of a lot, incorporates common areas
9 into a lot, adds additional property, or withdraws a lot from the community, the recorder
10 shall also index the amendment in the name of each owner of each lot affected by the
11 amendment.

12 (c) An indexing error shall not impair the effect of recordation of the document.

13 (2) The grant of a security right by the association shall comply with registry
14 requirements of law, including filings in accordance with the Uniform Commercial Code
15 – Secured Transactions.

16 §1141.5. Contents of the declaration

17 A. The declaration shall contain all of the following:

18 (1) A statement submitting the immovable property to a planned community.

19 (2) The name by which the planned community is to be identified, which shall
20 include the phrase "planned community" or be followed by the words "a planned
21 community".

1 (3) A complete property description of all of the immovable property within the
2 planned community.

3 (4) An identification of each lot by letter, name, or number, or a combination
4 thereof, so that no lot bears the same identification as any other lot.

5 (5) A written description and plat, meeting the requirements of R.S. 9:1141.9,
6 delineating the precise boundaries of each lot and designating any common areas and
7 limited common areas appurtenant thereto.

8 (6) The manner of allocating common expense liabilities, common surpluses, and
9 voting interest in the association, in accordance with R.S. 9:1141.6.

10 (7) A description of any development right or other special declarant right
11 reserved by the declarant, a complete property description of any immovable property
12 within the planned community to which each right applies, a general schematic map of
13 any immovable property that may be added to the planned community pursuant to a
14 development right, and the term within which the rights may be exercised.

15 (8) All matters required by R.S. 9:1141.6 in the event the declarant reserves the
16 right to change the allocations to lots of common expense liabilities, common surpluses,
17 and voting interest in the association.

18 (9) The name of the association formed in accordance with R.S. 9:1141.19.

19 (10) The rights and responsibilities for the maintenance and repair of association
20 property and for the maintenance, repair, and replacement of any improvements thereon.

21 (11) Any building restrictions and servitudes affecting the association property.

1 (12) Identification of lots as intended for residential or nonresidential use.

2 (13) The name of all natural persons who control the declarant, if the declarant is
3 not a natural person.

4 B. The declaration may contain any of the following:

5 (1) The purpose for which the association property is intended.

6 (2) Procedures whereby a lot owner may transfer his lot to the association and
7 thereby release himself from any further obligation for common expense liabilities.

8 (3) The method of amendment of the declaration, subject to the limitations
9 provided in R.S. 9:1141.14.

10 (4) The method for making assessments and the procedure for collecting from the
11 lot owners their respective assessments.

12 C. When additional immovable property is added to the planned community, an
13 amendment to the declaration shall be executed and filed for registry and indexed in
14 accordance with R.S. 9:1141.4(D). The amendment shall be effective when filed for
15 registry in the conveyance records of the parish in which the additional immovable
16 property is situated.

17 D. The community documents of a planned community restricted to a residential
18 use shall not:

19 (a) Reduce the voting interest required in R.S. 9:1141.14.

20 (b) Vary any requirement, procedure, or other provision of this Part pertaining to
21 the mandatory requirements of the declaration in accordance with this Section or the

1 provisions of Subpart D of this Part.

2 §1141.6. Allocation of common expense liabilities, common surpluses, and voting
3 interest in the association

4 A. The declaration shall allocate to each lot a fraction or percentage of the
5 common expense liabilities, common surpluses, and voting interest in the association and
6 shall state the formulas or methods used to establish the allocations.

7 B. If lots may be added to or withdrawn from the planned community or if
8 boundaries between adjoining lots may be relocated, the declaration shall state the
9 formulas or methods to be used to reallocate the common expense liabilities, common
10 surpluses, and voting interest in the association among all lots included in the planned
11 community after the addition, withdrawal, or relocation.

12 C.(1) The declaration may provide for the following:

13 (a) Different allocations to lots of voting interest on particular matters specified
14 in the declaration.

15 (b) Cumulative voting only for electing directors.

16 (c) Class voting on specified issues affecting the class if necessary to protect
17 valid interests of the class.

18 (2) A declarant may not utilize cumulative or class voting to avoid any limitation
19 imposed on declarants by this Part, nor may lots constitute a class because they are
20 owned by a declarant.

21 D. Except for minor variations due to rounding, the sum of the common expense

1 liabilities, common surpluses, or voting interest in the association allocated at any time to
2 all of the lots shall equal one if stated as a fraction or one hundred percent if stated as a
3 percentage.

4 E. The transfer, encumbrance, judicial sale, or other voluntary or involuntary
5 transfer of an ownership interest in a lot includes membership in the association and any
6 other rights in the association appurtenant to that lot.

7 §1141.7. Exercise of development rights

8 A. To exercise any development right reserved in R.S. 9:1141.5(A)(7), the
9 declarant shall prepare, execute, and file for registry an amendment to the declaration in
10 accordance with R.S. 9:1141.4(D). The amendment to the declaration shall assign an
11 identifying number to each new lot created, and, except in the case of subdivision or
12 conversion of lots described in Subsection D of this Section, reallocate the common
13 expense liabilities, common surpluses, and voting interest in the association among all
14 lots. The amendment shall describe any common areas and any limited common areas
15 created and, in the case of limited common areas, designate the lots by letter, name, or
16 number, or a combination thereof to which each is appurtenant.

17 B. Development rights may be reserved within any immovable property added to
18 the planned community if the amendment adding that immovable property includes or
19 incorporates by reference all matters required by R.S. 9:1141.5.

20 C. Development rights to add additional immovable property may be exercised
21 only within seven years after the date of the filing of the initial declaration. The

1 submission of an application for approval of a plat of subdivision pursuant to R.S. 33:113
2 shall suspend the running of the seven-year period, except that the suspension is
3 considered never to have occurred if the application is denied and any appeal period has
4 expired, or if the developer voluntarily withdraws or abandons the application or a plat of
5 subdivision that is the subject of the application prior to filing the plat for registry. If a
6 plat is approved, the seven-year period shall be interrupted and shall commence to run
7 anew on the date on which the plat of subdivision is filed for registry. This Section does
8 not extend the term for the exercise of development rights imposed by the declaration
9 pursuant to R.S. 9:1141.5(A)(7).

10 D. When a declarant exercises a development right to subdivide or convert a lot
11 previously created into additional lots, common areas, limited common areas, or any
12 combination thereof, the following apply:

13 (1) If the declarant converts the lot entirely to a common area or limited common
14 area, the amendment to the declaration shall reallocate all of the common expense
15 liabilities, common surpluses, and voting interest in the association of that lot among the
16 other lots by the same method provided in R.S. 9:1141.6, or as otherwise provided in the
17 community documents.

18 (2) If the declarant subdivides the lot into two or more lots or if the declarant
19 combines two or more lots into a single lot, regardless of whether any part of the lot is
20 converted into a common area or a limited common area, the amendment to the
21 declaration shall reallocate all of the common expense liabilities, common surpluses, and

1 voting interest in the association of the lot among the lots created by the subdivision in
2 the manner prescribed in the declaration.

3 E. If, pursuant to R.S. 9:1141.5(A)(7), the declaration provides that all or any
4 portion of the immovable property within the planned community is subject to a right of
5 withdrawal by the declarant, none of the immovable property may be withdrawn after a
6 lot has been transferred to an unrelated purchaser except upon a supermajority vote of the
7 association. A declarant may not withdraw all or any portion of immovable property that
8 has been transferred to the association.

9 Revision Comments – 2022

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11 If the association owns the immovable property sought to be withdrawn, R.S.
12 9:1141.15 applies.

13 §1141.8. Limited common areas

14 A. The declaration shall specify to which lot each limited common area is
15 allocated. An allocation may not be altered without the consent of all of the lot owners
16 whose lots are directly affected.

17 B. A limited common area may be reallocated upon request to the board of
18 directors by all of the lot owners between or among whose lots the reallocation is to be
19 made. When a request is made, an amendment to the declaration containing the name of
20 the requesting lot owners shall be executed by an authorized officer or agent of the
21 association and shall be filed for registry in accordance with R.S. 9:1141.4(D). Any
22 expenses incurred by the association in accordance with this Section shall be borne by the
23 requesting lot owners.

1 §1141.9. Plats

2 A. Each plat shall be clear and legible and shall show all of the following:

3 (1) The name and a survey of the entire planned community, including the
4 designation of all lots, commons areas, and limited common areas.

5 (2) The extent of any encroachments by or upon any portion of the planned
6 community.

7 (3) A depiction of all servitudes benefiting or burdening any portion of the
8 planned community, to the extent plottable.

9 (4) In the case of a leasehold planned community, a complete property
10 description of all immovable property subject to a lease.

11 (5) The distance between noncontiguous parcels of immovable property
12 comprising the planned community.

13 (6) All other matters required by R.S. 33:5051.

14 B. Upon exercising any development right to add immovable property to the
15 planned community, the declarant shall file for registry, in accordance with R.S.
16 9:1141.4(D), a new plat of the additional immovable property conforming to the
17 requirements of Subsection A of this Section.

18 C. The ownership interest of the declarant in the common areas and limited
19 common areas is transferred to the association when the declaration and plat have been
20 filed for registry and the incorporation of the association has occurred.

21 D. Each plat shall be made by a professional land surveyor.

1
2
3 Upon filing of the declaration and plat and the incorporation of the association,
4 the transfer of ownership of the common areas occurs by operation of law without the
5 necessity of filing a separate act translative of ownership in the public records. The rules
6 set forth in Subpart D of this Part determine the transferor's warranties of ownership and
7 condition of the common areas.

8 §1141.10. Relocation of lot boundaries

9 A. The boundaries between adjoining lots may be relocated upon the request of
10 the lot owners of the affected lots if the relocation does not alter the size of a lot by more
11 than ten percent.

12 B. Boundaries between lots and common areas may be relocated to incorporate
13 common areas into a lot upon the request of the affected lot owner and with the approval
14 of a supermajority vote.

15 C. Upon the request and approval as provided in Subsections A and B of this
16 Section, an amendment to the declaration shall be executed by an authorized officer or
17 agent of the association and filed for registry in accordance with R.S. 9:1141.4(D). In
18 addition, the requesting lot owners and officer or agent of the association shall execute an
19 act translative of ownership, and if applicable, an amended plat. Any expenses incurred
20 by the association in accordance with this Section shall be borne by the requesting lot
21 owners.

22 §1141.11. Subdivision of lots

23 A. A lot may be subdivided into two or more lots upon the request of the lot
24 owner and with the approval of a supermajority vote.

1 B. Upon approval of the subdivision, an amendment to the declaration shall
2 include the plat subdividing that lot; assign an identifying letter, name, or number to each
3 lot created; and reallocate to each lot created, in any reasonable manner prescribed by the
4 association or on any other basis the declaration requires, the common expense liabilities,
5 common surpluses, and voting interest in the association formerly allocated to the
6 subdivided lot.

7 C. The amendment to the declaration shall be executed by an authorized officer
8 or agent of the association and filed for registry in accordance with R.S. 9:1141.4(D).
9 Any expenses incurred by the association in accordance with this Section shall be borne
10 by the requesting lot owner.

11 §1141.12. Use for sales purposes

12 Subject to other provisions of law and local ordinances, a declarant may maintain
13 sales offices, management offices, and models on lots that the declarant owns and may
14 erect signs advertising the planned community on the common areas.

15 §1141.13. Servitude and use rights

16 A. A declarant has a personal servitude of right of use on and through the
17 common areas as may be reasonably necessary for the purpose of discharging obligations
18 or exercising special declarant rights, whether in accordance with this Part or reserved in
19 the declaration.

20 B. Lot owners have a right to use, for the purposes for which they were intended,
21 all common areas and all immovable property that shall become common areas, other

1 than limited common areas.

2 §1141.14. Amendment to declaration

3 A. Except as otherwise provided in this Section or R.S. 9:1141.7, the declaration
4 may be amended only by the vote requirement provided in the declaration. If a voting
5 requirement to amend the declaration is not provided in the declaration, it may be
6 amended by a two-thirds vote. If any lots in the planned community are used for
7 residential purposes, the declaration may not provide for amendment by less than a two-
8 thirds vote.

9 B. No amendment to the declaration may create or increase special declarant
10 rights; increase the number of lots; change the allocation of common expense liabilities,
11 common surpluses, or voting interest in the association for a lot; extend the time
12 limitations specified in R.S. 9:1141.7(C); or create additional development rights without
13 the approval of the association by a supermajority vote.

14 C.(1) The declaration may be amended only by a supermajority vote, or such
15 greater vote required by the community documents, to do any of the following:

16 (a) Prohibit or materially restrict the uses of a lot or the number or other
17 qualifications of persons who may occupy a lot.

18 (b) Impose more burdensome restrictions.

19 (2) An existing occupancy or use of a lot shall not be prohibited by an amendment
20 to the community documents if that occupancy or use has commenced prior to the filing
21 of the amendment for registry, except as provided in Paragraph (3) of this Subsection.

1 (3) If an existing occupancy or use has ceased for twelve consecutive months
2 after the date the amendment is filed for registry, and the period is not extended as
3 provided in Paragraph (4) of this Subsection, the lot shall become subject to the
4 prohibition on the existing occupancy or use contained in the amended declaration.

5 (4) A lot owner may submit a request to the board of directors to extend the time
6 period in Paragraph (3) of this Subsection when an existing occupancy or use is
7 discontinued due to a fortuitous event. The board of directors shall grant or deny the
8 request using reasonable discretion.

9 (5) A use restriction establishing or increasing the minimum term for the lease of
10 a lot or prohibiting the rental of less than the entirety of the lot shall be considered a more
11 burdensome restriction.

12 (6) Unless a greater percentage is required in the community documents, an
13 association may adopt by supermajority vote more burdensome restrictions governing
14 construction, design criteria, and aesthetic standards, subject to the following limitations:

15 (a) No new restriction shall impose a duty on a lot owner to act affirmatively or
16 remove or renovate any existing structure.

17 (b) Only exterior renovations or reconstructions that increase the value of the
18 improvements on the lot by more than forty percent are required to comply with the more
19 burdensome construction and design criteria standards. The lot owner shall submit to the
20 association, prior to the start of construction, an estimate of the value of the
21 improvements as determined by a qualified appraiser.

1 use has ceased for twelve months, subject to the rules of fortuitous events.

2 §1141.15. Termination of the planned community

3 A. A planned community may be terminated only by a supermajority vote, or any
4 greater percentage that the declaration specifies, and with any other approvals required by
5 the declaration. The declaration may provide for termination with less than a
6 supermajority vote if all of the lots are restricted exclusively to nonresidential uses.

7 B. A termination agreement shall be prepared and executed on behalf of the
8 association by an authorized officer or agent of the association and filed for registry in
9 accordance with R.S. 9:1141.4(D). A termination agreement shall contain a certification
10 that the minimum voting requirements have been met.

11 C. If a termination agreement provides for the transfer of ownership of all or a
12 portion of the common areas and limited common areas, the association, on behalf of the
13 lot owners, may contract for the transfer of ownership of common areas and limited
14 common areas, but the contract is not binding on the lot owners until the termination
15 agreement is approved and filed for registry pursuant to this Section. As long as the
16 association owns the common areas and limited common areas, the lot owners and their
17 successors continue to have the right to use and enjoy the areas in accordance with their
18 intended purpose and remain liable for all assessments and other obligations imposed on
19 lot owners by this Part or the declaration.

20 D. The existence of the association is not affected by the termination agreement.
21 Until the common areas and limited common areas within the planned community are

1 transferred following termination, ownership of the common areas and limited common
2 areas remains with the association.

3 E. Following termination of the planned community, the proceeds from any
4 transfers of ownership of common areas, limited common areas, and other property of the
5 association shall be paid to the association for the benefit of the lot owners and holders of
6 security rights in the property, as their interests may appear. Proceeds available to lot
7 owners and holders of security rights in lots shall be distributed in accordance with R.S.
8 9:1141.6.

9 Revision Comments – 2022

10
11 (a) Termination of a planned community requires the support of at least a
12 supermajority of the votes in the association, or such greater percentage as the
13 community documents may require. The community documents may specify a lower
14 percentage to terminate a planned community that consists exclusively of nonresidential
15 lots.

16
17 (b) Title to common areas is vested in the association. The association is a
18 separate legal entity. The termination of the planned community does not serve to
19 terminate the association. Rather, the association is terminated and liquidated in
20 accordance with the Nonprofit Corporation Law, R.S. 12:201 et seq.

21
22 (c) This Section is intended to apply to a complete termination of a planned
23 community. A termination affecting only a portion of the community is governed by the
24 rules applicable to the withdrawal of a lot or common area. See R.S. 9:1141.6, 1141.7,
25 and 1141.29.

26 §1141.16. Rights of secured parties

27 A. The declaration may require that specified actions of the lot owners or the
28 association shall be approved by creditors who hold security rights in the lots or who
29 have extended credit to the association, but no requirement for approval may operate to

1 do any of the following:

2 (1) Deny or delegate control over the general administrative affairs of the
3 association by the lot owners or the board of directors.

4 (2) Control the establishment or imposition of assessments except as provided in
5 Subsection C of this Section.

6 (3) Prevent the association or the board of directors from commencing,
7 intervening in, or settling any litigation or proceeding.

8 (4) Prevent the association from receiving and distributing any insurance
9 proceeds to make necessary repairs as a result of a casualty.

10 B. A lender who has extended credit to an association secured by a security right
11 to the income of the association or a security right in the common areas or limited
12 common areas may enforce the security right in accordance with its terms, subject to the
13 requirements of this Part or other provisions of law. Requirements that the association
14 deposit with the lender the association's periodic income in which the lender holds a
15 security right do not violate Subsection A of this Section.

16 C. If approved by an association in accordance with R.S. 9:1141.28, the holder of
17 a security right may require that assessments shall not be decreased without its approval.

18 §1141.17. Master associations

19 A. If any of the powers in R.S. 9:1141.20 are to be exercised by or delegated to a
20 corporation that exercises powers on behalf of planned communities or for the benefit of
21 the lot owners, all provisions of this Part applicable to lot owners associations shall apply

1 to the corporation, except as provided by this Section.

2 B. Unless it is acting in the capacity of an association as provided in R.S.
3 9:1141.19, a master association may exercise the powers provided in R.S.
4 9:1141.20(A)(2) only to the extent expressly permitted in the declaration of the planned
5 community that is part of the master association or expressly described in the delegation
6 of power to the master association.

7 C. If the declaration of any planned community provides that the board of
8 directors may delegate powers to a master association, the directors have no liability for
9 the acts or omissions of the master association following delegation.

10 D. The rights and responsibilities of lot owners with respect to the association as
11 provided in R.S. 9:1141.21, 1141.26, 1141.27, 1141.28, and 1141.29 apply in the conduct
12 of the affairs of a master association only to those persons who elect the board of a
13 master association, regardless of whether those persons are otherwise lot owners.

14 E. Even if a master association is also an association as provided in R.S.
15 9:1141.19, the articles of incorporation or other instrument creating the master
16 association and the declaration of each planned community, the powers of which are
17 assigned by the declaration or delegated to the master association, shall provide that the
18 board of directors of the master association shall be elected after the period of declarant
19 control in any of the following ways:

20 (1) All lot owners of each planned community subject to the master association
21 may elect all directors of the master association.

1 (2) All directors of each planned community subject to the master association
2 may elect all directors of the master association.

3 (3) All lot owners of each planned community subject to the master association
4 may elect specified directors of the master association.

5 (4) All directors of each planned community subject to the master association
6 may elect specified directors of the master association.

7 §1141.18. Combining planned communities

8 A. Any two or more planned communities may be combined into a single
9 planned community upon approval by the lot owners in each planned community by the
10 same vote required to terminate that planned community. If the planned communities to
11 be combined are managed by more than one association, the associations shall be
12 combined into one association in accordance with the applicable provisions of law.

13 B. The agreement to combine shall not be effective until it is filed for registry in
14 accordance with R.S. 9:1141.4(D) in every parish in which a portion of the combined
15 planned community is situated and, if associations are combining, until the articles of
16 merger or consolidation of the associations are filed with the secretary of state.

17 C. Every agreement to combine shall provide for the reallocation of common
18 expense liabilities, common surpluses, and voting interest to each lot by either stating the
19 reallocations or the formulas upon which they are based or stating the percentage
20 allocated to all of the lots comprising each of the preexisting planned communities.

21 SUBPART C. ~~ENFORCEMENT~~ MANAGEMENT OF THE PLANNED

1 COMMUNITY

2 ~~§1141.8. Community documents; force of law~~

3 ~~The community documents of residential planned communities shall have the~~
4 ~~force of law between the homeowners association and the individual lot owners and as~~
5 ~~between individual lot owners. The remedies for breach of any obligation imposed on lot~~
6 ~~owners or the association shall include damages, injunctions, or such other remedies as~~
7 ~~are provided by law.~~

8 ~~§1141.9. Homeowners association privilege~~

9 ~~In addition to any other remedies provided by law or by the community~~
10 ~~documents for nonpayment of assessments, a homeowners association as defined in this~~
11 ~~Part may utilize the provisions of Part III of this Chapter establishing a privilege on lots~~
12 ~~of delinquent owners for nonpayment of assessments.~~

13 §1141.19. Organization of lot owners association

14 A lot owners association shall be organized as a nonprofit corporation authorized
15 to do business in Louisiana. The membership of the association at all times consists
16 exclusively of all lot owners or, following termination of the planned community, of all
17 former lot owners entitled to distributions of proceeds in accordance with R.S. 9:1141.15
18 or their heirs, successors, or assigns. The association shall have a board of directors. The
19 association shall be formed prior to filing the declaration for registry.

20 §1141.20. Powers and duties of the lot owners association

21 A. Except as otherwise provided in this Part, the association:

1 (1) Shall adopt and may amend bylaws and may adopt and amend rules.

2 (2) Shall adopt and may amend budgets as provided in R.S. 9:1141.34, may
3 collect assessments for common expenses from lot owners, and may invest funds of the
4 association.

5 (3) May hire and discharge managing agents and other employees, agents, and
6 independent contractors.

7 (4) May institute, defend, or intervene in litigation or in arbitration, mediation, or
8 administrative proceedings in its own name on behalf of itself or any lot owner or
9 occupant on matters affecting the common interest of the planned community.

10 (5) May enter into contracts and incur liabilities.

11 (6) May regulate the use, maintenance, repair, replacement, and modification of
12 common areas.

13 (7) May cause additional improvements to be made as a part of the common
14 areas.

15 (8) May acquire, hold, encumber, and transfer in its own name any right, title, or
16 interest to immovable and movable property, whether corporeal or incorporeal, but
17 common areas may be transferred or subjected to a security right only pursuant to R.S.
18 9:1141.29.

19 (9) May grant servitudes, leases, and licenses through or over the common areas.

20 (10) May impose and receive any payments, fees, or charges for the use, rental,
21 or operation of the common areas and for services provided to lot owners or occupants.

1 (11) May impose charges, including interest and attorney fees, against lot owners
2 for late payment of assessments.

3 (12) May impose reasonable fines, including interest and attorney fees, against lot
4 owners and occupants for violations of the community documents.

5 (13) May impose reasonable charges, including interest and attorney fees, for the
6 preparation and recordation of amendments to the declaration or statements of privilege.

7 (14) May provide for the indemnification of its officers and board of directors
8 and maintain directors and officers liability insurance.

9 (15) May exercise any other powers conferred by the community documents.

10 (16) May exercise any other powers that may be exercised by organizations of
11 the same type.

12 (17) In addition to the rights of the association provided in R.S. 9:1141.32, may
13 suspend any right or privilege of a lot owner or occupant who fails to pay an assessment
14 or who violates any provision of the community documents, provided that the association
15 shall not do either of the following:

16 (a) Deny a lot owner access to the lot owner's lot.

17 (b) Withhold services provided by the association to a lot, a lot owner, or an
18 occupant if the effect of withholding the service would endanger the health, safety, or
19 property of any person.

20 B. An association may require that an occupant execute and file with the
21 association a lease or other occupancy agreement containing mandatory language for the

1 benefit of the association. Any occupant who fails to comply with the provisions of this
2 Subsection may be denied access to a lot.

3 C. If an occupant violates the provisions of the community documents, the
4 association may, in addition to exercising any of its powers against the lot owner, enforce
5 against the occupant mandatory provisions contained in the lease or other occupancy
6 agreement.

7 D. The association may determine whether to take enforcement action by
8 imposing sanctions or commencing an action for a violation of the provisions of the
9 community documents, including whether to compromise any claim for unpaid
10 assessments or other claim made by or against the association or to seek eviction.

11 E. The decision of the association in taking enforcement action in accordance
12 with Subsection D of this Section shall not be arbitrary or capricious.

13 F. The board of directors shall establish a reasonable method for lot owners and
14 occupants to communicate, which may include by electronic transmission, with the board
15 of directors on matters concerning the association.

16 G. In the event that the community documents fail to provide for a certain action
17 or procedure, the general provisions of this Part and of the Nonprofit Corporation Law,
18 R.S. 12:201 et seq., shall govern.

19 §1141.21. Board of directors and officers

20 A. Directors of the board of directors and officers of the association shall
21 exercise the degree of care and loyalty required of a director or officer and are subject to

1 the conflict of interest rules and limitations of liability governing directors and officers in
2 accordance with the Nonprofit Corporation Law, R.S. 12:201 et seq. Nevertheless, no
3 director or officer shall be liable to the association or its members for money damages for
4 any action taken, or any failure to act, as a director or officer, except as provided in R.S.
5 9:2792.7 or as otherwise provided by law.

6 B. The protection against liability of a director or officer for conduct described in
7 Subsection A of this Section may be modified in the community documents. The
8 association may purchase insurance against liability as provided in R.S. 12:1-857.

9 C. The board of directors shall not do any of the following:

10 (1) Amend the declaration.

11 (2) Amend the bylaws.

12 (3) Terminate the planned community.

13 (4) Elect directors, but the board of directors may fill vacancies in its
14 membership for the unexpired portion of any term or, if earlier, until the next regularly
15 scheduled election of directors.

16 (5) Determine the qualifications, powers, duties, or terms of office of directors.

17 D. The board of directors shall propose a budget to be approved in accordance
18 with R.S. 9:1141.34.

19 §1141.22. Declarant control of the association

20 A. The declaration may provide for a period of declarant control of the
21 association, during which a declarant, or persons designated by the declarant, may

1 appoint and remove the officers and directors. A declarant may voluntarily surrender the
2 right to appoint and remove officers and directors before the period ends. In that event,
3 the declarant may require, during the remainder of the period, that specified actions of the
4 association or board of directors as described in a recorded instrument executed by the
5 declarant be approved by the declarant before becoming effective.

6 B. Regardless of the period provided in the declaration, a period of declarant
7 control terminates as follows:

8 (1) If the right to add additional immovable property to the planned community
9 was not reserved in the declaration, one hundred twenty days after the date that seventy-
10 five percent of the total number of lots in the planned community are transferred to lot
11 owners other than the declarant or an affiliate of the declarant.

12 (2) If the right to add additional immovable property to the planned community
13 was reserved in the declaration, upon the expiration of the time period provided in R.S.
14 9:1141.7(C), as that period may be extended by the declarant's timely exercise of the
15 right to add additional immovable property.

16 C. The board of directors shall consist of at least three persons, each of whom
17 shall be a lot owner or a representative of a lot owner that is a juridical person. Except as
18 otherwise provided in R.S. 9:1141.17(E), a special meeting of the association shall be
19 held for the purpose of electing the board of directors at least thirty days prior to the
20 termination of the period of declarant control. The meeting notice shall be given, in
21 accordance with R.S. 9:1141.38, no more than sixty days and no fewer than thirty days

1 before the date of the meeting. If a quorum is not present at the meeting, then it may be
2 adjourned and reconvened by the association the next day, at which time those lot owners
3 who are present shall constitute a quorum for purposes of electing the board of directors.
4 Unless the community documents provide for the election of officers by the lot owners,
5 the board of directors shall be entitled to elect the officers. The directors and officers
6 shall take office upon the termination of the period of declarant control.

7 D. Notwithstanding the provisions of this Section, in no event shall the period of
8 declarant control of a master association terminate until all periods of declarant control
9 for all planned communities subject to the master association have terminated.

10 §1141.23. Transfer of special declarant rights

11 A. Special declarant rights may be transferred only by an instrument evidencing
12 the transfer recorded in every parish in which any portion of the planned community is
13 situated. Upon transfer of special declarant rights, the transferor is not relieved of any
14 obligation or liability arising before the transfer. A transferor has no liability for any act
15 or omission of, or any breach of a contractual obligation arising from the exercise of a
16 special declarant right by, a successor declarant.

17 B. In the event of partial transfer of special declarant rights, those special
18 declarant rights not transferred terminate on the effective date of the transfer. The
19 transferee of partial rights is only responsible for those obligations related to the special
20 declarant rights that were transferred.

21 C. A person who succeeds to special declarant rights is subject to the obligations

1 and liabilities imposed by this Part or the community documents with respect to those
2 special declarant rights transferred, except for any of the following:

3 (1) Misrepresentations by a previous declarant.

4 (2) Breach of any fiduciary obligation owed to the board of directors by a
5 previous declarant or his appointees.

6 (3) Any liability or obligation imposed on the transferor as a result of his acts or
7 omissions after the transfer.

8 D. Nothing in this Section subjects any successor to a special declarant right to
9 any claims against or other obligations of a transferor declarant, other than claims and
10 obligations in accordance with this Part or the community documents.

11 §1141.24. Termination of contracts

12 A. During the first two years after the board of directors elected by the lot owners
13 pursuant to R.S. 9:1141.22(C) takes office, the following contracts entered into by the
14 association may be terminated without penalty, provided that at least ninety days' notice
15 is given to the other party and the contract was entered into before the board of directors
16 took office:

17 (1) Any management, maintenance, or employment contract.

18 (2) Any other contract with the declarant or an affiliate of the declarant that is
19 unconscionable to the lot owners at the time the contract was entered into.

20 B. The provisions of this Section do not apply to a lease that, if terminated,
21 would terminate the planned community or reduce its size.

1 C. Nothing in this Section shall impair the ability of the association to rescind or
2 annul a contract in accordance with other provisions of law.

3 §1141.25. Bylaws

4 A. The bylaws of the association shall provide for all of the following:

5 (1) The number of directors, which shall be no fewer than three.

6 (2) The method of electing a president, treasurer, secretary, and any other officers
7 specified.

8 (3) The qualifications, powers and duties, terms of office, and manner of electing
9 and removing directors and officers and filling vacancies.

10 (4) The powers that the board of directors or officers may delegate to other
11 persons or to a managing agent.

12 (5) The officers who may prepare, execute, certify, and record amendments to the
13 community documents on behalf of the association.

14 (6) Any provision necessary to satisfy requirements in this Part or the community
15 documents concerning meetings, voting, quorums, and other activities of the association.

16 B. The bylaws may provide for any other necessary or appropriate matters,
17 including matters that may be adopted as rules, relative to managing the business and
18 regulating the affairs of the association and the planned community.

19 §1141.26. Meetings

20 A. The following requirements apply to association meetings:

21 (1) The association shall hold an annual meeting in accordance with the bylaws.

1 In the absence of a provision in the bylaws, an annual meeting shall be held upon the
2 giving of not more than sixty days' nor fewer than ten days' notice in accordance with
3 R.S. 9:1141.38.

4 (2) The association shall hold a special meeting to address any matter affecting
5 the planned community or the association if its president, a majority of the board of
6 directors, or lot owners having at least twenty percent, or any lower percentage specified
7 in the bylaws, of the voting interest in the association demand that the secretary call a
8 meeting. The secretary shall call the meeting within thirty days after receiving notice of
9 the lot owners' demand. Only matters described in the meeting notice required by
10 Paragraph (3) of this Subsection shall be considered at a special meeting.

11 (3) The association shall notify lot owners of the time, date, and place of each
12 annual and special meeting not more than sixty days nor fewer than ten days before the
13 meeting date. Notice may be given by any means provided in R.S. 9:1141.38. The notice
14 shall state the items on the agenda, including the following:

15 (a) The general nature of any proposed amendment to the community documents.

16 (b) Any budget changes.

17 (c) Any proposal to remove a director or an officer elected by the association.

18 (4) The minimum amount of time in which notice shall be given in accordance
19 with Paragraph (3) of this Subsection may be reduced or waived by the board of directors
20 for a meeting called to address an emergency.

21 (5) At the meeting, lot owners shall be given a reasonable opportunity to

1 comment regarding any matter affecting the planned community or the association.

2 (6) The community documents may allow for meetings of the association to be
3 conducted by telephonic, video, or other conferencing process, if the meeting notice
4 states the conferencing process to be used.

5 (7) Meetings of the association shall take place at the planned community or at a
6 place convenient to it.

7 (8) Except as otherwise provided in the community documents, all meetings of
8 the association shall be conducted in accordance with the most recent edition of Robert's
9 Rules of Order.

10 B. The following requirements apply to meetings of the board of directors and
11 committees of the association authorized to act for the association:

12 (1) Meetings shall be open to the lot owners except during executive sessions.
13 The board of directors and committees may hold an executive session only during a
14 regular or special meeting of the board or committee. No final vote or action shall be
15 taken during an executive session. An executive session shall be held only to do the
16 following:

17 (a) Consult with an attorney concerning legal matters.

18 (b) Discuss existing or potential litigation, mediation, arbitration, or
19 administrative proceedings.

20 (c) Discuss labor or personnel matters.

21 (d) Discuss contracts, leases, and other commercial transactions to purchase or

1 provide goods or services currently being negotiated, including the review of bids or
2 proposals, if premature general knowledge of those matters would place the association at
3 a disadvantage.

4 (e) Prevent public knowledge of a matter if the board of directors or committee
5 determines that public knowledge would violate the privacy of any person.

6 (2) For purposes of this Section, a gathering of the board of directors at which the
7 directors do not conduct association business is not a meeting of the board. The board of
8 directors may not use incidental or social gatherings or any other method to evade the
9 open meeting requirements of this Section.

10 (3) During the period of declarant control, the board of directors shall meet at
11 least two times per year. At least one of those meetings shall be held at the planned
12 community or at a place convenient to it.

13 (4) The board of directors shall establish procedural rules to permit participation
14 by a lot owner in the event that the lot owner is directly impacted by an agenda item or is
15 requested to attend by the board of directors.

16 (5) Unless the meeting is included in a schedule previously provided to the lot
17 owners or the meeting is called to address an emergency, the secretary or other officer
18 specified in the bylaws shall give notice of each board of directors meeting to each
19 director and to the lot owners. The notice shall be given at least ten days before the
20 meeting and shall state the time, date, place, and agenda of the meeting.

21 (6) If any materials are distributed to the board of directors before the meeting,

1 copies of those materials shall be reasonably available to lot owners, including by posting
2 on the association's website, except that the board need not make available copies of
3 unapproved minutes or materials that are to be considered in executive session.

4 (7) The board of directors may meet by telephonic, video, or other conferencing
5 process if the meeting notice states the conferencing process to be used.

6 (8) Except as provided in Paragraph (3) of this Subsection, in lieu of meeting, the
7 board of directors may act by unanimous consent as documented in a record signed by all
8 directors. The secretary shall promptly give notice to all lot owners of any action taken by
9 unanimous consent. After termination of the period of declarant control, the board of
10 directors may act by unanimous consent only to undertake ministerial actions or to
11 implement actions previously taken at a board meeting.

12 (9) All actions taken by the board of directors that do not comply with this
13 Section are nevertheless deemed valid unless and until set aside by a court. A challenge
14 to the validity of an action of the board of directors for failure to comply with this Section
15 shall not be brought more than sixty days after the minutes of the meeting at which the
16 action was taken are approved or notice of that action is provided to lot owners,
17 whichever is later.

18 (10) Except as otherwise provided in the community documents, all meetings of
19 the board of directors and the committees of the association shall be conducted in
20 accordance with the most recent edition of Robert's Rules of Order.

21 §1141.27. Quorum

1 A. Unless the bylaws provide otherwise, a quorum is present throughout any
2 meeting of the association if lot owners holding twenty percent of the voting interest in
3 the association are present in person or by proxy at the beginning of the meeting, have
4 cast absentee ballots that were solicited in accordance with R.S. 9:1141.28(D)(3) and
5 delivered to the secretary in a timely manner, or are present by any combination thereof.

6 B. Voting interest allocated to lots owned by the association shall be counted
7 toward a quorum.

8 C. Unless this Part or the community documents specify a greater number, a
9 quorum of the board of directors is present for purposes of determining the validity of
10 any action taken at a meeting if individuals entitled to cast a majority of the votes on that
11 board are present at the time a vote regarding that action is taken. If a quorum is present
12 when a vote is taken, the affirmative vote of a majority of the directors present is the act
13 of the board of directors unless a greater vote is required by this Part or the community
14 documents.

15 §1141.28. Voting; proxies; ballots

16 A. Directors may not vote by proxy at any meeting of the board of directors or at
17 any committee thereof.

18 B. Lot owners may vote at a meeting of the association in person, by absentee
19 ballot, by proxy or, when a vote is conducted without a meeting, by electronic
20 transmission or paper ballot.

21 C. The voting interest allocated to lots owned by the association shall be cast in

1 the same proportion as the votes cast on the matter by lot owners other than the
2 association.

3 D. At a meeting of the association at which a quorum is present, the following
4 requirements apply:

5 (1) Lot owners who are present may cast a vote in person by voice, show of
6 hands, standing, or any other method for determining votes, as designated by the
7 association.

8 (2) Unless a greater number of the votes in the association is required, a majority
9 of the voting interest cast is required for the approval of any action of the association.

10 (3) A lot owner may vote by absentee ballot without being present at the meeting.
11 The association shall promptly deliver an absentee ballot to a lot owner upon request
12 made at least three days before the scheduled meeting.

13 (4) Except as provided in Subsection E of this Section, if the name signed on a
14 vote, consent, waiver, ballot, or proxy appointment corresponds to the name of a lot
15 owner as indicated in the records of the association, the association, if acting in good
16 faith, is entitled to accept the vote, consent, waiver, ballot, or proxy appointment and give
17 it full effect as the act of the lot owner.

18 E. If only one of several owners of a lot owned in indivision votes, that lot owner
19 has the right to cast the voting interest allocated to that lot. If more than one of the lot
20 owners vote, the voting interest allocated to that lot shall be cast only in accordance with
21 the agreement of a majority in interest of the lot owners. There is agreement of a majority

1 in interest if any one of the lot owners casts the voting interest allocated to the lot without
2 any of the other lot owners promptly protesting to the association. In the event that there
3 is disagreement among the owners of a lot as to their interests, the association, acting in
4 good faith, is entitled to rely upon what is evidenced in its records as to that lot. In the
5 event that the records do not indicate the allocation of interests in a lot, the association is
6 entitled to treat the multiple lot owners as having equal shares. If a lot or an undivided
7 interest in a lot is subject to a usufruct, the usufructuary shall be deemed the owner of that
8 lot or the undivided interest of the lot for purposes of this Section.

9 F. The following requirements apply to proxy voting:

10 (1) A lot owner may appoint a proxy to vote or otherwise act by signing a written
11 appointment or by making an electronic transmission. An electronic transmission shall
12 contain or be accompanied by information from which it can be determined that the lot
13 owner authorized the transmission.

14 (2) The appointment of a proxy is effective when a signed written appointment or
15 an electronic transmission of the appointment is received by the officer or agent of the
16 association authorized to tabulate votes. A proxy is valid only for the meeting for which it
17 is cast and any recessed session of that meeting and is subject to any limitation contained
18 therein.

19 (3) The appointment of a proxy is revocable.

20 (4) The revocation of a proxy appointment, the death of the lot owner, or the
21 appointment of a curator for the lot owner appointing a proxy does not affect the right of

1 the association to accept the proxy's authority unless notice of the revocation, death, or
2 appointment of a curator is received by the officer or agent authorized to tabulate votes
3 before the proxy exercises authority pursuant to the appointment.

4 G. Unless prohibited or limited by the community documents, when an
5 association conducts a vote without a meeting, the following requirements apply:

6 (1) The association shall notify the lot owners that the vote will be taken by
7 ballot.

8 (2) The association shall deliver a paper or electronic ballot in accordance with
9 R.S. 9:1141.38.

10 (3) The ballot shall set forth each proposed action and provide an opportunity to
11 vote for or against each action.

12 (4) The ballot shall also contain all of the following:

13 (a) The number of responses needed to meet the quorum requirements.

14 (b) The voting interest necessary to approve each matter other than the election of
15 directors.

16 (c) The time and date by which a ballot shall be delivered to the association to be
17 counted, which shall be no fewer than seven days after the date the association delivers
18 the ballot.

19 (5) After delivery to the association, a ballot is not invalidated by death,
20 disability, or attempted revocation by the person who cast the ballot.

21 (6) A vote conducted pursuant to this Subsection is valid only if the number of

1 votes cast on an item equals or exceeds the requirement to authorize each proposed
2 action.

3 H. If the declaration requires that votes on specified matters affecting the planned
4 community be cast by lessees of leased lots rather than by lot owners, this Section applies
5 to lessees as if they were lot owners. Lot owners who lease their lots to other persons may
6 not cast votes on those specified matters.

7 §1141.29. Transfer or encumbrance of common areas or right to income

8 A. All or portions of the common areas may be transferred or subjected to a
9 security right by a two-thirds vote or such greater vote as is required by the declaration.
10 Any limited common area may be transferred or subjected to a security right with the
11 consent of all owners of lots to which any limited common area is allocated.
12 Nevertheless, if all of the lots in a planned community are restricted exclusively to
13 nonresidential uses, the declaration may provide that all or portions of the common areas
14 may be transferred or subjected to a security right by a vote that is less than two-thirds or
15 that limited common areas may be transferred or subjected to a security right upon the
16 consent of fewer than all the owners of lots to which the limited common area is
17 allocated.

18 B. An agreement to transfer common areas or limited common areas or to subject
19 them to a security right shall be prepared and executed by an authorized officer or agent
20 of the association and shall contain a certification that the minimum voting requirements
21 have been met. The agreement, and all ratifications thereof, shall be filed for registry in

1 accordance with R.S. 9:1141.4(D) and is effective only upon registry. An agreement
2 subjecting property of the association to a security right shall be created and made
3 effective against third persons as required by law.

4 C. The association, on behalf of the lot owners, may contract to transfer or
5 encumber a right in a planned community, or to grant a security right in the association's
6 right to receive assessments or other income, but the contract is not enforceable against
7 the association until approved pursuant to Subsections A and B of this Section.
8 Thereafter, the association has all powers necessary and appropriate to effect the transfer
9 or encumbrance.

10 D. Unless the security right is effective and filed for registry prior to the filing of
11 the declaration, neither the transfer or encumbrance of any portion of a common area, nor
12 the foreclosure upon such an encumbrance, shall release that common area from the
13 burdens and restrictions imposed by the declaration. Subject to the rights of a holder of a
14 security right in a common area, proceeds from the sale of the common areas are an asset
15 of the association, but the proceeds from the sale of limited common areas shall be
16 distributed equitably among the owners of the lots to which the limited common areas
17 were allocated. If any common areas are transferred to a creditor pursuant to a giving in
18 payment in accordance with Civil Code Article 2655, the transferee acquires the common
19 areas subject to the burdens and restrictions imposed by the declaration.

20 E. Proceeds of loans made to the association shall be used only for the purposes
21 approved by the association.

1 §1141.30. Insurance

2 A. Commencing not later than the time of the first transfer of a lot to an unrelated
3 purchaser, the association shall maintain, to the extent reasonably available and subject to
4 reasonable deductibles, commercial general liability insurance, including medical
5 payments insurance, in an amount determined by the board of directors, but not less than
6 any amount specified in the declaration, covering all occurrences commonly insured
7 against for bodily injury, death, and property damage arising out of or in connection with
8 the use, ownership, or maintenance of the common areas. The declaration may require the
9 association to carry any other insurance, and the association may carry any other
10 insurance it considers appropriate to protect the association or the lot owners.

11 B. If the insurance required in Subsection A of this Section is not reasonably
12 available, the association shall immediately notify all lot owners.

13 C. The issuance of an insurance policy to the association does not prevent a lot
14 owner from obtaining insurance for the lot owner's own benefit.

15 §1141.31. Surplus funds

16 Any surplus funds of the association remaining after payment of or provision for
17 common expenses and any prepayment of reserves shall be paid annually to the lot
18 owners in proportion to their common expense liabilities or credited to the lot owners to
19 reduce their future common expense assessments.

20 §1141.32. Assessments

21 A. Until the association makes a common expense assessment, the declarant shall

1 pay all common expenses. After the initial assessment has been made by the association,
2 assessments shall be made at least annually, based on a budget adopted by the
3 association. The association shall not incur expenses except for the benefit of the planned
4 community.

5 B. Except for assessments made in accordance with Subsections C, D, and E of
6 this Section or as otherwise provided in this Part, all common expenses shall be assessed
7 against all of the lots in accordance with the allocations set forth in the declaration
8 pursuant to R.S. 9:1141.6. The owner of a lot shall be personally liable for the payment of
9 all assessments levied against the lot during the period of his ownership. The association
10 may charge interest on any past due assessment or portion thereof at the rate established
11 by the association, which shall not exceed twelve percent per year.

12 C. To the extent required by the declaration:

13 (1) A common expense associated with the maintenance, repair, or replacement
14 of a limited common area shall be assessed against the lots to which that limited common
15 area is allocated equally or in any other proportion the declaration provides.

16 (2) A common expense benefiting fewer than all of the lots or their owners may
17 be assessed exclusively against the lots or lot owners benefitted.

18 (3) The costs of insurance may be assessed in proportion to risk, and the costs of
19 utilities may be assessed in proportion to usage.

20 D. If damage to a lot or other part of the planned community or any other
21 common expense is caused by the willful misconduct of any lot owner or a guest or

1 invitee of a lot owner, the association may assess that damage or common expense
2 exclusively against that owner's lot, even if the association maintains insurance with
3 respect to that damage or common expense.

4 E. If common expense liabilities are reallocated, common expense assessments
5 and any installment thereof not yet due shall be recalculated in accordance with the
6 reallocated common expense liabilities.

7 §1141.33. Upkeep of the planned community

8 Except as otherwise provided by the community documents, the association is
9 responsible for maintenance, repair, and replacement of the common areas and limited
10 common areas, and each lot owner is responsible for the maintenance of his lot and the
11 maintenance, repair, and replacement of any improvements located thereon. Each lot
12 owner shall afford to the association, and to its agents or employees, access through his
13 lot that is reasonably necessary for those purposes.

14 §1141.34. Adoption of budgets; special assessments

15 A. The board of directors shall submit, at least annually, a proposed budget for
16 the planned community for consideration by the lot owners at a duly called meeting of
17 the association. Not later than thirty days after adoption of a proposed budget, the board
18 of directors shall provide to all lot owners a summary of the budget, including any
19 reserves, and a statement of the basis on which any reserves are calculated and funded.
20 Simultaneously, the board shall set a date, which shall be no fewer than ten days nor
21 more than sixty days after the summary is provided, for a meeting of the association to

1 consider ratification of the budget. A majority vote, or any greater vote specified in the
2 declaration, is required to ratify the budget. If a proposed budget is not ratified, the
3 budget last ratified at a meeting of the association continues until a subsequent budget is
4 ratified.

5 B. The board of directors may propose a special assessment at any time. Except
6 as otherwise provided in Subsection C of this Section, the assessment is effective only if
7 the board of directors follows the procedures for ratification of a budget provided in
8 Subsection A of this Section and the lot owners ratify the proposed assessment at a
9 meeting of the association as provided in Subsection A of this Section.

10 C. If the board of directors, by a vote of two-thirds of directors present and
11 voting, determines that a special assessment is necessary to respond to an emergency:

12 (1) The special assessment becomes effective immediately in accordance with the
13 terms of the vote.

14 (2) Notice of the emergency assessment shall be provided promptly to all lot
15 owners.

16 (3) The board of directors shall spend the emergency special assessment funds
17 only for the purposes described in the vote.

18 §1141.35. Privileges for sums due to the association; enforcement

19 A. A privilege in favor of the association shall arise on a lot for any assessment
20 attributable to that lot or fines imposed against the lot owner. Reasonable attorney fees
21 and costs, other fees, charges, fines, and interest charged pursuant to R.S.

1 9:1141.20(A)(10), (11), (12), and (13), and any other sums due to the association in
2 accordance with the declaration, this Part, or as a result of an administrative, arbitration,
3 mediation, or judicial decision are enforceable in the same manner as unpaid assessments
4 pursuant to this Section. If an assessment is payable in installments, the privilege is for
5 the full amount of the annual assessment from the time the first installment becomes due.

6 B. To be preserved, the privilege shall be evidenced by a statement of privilege,
7 signed and verified by affidavit of an authorized officer or agent of the association, and
8 filed for registry in the mortgage records of the parish in which the lot is situated. The
9 statement of privilege shall include a complete property description of the lot, the name
10 of its record owner, the amount of delinquent or accelerated assessment, the date on
11 which the assessment became delinquent, and any fines or late fees assessed. At least
12 seven days prior to the filing for registry of the statement of privilege, the association
13 shall deliver to the lot owner, or send to the lot owner by registered or certified mail, a
14 sworn detailed statement of its claim for the delinquent or accelerated assessment that
15 includes the date the assessment became delinquent or accelerated.

16 C. A privilege pursuant to this Section is effective from the time the statement of
17 privilege is filed for registry in the mortgage records and, except as otherwise provided in
18 the Private Works Act, R.S. 9:4801 et seq., is preferred in rank to all mortgages,
19 privileges, and other rights in the lot that become effective against third persons after that
20 time.

21 D. In the absence of a contrary provision in a declaration authorizing two or more

1 associations, privileges in favor of those associations for assessments have equal priority
2 regardless of the date on which they filed statements of privilege unless there is an
3 intervening encumbrance, in which event this Subsection does not apply.

4 E.(1) A privilege for unpaid assessments is extinguished unless a suit to enforce
5 the privilege is instituted within five years after the privilege becomes effective.

6 (2) The effect of recordation of a statement of privilege and the privilege
7 preserved by it shall cease as to third persons unless a notice of pendency of action in
8 accordance with Code of Civil Procedure Article 3752, identifying the suit required to be
9 filed by Paragraph (1) of this Subsection, is filed for registry in the mortgage records
10 within five years after the privilege becomes effective. In addition to the requirements of
11 Code of Civil Procedure Article 3752, the notice of pendency of action shall contain a
12 reference to the recorded statement of privilege. If the effect of recordation of a statement
13 of privilege has ceased for lack of timely filing of a notice of pendency of action, the
14 recorder of mortgages upon receipt of a written signed application shall cancel the
15 recordation of the statement of privilege.

16 F. This Section does not affect the personal liability of a lot owner for the
17 payment of past due sums for which Subsection A of this Section grants a privilege or
18 prevent an association from acquiring a lot through a giving in payment.

19 G. A judgment or decree in any action brought in accordance with this Section
20 shall include costs and reasonable attorney fees for the prevailing party.

21 H. Upon request made in a record, the association shall furnish to a lot owner a

1 statement setting forth the amount of any unpaid assessments against the lot owner's lot.
2 The statement shall be furnished within ten business days after receipt of the request and
3 is binding on the association, the board of directors, and every lot owner.

4 I. An association may commence an action to enforce a privilege on a lot in
5 accordance with this Section only with approval from the board of directors.

6 J. The association shall apply any sums paid by a lot owner who is delinquent in
7 paying assessments in the following order:

8 (1) Unpaid assessments.

9 (2) Late charges.

10 (3) Reasonable attorney fees, costs, and other collection charges.

11 (4) All other unpaid fees, charges, fines, penalties, and interest.

12 §1141.36. Association records

13 A. An association shall retain all of the following:

14 (1) Appropriate accounting records concerning the operation and administration
15 of the association.

16 (2) Minutes of all meetings of the lot owners and board of directors other than
17 executive sessions, a record of all actions taken by the lot owners or board of directors
18 without a meeting, and a record of all actions taken by a committee in place of the board
19 of directors on behalf of the association.

20 (3) The names of lot owners in a form that permits preparation of a list of the
21 names of all lot owners and the addresses at which the association communicates with

1 them, in alphabetical order showing the voting interest each lot owner is entitled to cast.

2 (4) Its original or restated organizational documents and all amendments to them,
3 and all rules currently in effect.

4 (5) All financial statements and tax returns of the association for the past three
5 years.

6 (6) A list of the names and addresses of its current directors and officers.

7 (7) The most recent annual report delivered to the secretary of state.

8 (8) Financial and other records sufficiently detailed to enable the association to
9 comply with R.S. 9:1141.43(B).

10 (9) Copies of current contracts to which the association is a party.

11 (10) Records of board of directors or committee actions to approve or deny any
12 requests for design or architectural changes from lot owners.

13 (11) Ballots, proxies, and other records related to voting by lot owners for one
14 year after the election, action, or vote to which they relate.

15 B. Upon receipt of a request for specific records, the association shall make the
16 records available for examination and copying by a lot owner or the lot owner's agent.
17 An inspection shall occur during reasonable business hours or at a mutually convenient
18 time and location.

19 C. Records retained by an association may be withheld from inspection and
20 copying to the extent that they concern any of the following:

21 (1) Personnel and medical records relating to specific individuals.

1 (2) Contracts and other commercial transactions to purchase or provide goods or
2 services that are currently being negotiated.

3 (3) Existing or potential litigation or mediation, arbitration, or administrative
4 proceedings.

5 (4) Communications with the association's attorney that are protected by the
6 attorney-client privilege or the work-product rule.

7 (5) Information the disclosure of which would violate law.

8 (6) Records of an executive session of the board of directors.

9 (7) Individual lot files other than those of the requesting lot owner.

10 D. An association may charge a reasonable fee for providing copies of any
11 records in accordance with this Section and for supervising the lot owner's inspection.

12 E. A right to copy records in accordance with this Section includes the right to
13 receive copies by photocopying or other means, including receipt of copies through an
14 electronic transmission, if available, upon request by the lot owner.

15 F. An association is not obligated to compile or synthesize information.

16 G. Information provided pursuant to this Section shall not be used for
17 commercial or other improper purposes, and the association may deny access to
18 information if the association has a good faith belief that the information is being
19 requested for such purposes. The court may order the person obtaining information from
20 the association to pay the association's expenses if the court determines that the
21 information was used for an improper purpose.

1 §1141.37. Rules

2 A. Before adopting, amending, or repealing any rule, the board of directors shall
3 give all lot owners notice of the proposed action and provide the text of the rule or the
4 proposed change and the date on which the board of directors will act after considering
5 comments from lot owners.

6 B. Following the adoption, amendment, or repeal of a rule, the board of directors
7 shall notify the lot owners of its action and provide a copy of any new or revised rule.

8 C. The board of directors shall adopt procedures for enforcement of standards
9 adopted in accordance with R.S. 9:1141.14(C) and for approval of construction
10 applications, including a reasonable time within which the board of directors shall act
11 after an application is submitted and the consequences of its failure to act.

12 D. A rule regulating display of the flag of the United States shall be consistent
13 with federal law.

14 E. The board of directors may adopt rules that affect the use of or behavior on
15 lots that may be used for residential purposes only to implement a provision of the
16 declaration or to regulate any behavior in or occupancy of a lot that violates the
17 declaration or adversely affects the use and enjoyment of other lots or the common areas
18 by other lot owners.

19 F. Every rule adopted pursuant to this Section is required to be reasonable.

20 §1141.38. Notice to lot owners

21 A. An association shall deliver any notice required pursuant to this Part by any of

1 the following methods:

2 (1) United States mail postage paid, or commercial courier as defined in Code of
3 Civil Procedure Article 1313(D), to the mailing address designated by the lot owner.

4 (2) Electronic mail to the address designated by the lot owner.

5 (3) Hand delivery to the physical location of each lot, if neither a mailing address
6 nor an electronic mail address has been designated by the lot owner.

7 (4) United States mail postage paid, or commercial courier as defined in Code of
8 Civil Procedure Article 1313(D), to the mailing address of each lot.

9 (5) Any other method reasonably calculated to provide notice to the lot owner.

10 B. The ineffectiveness of a good faith effort to deliver notice by an authorized
11 means does not invalidate action taken at or without a meeting.

12 §1141.39. Removal of officers and directors

13 A. Notwithstanding any provision of the community documents to the contrary,
14 lot owners present in person, by proxy, or by absentee ballot at any meeting of the
15 association at which a quorum is present and for which notice of removal was given may
16 by majority vote remove any director of the board of directors and any officer elected by
17 the lot owners, with or without cause. However, a director appointed by the declarant
18 may not be removed during the period of declarant control.

19 B. At any meeting at which a vote to remove a director or an officer is to be
20 taken, the director or officer being considered for removal shall have a reasonable
21 opportunity to speak before the vote.

1 public offering statement in accordance with R.S. 9:1141.43.

2 B. A declarant who offers a lot to a purchaser shall deliver a public offering
3 statement in accordance with this Section and R.S. 9:1141.48. The declarant is liable in
4 accordance with R.S. 9:1141.44 and 1141.48 for any false or misleading statement in the
5 public offering statement and for any omission of a material fact therefrom.

6 C. If a lot in a planned community is also part of any other regime in which the
7 delivery of a public offering statement is required by law, a single public offering
8 statement conforming to the requirements of R.S. 9:1141.43 as related to each regime in
9 which the lot is located may be prepared and delivered in lieu of providing two or more
10 public offering statements.

11 §1141.43. Public offering statement; requirements

12 A. A public offering statement shall contain and fully and accurately disclose all
13 of the following:

14 (1) The name and principal address of the declarant and of the planned
15 community, and a statement that the planned community is a planned community.

16 (2) A general description of the planned community, including, to the extent
17 possible, the declarant's schedule of commencement and completion of construction of
18 common areas and limited common areas disclosed in promotional or marketing
19 materials as "SHALL BE BUILT". Any promotional or marketing materials that show
20 the intended location and dimensions of any contemplated improvement to be constructed
21 anywhere within the planned community or on any immovable property to be added to

1 the planned community shall be labeled either "SHALL BE BUILT" or "NEED NOT BE
2 BUILT".

3 (3) A copy of the declaration meeting the requirements of R.S. 9:1141.5.

4 (4) Copies of any other recorded covenants, conditions, restrictions, and
5 reservations affecting the planned community; the bylaws and any rules of the
6 association; and a brief description of any contracts or occupancy agreements that may be
7 subject to termination pursuant to R.S. 9:1141.24.

8 (5) The financial information required by Subsection B of this Section.

9 (6) Any services not reflected in the budget that the declarant provides or
10 expenses that the declarant pays that may become a common expense of the association,
11 and the projected common expense assessment attributable to each of those services or
12 expenses for the association and for each type of lot.

13 (7) Any initial or special fee due from the purchaser or seller at the time of sale,
14 together with a description of the purpose and method of calculating the fee.

15 (8) A narrative description of any liens, defects, or encumbrances that are
16 revealed in a title policy or title opinion affecting the ownership of the immovable and
17 movable property forming the planned community as of the date of the declaration or that
18 are otherwise known by the declarant.

19 (9) The terms and significant limitations of any warranties provided by the
20 declarant, including statutory warranties and limitations on the enforcement thereof or on
21 damages.

1 (10) A statement that within fifteen days after receipt of a public offering
2 statement, a purchaser, before transfer, may cancel any contract to sell.

3 (11) A statement of any unsatisfied judgment or pending action against the
4 association, and the status of any pending action material to the planned community of
5 which a declarant has actual knowledge.

6 (12) Any restrictions on use, occupancy, and alienation of the lots and any
7 restrictions on the amount for which a lot may be sold.

8 (13) A description of any insurance coverage provided for the benefit of lot
9 owners.

10 (14) Any current or expected fees or charges to be paid by lot owners for the use
11 of the common areas, limited common areas, and other facilities related to the planned
12 community.

13 (15) The extent to which financial arrangements have been provided for
14 completion of all common areas and limited common areas that the declarant is obligated
15 to build pursuant to R.S. 9:1141.46.

16 (16) The zoning classification and any other land use designation affecting the
17 planned community.

18 (17) Any other material circumstances, features, and characteristics of the
19 planned community and the lots.

20 (18) A description of any financial arrangement that is not otherwise disclosed
21 and contained in the budget and that is binding on the association.

1 (19) A narrative description of all special declarant rights retained by the
2 declarant.

3 B. The public offering statement shall contain a current balance sheet and a
4 projected budget for the association for one year after the date of the first transfer of a lot
5 to an unrelated purchaser, and thereafter the current budget of the association, a statement
6 of who prepared the budget, and a statement of the assumptions concerning occupancy
7 and inflation factors. The budget shall include the following:

8 (1) A statement of the amount included as a reserve for repairs and replacements.

9 (2) A statement of any other reserves.

10 (3) The projected common expense assessment by category of expenditures.

11 (4) The projected monthly common expense assessment for each lot.

12 C. The declarant shall be required to provide a supplement to the public offering
13 statement containing the information required in Subsection B of this Section on an
14 annual basis until all of the lots are owned by unrelated purchasers.

15 D. The declarant shall promptly amend the public offering statement to report
16 any material change in the information required by this Section.

17 E.(1) A public offering statement is not required in any of the following
18 circumstances:

19 (a) A gratuitous disposition of a lot.

20 (b) A disposition of a lot pursuant to court order.

21 (c) A disposition of a lot by a governmental agency.

1 (d) A disposition of a lot by foreclosure or giving in payment.

2 (e) A disposition of a lot restricted to nonresidential uses in a wholly
3 nonresidential community.

4 (2) A public offering statement is not required when a planned community
5 contains fewer than seventy-five lots based on the total number of anticipated lots after
6 all development rights to add additional immovable property have been exercised in
7 accordance with R.S. 9:1141.7.

8 (3) When a lot is subject to a contract to sell and is owned by a person other than
9 the declarant, the association shall be required to provide to the purchaser all information
10 required in this Section within ten days of a request for the information.

11 §1141.44. Purchaser's right to cancel

12 A. The person required to deliver a public offering statement shall provide a
13 purchaser with a copy of the public offering statement and all amendments thereto at least
14 fifteen days before transfer of the lot. A purchaser shall not be required to acquire a lot
15 unless fifteen days have elapsed from the date of the delivery of the public offering
16 statement. A purchaser, before transfer, may cancel the contract within fifteen days after
17 first receiving the public offering statement.

18 B. If a purchaser does not receive a public offering statement as required by this
19 Subpart, the purchaser may cancel any contract to sell any time prior to the transfer, and,
20 upon doing so, shall be entitled to recover actual damages.

21 C. A purchaser may cancel a contract pursuant to Subsection A or B of this

1 Section by hand delivering or mailing notice thereof by prepaid United States mail to the
2 seller or his agent for service of process. Cancellation is without penalty. All payments
3 made by the purchaser to the seller before cancellation shall be promptly refunded.

4 D. If a purchaser does not receive a public offering statement as required by this
5 Subpart prior to or at the time of the execution of the contract to sell, the purchaser may
6 recover all costs and expenses incurred if the purchaser elects to cancel the contract to
7 sell prior to acquisition of the lot.

8 §1141.45. Express warranties of declarant

9 A. Express warranties made by a declarant to an unrelated purchaser, if relied
10 upon by the unrelated purchaser, regardless of the delivery or receipt of a public offering
11 statement, are created as follows:

12 (1) Any affirmation of fact or promise by the declarant that relates to the lot, its
13 use, or rights appurtenant thereto; area improvements to the planned community that
14 would directly benefit the lot; or the right to use or have the benefit of facilities not
15 located in the planned community creates an express warranty that the lot and related
16 rights and uses will conform to the affirmation or promise.

17 (2) A provision that a purchaser may put a lot only to a specified use is an
18 express warranty that the specified use is lawful.

19 B. Neither formal words, such as "warranty" or "guarantee", nor a specific
20 intention to make a warranty are necessary to create an express warranty of quality, but a
21 statement purporting to be merely an opinion or commendation of the immovable

1 property or its value does not create a warranty.

2 §1141.46. Implied warranties

3 Any limitation, modification, or exclusion of implied warranties shall be as
4 provided by law.

5 §1141.47. Warranties

6 A. Except as provided in Subsection B of this Section, the warranty period
7 provided by law shall apply to this Part.

8 B. The association may enforce any warranty claim involving the common areas
9 and limited common areas in any manner provided by law.

10 Revision Comments – 2022

11 Lack of privity does not deprive the association of standing to maintain an action
12 to enforce an obligation owed to the declarant. See R.S. 9:1141.45. For example, in the
13 event that a declarant entered into a contract with another person who agreed to construct
14 improvements on common areas, the association would be subrogated to the rights of the
15 declarant to enforce a claim for defective construction.

16 §1141.48. Effect of violations on rights of action; attorney fees

17 A declarant, association, lot owner, or any other person who has suffered actual
18 damages may bring an action to enforce a right granted or obligation imposed by this
19 Subpart. The court may award reasonable costs and attorney fees to the prevailing party.

20 §1141.49. Declarant's obligation to complete and restore

21 A. Except for improvements labeled "NEED NOT BE BUILT" in any
22 promotional materials or on a plat, the declarant shall complete all improvements
23 depicted on any site plan or other graphic representation prepared by or at the direction of

1 the declarant or the party responsible for the preparation of a public offering statement,
2 including any plats or plans prepared pursuant to R.S. 9:1141.9.

3 B. The declarant is subject to liability for the prompt repair and restoration, to a
4 condition compatible with the remainder of the planned community, of any portion of the
5 planned community affected by the exercise of rights reserved pursuant to or created by
6 R.S. 9:1141.7 or 1141.12.

7 C. Any description of the quantity or extent of the immovable property
8 comprising the planned community, including plats or surveys or improvements indicated
9 as "SHALL BE BUILT", creates an express warranty that the planned community will
10 conform to the description, with the amenities provided by the declarant subject to
11 customary tolerances.

12 Revision Comments – 2022

13
14 (a) The duty imposed by Subsection A of this Section is a fundamental obligation
15 of the declarant and is one that a successor declarant is obligated to perform under R.S.
16 9:1141.23.

17
18 (b) This Section requires the declarant to repair and restore the planned
19 community following the exercise of any rights reserved or created to exercise a
20 development right, alter lots, relocate the boundaries between adjoining lots, subdivide
21 lots, use lots or common areas for sales purposes, or exercise servitude and use rights.
22 Plainly, this obligation of the declarant exists only if the declarant exercises these rights.
23 If any right to, for example, alter lots is exercised by another lot owner, that lot owner,
24 and not the declarant, would be responsible for the consequences of those acts.

25 §1141.50. Substantial completion of lots

26 A. In the case of a sale of a lot for which delivery of a public offering statement
27 is required, a contract to sell may be executed, but the declarant shall transfer no interest

1 in the lot until the declaration is filed for registry, the requirements of R.S. 33:114 et seq.
2 have been met, and all other required governmental approvals have been obtained.

3 B. When a declarant has transferred an interest in a lot in a planned community in
4 violation of Subsection A of this Section, the purchaser community shall have the right to
5 rescind the transfer or demand specific performance that the declarant take the actions
6 described in Subsection A of this Section and to pursue any other remedy provided by
7 law for the declarant's failure to comply with the provisions of Subsection A of this
8 Section.

9 Revision Comments – 2022

10
11 The purpose of this Section is to allow a declarant to "pre-sell" a development.
12 This frequently is required to obtain financing. The declarant is prohibited, however,
13 from the actual sale of lots until all governmental requirements have been satisfied.

14 * * *

15 §2792.7. Limitation of liability of director, officer, or trustee of certain homeowners
16 associations

17 * * *

18 B. For purposes of this Section, "homeowners association" means any of the
19 following:

20 * * *

21 (3) A ~~homeowners~~ lot owners association as defined in the Louisiana
22 ~~Homeowners Association~~ Planned Community Act, R.S. 9:1141.1 et seq.

23 * * *

1 §3132. Definitions

2 As used in this Chapter:

3 (1) "Private transfer fee" means a fee or charge required by a private transfer fee
4 obligation and payable upon the transfer of an interest in an immovable, or payable for
5 the right to make or accept such transfer, regardless of whether the fee or charge is a
6 fixed amount or is determined as a percentage of the value of the immovable, the
7 purchase price, or other consideration given for the transfer. "Private transfer fee" shall
8 not include the following:

9 * * *

10 (g) Any fee, charge, assessment, fine, or other amount authorized under
11 Louisiana Condominium Act, R.S. 9:1121.101 et seq.; the Louisiana Timesharing Act,
12 R.S. 9:1131.1 et seq.; or the Louisiana ~~Homeowners Association~~ Planned Community
13 Act, R.S. 9:1141.1 et seq.

14 * * *

DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB/HB _____

2022 Regular Session

Author

Abstract: Provides for the Louisiana Planned Community Act.

Present law (C.C. Art. 783) provides that the Louisiana Homeowners Association Act shall

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

supersede the building restriction articles of the Civil Code in the event of a conflict.

Proposed law retains present law but changes the reference from the Homeowners Association Act to the Planned Community Act.

Present law (R.S. 9:1141.1-1141.9) provides for the Louisiana Homeowners Association Act.

Proposed law (R.S. 9:1141.1-1141.50) creates the Louisiana Planned Community Act modeled after the 2008 Uniform Common Interest Ownership Act.

Present law (R.S. 9:1141.1-1141.3) provides general provisions such as a short title, definitions, and applicability.

Proposed law retains a short title, adds several defined terms, and provides for applicability.

Present law (R.S. 9:1141.4-1141.7) provides for the creation, amendment, and termination of building restrictions and also provides voting procedures.

Proposed law (R.S. 9:1141.4) provides for the creation, amendment, and termination of a planned community.

Proposed law (R.S. 9:1141.5) requires the declaration and any amendments to contain certain information and to be recorded in the conveyance records.

Proposed law (R.S. 9:1141.6) provides for the allocation of common expense liabilities, common surpluses, and voting interests in the association.

Proposed law (R.S. 9:1141.7) provides procedures for a declarant to exercise or transfer any reserved development rights.

Proposed law (R.S. 9:1141.8) requires the declaration to provide for the ownership of limited common areas.

Proposed law (R.S. 9:1141.9) sets forth what information is required to be on the plat including such items as the name of the community, any encroachments, and all servitudes. Proposed law also requires the plat to be made a professional land surveyor.

Proposed law (R.S. 9:1141.10 and 1141.11) authorizes the relocation of lot boundaries and the subdivision of lots upon the request of lot owners and with the proper approval.

Proposed law (R.S. 9:1141.12 and 1141.13) allows the declarant to maintain a sales office and models on lots owned by the declarant and grants the declarant a personal servitude of use on the

common areas to discharge obligations or exercise special declarant rights.

Proposed law (R.S. 9:1141.14) requires certain voting procedures to amend the declaration and restricts certain types of actions from being taken by amendment, such as prohibiting an existing use of a lot. Proposed law authorizes the adoption of more burdensome restrictions when special conditions are met.

Proposed law (R.S. 9:1141.16) provides for the rights of secured parties to approve certain actions of the lot owners but does not allow creditors to control the association's general affairs, establish or impose assessments, prevent the settlement of litigation, or prevent the distribution of insurance proceeds.

Proposed law (R.S. 9:1141.17 and 1141.18) provides for master associations and combining planned communities.

Present law (R.S. 9:1141.8-1141.9) provides for the enforcement of the community documents and the establishment of a homeowners association privilege.

Proposed law (R.S. 9:1141.19 and 1141.20) provides for the organization of a lot owners association as a nonprofit corporation and provides for the powers and duties of such an association, such as adopting bylaws, preparing a yearly budget, entering into contracts, receiving assessments, imposing fees and fines, and indemnifying officers and the board of directors.

Proposed law prohibits the association from denying a lot owner access to his property or withholding services necessary for the owner's health, safety, or property.

Proposed law (R.S. 9:1141.21) provides for the powers and duties of the board of directors and the officers of the association. Proposed law prohibits the board from amending the declaration or the bylaws and from terminating the planned community.

Proposed law (R.S. 9:1141.22) provides for the period of declarant control of the association and the termination thereof.

Proposed law (R.S. 9:1141.25) provides for the bylaws of the association to address the number of members on the board, the method of electing officers and the required qualifications, and their powers.

Proposed law (R.S. 9:1141.26-1141.28) provides requirements for association meetings including proper notice, opportunities for comments, location, executive sessions, emergency meetings, availability of materials, quorum requirements, voting procedures, and access to association records.

Proposed law (R.S. 9:1141.29) provides for the transfer or encumbrance of common areas and the right to receive assessments or other income.

Proposed law (R.S. 9:1141.30) provides insurance requirements for the planned community.

Proposed law (R.S. 9:1141.31 and 1141.32) provides for the assessment procedure and the distribution of any surplus funds.

Proposed law (R.S. 9:1141.34) requires the annual adoption of a budget.

Proposed law (R.S. 9:1141.37) authorizes the adoption, amendment, or repeal of association rules.

Proposed law (R.S. 9:1141.38) provides that notice to lot owners may be achieved by United States mail, electronic mail, hand delivery, or any other method that will provide reasonable notice.

Proposed law (R.S. 9:1141.39) provides for the removal of officers and directors.

Proposed law (R.S. 9:1141.41-1141.50) provides consumer protections through the requirement of a public offering statement, granting the purchaser a right to cancel, express and implied warranties, and authorizing the court to award attorney fees.

Present law (R.S. 9:2792.7(B)(3) and 3132(1)(g)) includes references to the Louisiana Homeowners Association Act and homeowners associations.

Proposed law corrects cross references and terminology for consistency with the Planned Community Act.

(Amends R.S. 9:1141.1-1141.50, 2792.7(B)(3), and 3132(1)(g))