

easements and portions of rights of way; and make reasonable accommodations or permit reasonable modifications to be made to lots or common areas to accommodate lot owners, residents, tenants, employees and people with disabilities, as defined by prevailing federal, state or local statute, rule, code or ordinance; (7) cause additional improvements to be made as a part of the common areas; provided that the association does not materially impair a lot owner's quiet enjoyment of the lot; (8) by a vote of no less than a majority of lot owners, annex real property into the development; (9) acquire, hold, encumber and convey in the association's name any right, title or interest to real or personal property other than common areas; provided that the association does not materially impair a lot owner's quiet enjoyment of the lot; (10) grant easements, leases, licenses and concessions through or over the common areas; provided that the association does not materially impair a lot owner's quiet enjoyment of the lot; (11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy fines for violations of the declaration, bylaws and rules of the association; (12) suspend a lot owner's right to use common areas because of late payment or nonpayment of assessments, following notice to the lot owner and an opportunity to be heard; (13) impose reasonable charges for preparation and recording of amendments to the declaration or preparation of a disclosure certificate as required by the Homeowner Association Act; (14) provide for the indemnification of its officers and board and maintain directors' and officers' liability insurance; (15) exercise any powers conferred by the declaration, the bylaws or the articles of incorporation; and (16) assign the association's right to future income, including the right to receive common expense assessments. Reserve funds held for future major repairs and replacements of common areas shall not be assigned or pledged.

SECTION 5 outlines the duties and responsibilities of board members and officers as well as budget notification requirements.

SECTION 6 provides for and outlines limitations for the declarant to control the board. Regardless of the period provided in the declaration, the period of declarant control shall be terminated no later than the earlier of: (1) sixty days after conveyance of seventy-five percent of the parcels that may be created to parcel owners other than a declarant; (2) two years after all declarants have ceased to offer parcels for sale in the ordinary course of business; (3) two years after any development right to add new parcels was last exercised; or (4) the day the declarant or the declarant's designee, after giving written notice to parcel owners, records an instrument voluntarily surrendering all rights to control activities of the association.

The section then goes on to describe other scenarios and how the authority to elect or appoint board members transitions from the declarant to the parcel owners.

SECTION 7 provides for proxy and absentee voting and ballot counting.

SECTION 8 provides for record disclosure of the association to its members. All financial and other records of the association shall be made available for examination by a lot owner within ten business days of the request. The association shall not charge a fee for making financial and other records available for review but may charge a reasonable fee for copies. The "financial and other records" includes: (1) the declaration of the association; (2) the name, address and telephone number of the association's designated agent; (3) the bylaws of the association; (4) the names of all association members; (5) minutes of all meetings of the association's lot owners and board, other than executive sessions, and records of all actions taken by a committee in place of the board or on behalf of the association; (6) the operating budget for the current fiscal year; (7)

current assessments, including both regular and special assessments; (8) financial statements and accounts, including amounts held in reserve; (9) the most recent financial audit or review, if any; (10) all current contracts entered into by the association or the board on behalf of the association; and (11) current insurance policies, including company names, policy limits, deductibles, additional named insureds and expiration dates for property, general liability and association director and officer professional liability, and fidelity policies.

SECTION 9 requires the association to conduct an annual financial audit to be completed within 180 of the end of the fiscal year. The audit or review shall be made available to lot owners within thirty days of its completion.

SECTION 10 provides for the requirements to officially record the homeowner association notice and declaration.

SECTIONs 11, 12 and 13 define lot seller and purchaser responsibilities related to the homeowner association including the ability to cancel a sale based on the association's status.

SECTION 13 describes the applicability of the bill.—(A.) The Homeowner Association Act shall apply, in its entirety, to all homeowner associations created within this state after July 1, 2013.(B) Sections 8 and 10 through 13 of the Homeowner Association Act shall apply to associations created before July 1, 2013 only with respect to events and circumstances occurring after July 1, 2013. The Homeowner Association Act does not invalidate existing provisions of the articles of incorporation, declaration, bylaws or rules of an association created before July 1, 2013. (C) The Homeowner Association Act shall not apply to a condominium governed by the Condominium Act.

SECTION14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.

FISCAL IMPLICATIONS

No fiscal implications identified.

TECHNICAL ISSUES

The AGO offers the following possible concerns related to language:

The language at § 5 providing for budget approval by lot owners “or their duly elected representatives” is unclear. Presumably, the elected board members propose a budget and submit to others for approval. It is not clear how or whether board members are elected by association members. “Board” is defined in § 2 (C) as “the body ... designated in the declaration or bylaw to act on behalf of the association.”

Thought might be given to whether the term “annex” is appropriate, at § 4, in the context of real property, since associations are not governmental entities.

MW/bm