GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 433

MONDAY, MARCH 12, 2012

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 11, 2012
4:14 p.m.
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY

AN ACT relating to condominiums and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 381.9103 is amended to read as follows:

(1) Except as provided in subsections (2), (3)***,*** ***and*** (4)~~[, and (5)]~~ of this section, KRS 381.9101 to 381.9207 applies to all condominiums created within the Commonwealth after January 1, 2011.

(2) KRS 381.9109, 381.9111, 381.9113, 381.9129, 381.9131, 381.9167, 381.9169, 381.9183, 381.9193,~~[and]~~ 381.9197, ***subsection (2) of Section 9 of this Act, and Section 10 of this Act,*** and KRS 381.9105 to the extent necessary in construing any of these sections, apply to all condominiums created before January 1, 2011, but only to the extent of events or circumstances occurring after January 1, 2011, and do not invalidate existing provisions of the declaration, bylaws, plats, or plans of those condominiums.

(3)~~[Any amendment to the declaration, bylaws, plats, or plans of any condominium created before January 1, 2011, shall conform to KRS 381.9101 to 381.9207.~~

~~(4)]~~ Unit owners of units to which one hundred percent (100%) of the votes in the association are allocated***, or such lesser percentage as stated in the declaration as necessary to terminate the condominium,*** may elect~~[, by unanimous vote,]~~ that KRS 381.9101 to 381.9207 shall apply to a condominium created before the January 1, 2011. In such event the declaration, bylaws, plats, or plans of the condominium shall be modified or amended to the extent necessary to be consistent with KRS 381.9101 to 381.9207.

(4)~~[(5)]~~ Notwithstanding any provision to the contrary set forth in the declaration, bylaws, plats, or plans of a condominium created before January 1, 2011, the executive board of the association shall have the right to rely on the provisions set forth in KRS 381.9101 to 381.9207 to deal with any situation that presents a public safety or public health issue to one (1) or more unit owners in the association.

(5)~~[(6)]~~ KRS 381.805 to 381.910 shall not apply to condominiums created after January 1, 2011, and do not invalidate any amendment to the declaration, bylaws, plats, or plans of any condominium created before January 1, 2011, if the amendment would be permitted by KRS 381.9101 to 381.9207. The amendment shall be adopted in conformity with the procedures and requirements specified by those instruments and by ***KRS 381.805 to 381.910***~~[KRS 381.9101 to 381.9207]~~. If the amendment grants to any person any rights, powers, or privileges permitted by KRS 381.9101 to 381.9207, all correlative obligations, liabilities, and restrictions in KRS 381.9101 to 381.9207 shall also apply to that person.

➔Section 2. KRS 381.9105 is amended to read as follows:

As used in KRS 381.9101 to 381.9207, or in the declaration or bylaws of any condominium unless specifically provided or the context otherwise requires:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant.

(a) A person controls a declarant if the person:

1. Is a general partner, officer, director, limited liability entity member or manager, or employer of the declarant and has the legal authority to direct the business and affairs of the declarant;

2. Directly, indirectly, or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than fifty percent (50%) of the voting interest in the declarant; or

3. Controls in any manner the election of a majority of the directors of the declarant.

(b) A person is controlled by a declarant if the declarant:

1. Is a general partner, officer, director, limited liability entity member or manager, or employer of the person and has the legal authority to direct

the business and affairs of the person;

2. Directly, indirectly, or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than fifty percent (50%) of the voting interest in the person; or

3. Controls in any manner the election of a majority of the directors of the person.

Control does not exist if the powers described in paragraph (a) or (b) of this subsection are held solely as security for an obligation and are not exercised;

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit;

(3) "Association" or "unit owners' association" means the association organized pursuant to KRS 381.9165;

(4) ***"Capital expenditure" means an expenditure to replace, repair, or improve common elements, or acquire new common elements;***

(5) "Common elements" means all portions of a condominium other than the units;

(6)~~[(5)]~~ "Common expenses" means expenditures made or financial liabilities incurred by the association, to the extent permitted by the declaration or KRS 381.9101 to 381.9207, together with any allocations to reserves;

(7)~~[(6)]~~ "Common expense liability" means the liability for common expenses allocated to each unit pursuant to KRS 381.9137;

(8)~~[(7)]~~ "Condominium" means ***real estate***~~[single units in a single unit or a multiple unit structure or structures]~~, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;

(9)~~[(8)]~~ "Declarant" means any person or group of persons acting in concert who:

(a) As part of a common promotional plan for the condominium, formulated, sponsored, and promoted by the person or persons, offers to dispose of his, her, or their interest in a unit within the condominium not previously disposed of; or

(b) Reserves or succeeds to any special declarant right;

(10)[~~(9)~~] "Declaration" means any instrument, including a master deed, however denominated, that creates a condominium, and any amendments to those instruments;

(11)[~~(10)~~] "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(a) Add real estate to a condominium;

(b) Create units, common elements, or limited common elements within a condominium;

(c) Subdivide units or convert units into common elements;

(d) Allocate or reallocate common elements among units; or

(e) Withdraw real estate from a condominium;

(12)[~~(11)~~] "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the creation, assignment, transfer, or release of a mortgage or security interest;

(13)[~~(12)~~] "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association;

(14)[~~(13)~~] "Identifying number" means a symbol or address that identifies only one (1) unit in a condominium;

(15)[~~(14)~~] "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size;

(16)[~~(15)~~] "Limited common element" means a portion of the common elements

allocated by the declaration or by operation of KRS 381.9127 for the exclusive use of one (1) or more but fewer than all of the units;

(17)[~~(16)~~] "Master association" means an organization described in KRS 381.9161, whether or not it is also an association described in KRS 381.9165;

(18)[~~(17)~~] "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, or other legal or commercial entity;

(19)[~~(18)~~] "Purchaser" means any person other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary or involuntary transfer acquires a legal or equitable interest in a unit other than:

(a) A leasehold interest, including renewal options of less than twenty (20) years; or

(b) As security for an obligation;

(20)[~~(19)~~] "Real estate" means any fee simple interest, leasehold estate, or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

(21)[~~(20)~~] "Recording data" means the book and page number of instruments recorded in the office of a county clerk;

(22)[~~(21)~~] "Residential" means use for dwelling or personal recreation, or both;

(23)[~~(22)~~] "Special declarant rights" means rights reserved for the benefit of a declarant to:

(a) Complete improvements indicated on plats and plans filed with the declaration;

(b) Exercise any development rights;

(c) Maintain sales offices, management offices, signs advertising the condominium, and models;

(d) Use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium;

(e) Make the condominium part of a larger condominium or a planned community;

(f) Make the condominium subject to a master association; or

(g) Appoint or remove any officer of the association, master association, or any executive board member during any period of declarant control;

(24) ~~[(23)]~~ "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in KRS 381.9133, ***including patios, balconies, and other spaces if designated in the declaration***; and

(25) ~~[(24)]~~ "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation or as a sublessee of a lessee of a unit.

➔Section 3. KRS 381.9145 is amended to read as follows:

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his or her unit that do not impair the structural integrity, ***utility components,*** or mechanical systems or lessen the support of any portion of the condominium;

(2) Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without ***the written*** permission of the association; and

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity, ***utility components,*** or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries ***and neither creates a merged unit nor modifies the basis for the calculation and collection of assessments***.

➔Section 4. KRS 381.9167 is amended to read as follows:

(1) Except as provided in subsection (2) of this section and subject to the provisions of the declaration, the association, even if unincorporated, may:

(a) Adopt and amend bylaws, rules, and regulations;

(b) Adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;

(c) Hire and discharge ***managers***~~[managing agents]~~ and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the condominium;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of common elements, and authorize access to any unit for those purposes;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that common elements may only be conveyed or subjected to a lien or security interest as provided in KRS 381.9185;

(i) Grant easements, leases, licenses, and concessions through or over the common elements;

(j) Impose and receive payments, fees, or charges:

1. For the use, rental, or operation of the common elements other than limited common elements described in KRS 381.9127(2), (4), and (6);

2. For services provided to unit owners; and

3. To cover emergency or extraordinary circumstances affecting the condominium or any part thereof;

(k) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association that may include reimbursement to the association of reasonable fees and costs, ***including attorney fees,*** associated with the enforcement of this paragraph;

(l) Impose reasonable charges for the preparation and recordation of amendments to the declaration,~~[resale]~~ certificates required by KRS 381.9203, or statements of unpaid assessments, ***except that:***

1. Any fee imposed for the preparation of a certificate shall not exceed the lesser of two hundred twenty-five dollars ($225) or eighty percent (80%) of the current monthly assessment fee charged that unit by the association; and

2. No more than fifty dollars ($50) shall be charged to update a previous certificate issued in the same fiscal year of the association;

(m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments,~~[but only to the extent expressly provided in the declaration and only]~~ for the purpose of securing financial accommodations

obtained by the association to perform its duties and obligations under the declaration or KRS 381.9101 to 381.9207;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration shall not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(3) Notwithstanding the declaration, an association may impose an emergency assessment against any unit affected to:

(a) Comply with a judicial order; or

(b) Repair an emergency condition of any common structural***, utility,*** or mechanical component which has made, or is in imminent danger of making, any unit***, common element, or limited common element*** unsafe, uninhabitable, or uninsurable, provided the association is first provided ***an opinion affixed with a professional seal***~~[a certificate]~~ from a professional engineer or licensed architect stating the emergency condition.

(4) The emergency assessment provided for in subsection (3) of this section shall be made upon the vote of:

(a) A simple majority of unit owners present at a special called meeting. If the declaration does not provide for special meetings, one (1) may be called under this subsection to address the issues identified in subsection (3) of this section***; or***

(b) Seventy-five percent (75%) of the members of the association's executive board.

Any emergency assessment made under this subsection may be reduced or rescinded by a vote of a simple majority of ***total*** unit owners~~[present]~~ at a~~[subsequent]~~ special meeting.

➔Section 5. KRS 381.9169 is amended to read as follows:

(1) Except as provided in the declaration, the bylaws, or subsection (2) of this section, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall ***act in accordance with Section 11 of this Act***~~[exercise ordinary and reasonable care]~~.

(2) The executive board shall not act on behalf of the association to amend the declaration, to terminate the condominium, or to elect members of the executive board or determine the qualifications, powers, and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(3) If the executive board adopts a~~[proposed]~~ budget for the condominium, the board shall:

(a) Provide a summary of the budget to all unit owners within thirty (30) days after the adoption; and

(b) ***If the adopted budget contains an increase of greater than fifteen percent (15%) from the previous year's budget,*** set a date for a meeting of the unit owners to consider ratification of the budget, which meeting shall not be less than fourteen (14) days nor more than thirty (30) days after providing the summary. ~~[~~

~~]~~The budget shall be deemed ratified, whether or not a quorum is present, unless at that meeting a majority of all the unit owners, or any larger vote specified in the declaration, reject the budget. If the~~[proposed]~~ budget is rejected, the periodic budget last ratified by the unit owners shall be continued

until such time as~~[the unit owners ratify]~~ a subsequent budget ***is adopted***~~[proposed]~~ by the executive board ***in conformity with this subsection***.

(4) Except as provided in subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him or her, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of the units which may be created to unit owners other than a declarant;

(b) Two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business;

(c) Two (2) years after any development right to add new units was last exercised; or

(d) Seven (7) years after the first unit was conveyed to a unit owner other than a declarant.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than a declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by unit owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-

third percent (33-1/3%) of the members of the executive board shall be elected by unit owners other than the declarant.

(6) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members, a majority of whom shall be unit owners or owners of equity interests in units. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(7) Any provision of the declaration or bylaws to the contrary notwithstanding, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

➔Section 6. KRS 381.9179 is amended to read as follows:

(1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast ***ten percent (10%)*** ~~[twenty percent (20%)]~~ of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

➔Section 7. KRS 381.9187 is amended to read as follows:

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements insuring against fire and extended coverage perils and such other risks as may be determined by the association. The total amount of insurance after application of any deductibles

shall be not less than one hundred percent (100%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations,~~[foundations,]~~ and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, the association shall immediately cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner or member of his or her household;

(c) No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's

policy provides primary insurance.

(4) Any loss covered by the property policy under subsection (1) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to subsection (7) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(5) An insurance policy issued to the association shall not prevent a unit owner from obtaining insurance for his or her own benefit.

(6)~~[An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or mortgagee. The insurer issuing the policy shall not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner, and each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.~~

~~(7)]~~ Disposition of insurance proceeds shall be made as follows:

(a) Any portion of the condominium for which insurance is required under this section and which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

1. The condominium is terminated;

2. Repair or replacement would be illegal under any state statute or local health or safety ordinance; or

3. Eighty percent (80%) of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense;

(b) If the entire condominium is not repaired or replaced:

1. The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium;

2. The insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and

3. The remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units.

If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been acquired by eminent domain under KRS 381.9113, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations; and

(c) Notwithstanding the provisions of this subsection, KRS 381.9157 governs the distribution of insurance proceeds if the condominium is terminated.

(7)~~[(8)]~~ The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

➔Section 8. KRS 381.9197 is amended to read as follows:

(1) The association shall keep financial records sufficiently detailed to enable the association to comply with KRS 381.9203 ***and, except for the statement of cash receipts and disbursements which shall be kept on a cash basis, all financial statements shall be prepared in accordance with generally accepted accounting principles***. All financial and other records shall be made reasonably available for examination by any unit owner and his or her authorized agents.

(2) Not later than one hundred fifty (150) days after the end of the fiscal year, or annually on a date provided in the declaration or bylaws, the association shall cause to be prepared by an independent accountant or certified public accountant a financial report for the preceding fiscal year. No later than thirty (30) days after the financial report is prepared and received by the executive board, the association shall make it available for examination by any unit owner and, upon request and payment of a reasonable fee, shall provide a unit owner with a copy of the financial report.

(3) The type of financial report the association shall have prepared under this section shall be determined as follows:

(a) An association with total annual revenues of less than one hundred thousand dollars ($100,000) shall have prepared a financial statement of cash receipts and disbursements that disclose all sources of income and expenses by account and classification;

(b) An association with total annual revenues of at least one hundred thousand dollars ($100,000) but less than two hundred fifty thousand dollars ($250,000) shall have prepared a financial report under the standards of a compilation by a certified public accountant;

(c) An association with total annual revenues of at least two hundred fifty thousand dollars ($250,000) but less than five hundred thousand dollars ($500,000) shall have prepared a financial report under the standards of a

review by a certified public accountant; and

(d) An association with total annual revenues of five hundred thousand dollars ($500,000) or greater shall have prepared a financial report under the standards of an audit by a certified public accountant.

The executive board of an association, in its sole discretion, may elect to have the financial report required by this subsection prepared in accordance with a higher standard of care than required for that association's annual revenue level.

➔Section 9. KRS 381.9201 is amended to read as follows:

(1) This section and KRS 381.9205 and 381.9207 apply to all units subject to KRS 381.9101 to 381.9207, except as provided in subsection (2) of this section or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(2) The certificate referred to in KRS 381.9203 shall ***not be required***~~[also be prepared or delivered]~~ in the case of:

(a) A gratuitous disposition of a unit;

(b) A disposition pursuant to court order;

(c) A disposition by a government or governmental agency;

(d) A disposition by foreclosure or deed in lieu of foreclosure;

(e) A disposition to a person in the business of selling real estate who intends to offer those units to purchasers***, and where the purchaser has modified or waived the requirements of Section 10 of this Act by agreement***; or

(f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

➔Section 10. KRS 381.9203 is amended to read as follows:

(1) ***Except as provided in subsection (2) of Section 9 of this Act,*** a seller of a unit shall furnish to a purchaser ***or purchaser's agent***~~[, upon request and]~~ before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the

declaration, other than the plats and plans, and a copy of the bylaws, the rules or regulations of the association, and a certificate***, current to the date of issuance and signed and dated by the association's manager or authorized agent,*** containing:

(a) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense***, emergency assessment,*** or special assessment currently due and payable from the selling unit owner;

(c) A statement of any other fees payable by unit owners;

(d) A statement of any capital expenditures anticipated by the association for the current and, if known, next two (2) fiscal years;

(e) A statement of the amount of any reserves for capital expenditures, if any, and of any portions of those reserves designated by the association for any specified projects;

(f) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(g) The current operating budget of the association;

(h) ***The date of the most current financial report prepared for the association pursuant to Section 8 of this Act;***

(i) A statement of any unsatisfied judgments against the association,~~[and]~~ the status of any pending suits in which the association is a defendant***, or any pending suits in which the association is a named party and the amount in dispute or contest is more than ten thousand dollars ($10,000)***;

(j)~~[(i)]~~ A statement describing any insurance coverage ***maintained by the association or an attachment of a certificate of insurance issued to the association***~~[provided for the benefit of unit owners]~~; and

(k)~~[(j)]~~ If any portion of the condominium is situated upon a leasehold estate, a

statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(2) The association shall, within ten (10) days after ***receipt of*** a ***written*** request by a unit owner, furnish a certificate containing the information necessary to enable the unit owner to comply with subsection (1) of this section. A unit owner ***or unit owner's agent*** providing a purchaser with the certificate issued pursuant to this subsection shall not be liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(3) A unit owner ***or unit owner's agent*** shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the sales contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs.

(4) An association may not deny the validity of any statement in the certificate.

(5) Failure to provide a certificate does not void a deed to a purchaser.

➔SECTION 11. A NEW SECTION OF KRS 381.9101 TO 381.9207 IS CREATED TO READ AS FOLLOWS:

(1) A board member shall discharge his or her duties as an officer or a member of the executive board, including his or her duties as a member of a committee:

(a) In good faith;

(b) On an informed basis; and

(c) In a manner he or she honestly believes to be in the best interests of the corporation.

(2) Such board member shall be considered to discharge his or her duties on an informed basis if he or she makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the association, or into a particular action to be taken or decision to be made.

(3) In discharging his or her duties, such board member shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the association whom the board member honestly believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or

(c) A committee of the executive board of which he or she is not a member if the board member honestly believes the committee merits confidence.

(4) A board member of an association shall not be considered to act in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.

(5) In addition to any other limitation on such board member's liability for monetary damages contained in any provision of the association's articles of incorporation adopted in accordance with state law, any action taken as a board member, or any failure to take any action as a board member, shall not be the basis for monetary damages or injunctive relief unless:

(a) The board member has breached or failed to perform the duties of the board member's office in compliance with this section; and

(b) In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.

(6) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of subsection (5)(a) and (b) of this section, and the burden of proving that the

breach or failure to perform was the legal cause of the damages suffered.

➔Section 12. KRS 381.9155 is amended to read as follows:

(1) Except in cases of amendments that may be executed by a declarant under KRS 381.9141(6) or 381.9143; the association under KRS 381.9113, 381.9135(4), 381.9139(3), 381.9147(1), or 381.9149; or certain unit owners under KRS 381.9139(2), 381.9147(1), or 381.9149(2), and except as limited by subsection (4) of this section and KRS 381.9187***(6)***~~[(7)]~~, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority specified in the declaration. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(2) An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than one (1) year after the amendment is recorded.

(3) Every amendment to the declaration shall be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation. An amendment shall be indexed in the name of the condominium and the association and in the name of the parties executing the amendment.

(4) Except to the extent expressly permitted or required by other provisions of KRS 381.9101 to 381.9207, an amendment shall not create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(5) Amendments to the declaration required by KRS 381.9101 to 381.9207 to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that

purpose or, in the absence of designation, by the president of the association.

➔Section 13. KRS 381.9175 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, KRS 381.9187*(6)*[~~(7)~~], or as otherwise provided by the declaration, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his or her unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under KRS 381.9101 to 381.9207, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

➔Section 14. The following KRS section is repealed:

381.865 Books of account -- Inspection -- Audit or review by independent accountant. (Effective January 1, 2011)

➔Section 15. Whereas there is an urgent need to establish uniformity with regard to the creation of condominiums and the rights and responsibilities of all persons involved, and because of the importance of providing notice of liens and lien priorities to persons or businesses loaning moneys for condominiums and to persons purchasing condominiums, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Speaker-House of Representatives

President of Senate

Attest: Jean T. Durgin
Chief Clerk of House of Representatives

Approved
Governor

Date 4-11-12