

HB 391 The Kentucky Condominium Act

AN ACT relating to condominiums.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 54 of this Act shall be known and may be cited as the Kentucky Condominium Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

*(1) Except as provided in subsections (2), (3), (4), and (5) of this section, Sections 1 to 54 of this Act applies to all condominiums created within the Commonwealth after the effective date of this Act.*

*(2) Sections 5, 6, 7, 15, 16, 34, 35, 42, 47, and 49 of this Act, and Section 3 of this Act to the extent necessary in construing any of these sections, apply to all condominiums created before the effective date of this Act, but only to the extent of events or circumstances occurring after the effective date of this Act 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 the effective date of this Act shall conform to Sections 1 to 54 of this Act.*

*(4) Unit owners of units to which one hundred percent (100%) of the votes in the*

association are allocated may elect, by unanimous vote, that Sections 1 to 54 of this Act shall apply to a condominium created before the effective date of this Act. 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 Sections 1 to 54 of this Act.

(5) Notwithstanding any provision to the contrary set forth in the declaration, bylaws, plats, or plans of a condominium created before the effective date of this Act, the executive board of the association shall have the right to rely on the provisions set forth in Sections 1 to 54 of this Act to deal with any situation that presents a public safety or public health issue to one (1) or more unit owners in the association.

(6) KRS 381.805 to 381.910 shall not apply to condominiums created after the effective date of this Act and do not invalidate any amendment to the declaration, bylaws, plats, or plans of any condominium created before the effective date of this Act if the amendment would be permitted by Sections 1 to 54 of this Act. The amendment shall be adopted in conformity with the procedures and requirements specified by those instruments and by Sections 1 to 54 of this Act. If the amendment grants to any person any rights, powers, or privileges permitted by Sections 1 to 54 of this Act, all correlative obligations, liabilities, and restrictions in Sections 1 to 54 of this Act shall also apply to that person.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 54 of this Act, 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 Section 33 of this Act;
- (4) "Common elements" means all portions of a condominium other than the units;
- (5) "Common expenses" means expenditures made or financial liabilities incurred

by the association, to the extent permitted by the declaration or Sections 1 to 54 of this Act, together with any allocations to reserves;

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 19 of this Act;

(7) "Condominium" means 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;

(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;

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

(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;

(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;

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

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

(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;

(15) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 14 of this Act for the exclusive use of one (1) or more but fewer than all of the units;

(16) "Master association" means an organization described in Section 31 of this Act, whether or not it is also an association described in Section 33 of this Act;

(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;

(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;

(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;

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

(21) "Residential" means use for dwelling or personal recreation, or both;

(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;

(23) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 17 of this Act; and

(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 4. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Except as expressly provided in Sections 1 to 54 of this Act, provisions of Sections 1 to 54 of this Act may not be varied by agreement, and rights conferred by Sections 1 to 54 of this Act may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of Sections 1 to 54 of this Act or the declaration.

→SECTION 5. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(3) Any portion of the common elements for which the declarant has reserved any development right shall be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(4) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

(5) A residential unit of a condominium may be a homestead as allowed in KRS Chapters 132 and 427.

→SECTION 6. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation shall not prohibit the condominium form of ownership or impose any

requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of Sections 1 to 54 of this Act invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for his or her unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) The unit's allocated interests are reduced in proportion to the reduction in the size of the unit; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the

taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association and, unless the declaration provides otherwise, the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court decree shall be recorded in every county in which any portion of the condominium is located.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless displaced by a particular provision of Sections 1 to 54 of this Act, the principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause, shall supplement Sections 1 to 54 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 54 of this Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Sections 1 to 54 of this Act shall be liberally construed and applied to promote its underlying purposes and policies.

**(2) The underlying purposes and policies of Sections 1 to 54 of this Act are:**

**(a) To simplify, clarify, and modernize the law governing condominiums; and**

**(b) To make uniform the law among the various jurisdictions.**

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

**If any provision of Sections 1 to 54 of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of Sections 1 to 54 of this Act that can be given effect without the invalid provision or application, and to this end the provisions of Sections 1 to 54 of this Act are severable.**

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

**Every contract or duty governed by Sections 1 to 54 of this Act imposes an obligation of good faith in its performance or enforcement.**

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

**A condominium may be created pursuant to Sections 1 to 54 of this Act only by recording a declaration executed in the same manner as a deed. The declaration shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the condominium, the association, and each person executing the declaration. The county clerk shall determine the methods and mechanics for recording and storing any plans and plats associated with a declaration or amendment of a declaration.**

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

**(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint,**

finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements unless otherwise specified in the declaration.

(2) If any chute, flue, duct, wire, conduit, heating system, air conditioning system, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one (1) unit or any portion of the common elements is a part of the common elements unless otherwise specified in the declaration.

(3) Subject to subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

(5) Any sprinkler system, alarm system, or other system of protection that serves more than one (1) unit, unless all units served are owned by the same owner, shall be part of the common elements.

(6) All interior hallways, stairways, and other interior space, including all fixtures located within these spaces, that are located outside of a unit shall be limited common elements allocated exclusively to the units appurtenant to or otherwise accessible from such interior spaces.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to Section 34 of this Act.

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with Sections 1 to 54 of this Act.

(4) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with Sections 1 to 54 of this Act.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the deed and declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit. The numbering system of units shall be adequate to easily distinguish each unit, including those built at different times.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) The declaration for a condominium shall contain:

(a) The name of the condominium which shall include the word "condominium" or be followed by the words "a condominium," and the association;

(b) The name of every county in which any part of the condominium is situated;

(c) A legally sufficient description of the real estate included in the condominium;

- (d) A statement of the maximum number of units which the declarant reserves the right to create;
- (e) A description of the boundaries of each unit created by the declaration, including the unit's identifying number;
- (f) A description of any limited common elements as provided in subsection (2)(h) of Section 21 of this Act, except for those limited common elements specified in subsections (2), (4), and (6) of Section 14 of this Act;
- (g) A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in subsections (2), (4), and (6) of Section 14 of this Act, together with a statement that they may be so allocated;
- (h) A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;
- (i) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
1. a. A statement fixing the boundaries of those portions and identifying the proposed order in which those portions may be subjected to the exercise of each development right; or
  - b. A statement that no assurances are made concerning the boundaries or order in which the exercise of development rights may occur; and
  2. A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of

the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (i) of this subsection may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in Section 19 of this Act;

(l) Any restrictions on use, occupancy, and alienation of the units;

(m) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and

(n) All matters required by Sections 18, 19, 20, 21, and 27 of this Act, and subsection (4) of Section 35 of this Act.

(2) The declaration may contain any other matters the declarant deems appropriate.

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) A memorandum of lease shall be recorded with respect to any lease the expiration or termination of which may terminate the condominium or reduce its size. Every lessor of those leases shall sign the memorandum of lease, and the memorandum of lease shall state:

(a) The elements of recording for the lease;

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

- (f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.
- (2) After the declaration for a leasehold condominium is recorded, neither the lessor nor his or her successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his or her share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.
- (3) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.
- (4) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with subsection (1) of Section 7 of this Act, as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations shall not discriminate in favor of units owned by the declarant.
- (2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide:

(a) That different allocations of votes shall be made to the units on particular matters specified in the declaration; and

(b) For class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant shall not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by Sections 1 to 54 of this Act, and units shall not constitute a class because they are owned by a declarant.

(4) The declaration shall not permit cumulative voting, including cumulative voting for the purpose of electing members of the executive board.

(5) Unless otherwise stated in the declaration, the declarant retains full voting rights to any unit until it conveyed.

(6) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one (1), if stated as fractions, or one hundred percent (100%), if stated as percentages. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails in the absence of error in specifying the allocated interest.

(7) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, shall be void.

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Except for the limited common elements described in subsections (2), (4), and (6) of Section 14 of this Act, the declaration shall specify to which unit or units each

limited common element is allocated. That allocation shall not be altered without the consent of the unit owners whose units are affected.

(2) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it after receiving all fees and other costs associated with recording the instrument. The amendment shall be recorded in the names of the parties and the condominium.

(3) A common element not previously allocated as a limited common element shall not be so allocated, except pursuant to provisions in the declaration made in accordance with subsection (1)(g) of Section 17 of this Act. The allocations shall be made by amendments to the declaration.

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Plats and plans are a part of the declaration. Separate plats and plans are not required by Sections 1 to 54 of this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan shall be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(2) Each plat shall contain:

(a) The name and a survey or general schematic map of the entire condominium;

(b) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

- (c) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;
  - (d) The extent of any encroachments by or upon any portion of the condominium;
  - (e) The location, with reference to an established datum, of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (4) of this section and that unit's identifying number;
  - (f) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";
  - (g) The distance between noncontiguous parcels of real estate comprising the condominium;
  - (h) The location and dimensions of limited common elements, including porches, balconies, and patios, other than parking spaces and the other limited common elements described in subsections (2), (4), and (6) of Section 14 of this Act; and
  - (i) In the case of real estate not subject to development rights, all other matters customarily shown on land surveys prepared in accordance with standards established pursuant to KRS 322.290.
- (3) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown shall be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."
- (4) To the extent not shown or projected on the plats, plans of the units shall show or project:
- (a) Any horizontal unit boundaries exclusive of elevations, with reference to an established datum, and that unit's identifying number; and
  - (b) Any units in which the declarant has reserved the right to create additional

units or common elements, identified appropriately.

- (5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.
- (6) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (1), (2), and (4) of this section, or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of subsections (1), (2), and (4) of this section.
- (7) Any certification of a plat or plan required by this section or Section 13 of this Act shall be made by a professional land surveyor, licensed architect, or professional engineer.

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) To exercise any development right reserved under subsection (1)(h) of Section 17 of this Act, the declarant shall prepare, execute, and record an amendment to the declaration and comply with Section 21 of this Act. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment shall describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 20 of this Act.
- (2) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by Section 17 or 18 of this Act, as the case may be, and the plats and

plans include all matters required by Section 21 of this Act. This provision does not extend the time limit on the exercise of development rights imposed by the declaration under subsection (1)(h) of Section 17 of this Act.

(3) If a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both, the declaration shall be amended as follows:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration shall reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; or

(b) If the declarant subdivides the unit into two (2) or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to subsection (1)(h) of Section 17 of this Act, that all or a portion of the real estate is subject to the development right of withdrawal, then the following shall apply:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser without the written consent of all unit owners owning units within the real estate; and

(b) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser without the written consent of all unit owners owning units within that portion.

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 381 IS CREATED 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 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 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 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.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application shall state the proposed reallocations. Unless the executive board determines, within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

(2) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

(3) All costs associated with the preparation and recording of the documents, plats, and plans required by this section shall be paid by the unit owners.

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) If the declaration expressly so permits, a unit may be subdivided into two (2) or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(2) The amendment to the declaration shall be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(3) All costs associated with the preparation and recording of the documents, plats, and plans required by subsection (1) of this section shall be paid by the owner of the unit being subdivided.

➔SECTION 26. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his or her willful misconduct or relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

➔SECTION 27. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under Sections 1 to 54 of this Act or reserved in the declaration.

➔SECTION 28. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) Except in cases of amendments that may be executed by a declarant under subsection (6) of Section 21 of this Act or Section 22 of this Act; the association under Section 7 of this Act, subsection (4) of Section 18 of this Act, subsection (3) of Section 20 of this Act, subsection (1) of Section 24 of this Act, or Section 25 of this Act; or certain unit owners under subsection (2) of Section 20 of this Act, subsection (1) of Section 24 of this Act, or subsection (2) of Section 25 of this Act, and except as limited by subsection (4) of this section and subsection (7) of Section 44 of this Act, 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 Sections 1 to 54 of this Act, 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 Sections 1 to 54 of this Act 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 29. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(2) An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement, or ratification thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(3) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall

set forth the minimum terms of the sale.

(4) In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but shall not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(5) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (8) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of that occupancy, each unit owner and his or her successors in interest remain liable for all assessments and other obligations imposed on unit owners by Sections 1 to 54 of this Act or the declaration.

(6) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the

real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (8) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit.

(7) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(8) The respective interests of unit owners referred to in subsections (5), (6), and (7) of this section are as follows:

(a) Except as provided in paragraph (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one (1) or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements; and

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(9) Except as provided in subsection (10) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(10) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium. The provisions of this subsection shall not apply to any common elements constituting a portion of the real estate to the extent the common elements as described in and subject to the declaration have been developed.

→SECTION 30. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

The declaration may require that all or a specified number or percentage of the mortgagees encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval shall not operate to:

(1) Deny or delegate control over the general administrative affairs of the association

by the unit owners or the executive board; or

(2) Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except as provided in Section 44 of this Act.

➔SECTION 31. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) If the declaration for a condominium provides that any of the powers described in Section 34 of this Act are to be exercised by or may be delegated to a for-profit or nonprofit corporation or unincorporated association which exercises those or other powers on behalf of one (1) or more condominiums or for the benefit of the unit owners of one (1) or more condominiums, all provisions of Sections 1 to 54 of this Act applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in Section 33 of this Act, it may exercise the powers set forth in subsection (1)(b) of Section 34 of this Act only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 35, 39, 40, 41, and 43 of this Act apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of Sections 1 to 54 of this Act.

(5) Notwithstanding the provisions of subsection (6) of Section 35 of this Act with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in Section 33 of this Act, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that executive board;

(b) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board;

(c) All unit owners of each condominium subject to the master association may elect specified members of that executive board; or

(d) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Any two (2) or more condominiums by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the pre-existing condominiums and the operations and activities of all associations of the pre-existing condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

(2) In addition to any other requirements of the declaration, the merger or consolidation of two (2) or more condominiums pursuant to subsection (1) of this section shall be evidenced by a recorded agreement duly executed by the president of the association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either:

(a) By stating the reallocations or the formulas upon which they are based; or

(b) By stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the pre-existing condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing condominium.

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless stated otherwise in the declaration, a unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association shall at all times consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under Section 29 of this Act, or their heirs, successors, or assigns. The association shall be organized as a for-profit or nonprofit

corporation or as an unincorporated association.

➔SECTION 34. A NEW SECTION OF KRS CHAPTER 381 IS CREATED 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 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 Section 43 of this Act;

(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 subsections (2), (4), and (6) of

Section 14 of this Act;

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 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 Section 52 of this Act, or statements of unpaid assessments;

(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 Sections 1 to 54 of this Act;

(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 or mechanical component which has made, or is in imminent danger of making, any unit unsafe, uninhabitable, or uninsurable, provided the association is first provided 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 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. Any emergency assessment made under this subsection may be reduced or rescinded by a vote of a simple majority of unit owners present at a subsequent special meeting.

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 381 IS CREATED 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 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) 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 proposed by the executive board.

(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 36. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) No special declarant right created or reserved under Sections 1 to 54 of this Act may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument

is not effective unless executed by the transferee.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by Sections 1 to 54 of this Act. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;

(b) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by Sections 1 to 54 of this Act or by the declaration relating to the retained special declarant rights and arising after the transfer; and

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Unless otherwise provided in a mortgage, in case of foreclosure of a mortgage, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant. The judgment or instrument conveying title shall provide for transfer of only the special declarant

rights requested.

(4) Upon foreclosure, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by Sections 1 to 54 of this Act or by the declaration;

(b) A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by Sections 1 to 54 of this Act or the declaration:

1. On a declarant which relate to his or her exercise or nonexercise of special declarant rights; or

2. On his or her transferor, other than:

a. Misrepresentations by any previous declarant;

b. Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

c. Breach of any fiduciary obligation by any previous declarant or his or her appointees to the executive board; or

d. Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if he or she is not an affiliate of a declarant, shall not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant; and

(d) A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (3) of this section, may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor shall not exercise any of those rights other than a right held by his or her transferor to control the executive board in accordance with subsection (4) of Section 35 of this Act for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under subsection (4) of Section 35 of this Act.

(6) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under Sections 1 to 54 of this Act or the declaration.

➔SECTION 37. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) The bylaws of the association shall provide for:

(a) The number of members of the executive board and the titles of the officers

of the association;

(b) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(c) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

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

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

(f) The method of amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

➔SECTION 38. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in subsection (2) of this section, subsection (7) of Section 44 of this Act, 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 Sections 1 to 54 of this Act, 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 39. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten (10) days nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

➔SECTION 40. A NEW SECTION OF KRS CHAPTER 381 IS CREATED 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 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 41. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) If only one (1) of the multiple owners of a unit is present at a meeting of the association, he or she is entitled to cast all the votes allocated to that unit. If more than one (1) of the multiple owners of a unit are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one (1) of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.
- (2) Votes allocated to a unit may be cast pursuant to proxy duly executed by a unit owner. If a unit is owned by more than one (1) person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section, except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.
- (3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units:
- (a) Subsections (1) and (2) of this section apply to lessees as if they were unit owners;
- (b) Unit owners who have leased their units to other persons shall not cast votes on those specified matters;
- (c) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners; and
- (d) Unit owners shall also be given notice, as provided in Section 39 of this Act,

of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast.

➔SECTION 42. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Neither the association nor any unit owner except the declarant shall be liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain.

(2) An action alleging a wrong done by the association shall be brought against the association and not against any unit owner.

(3) If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association shall be liable to the association or to any unit owner:

(a) For all tort losses not covered by insurance suffered by the association or that unit owner; and

(b) For all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission.

(4) Whenever the declarant is liable to the association under this section, the declarant shall be liable for all litigation expenses, including reasonable attorneys fees, incurred by the association.

(5) Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association shall be governed by Section 48 of this Act.

➔SECTION 43. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO

READ AS FOLLOWS:

- (1) Portions of the common elements may be conveyed or subjected to a lien or security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; however, all the owners of units to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a lien or security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.
- (2) An agreement to convey common elements or subject them to a lien or security interest shall be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof shall be recorded in every county in which a portion of the condominium is situated, and shall be effective only upon recordation.
- (3) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a lien or security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- (4) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, shall be void.
- (5) A conveyance or encumbrance of common elements pursuant to this section shall

not deprive any unit of its rights of access and support.

(6) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

➔SECTION 44. A NEW SECTION OF KRS CHAPTER 381 IS CREATED 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 Section 7 of this Act, 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, Section 29 of this Act governs the distribution of insurance proceeds if the condominium is terminated.

(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 45. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves may be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

➔SECTION 46. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made at least annually and based on a budget adopted at least annually by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsection (1) of Section 19 of

this Act. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association not exceeding eighteen percent (18%) per year.

(3) To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(c) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

(4) Assessments may be made to pay a judgment against the association and, if made, shall only be made against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(5) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his or her unit.

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

➔SECTION 47. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) The association shall have a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due and, if the assessment is payable in installments, the lien shall be for the full amount of the assessment at the time the first installment becomes due. The association's lien may be foreclosed in like manner as a mortgage on real

estate. Unless the declaration otherwise provides, fees, charges, late charges, reasonable collection costs, attorney fees, fines, and interest charged pursuant to subsection (1)(j) to (l) of Section 34 of this Act, shall be secured by the lien and enforceable as assessments under this section.

(2) A lien under this section shall take priority over all other liens and encumbrances on a unit, except:

(a) Liens and encumbrances recorded before the recordation of the declaration;

(b) A mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit.

(3) Unless the declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens shall have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section shall be required.

(5) A lien for unpaid assessments shall be extinguished unless proceedings to enforce the lien are instituted within five (5) years after the full amount of the assessments becomes due.

(6) Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(8) The association shall, upon written request, provide a unit owner a recordable

statement setting forth the amount of unpaid assessments against his or her unit.  
The statement shall be delivered within ten (10) business days after receipt of the request and shall be binding on the association, the executive board, and every unit owner.

➔SECTION 48. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) Except as provided in subsection (2) of this section, a judgment for money against the association, if recorded, shall not be a lien on the common elements but shall be a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner shall be subject to the claims of creditors of the association.
- (2) If the association has granted a lien or security interest in the common elements to a creditor of the association pursuant to Section 43 of this Act, the holder of that lien or security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.
- (3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien securing the obligation to pay for work performed or materials supplied before creation of the condominium, becomes effective against two (2) or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his or her unit, and the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be indexed in the name of the condominium and the association and, when so indexed, shall be notice of the lien against the units.

→SECTION 49. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

The association shall keep financial records sufficiently detailed to enable the association to comply with Section 52 of this Act. All financial and other records shall be made reasonably available for examination by any unit owner and his or her authorized agents.

→SECTION 50. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

With respect to a third person dealing with the association in the association's capacity as a trustee:

(1) The existence of trust powers and their proper exercise by the association may be assumed without inquiry;

(2) A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers;

(3) A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise; and

(4) A third person is not bound to ensure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

→SECTION 51. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) This section and Sections 53 and 54 of this Act apply to all units subject to Sections 1 to 54 of this Act, 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 Section 52 of this Act shall 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; or

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

➔SECTION 52. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) A seller of a unit shall furnish to a purchaser, 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 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 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) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(i) A statement describing any insurance coverage provided for the benefit of unit owners; and

(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 a 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 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 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.

➔SECTION 53. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Before conveying real estate to the association, the declarant shall have that real estate released from all liens, the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units.

➔SECTION 54. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

(1) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to Section 21 of this Act.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved or created by Sections 22, 23, 24, 25, and 27 of this Act.

➔Section 55. KRS 381.865 is amended to read as follows:

The administrator, or board of administration, or the person appointed pursuant to the bylaws of the regime, shall keep a book with a detailed account of the receipts and expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other common expenses incurred by or in behalf of the regime. Both the book and vouchers accrediting the entries made thereon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited or reviewed at least once a year by an independent accountant~~auditor~~ outside of the organization.

➔Section 56. This Act takes effect January 1, 2011.