

**2810.3400 OWNERS' ASSOCIATION.**

In subdivisions that involve a planned development or similar arrangement, the covenants, conditions, restrictions, articles of incorporation, bylaws, and other instruments for the management, regulation, and control of these types of subdivisions shall ordinarily provide, but need not be limited to:

- A. creation of an association of lot, parcel, unit, or undivided interest owners;
- B. a description of the areas or interests to be owned or controlled by owners in common;
- C. transfer of title and/or control of common areas, common facilities, and/or mutual and reciprocal rights of use to the owners in common or to an association thereof;
- D. procedures for calculating and collecting regular assessments to defray expenses attributable to the ownership, use, and operation of common areas and facilities with said assessments to be levied against each owner, including the subdivider, according to the ratio of the number of lots or units owned by each owner to the total of lots or units subject to the assessment, or on some other reasonable and equitable basis such as the selling price of the unit to the aggregate selling prices of all units subject to the assessment;
- E. procedures for establishing and collecting special assessments for capital improvements or other purposes on the same basis as for regular assessments with suitable monetary limitations on special assessments or expenditures without the prior approval of a majority of the owners affected;
- F. where appropriate, liens against privately owned subdivision properties and the foreclosure thereof on account of the nonpayment of assessments duly levied;
- G. where appropriate, annexation of additional land to the existing development with suitable substantive and procedural safeguards against increased per capital assessments on account of such annexation;
- H. monetary penalties and/or use privilege and voting suspensions of members for breaches of the restrictions, bylaws or other instruments for management and control of the subdivision with procedures for hearings for disciplined members;
- I. creation of a board of directors or other governing body for the owners' association with the members of said body to be elected by a vote of members of the association at an annual or special meeting to be held not later than six months after the sale of the first lot, unit, or undivided interest of the subdivision;
- J. procedures for the election and removal of members of the governing body which shall include concurrent terms for members and cumulative voting features in the election and removal of such members;

K. enumeration of the powers of the governing body which shall normally include at least the following:

(1) the enforcement of applicable provisions of the restrictions, bylaws, and the other instruments for the management and control of the subdivision;

(2) payment of taxes and assessments which are or could become a lien on the common area or some portion thereof;

(3) delegation of its powers to committees, officers, or employees;

(4) contracting for materials and/or services for the common area or the owners' association with the term of any service contract limited to a duration of one year, except with the approval of a majority of the members of the owners' association, except in those subdivisions where the terms of the management contract have been approved by the Federal Housing Administration or Veterans Administration;

(5) contracting for fire, casualty, liability, and other insurance on behalf of the owners' association;

(6) entry upon any privately owned lot or unit where necessary in connection with construction, maintenance, or repair for the benefit of the common area or the owners in common;

L. allocation of voting rights to members of the owners' association on the basis of lot or unit ownership or on some other reasonable and equitable basis;

M. preparation of an annual operating statement reflecting income and expenditures of the association for its fiscal year with provision for distribution of a copy of said report to each member within 90 days after the end of the fiscal year;

N. annual and special meetings of members within the subdivision or as close thereto as practicable;

O. reasonable, and in no case less than ten days, written notice to members of annual and special meetings specifying the place, day, and hour, and in the case of special meetings, the nature of the business to be undertaken;

P. quorum requirements for members' meetings ranging from 25 percent to 50 percent of the total membership depending upon the nature of the subdivision and other relevant factors;

Q. voting proxies for members' meetings;

R. amendment of those provisions of the restrictions, bylaws, or rules that relate to the management, operation, and control of the owners' association and/or the common areas, common facilities or interests; depending upon the nature of the right or obligation

to be affected by the amendment, the commissioner will ordinarily consider as reasonable amendments enacted as follows:

(1) restrictions: 51 percent of all of the owners; and

(2) bylaws or rules: 51 percent of all of the owners;

S. prohibition or restrictions upon the severability of commonly owned interests through partition or otherwise;

T. action to be taken and procedures to be followed in the event of destruction or extensive damage to the common areas or facilities including provisions respecting the use and disposition of insurance proceeds payable to the association on account of such destruction or damage.

**Statutory Authority:** *MS s 83.38*

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