

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1668

By: Vaughn of the House

and

Coffee of the Senate

COMMITTEE SUBSTITUTE

[Oklahoma Real Estate Development Act - homeowners associations - dispute resolution - noncompliance - repealer - codification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 850 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Real Estate Development Act".

SECTION 2. AMENDATORY 60 O.S. 2001, Section 851, is amended to read as follows:

Section 851. ~~The term "real~~ A. As used in the Oklahoma Real Estate Development Act, unless the context otherwise requires:

1. "Amend" or "amendment" means change in any form, including without limitation, the addition of new language or a new subject not previously addressed;

2. "Annual assessments" means a sum charged annually to the lot owners on a reasonable prorated basis, as set forth in the declaration or governing documents for the payment of common expense liability, including, but not limited to, the operating expenses of the owners' association. Provided, the declarant may elect to

charge reduced annual assessments or exempt from payment of annual assessment lot owners who are not owner occupants;

3. "Board of directors" means the body, regardless of name, designated in the declaration to act on behalf of the association;

4. "Common areas" means:

a. any real estate within a real estate development which is owned by the association, other than a lot, and

b. any other interests in real estate for the benefit of lot owners which are subject to the declaration;

5. "Common expenses" means expenditures made by, or financial liabilities of, the association, including, but not limited to, general operating and reserve expenses;

6. "Common expense liability" means the liability for common expenses allocated to each lot pursuant to the declaration or governing documents;

7. "Declarant" means any person or group of persons acting in concert who:

a. as part of a common promotional plan, offers to dispose of the interest in a lot not previously disposed of, or

b. succeeds to any development right or obligation;

8. "Declaration" means any instruments, covenants, owner certificates, and other filed documents, however denominated but not a plat, that create a real estate development, including any amendments to those filed documents;

9. "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

a. add real estate to a real estate development,

b. create lots or common areas, or

c. subdivide lots or convert lots into common areas;

10. "Governing documents" means the plat, declaration, deeds, articles of incorporation, bylaws, rules and regulations and other

documents which govern the operation of the real estate development or owners' association;

11. "Lot" means a physical portion of the real estate development designated for separate ownership or occupancy, the boundaries of which are described pursuant to the declaration;

12. "Lot owner" or "owner" means a declarant or other person who owns or holds legal or equitable title to a lot, but does not include a person having an interest in a lot solely as security for an obligation;

13. "Owner occupant" means the lot owner occupying a residence constructed on a lot located in a real estate development;

14. "Owners' association" means an association created under subsection A of Section 852 of this title or Section 42-106.1 of Title 11 of the Oklahoma Statutes;

15. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal entity;

16. "Plat" means the instrument filed in the office of the county clerk within which the real estate development is located, setting forth the boundary lines for the lots, common areas, easements and areas dedicated for public purposes, and as governed by Section 288.1 of Title 19 of the Oklahoma Statutes;

17. "Real estate" means any estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that 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 space that may be filled with air or water;

18. "Real estate development" means real estate with respect to which a person, by virtue of their ownership of a lot, is obligated to pay for real estate taxes, insurance premiums, maintenance, or

improvement of other real estate described in the declaration. Real estate development shall also include developments:

~~1. Which~~

a. which consist or will consist of separately owned lots, parcels or areas with either or both of the following features:

~~a. One~~

(1) one or more additional contiguous or noncontiguous lots, parcels or areas owned in common by the owners of the separately owned lots, parcels or areas~~;~~

~~b. Mutual~~

(2) mutual, common or reciprocal interests in or restrictions upon, all or portions of such separately owned lots, parcels or areas, or both~~;~~ or

~~2. The~~

b. the estate in a separately or commonly owned lot, parcel or area may be an estate of inheritance, estate in fee, an estate for life, or an estate for years.

Either common ownership of the additional contiguous or noncontiguous lots, parcels or areas referred to in ~~subparagraph a.~~ division (1) of paragraph 1. above subparagraph a of this paragraph, or the enjoyment of the mutual, common or reciprocal interests in, or restrictions upon the separately owned lots, parcels or areas pursuant to ~~subparagraph b.~~ division (2) of paragraph 1. above subparagraph a of this paragraph, or both, may be through ownership of shares of stock or membership in an owners association or otherwise;

19. "Residential purposes" means use for dwelling purposes;

20. "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures

payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation; and

21. "Special assessments" means a sum other than annual assessments assessed by an association uniformly to all lots for the purpose of construction, replacement or maintenance of improvements or other extraordinary expenses of the owners' association.

B. All provisions of the governing documents are severable.

C. The rule against perpetuities does not apply to defeat any provision of the governing documents.

D. In the event of a conflict between the provisions of the governing documents, the declaration prevails, except to the extent the declaration is inconsistent with the Oklahoma Real Estate Development Act.

E. All provisions of the Oklahoma Real Estate Development Act shall be construed as to affect the overall purpose of the real estate development plan, including the establishment and operation of a valid owners' association and the protection of rights of owners and their property values.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 852a of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any governing document language to the contrary, a real estate development is created by recording a declaration executed in the same manner as a deed. If the governing documents provide for any common area, or for the owners to bear a common expense liability, or for the enforcement of covenants or restrictions, an owners' association shall be created upon the

filing of the declaration. The filing of a declaration requiring common area ownership or common expense liability or enforcement shall be prima facie evidence of the creation of the owners' association at the time of filing. The declaration shall be recorded in every county in which any portion of the real estate development is located.

B. In a real estate development, if the right is expressly reserved in the declaration, the declarant may annex property lying contiguous to the real estate development by amending the declaration during the period of time so provided in the declaration for such annexation.

C. 1. The declaration shall contain:

- a. the names of the real estate development and the owners' association,
- b. the name of every county in which any part of the real estate development is situated,
- c. a legally sufficient description of the real estate permitted to be included in the real estate development,
- d. a description of any real estate as set forth in the plat that is or must become common areas,
- e. a description of any development rights reserved by the declarant,
- f. if annexation or additional properties may be added to the real estate development and owners' association at a future time, a statement that the declarant has reserved the right to annex or add contiguous properties to the real estate development,
- g. each pro rata allocation of common expense liabilities, and
- h. initial covenants, conditions, obligations or restrictions related to the uses or occupancy of a lot

or other property located within the real estate development.

2. The declaration may contain any other matters appropriate for real estate development.

D. 1. Unless otherwise provided, the declaration may be amended by a majority vote of the then record owners of lots in the real estate development. The original declarant may provide in the declaration that as long as the declarant owns a lot within the real estate development the declarant may unilaterally amend the declaration. Such unilateral declarant amendments shall be consistent with the overall plan for the real estate development; or designed to remedy problems within the real estate development not anticipated at the time the declaration was filed, and the amendments cannot significantly increase the common expense liability for other lot owners. Once more than ninety percent (90%) of the lots within the real estate development have been sold to owner occupants, such unilateral amendments can only occur with the concurrence of a majority vote of the board of directors of the owners' association.

2. No action to challenge the validity of an amendment adopted by the declarant or lot owners pursuant to this section may 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 real estate development is located and is effective only upon recordation.

4. Amendments to the declaration shall be prepared, executed, recorded in the office of the county clerk where the real estate development is located, and certified on behalf of the association by the president and secretary or other appropriate officers of the association. The certification shall include a statement that the required percentage of votes of lot owners approving the amendments was obtained. The original signatures of the lot owners approving

the amendments shall be retained in the business records of the association, and made available for inspection and copying by any lot owner, or the lot owner's designated legal, or other representatives on reasonable advance notice. Amendments adopted pursuant to the amendment rights of the declarant shall be prepared, executed and recorded by the declarant.

E. 1. Any development right created or reserved under the Oklahoma Real Estate Development Act or within the governing documents may be transferred from the declarant to another person only by a recorded instrument, other than a deed providing for the transfer of the development right.

SECTION 4. AMENDATORY 60 O.S. 2001, Section 854, is amended to read as follows:

Section 854. ~~Membership of said owners~~ A. 1. After creating the owners' association by the filing of a declaration, the declarant may organize an owners' association shall consist of recorded owners of separately owned lots in the real estate development. Membership is transferred upon legal transfer of title to the separately owned lots. The owners association may also enforce the covenant and restrictions of the real estate development when specified by the covenants and restrictions as a nonprofit corporation, trust or other business entity. The membership of the association at all times consists exclusively of all lot owners.

2. The owners of more than fifty percent (50%) of the lots within any existing or future real estate development may further organize an owners' association into a nonprofit corporation or other business entity at any time.

B. An owners' association may exercise the following powers:

1. Adopt and amend budgets for revenues, expenditures, and reserves and collect both annual and special assessments;

2. Impose charges for late payment of assessments, including interest charges of up to eighteen percent (18%) per annum and, after notice and an opportunity to be heard, levy reasonable fines for violations of the governing documents;
3. Exercise any other powers conferred by the governing documents;
4. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and
5. Exercise any other powers necessary and proper for the governance and operation of the association.

C. Bylaws may be adopted for an owners' association in any manner provided by the laws of this state. Bylaws may be recorded in the office of the county clerk in which the real estate development is located. If adopted, the bylaws of the owners' association shall include:

1. The number of members of the board of directors and the titles of the officers of the owners' association;
2. Election by the board of directors of a president, vice president, treasurer, secretary and any other officers of the owners' association the bylaws specify;
3. The qualifications, powers and duties, terms of office, and manner of electing and removing members and officers of the board of directors and filling vacancies; and
4. Amendment of the bylaws by a majority vote of the board of directors.

D. Except as provided in the governing documents or limited by Oklahoma law, the board of directors may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board of directors appointed by the declarant shall exercise the degree of care and loyalty required of

a trustee. Officers and members of the board of directors not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under the Oklahoma General Corporation Act and in a fiduciary capacity with regard to the funds and assets of the association, including maintenance of common areas and improvements.

E. The declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. Further, as long as the declarant owns one lot within the real estate development, the declarant shall have the unilateral right to approve plans for all initial construction of owner-occupied residences on lots within the real estate development.

F. Except for approval of initial construction as set forth herein, declarant control of the owners' association terminates no later than the earlier of:

1. Sixty (60) days after conveyance of ninety percent (90%) of the lots within the real estate development to owner occupants;
2. The date specified in the declaration; or
3. The date the declarant records an instrument transferring all rights to control activities of the owners' association to the lot owners.

G. The declarant shall not turn over control of the owners' association to the lot owners, until the following have occurred:

1. The declarant delivers the signed originals or duplicate copies of the original governing documents, including any amendments thereto, the books and records of the owners' association, including resolutions and minutes, the bank statements and financial records of the owners' association, including an accounting for funds received and expenditures made utilizing assessments obtained from the lot owners, and any unexpected funds collected from the lot

owners for maintenance of the common areas or operation of the owners' association;

2. The common areas and improvements, if any, are deeded to the owners' association free and clear of any outstanding claims, including real property taxes; and

3. The declarant furnishes to the lot owners thirty (30) days' advance written notice of the intent of the declarant to transfer control of the owners' association and responsibility for maintenance of the common areas and improvements to the lot owners, including notice of the date, time and location of a meeting. At the meeting, the declarant will transfer the documents, records, funds and deed(s) as set forth herein and at expense of the declarant for orderly transition of control of the owners' association from the declarant to the lot owners.

H. 1. Not later than sixty (60) days after conveyance of fifty percent (50%) of the lots to owner occupants, the declarant shall appoint one owner occupant to the board of directors.

2. No later than the termination of any period of declarant control, the lot owners shall elect a board of directors of at least three members, at least a majority of whom must be lot owners. The board of directors shall appoint the officers. The members and officers of the board of directors shall take office upon election.

3. Any provision of the governing document notwithstanding, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes that may be cast for election of the board of directors are present in person or by proxy at the beginning of the meeting.

4. Any provision of the governing documents notwithstanding, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

5. Except as otherwise provided within this section, each lot shall have one vote in association matters, which may be subject to a good standing provision. The declaration may provide for the declarant to have more than one vote per lot, until such time as declarant transfers control of the owners' association over to the lot owners as set forth in subsection G of this section.

SECTION 5. AMENDATORY 60 O.S. 2001, Section 855, is amended to read as follows:

Section 855. ~~The powers granted the owners association under this act~~ A. The Oklahoma Real Estate Development Act shall apply only to owners associations all real estate developments created subsequent to after the effective date of this act. The Oklahoma Real Estate Development Act and any amendments thereto shall be a part of the charter or certificate of incorporation of every owners' association existing on the effective date of this act, except so far as the same are inapplicable and inappropriate to the objects of the owners' association. The provisions of this section shall not affect or impair as to any owners' association any rights protected or guaranteed by the Constitution of this state or the United States.

B. The requirements of the Oklahoma Real Estate Development Act shall not apply to nonresidential or commercial real estate developments.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 856a of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Any person owning property in a real estate development or the owners' association created under the Oklahoma Real Estate Development Act shall be entitled to bring an action against any other person to enforce any of the restrictions and covenants or obligations under any governing document of the real estate development. In any action to enforce any restriction and covenant

or obligation of any governing document pursuant to the provisions of this section, the prevailing party shall be entitled to recover reasonable attorney fees to be determined by the court, which shall be taxed as costs in the action.

B. The association has a statutory lien on a lot for any assessment levied against that lot or fines imposed against its lot owner. Recording of the declaration that provides for a common expense liability constitutes record notice and perfection of the lien to lot owners taking title subsequent to the filing of the declaration. The owners' association lien may be foreclosed in any manner provided by law for the foreclosure of mortgages or deeds of trust, with or without power of sale.

SECTION 7. REPEALER 60 O.S. 2001, Section 852, is hereby repealed.

SECTION 8. This act shall become effective November 1, 2004.

49-2-3033 TEK 6/12/2015 1:56:38 PM