

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1668

By: Vaughn

AS INTRODUCED

An Act relating to property; enacting the Oklahoma Real Estate Development Act; amending 60 O.S. 2001, Sections 851, 854 and 855, which relate to definitions and membership and application of the act; modifying certain definition; adding definitions; providing real estate development creation procedures; providing annexation under certain circumstances; providing certain procedures; providing procedure of amending declaration to add real estate; providing declaration requirements; allowing discretionary provisions in a declaration; providing bylaw requirements; allowing discretionary bylaws to be added; providing for amendment to declaration procedures; providing for challenges to amendments; providing amendment recordation procedure; providing procedures to extend development rights; providing procedures for exercising special declarant or development rights; providing for reservation of development rights; providing procedure to subdivide or convert certain lots; providing for withdrawal procedure for certain lots; providing for transfer of special declarant or development rights under certain circumstances; providing transferor liability; providing for successor obligations under certain circumstances; providing for organization of homeowners associations; modifying membership qualifications; requiring that homeowners associations be organized as a valid business entity; providing general powers; providing certain restrictions on declaration; providing for a board of directors and officers; providing limitations on board; requiring the board to provide a budget summary to lot owners under certain circumstances; providing for a meeting for ratification; providing ratification procedures; providing certain limitations of control of the declarant; providing for transfer of the board from declarant to the lot owners under certain circumstances; providing board election procedures for lot owners; providing removal procedures for board members; providing for certain duties of the association; providing for sole liability of a declarant for certain expenses; providing meeting procedures for associations; providing voting procedures; providing for proxies; providing for revocation and termination of proxies; providing voting procedures for lessees; prohibiting votes by lots owned by the association; providing procedures for assessment; requiring common expenses to be assessed against certain lots; providing interest rate for past due common expenses; providing certain

variations of common expenses; providing for applicability of act to certain real estate developments; providing for applicability of amendments to act; providing for applicability of the act for developments created prior to the effective date under certain circumstances; providing definition of nonresidential real estate development; providing for applicability of act under certain circumstances; providing for alternate dispute resolution; providing procedures; providing that the association has a statutory lien on certain lots; providing that certain expenses are enforceable as assessments; providing for lien priority; providing certain exceptions; providing for recordation; providing for certain limitation of action; requiring certain statement be furnished to the association upon written request; providing procedures for lien foreclosure by an association; providing limitations on lot owners for certain judgments; providing enforcement procedure for security interest against common areas; providing for liens against multiple lots; providing lot owner portion of responsibility; providing for method of indexing a judgment against association; providing for noncompliance with the act; providing for damages and certain fees; requiring certain constructed items be completed according to depiction or design prior to conveyance of title; providing for codification; and providing an 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. "Association" or "lot owners' association" means the lot owners' association created under subsection A of Section 854 of this title;

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

3. "Common areas" means:

- a. any real estate within a real estate development which is owned or leased 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;

4. "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves;

5. "Common expense liability" means the liability for common expenses allocated to each lot pursuant to paragraph 2 of subsection F of Section 854 of this title;

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

- a. as part of a common promotional plan, offers to dispose of his or its interest in a lot not ever previously disposed of, or
- b. reserves or succeeds to any special declarant or development right;

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

8. "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,
- c. subdivide lots or convert lots into common areas, or
- d. withdraw real estate from a real estate development;

9. "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a lot, but the term does not include the transfer or release of a security interest;

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 homeowner association;

11. "Identifying number" means a symbol or address that identifies only one lot in a real estate development;

12. "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a lot, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a real estate development not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the real estate development is located;

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

14. "Plat" means the instrument filed in the county clerk's office within which the real estate development sits, as governed by Section 288.1 of Title 19 of the Oklahoma Statutes;

15. "Promotional material" means any written or verbal advertisement, brochure, pamphlet, or sign used to make an offering;

16. "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a lot other than:

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

b. as security for an obligation;

17. "Real estate" means any leasehold or other 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.

"Ownership of a lot" does not include holding a leasehold interest of less than twenty (20) years in a lot, including renewal options.

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 or recreational purposes, or both;

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;

21. "Special assessments" means, except in the context of Section 853 of this title, a sum, other than annual dues, assessed by an association uniformly to all lots;

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 pursuant to Section 852 of this title,
- b. exercise any development right pursuant to Section 852 of this title,

- c. maintain sales offices, management offices, signs advertising the real estate development, and models,
- d. use easements through the common areas for the purpose of making improvements within the real estate development or within real estate which may be added to the real estate development,
- e. exempt certain lots from any liability on the payment of assessments,
- f. merge or consolidate a real estate development with another real estate development of the same form of ownership, or
- g. appoint or remove any officer of the association or any master association or any board of directors member during any period of declarant control;

23. "Lot" means a physical portion of the real estate development designated for separate ownership or occupancy, the boundaries of which are described pursuant to subsection C of Section 852a of this title; and

24. "Lot 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. In a real estate development, the declarant is the owner of any lot created by the declaration.

B. Except as expressly provided in this act, the provisions of this act may not be varied by agreement, and rights conferred by it may not be waived. Except as provided in Section 852a of this title, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this act or the declaration.

C. All provisions of the governing documents are severable.

D. The rule against perpetuities does not apply to defeat any provision of the governing documents adopted pursuant to Section 854 of this title.

E. 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 this act.

F. Title to a lot and common areas is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this act. Whether a substantial failure impairs marketability is not affected by this act.

G. All provisions of this act and the governing documents shall be construed as to effect the overall purpose of a real estate development plan, including the establishment of a valid homeowners association and protection of rights of owners.

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 may be created pursuant to this act only 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 maintenance responsibility, a homeowners association shall be created upon the filing of the declaration. The filing of a declaration requiring such common area ownership or maintenance responsibility shall be prima facie evidence of the association's creation at the time of filing. The declaration must be recorded in every county in which any portion of the real estate development is located.

B. 1. In a real estate development, if the right is originally reserved in the declaration and the property that may be annexed is fully described in the declaration, the declarant may annex such

described property to the real estate development by amending the declaration during the period of time so provided in the declaration for such annexation. In the event sixty-seven percent (67%) of the lot owners within the real estate development refuse the annexation by a vote conducted in the same manner pursuant to Section 854 of Title 60 of the Oklahoma Statutes, the annexation shall not occur.

2. In a real estate development, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the real estate development without describing the location of that real estate in the original declaration; but, the amount of real estate added to the real estate development pursuant to this section may not exceed ten percent (10%) of the real estate described in subsection C of this section and the declarant may not in any event increase the number of lots in the real estate development beyond the number stated in the original declaration pursuant to subsection C of this section.

C. 1. The declaration shall contain:

- a. the names of the real estate development and the association and a statement that the real estate development is a real estate development under this act,
- 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 included in the real estate development,
- d. a description of any real estate that is or must become common areas,
- e. 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,

f. 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) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, 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,

g. any other conditions or limitations under which the rights described in subparagraph e of this paragraph may be exercised or will lapse,

h. an allocation to each lot of the allocated interests,

i. any restrictions:

(1) on alienation of the lots, including any restrictions on leasing which exceed the restrictions on leasing lots which board of directors may impose pursuant to Section 854 of Title 60 of the Oklahoma Statutes, and

(2) on the amount for which a lot may be sold or on the amount that may be received by a lot owner on sale, condemnation, or casualty loss to the lot or to the real estate development, or on termination of the real estate development, and

- j. the recording data for recorded easements and licenses appurtenant to or included in the real estate development or to which any portion of the real estate development is or may become subject by virtue of a reservation in the declaration.

2. The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a lot or the number or other qualifications of persons who may occupy lots.

D. 1. If an association is created under this section, the declarant shall adopt a set of bylaws for the association prior to the sale of the first lot. The bylaws may be recorded. The bylaws of the association shall provide:

- a. the number of members of the board of directors and the titles of the officers of the association,
- b. election by the board of directors 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 board of directors members and offices and filling vacancies,
- d. which, if any, of its powers the board of directors 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. amendment of the bylaws by a majority vote of the board of directors.

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

E. 1. Except in cases of amendments that may be executed by a declarant under subsection B or F of this section, and except as limited by paragraph 4 of this subsection, the declaration may be amended only by vote or agreement of lot owners of lots to which at least fifty percent (50%) of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association 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 must be recorded in every county in which any portion of the real estate development is located and is effective only upon recordation.

4. Except to the extent expressly permitted or required by other provisions of the Oklahoma Real Estate Development Act, no amendment may create or increase special declarant rights in the absence of unanimous consent of the lot owners.

5. Amendments to the declaration required by the Oklahoma Real Estate Development Act to be recorded must be prepared, executed, recorded, and certified on behalf of the association or lot owners by any two officers of the association designated for that purpose or, in the absence of designation, by the president and secretary of the association. Such amendment shall include the name and lot ownership of each owner voting to approve the amendment.

6. The time limits specified in the declaration pursuant to Section 852 of Title 60 of the Oklahoma Statutes within which reserved development rights must be exercised may be extended, and additional development rights may be created, 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 lots not owned by the declarant, agree to that action. The agreement is

effective thirty (30) days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the thirty-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

F. 1. To exercise any special declarant or development right reserved under subsection D of this section, the declarant shall prepare, execute, and record an amendment to the declaration pursuant to subsection F of this section. The declarant is the lot owner of any lots thereby created. The amendment to the declaration must assign an identifying number to each new lot created, and, except in the case of subdivision or conversion of lots described in subsection B of this section, reallocate the allocated interests among all lots. The amendment must describe any common areas.

2. Development rights may be reserved within any real estate added to the real estate development if the amendment adding that real estate includes all matters required by subsection D or E of this section, as the case may be. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to subparagraph e of paragraph 1 of subsection C of this section.

3. Whenever a declarant exercises a development right to subdivide or convert a lot previously created into additional lots, common areas, or both:

- a. if the declarant converts the lot entirely to common areas, the amendment to the declaration must reallocate all the allocated interests of that lot among other lots equally, and
- b. if the declarant subdivides the lot into two or more lots, whether or not any part of the lot is converted

into common areas, the amendment to the declaration must reallocate all the allocated interests of the lot among the lots created by the subdivision in any reasonable manner prescribed by the declarant.

4. If the declaration provides, pursuant to subparagraph e of paragraph 1 of subsection C of this section, that all or a portion of the real estate is subject to a right of withdrawal:

- 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 lot has been conveyed to a purchaser, and
- b. if any portion is subject to withdrawal, it may not be withdrawn after a lot in that portion has been conveyed to a purchaser.

G. 1. Notwithstanding any contrary provisions in any governing document, a special declarant or development right, as defined by Section 851 of Title 60 of the Oklahoma Statutes, created or reserved under the Oklahoma Real Estate Development Act or within the governing documents may be transferred from the declarant only to a person owning fifty-one percent (51%) of the lots not previously sold in the real estate development and only by an instrument, other than a title transfer instrument such as a deed, evidencing the transfer recorded in every county in which any portion of the real estate development is located. The instrument is not effective unless executed and acknowledged by both the transferor and 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 the

transferor by the Oklahoma Real Estate Development Act. Lack of privity does not deprive any lot 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 real estate development,
- c. if a transferor retains any special declarant rights, 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 the Oklahoma Real Estate Development 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 instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any lots owned by a declarant or real estate in a real estate development subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in

the declaration pursuant to Section 852 of Title 60 of the Oklahoma Statutes and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

4. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all interests in a real estate development 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 this act or by the declaration,
- b. a successor to any special declarant right, other than a successor described in subparagraphs c and d of this paragraph or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this act or the declaration:
 - (1) on a declarant which relate to the successor's exercise or nonexercise of special declarant rights, or
 - (2) on his transferor, other than:
 - (a) misrepresentations by any previous declarant,

- (b) warranty obligations on improvements made by any previous declarant, or made before the real estate development was created,
 - (c) breach of any fiduciary obligation by any previous declarant or his appointees to the board of directors, 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, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, or
- d. a successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under paragraph 3 of this subsection, may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any lot or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor of the successor to control the board of directors in accordance with paragraph 4 of subsection C of Section 854 of Title 60 of the Oklahoma Statutes 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, the successor declarant is not subject to any liability or obligation as a declarant other than liability for overt acts and omissions.

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 this act or the declaration.

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

Section 854. ~~Membership of said owners~~ A. 1. The declarant shall organize a homeowners 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 no later than the date the first lot in the real estate development is conveyed. The membership of the association at all times consists exclusively of all lot owners or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation, trust, or other valid business entity.

2. The owners of fifty-one percent (51%) of the lots within the real estate development may further organize the homeowner association into a corporate entity at any time.

B. 1. Except as provided in paragraph 2 of this subsection, and subject to the provisions of the declaration, the association may, but not limited to, exercise the following powers:

a. adopt and amend bylaws and rules,

- b. adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot 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 or more lot owners on matters affecting the real estate development,
- e. make contracts and incur liabilities,
- f. regulate the use, maintenance, repair, replacement, and modification of common areas,
- g. cause additional improvements to be made as a part of the common areas,
- h. acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but common areas may be conveyed or subjected to a security interest only pursuant to the governing documents,
- i. grant easements, leases, licenses, and concessions through or over the common areas,
- j. impose and receive any payments, fees, or charges for the use, rental, or operation of the common areas, and for services provided to lot owners,
- 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 of the association,
- l. impose reasonable charges for the preparation and recordation of amendments to the declaration, or statements of unpaid assessments,

- m. provide for the indemnification of its officers and board of directors 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 the declaration expressly so provides,
- o. exercise any other powers conferred by the declaration or bylaws,
- p. exercise all other powers that may be exercised in this state by legal entities of the same type as the association,
- q. exercise any other powers necessary and proper for the governance and operation of the association, and
- r. by rule, require that disputes between the board of directors and lot owners or between two or more lot owners regarding the real estate development must be submitted to nonbinding alternative dispute resolution in the manner described in the rule as a prerequisite to commencement of a judicial proceeding.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed and the power of the association to deal with other persons.

C. 1. 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 Code.

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

3. Within thirty (30) days after adoption of any proposed budget for the real estate development, the board of directors shall provide a summary of the budget to all the lot owners and shall set a date for a meeting of the lot owners to consider ratification of the budget not less than fourteen (14) days nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all lot owners, or any larger vote specified in the declaration, reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or not presented, the periodic budget last ratified by the lot owners must be continued until such time as the lot owners ratify a subsequent budget proposed by the board of directors.

4. Subject to paragraph 5 of this subsection, 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. 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 lots that may be created to lot owners other than a declarant,
- b. two (2) years after all declarants have ceased to offer lots for sale in the ordinary course of business,
- c. two (2) years after any right to add new lots was last exercised, or

d. the day the declarant, after giving written notice to lot owners, records an instrument voluntarily surrendering all rights to control activities of the association. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, 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 lots that may be created to lot owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the board of directors must be elected by lot owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the lots that may be created to lot owners other than a declarant, not less than sixty percent (60%) of the members of the board of directors must be elected by lot owners other than the declarant.

6. 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 elect the officers. The members and officers of the board of directors shall take office upon election.

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

D. 1. Except to the extent provided by the declaration, the association is responsible for maintenance, repair, and replacement of the common areas, and each lot owner is responsible for maintenance, repair, and replacement of their lot. Each lot owner shall afford to the association and other lot owners, and to their agents or employees, access through their lot reasonably necessary for those purposes. If damage is inflicted on the common areas or on any lot through which access is taken, the lot 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 lot owner has under this act, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other lot owner and no other portion of the real estate development 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.

3. In a real estate development, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common areas of lots.

E. 1. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by lot 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 lot or to any other mailing address designated in writing by the lot owner. The notice of any meeting

must 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 an officer or member of the board of directors.

2. Unless the bylaws provide otherwise, 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.

3. Unless the bylaws specify a larger percentage, 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.

4. If only one of several owners of a lot is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that lot. If more than one of the owners is present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

5. Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. A lot owner may revoke a proxy given pursuant to this section only 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.

6. If the declaration requires that votes on specified matters affecting the real estate development be cast by lessees rather than lot owners of leased lots, then:

- a. the provisions of paragraphs 6 and 7 of subsection C of this section apply to lessees as if they were lot owners,
- b. lot owners who have leased their lots to other persons may not cast votes on those specified matters, and
- c. lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners must also be given notice, in the manner provided in this section of all meetings at which lessees are entitled to vote.

7. No votes allocated to a lot owned by the association may be cast.

F. 1. Prior to assessing any lot for any assessment, the declarant shall prepare a budget based on the actual expenses of the association. Such budget shall not include any amount or calculation for expenses associated with the declarant's development costs. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

2. Except for assessments under provisions for special assessments, all common expenses must be assessed against all the lots in accordance with the allocations set forth in the declaration pursuant to Section 852 of this title. Any past due common expense assessment or installment thereof bears interest at the rate

established in the declaration, bylaws, or in the absence of such provision, eighteen percent (18%) per year.

3. To the extent required by the declaration:

- a. any common expense or portion thereof benefiting fewer than all of the lots must be assessed exclusively against the lots benefited, and
- b. the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

4. Assessments to pay a judgment against the association may be made only against the lots in the real estate development 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 lot owner, the association may assess that expense exclusively against his lot.

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

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

Section 855. ~~The powers granted the owners association under A.~~ Except as provided in subsection C of this act section, 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. Amendments to the Oklahoma Real Estate Development Act apply to all real estate developments created after the effective date of this act or any developments already subject to the act, regardless of when the amendment is adopted in this state.

B. Except as provided in Section 854 of this title, to the extent necessary in construing any of those sections, the Oklahoma Real Estate Development Act applies to all real estate developments created in this state before the effective date of the Oklahoma Real Estate Development Act; but those sections apply only with respect to events and circumstances occurring after the effective date of the Oklahoma Real Estate Development Act and do not invalidate existing provisions of the governing documents of those real estate developments.

C. 1. "Nonresidential real estate development" means a real estate development in which all lots are restricted exclusively to nonresidential purposes. Except as provided in paragraph 4 of this subsection, this section applies only to nonresidential real estate developments.

2. A nonresidential real estate development is not subject to this act unless the declaration otherwise provides.

3. The declaration of a nonresidential real estate development may provide that the entire act applies to the development or that only this section applies.

4. A real estate development that contains lots restricted exclusively to nonresidential purposes and other lots that may be used for residential purposes is not subject to the Oklahoma Real Estate Development Act unless the lots that may be used for residential purposes would comprise a real estate development in the absence of the nonresidential lots or the declaration provides that the Oklahoma Real Estate Development Act apply as provided in this subsection or subsection B of this section.

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. Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, prior to the

filing of a civil action by either an association or an owner solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments not in excess of Five Thousand Dollars (\$5,000.00), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this section, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a request for resolution. The request for resolution shall include:

1. A brief description of the dispute between the parties;
2. A request for alternative dispute resolution; and
3. A notice that the party receiving the request for resolution is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected.

Service of the request for resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 2004 of Title 12 of the Oklahoma Statutes. Parties receiving a request for resolution shall have thirty (30) days following service of the request for resolution to accept or reject alternative dispute resolution and, if not accepted within the thirty-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the request for resolution is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the request for resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

B. 1. The association has a statutory lien on a lot for any assessment levied against that lot or fines imposed against its lot owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subsection B of Section 854 of Title 60 of the Oklahoma Statutes are enforceable as assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a lot except:

- a. liens and encumbrances recorded before the recordation of the declaration,
- b. a first security interest on the lot 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 lot.

The lien is also prior to all security interests described in subparagraph b of this paragraph to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection B Section 854 of Title 60 of the Oklahoma Statutes which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessment made by the association. The lien under this section is not subject to the provisions of exemptions.

3. 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 is required.

4. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments becomes due.

- a. this section does not prohibit actions to recover sums for which this subsection creates a lien or prohibit an association from taking a deed in lieu of foreclosure, and
- b. a judgment or decree in any action brought under this section must include costs and reasonable attorney fees for the prevailing party.

5. The association upon written request shall furnish to a lot owner a statement setting forth the amount of unpaid assessments against the lot. If the lot owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the association, the board of directors, and every lot owner.

6. The association's lien may be foreclosed as provided in this subsection:

- a. the association's lien must be foreclosed in like manner as a mortgage on real estate or by the power of sale under Oklahoma law, and
- b. in the case of foreclosure under a power of sale, the association shall give reasonable notice of its action to all lien holders of the lot whose interest would be affected.

7. In an action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver to collect all sums alleged to be due and owing to a lot owner before commencement or during pendency of the action. The receivership is governed by Oklahoma law. The court may order the receiver to pay any sums held by the receiver to the association

during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to subsection B of Section 852 of Title 60 of the Oklahoma Statutes.

C. In real estate development:

1. Except as provided in subsection B of Section 852 of Title 60 of the Oklahoma Statutes, a judgment for money against the association, if recorded, if docketed, or if other procedures required under state law to perfect a lien on real estate as a result of a judgment, is not a lien on the common areas, but is a lien in favor of the judgment lien holder against all of the lots in the real estate development at the time the judgment was entered. No other property of a lot owner is subject to the claims of creditors of the association;

2. If the association has granted a security interest in the common areas to a creditor of the association pursuant to subsection B of Section 852 of Title 60 of the Oklahoma Statutes, the holder of that security interest shall exercise its right against the common areas before its judgment lien on any lot may be enforced;

3. Whether perfected before or after the creation of the real estate development, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the real estate development, becomes effective against two or more lots, the lot owner of an affected lot may pay to the lien holder the amount of the lien attributable to his lot, and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that lot. The amount of the payment must be proportionate to the ratio which that lot owner's common expense liability bears to the common expense liabilities of all lot owners whose lots are subject to the lien. After payment, the association may not assess or have

a lien against that lot owner's lot for any portion of the common expenses incurred in connection with that lien; and

4. A judgment against the association must be indexed in the name of the real estate development and the association and, when so indexed, is notice of the lien against the lots.

D. If a declarant or any other person subject to this act fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this act. The court, in an appropriate case, may award court costs and reasonable attorney fees.

E. Prior to conveying title of any common areas to the association or owners, the declarant shall construct and complete any common area improvements, amenities, depicted or designated in any promotional material.

SECTION 7. This act shall become effective November 1, 2003.

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