

FEB 19 2002  
COMMERCE AND REGULATION

HOUSE FILE 2442  
BY MURPHY

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the law on homeowners' associations.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2442

1 Section 1. NEW SECTION. 557D.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Assessment" or "amenity fee" means a sum of money  
5 payable to the association, to the developer or other owner of  
6 common areas, or to recreational facilities and other  
7 properties serving the parcels by the owners of one or more  
8 parcels as authorized in the governing documents, which, if  
9 not paid by the owner of a parcel, can result in a lien  
10 against the parcel.

11 2. "Association" means an Iowa corporation responsible for  
12 the operation of a community in which the voting membership is  
13 made up of parcel owners or their agents, or a combination  
14 thereof, and in which membership is a mandatory condition of  
15 parcel ownership, and which is authorized to impose  
16 assessments that, if unpaid, may become a lien on the parcel.  
17 The term "association" does not include a special district  
18 created pursuant to chapters 357 through 357H, 358, and 358C.

19 3. "Common area" means all real property within a  
20 community which is owned or leased by an association or  
21 dedicated for use or maintenance by the association or its  
22 members, including, regardless of whether title has been  
23 conveyed to the association, any of the following:

24 a. Real property, the use of which is dedicated to the  
25 association or its members by a recorded plat.

26 b. Real property committed by a declaration of covenants  
27 to be leased or conveyed to the association.

28 4. "Community" means the real property that is or will be  
29 subject to a declaration of covenants which is recorded in the  
30 county where the property is located.

31 5. "Declaration of covenants" or "declaration" means a  
32 recorded written instrument in the nature of covenants running  
33 with the land which subjects the land comprising the community  
34 to the jurisdiction and control of an association in which the  
35 owners of the parcels, or their association representatives,

1 must be members.

2 6. "Developer" means a person or entity that does either  
3 of the following:

4 a. Creates the community served by the association.

5 b. Succeeds to the rights and liabilities of the person or  
6 entity that created the community served by the association,  
7 if the succession is evidenced in writing.

8 7. "Governing documents" means both of the following:

9 a. The recorded declaration of covenants for a community,  
10 and all duly adopted and recorded amendments, supplements, and  
11 recorded exhibits to the declaration.

12 b. The articles of incorporation and bylaws of the  
13 homeowners' association, and any duly adopted amendments to  
14 them.

15 8. "Member" means a member of an association, and may  
16 include, but is not limited to, a parcel owner or an  
17 association representing parcel owners or a combination of  
18 each.

19 9. "Parcel" means a platted or unplatted lot, tract, unit,  
20 or other subdivision of real property within a community, as  
21 described in the declaration and to which the following apply:

22 a. Is capable of separate conveyance.

23 b. The parcel owner or an association in which the parcel  
24 owner must be a member is obligated as follows:

25 (1) By the governing documents to be a member of an  
26 association that serves the community.

27 (2) To pay to the association assessments that, if not  
28 paid, may result in a lien.

29 10. "Parcel owner" means the record owner of legal title  
30 to a parcel.

31 11. "Voting interest" means the voting rights distributed  
32 to the members of the association, pursuant to the governing  
33 documents.

34 Sec. 2. NEW SECTION. 557D.2 PURPOSES, SCOPE, AND  
35 APPLICATION.

1 1. The purposes of this chapter are to give statutory  
2 recognition to corporations that operate residential  
3 communities in this state, to provide procedures for operating  
4 homeowners' associations, and to protect the rights of  
5 association members without unduly impairing the ability of  
6 these associations to perform their functions.

7 2. The general assembly recognizes that it is not in the  
8 best interest of homeowners' associations or the individual  
9 association members to create or require a department or other  
10 agency of state government to regulate the affairs of  
11 homeowners' associations. Further, the general assembly  
12 recognizes that certain contract rights have been created for  
13 the benefit of homeowners' associations and members thereof  
14 before the effective date of this Act and that this chapter is  
15 not intended to impair such contract rights, including, but  
16 not limited to, the rights of the developer to complete the  
17 community as initially contemplated.

18 3. This chapter does not apply to any of the following:

19 a. A community that is composed of property primarily  
20 intended for commercial, industrial, or other nonresidential  
21 use.

22 b. The commercial or industrial parcels in a community  
23 that contains both residential parcels and parcels intended  
24 for commercial or industrial use.

25 4. This chapter does not apply to any association or  
26 similar entity that is formed by or for owners or residents of  
27 a manufactured home community or mobile home park, as both are  
28 defined in section 435.1, a residential cooperative under  
29 chapter 499A, a horizontal property regime under chapter 499B,  
30 or a time-share project under chapter 557A.

31 Sec. 3. NEW SECTION. 557D.3 ASSOCIATION POWERS AND  
32 DUTIES -- MEETINGS -- RECORDS -- BUDGETS.

33 1. POWERS AND DUTIES. On or after July 1, 2002, an  
34 association which operates a community in this state must be  
35 an Iowa corporation. The association must be incorporated and

1 the initial governing documents must be recorded in the  
2 official records of the county in which the community is  
3 located. An association may operate more than one community.  
4 The officers and directors of an association have a fiduciary  
5 relationship to the members who are served by the association.  
6 The powers and duties of an association include those set  
7 forth in this chapter and, except as expressly limited or  
8 restricted in this chapter, those set forth in the governing  
9 documents. A member does not have authority to act for the  
10 association by virtue of being a member. An association may  
11 have more than one class of members and may issue membership  
12 certificates.

13 2. BOARD MEETINGS. A meeting of the board of directors of  
14 an association occurs whenever a quorum of the board gathers  
15 to conduct association business. All meetings of the board  
16 must be open to all members except for meetings between the  
17 board and its attorney with respect to proposed or pending  
18 litigation where the contents of the discussion would  
19 otherwise be governed by the attorney-client privilege.  
20 Notices of all board meetings must be posted in a conspicuous  
21 place in the community at least forty-eight hours in advance  
22 of a meeting, except in an emergency. In the alternative, if  
23 notice is not posted in a conspicuous place in the community,  
24 notice of each board meeting must be mailed or delivered to  
25 each member at least seven days before the meeting, except in  
26 an emergency. Notwithstanding this general notice  
27 requirement, for communities with more than one hundred  
28 members, the bylaws may provide for a reasonable alternative  
29 to posting or mailing of notice for each board meeting,  
30 including publication of notice or provision of a schedule of  
31 board meetings. An assessment shall not be levied at a board  
32 meeting unless the notice of the meeting includes a statement  
33 that assessments will be considered and the nature of the  
34 assessments. Directors shall not vote by proxy or by secret  
35 ballot at board meetings, except that secret ballots may be

1 used in the election of officers. This subsection also  
2 applies to the meetings of any committee or other similar  
3 body, when a final decision will be made regarding the  
4 expenditure of association funds, and to any body vested with  
5 the power to approve or disapprove architectural decisions  
6 with respect to a specific parcel of residential property  
7 owned by a member of the community.

8 3. MINUTES. Minutes of all meetings of the members of an  
9 association and of the board of directors of an association  
10 must be maintained in written form or in another form that can  
11 be converted into written form within a reasonable time. A  
12 vote or abstention from voting on each matter voted upon for  
13 each director present at a board meeting must be recorded in  
14 the minutes.

15 4. OFFICIAL RECORDS. The association shall maintain each  
16 of the following items, when applicable, which constitute the  
17 official records of the association:

18 a. Copies of any plans, specifications, permits, and  
19 warranties related to improvements constructed on the common  
20 areas or other property that the association is obligated to  
21 maintain, repair, or replace.

22 b. A copy of the bylaws of the association and of each  
23 amendment to the bylaws.

24 c. A copy of the articles of incorporation of the  
25 association and of each amendment to the articles.

26 d. A copy of the declaration of covenants and a copy of  
27 each amendment to the declaration.

28 e. A copy of the current rules of the association.

29 f. The minutes of all meetings of the board of directors  
30 and of the members, which minutes must be retained for at  
31 least seven years.

32 g. A current roster of all members and their mailing  
33 addresses and parcel identifications.

34 h. All of the association's insurance policies or a copy  
35 of the policies, which policies must be retained for at least

1 seven years.

2 i. A current copy of all contracts to which the  
3 association is a party, including, without limitation, any  
4 management agreement, lease, or other contract under which the  
5 association has any obligation or responsibility. Bids  
6 received by the association for work to be performed must also  
7 be considered official records and must be kept for a period  
8 of one year.

9 j. The financial and accounting records of the  
10 association, kept according to good accounting practices. All  
11 financial and accounting records must be maintained for a  
12 period of at least seven years. The financial and accounting  
13 records must include all of the following:

14 (1) Accurate, itemized, and detailed records of all  
15 receipts and expenditures.

16 (2) A current account and a periodic statement of the  
17 account for each member, designating the name and current  
18 address of each member who is obligated to pay assessments,  
19 the due date and amount of each assessment or other charge  
20 against the member, the date and amount of each payment on the  
21 account, and the balance due.

22 (3) All tax returns, financial statements, and financial  
23 reports of the association.

24 (4) Any other records that identify, measure, record, or  
25 communicate financial information.

26 5. INSPECTION AND COPYING OF RECORDS. The official  
27 records shall be maintained within the state and must be open  
28 to inspection and available for photocopying by members or  
29 their authorized agents at reasonable times and places within  
30 ten business days after receipt of a written request for  
31 access. This subsection may be complied with by having a copy  
32 of the official records available for inspection or copying in  
33 the community.

34 a. The failure of an association to provide access to the  
35 records within ten business days after receipt of a written

1 request creates a rebuttable presumption that the association  
2 willfully failed to comply with this subsection.

3 b. A member who is denied access to official records is  
4 entitled to the actual damages or minimum damages for the  
5 association's willful failure to comply with this subsection.  
6 The minimum damages are to be fifty dollars per calendar day  
7 up to ten days, the calculation to begin on the eleventh  
8 business day after receipt of the written request.

9 c. The association may adopt reasonable written rules  
10 governing the frequency, time, location, notice, and manner of  
11 inspections, and may impose fees to cover the costs of  
12 providing copies of the official records, including, without  
13 limitation, the costs of copying. The association shall  
14 maintain an adequate number of copies of the recorded  
15 governing documents, to ensure their availability to members  
16 and prospective members, and may charge only its actual costs  
17 for reproducing and furnishing these documents to those  
18 persons who are entitled to receive them.

19 6. BUDGETS. The association shall prepare an annual  
20 budget. The budget must reflect the estimated revenues and  
21 expenses for that year and the estimated surplus or deficit as  
22 of the end of the current year. The budget must set out  
23 separately all fees or charges for recreational amenities,  
24 whether owned by the association, the developer, or another  
25 person. The association shall provide each member with a copy  
26 of the annual budget or a written notice that a copy of the  
27 budget is available upon request at no charge to the member.  
28 The copy must be provided to the member within the time limits  
29 set forth in subsection 5.

30 7. FINANCIAL REPORTING. The association shall prepare an  
31 annual financial report within sixty days after the close of  
32 the fiscal year. The association shall, within the time  
33 limits set forth in subsection 5, provide each member with a  
34 copy of the annual financial report or a written notice that a  
35 copy of the financial report is available upon request at no

1 charge to the member. The financial report must consist of  
2 either of the following:

3 a. Financial statements presented in conformity with  
4 generally accepted accounting principles.

5 b. A financial report of actual receipts and expenditures,  
6 cash basis, which report must show both of the following:

7 (1) The amount of receipts and expenditures by  
8 classification.

9 (2) The beginning and ending cash balances of the  
10 association.

11 8. ASSOCIATION FUNDS -- COMMINGLING.

12 a. All association funds held by a developer shall be  
13 maintained separately in the association's name. Reserve and  
14 operating funds of the association shall not be commingled  
15 prior to turnover except the association may jointly invest  
16 reserve funds. However, these jointly invested funds must be  
17 accounted for separately.

18 b. A developer in control of an association shall not  
19 commingle any association funds with the developer's funds or  
20 with the funds of any other homeowners' association or  
21 community association.

22 Sec. 4. NEW SECTION. 557D.4 RIGHT OF OWNERS TO PEACEABLY  
23 ASSEMBLE.

24 1. All common areas and recreational facilities serving  
25 any association shall be available to parcel owners in the  
26 association served thereby and their invited guests for the  
27 use intended for these common areas and recreational  
28 facilities. The entity or entities responsible for the  
29 operation of the common areas and recreational facilities may  
30 adopt reasonable rules and regulations pertaining to the use  
31 of these common areas and recreational facilities. An entity  
32 shall not unreasonably restrict any parcel owner's right to  
33 peaceably assemble or right to invite public officers or  
34 candidates for public office to appear and speak in common  
35 areas and recreational facilities.

1 2. An owner prevented from exercising rights guaranteed by  
2 subsection 1 may bring an action in the district court of the  
3 county in which the alleged infringement occurred and, upon  
4 favorable adjudication, the court shall enjoin the enforcement  
5 of any provision contained in any association document or rule  
6 that operates to deprive the owner of such rights.

7 Sec. 5. NEW SECTION. 557D.5 OBLIGATIONS OF MEMBERS --  
8 REMEDIES, PENALTIES, AND BOARD VACANCIES.

9 1. Each member and the member's tenants, guests, and  
10 invitees, and each association, are governed by, and must  
11 comply with, this chapter, the governing documents of the  
12 community, and the rules of the association. Actions at law  
13 or in equity, or both, to redress alleged failure or refusal  
14 to comply with these provisions may be brought by the  
15 association or by any member against any of the following:

16 a. The association.

17 b. A member.

18 c. Any director or officer of an association who willfully  
19 and knowingly fails to comply with these provisions.

20 d. Any tenants, guests, or invitees occupying a parcel or  
21 using the common areas.

22 The prevailing party in any litigation is entitled to  
23 recover reasonable attorney fees and costs. This section does  
24 not deprive any person of any other available right or remedy.

25 2. If the governing documents so provide, an association  
26 may suspend, for a reasonable period of time, the rights of a  
27 member or a member's tenants, guests, or invitees, or both, to  
28 use common areas and recreational facilities and may levy  
29 reasonable penalties, not to exceed one hundred dollars per  
30 violation, against any member or any tenant, guest, or  
31 invitee. A penalty may be levied on the basis of each day of  
32 a continuing violation, with a single notice and opportunity  
33 for hearing, except that the penalty shall not exceed one  
34 thousand dollars in the aggregate unless otherwise provided in  
35 the governing documents.

1 a. A penalty or suspension shall not be imposed without  
2 notice of at least fourteen days to the person sought to be  
3 penalized or suspended and an opportunity for a hearing before  
4 a committee of at least three members appointed by the board  
5 who are not officers, directors, or employees of the  
6 association, or the spouse, parent, child, brother, or sister  
7 of an officer, director, or employee. If the committee, by  
8 majority vote, does not approve a proposed penalty or  
9 suspension, it shall not be imposed.

10 b. The requirements of this subsection do not apply to the  
11 imposition of penalties or suspensions upon any member because  
12 of the failure of the member to pay assessments or other  
13 charges when due if that action is authorized by the governing  
14 documents.

15 c. Suspension of common-area-use rights shall not impair  
16 the right of an owner or tenant of a parcel to have vehicular  
17 and pedestrian ingress to and egress from the parcel,  
18 including, but not limited to, the right to park.

19 3. If the governing documents so provide, an association  
20 may suspend the voting rights of a member for the nonpayment  
21 of regular annual assessments that are delinquent in excess of  
22 ninety days.

23 4. If an association fails to fill vacancies on the board  
24 of directors sufficient to constitute a quorum in accordance  
25 with the bylaws, any member may petition the district court  
26 that has jurisdiction over the community served by the  
27 association for the appointment of a receiver to manage the  
28 affairs of the association. At least thirty days before  
29 applying to the district court, the member shall mail to the  
30 association, by certified mail or restricted certified mail,  
31 and post, in a conspicuous place on the property of the  
32 community served by the association, a notice describing the  
33 intended action, giving the association thirty days to fill  
34 the vacancies. If during such time the association fails to  
35 fill a sufficient number of vacancies so that a quorum can be

1 assembled, the member may proceed with the petition. If a  
2 receiver is appointed, the association shall be responsible  
3 for the salary of the receiver, court costs, attorney fees,  
4 and all other expenses of the receivership. The receiver has  
5 all the powers and duties of a duly constituted board of  
6 directors and shall serve until the association fills a  
7 sufficient number of vacancies on the board so that a quorum  
8 can be assembled.

9 Sec. 6. NEW SECTION. 557D.6 MEETINGS OF MEMBERS --  
10 VOTING AND ELECTION PROCEDURES -- AMENDMENTS.

11 1. QUORUM -- AMENDMENTS.

12 a. Unless a lower number is provided in the bylaws, the  
13 percentage of voting interests required to constitute a quorum  
14 at a meeting of the members shall be thirty percent of the  
15 total voting interests. Unless otherwise provided in this  
16 chapter or in the articles of incorporation or bylaws,  
17 decisions that require a vote of the members must be made by  
18 the concurrence of at least a majority of the voting interests  
19 present, in person or by proxy, at a meeting at which a quorum  
20 has been attained.

21 b. Unless otherwise provided in the governing documents or  
22 required by law, and other than those matters set forth in  
23 paragraph "c", any governing document of an association may be  
24 amended by the affirmative vote of two-thirds of the voting  
25 interests of the association.

26 c. Unless otherwise provided in the governing documents as  
27 originally recorded, an amendment shall not affect vested  
28 rights unless the record owner of the affected parcel and all  
29 record owners of liens on the affected parcels join in the  
30 execution of the amendment.

31 2. ANNUAL MEETING. The association shall hold a meeting  
32 of its members annually for the transaction of any and all  
33 proper business at a time, date, and place stated in, or fixed  
34 in accordance with, the bylaws. The election of directors, if  
35 one is required to be held, must be held at, or in conjunction

1 with, the annual meeting or as provided in the governing  
2 documents.

3 3. SPECIAL MEETINGS. Special meetings must be held when  
4 called by the board of directors or, unless a different  
5 percentage is stated in the governing documents, by at least  
6 ten percent of the total voting interests of the association.  
7 Business conducted at a special meeting is limited to the  
8 purposes described in the notice of the meeting.

9 4. CONTENT OF NOTICE. Unless law or the governing  
10 documents require otherwise, notice of an annual meeting need  
11 not include a description of the purposes for which the  
12 meeting is called. Notice of a special meeting must include a  
13 description of the purpose for which the meeting is called.

14 5. ADJOURNMENT. Unless the bylaws require otherwise,  
15 adjournment of an annual or special meeting to a different  
16 date, time, or place must be announced at that meeting before  
17 an adjournment is taken, or notice must be given of the new  
18 date, time, or place pursuant to section 557D.3, subsection 2.  
19 Any business that might have been transacted on the original  
20 date of the meeting may be transacted at the adjourned  
21 meeting.

22 6. PROXY VOTING. The members have the right, unless  
23 otherwise provided in this subsection or in the governing  
24 documents, to vote in person or by proxy. To be valid, a  
25 proxy must be dated, must state the date, time, and place of  
26 the meeting for which it was given, and must be signed by the  
27 authorized person who executed the proxy. A proxy is  
28 effective only for the specific meeting for which it was  
29 originally given, as the meeting may lawfully be adjourned and  
30 reconvened from time to time, and automatically expires ninety  
31 days after the date of the meeting for which it was originally  
32 given. A proxy is revocable at any time at the pleasure of  
33 the person who executes it. If the proxy form expressly so  
34 provides, any proxy holder may appoint, in writing, a  
35 substitute to act in the proxy holder's place.

1 7. ELECTIONS. Elections of directors must be conducted in  
2 accordance with the procedures set forth in the governing  
3 documents of the association. All members of the association  
4 shall be eligible to serve on the board of directors, and a  
5 member may nominate the member's self as a candidate for the  
6 board at a meeting where the election is to be held. Except  
7 as otherwise provided in the governing documents, boards of  
8 directors must be elected by a plurality of the votes cast by  
9 eligible voters.

10 8. RECORDING. A parcel owner may audiotape or videotape  
11 meetings of the board of directors and meetings of the  
12 members. The board of directors of the association may adopt  
13 reasonable rules governing the taping of meetings of the board  
14 and of the members.

15 Sec. 7. NEW SECTION. 557D.7 TRANSITION OF ASSOCIATION  
16 CONTROL IN A COMMUNITY.

17 With respect to associations, all of the following apply:

18 1. Members other than the developer are entitled to elect  
19 at least a majority of the members of the board of directors  
20 of the association when the earlier of the following events  
21 occurs:

22 a. Three months after ninety percent of the parcels in all  
23 phases of the community that will ultimately be operated by  
24 the association have been conveyed to members.

25 b. Another percentage of the parcels has been conveyed to  
26 members, or another date or event has occurred, as is set  
27 forth in the governing documents in order to comply with the  
28 requirements of any governmentally chartered entity with  
29 regard to the mortgage financing of the parcels.

30 For purposes of this section, the term "members other than  
31 the developer" shall not include builders, contractors, or  
32 others who purchase a parcel for the purpose of constructing  
33 improvements on the parcel for resale.

34 2. The developer is entitled to elect at least one member  
35 of the board of directors of the association as long as the

1 developer holds for sale in the ordinary course of business at  
2 least five percent of the parcels in all phases of the  
3 community. After the developer relinquishes control of the  
4 association, the developer may exercise the right to vote any  
5 developer-owned voting interests in the same manner as any  
6 other member, except for purposes of reacquiring control of  
7 the association or selecting the majority of the members of  
8 the board of directors.

9 3. At the time the members are entitled to elect at least  
10 a majority of the board of directors of the association, the  
11 developer shall, at the developer's expense, within no more  
12 than ninety days deliver all of the following to the board:

13 a. All deeds to common property owned by the association.

14 b. The original of the association's declarations of  
15 covenants and restrictions.

16 c. A certified copy of the articles of incorporation of  
17 the association.

18 d. A copy of the bylaws.

19 e. The minute books, including all minutes.

20 f. The books and records of the association.

21 g. Policies, rules, and regulations, if any, which have  
22 been adopted.

23 h. Resignations of directors who are required to resign  
24 because the developer is required to relinquish control of the  
25 association.

26 i. The financial records of the association from the date  
27 of incorporation through the date of turnover.

28 j. All association funds and control of them.

29 k. All tangible property of the association.

30 l. A copy of all contracts which may be in force with the  
31 association as one of the parties.

32 m. A list of the names and addresses and telephone numbers  
33 of all contractors, subcontractors, or others in the current  
34 employ of the association.

35 n. Any and all insurance policies in effect.

1 o. Any permits issued to the association by governmental  
2 entities.

3 p. All warranties in effect.

4 q. A roster of current members and their addresses and  
5 telephone numbers and section and lot numbers.

6 r. Employment and service contracts in effect.

7 4. This section does not apply to an association in  
8 existence on the effective date of this Act.

9 Sec. 8. NEW SECTION. 557D.8 PROHIBITED CLAUSES IN  
10 ASSOCIATION DOCUMENTS.

11 1. It is declared that the public policy of this state  
12 prohibits the inclusion or enforcement of certain types of  
13 clauses in association documents, including declaration of  
14 covenants, articles of incorporation, bylaws, or any other  
15 document of the association which binds members of the  
16 association, which either have the effect of or provide that:

17 a. A developer has the unilateral ability and right to  
18 make changes to the association documents after the transition  
19 of association control in a community from the developer to  
20 the nondeveloper members, as set forth in section 557D.7, has  
21 occurred.

22 b. An association is prohibited or restricted from filing  
23 a lawsuit against the developer, or the association is  
24 otherwise effectively prohibited or restricted from bringing a  
25 lawsuit against the developer.

26 c. After the transition of association control in a  
27 community from the developer to the nondeveloper members, as  
28 set forth in section 557D.7, has occurred, a developer is  
29 entitled to cast votes in an amount that exceeds one vote per  
30 residential lot.

31 The clauses in this subsection are declared null and void  
32 as against the public policy of this state.

33 2. Association documents, including declarations of  
34 covenants, articles of incorporation, or bylaws, shall not  
35 preclude the display of one United States flag by property

1 owners. However, the flag must be displayed in a respectful  
2 way and may be subject to reasonable standards for size,  
3 placement, and safety, as adopted by the association,  
4 consistent with federal law and any local ordinances.

5 Sec. 9. NEW SECTION. 557D.9 ASSESSMENTS AND CHARGES.

6 For any community created on or after July 1, 2002, the  
7 governing documents must describe the manner in which expenses  
8 are shared and specify the member's proportional share of  
9 them. Assessments levied pursuant to the annual budget or  
10 special assessment must be in the member's proportional share  
11 of expenses as described in the governing document, which  
12 share may be different among classes of parcels based upon the  
13 state of development of the parcels, levels of services  
14 received by the applicable members, or other relevant factors.  
15 While the developer is in control of the association, the  
16 developer may be excused from payment of its share of the  
17 operating expenses and assessments related to its parcels for  
18 any period of time for which the developer has, in the  
19 declaration, obligated itself to pay any operating expenses  
20 incurred that exceed the assessments receivable from other  
21 members and other income of the association.

22 Sec. 10. NEW SECTION. 557D.10 AGREEMENTS ENTERED INTO BY  
23 THE ASSOCIATION.

24 Any grant or reservation made by any document, and any  
25 contract with a term in excess of ten years made by an  
26 association before control of the association is turned over  
27 to the members other than the developer, which provide for  
28 operation, maintenance, or management of the association or  
29 common areas must be fair and reasonable.

30 Sec. 11. NEW SECTION. 557D.11 RECREATIONAL LEASEHOLDS --  
31 RIGHT TO ACQUIRE -- ESCALATION CLAUSES.

32 1. A lease of recreational or other commonly used  
33 facilities serving a community, which lease is entered into by  
34 the association or its members before control of the  
35 association is turned over to the members other than the

1 developer, must provide as follows:

2 a. That the facilities shall not be offered for sale  
3 unless the association has the option to purchase the  
4 facilities, provided the association meets the price and terms  
5 and conditions of the facility owner by executing a contract  
6 with the facility owner within ninety days, unless agreed to  
7 otherwise, from the date of mailing of the notice by the  
8 facility owner to the association. If the facility owner  
9 offers the facilities for sale, the owner shall notify the  
10 association in writing stating the price and the terms and  
11 conditions of sale.

12 b. If a contract between the facility owner and the  
13 association is not executed within the ninety-day period,  
14 unless extended by mutual agreement, then, unless the facility  
15 owner thereafter elects to offer the facilities at a price  
16 lower than the price specified in the owner's notice to the  
17 association, the owner has no further obligations under this  
18 subsection, and the owner's only obligation shall be as set  
19 forth in subsection 2.

20 c. If the facility owner thereafter elects to offer the  
21 facilities at a price lower than the price specified in the  
22 owner's notice to the association, the association will have  
23 an additional ten days to meet the price and terms and  
24 conditions of the facility owner by executing a contract.

25 2. If a facility owner receives a bona fide offer to  
26 purchase the facilities that the owner intends to consider or  
27 make a counteroffer to, the owner's only obligations shall be  
28 to notify the association that the owner has received an  
29 offer, to disclose the price and material terms and conditions  
30 upon which the owner would consider selling the facilities,  
31 and to consider any offer made by the association. The  
32 facility owner shall be under no obligation to sell to the  
33 association or to interrupt or delay other negotiations, and  
34 the owner shall be free at any time to execute a contract for  
35 sale of the facilities to a party or parties other than the

1 association.

2 3. a. As used in subsections 1 and 2, the term "notify"  
3 means the placing of a notice in the United States mail  
4 addressed to the president of the association. Each notice  
5 shall be deemed to have been given upon the deposit of the  
6 notice in the United States mail.

7 b. As used in subsection 1, the term "offer" means any  
8 solicitation by the facility owner directed to the general  
9 public.

10 4. This section does not apply to any of the following:

11 a. A sale or transfer to a person who would be included  
12 within the table of descent and distribution if the facility  
13 owner were to die intestate.

14 b. A transfer by gift, devise, or operation of law.

15 c. A transfer by a corporation to an affiliate. As used  
16 in this paragraph, "affiliate" means a shareholder of the  
17 transferring corporation; a corporation or entity owned or  
18 controlled, directly or indirectly, by the transferring  
19 corporation; or another corporation or entity owned or  
20 controlled, directly or indirectly, by a shareholder of the  
21 transferring corporation.

22 d. A transfer to a governmental or quasi-governmental  
23 entity.

24 e. A conveyance of an interest in the facilities  
25 incidental to the financing of the facilities.

26 f. A conveyance resulting from the foreclosure of a  
27 mortgage, deed of trust, or other instrument encumbering the  
28 facilities or a deed given in lieu of the foreclosure.

29 g. A sale or transfer between or among joint tenants in  
30 common owning the facilities.

31 h. The purchase of the facilities by a governmental entity  
32 under its powers of eminent domain.

33 5. a. The general assembly declares that the public  
34 policy of this state prohibits the inclusion or enforcement of  
35 escalation clauses in land leases or other leases for

1 recreational facilities, land, or other commonly used  
2 facilities that serve residential communities, and those  
3 clauses are declared void. For purposes of this subsection,  
4 an escalation clause is any clause in a lease which provides  
5 that the rental rate under the lease or agreement is to  
6 increase at the same percentage rate as any nationally  
7 recognized and conveniently available commodity or consumer  
8 price index.

9 b. This public policy prohibits the inclusion of the  
10 escalation clauses in leases entered into on or after July 1,  
11 2002.

12 c. This section is inapplicable to any of the following:

13 (1) If the lessor is the federal government, this state,  
14 any political subdivision of this state, or any agency of a  
15 political subdivision of this state.

16 (2) To an association that is in existence before July 1,  
17 2002.

18 Sec. 12. NEW SECTION. 557D.12 DISPUTE RESOLUTION.

19 The general assembly finds that alternative dispute  
20 resolution often reduces court dockets and trials and offers a  
21 more efficient, cost-effective option to litigation. At any  
22 time after the filing in a court of competent jurisdiction of  
23 a complaint relating to a dispute under this chapter, the  
24 court may order that the parties enter mediation or  
25 arbitration procedures.

26 Sec. 13. NEW SECTION. 557D.13 DECLARATION OF COVENANTS  
27 AND SURVIVAL AFTER TAX DEED OR FORECLOSURE.

28 All provisions of a declaration of covenants relating to a  
29 parcel that has been sold for taxes or special assessments  
30 survive and are enforceable after the issuance of a tax deed,  
31 or upon the foreclosure of an assessment, a certificate or  
32 lien, a tax deed, tax certificate, or tax lien, to the same  
33 extent that the provisions would be enforceable against a  
34 voluntary grantee of title to the parcel immediately before  
35 the delivery of the tax deed or immediately before the

1 foreclosure.

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EXPLANATION

3 This bill provides statutory recognition to corporations  
4 that operate residential communities in this state, to provide  
5 procedures for operating homeowners' associations, and to  
6 protect the rights of association members without unduly  
7 impairing the ability of these homeowners' associations to  
8 perform their functions. The bill does not apply to a  
9 community that is composed of property primarily intended for  
10 commercial, industrial, or other nonresidential use and does  
11 not apply to commercial or industrial parcels in a community  
12 that has both residential parcels and parcels intended for  
13 commercial and industrial use. In addition, the bill does not  
14 apply to associations formed by owners or residents of a  
15 manufactured home community, mobile home park, residential  
16 cooperative, horizontal property regime (condominiums), and a  
17 time-share project.

18 The bill provides the following:

19 That the association has broad powers limited only by the  
20 chapter in the bill and the initial governing documents.  
21 Meetings of the board of directors of the association, which  
22 must be established as an Iowa corporation, must be open to  
23 all owners of parcels in the community and general notice must  
24 be provided of the meeting dates. No assessment may be adopted  
25 at a meeting unless the notice of the meeting provides that an  
26 assessment will be considered. Minutes of each meeting shall  
27 be available to members and include all matters voted upon.  
28 Official records of the association shall be kept and made  
29 available to members. These include: plans for the  
30 community, bylaws, articles of incorporation, minutes, list of  
31 members, insurance policies, and financial and accounting  
32 records.

33 That the parcel owners have a right to use the common areas  
34 and recreational facilities of the community and the right of  
35 the parcel owners to peaceably assemble is not to be

1 restricted. Penalties are assessed for failure to follow the  
2 rules of the association or pay assessments.

3 That meetings of the members of the association be held  
4 annually for the election of directors of the association and  
5 the transaction of any other proper business. Proxy voting is  
6 allowed at these meetings.

7 That the control of the association is turned over to the  
8 members other than the developer when at least 90 percent of  
9 the parcels are owned by such members and all documents  
10 relating to and personal property and funds of the association  
11 are turned over to the members.

12 That the governing documents must describe the manner in  
13 which expenses are shared and the member's proportional share  
14 of them. Assessments shall be levied pursuant to an annual  
15 budget and must be in the member's proportional share.

16 However, the share may be different among classes of parcels,  
17 services rendered, or other relevant factors.

18 That recreational facilities or other common facilities  
19 that are leased by the association prior to control of the  
20 association being turned over to the members must provide that  
21 the facility shall not be offered for sale unless the  
22 association has the option to purchase the facility. In  
23 addition, escalation clauses in leases are void. These  
24 clauses provide that the rental rate of the recreational  
25 facilities, land, or other common facilities increase at the  
26 same percentage rate as any nationally recognized and  
27 conveniently available commodity or consumer price index.  
28 These provisions relating to leases only apply to those  
29 entered into on or after July 1, 2002.

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