

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regulating homeowners in common interest communities.

PETITION OF:

NAME:

Monica M. Bradlee

DISTRICT/ADDRESS:

53 Warren St, Apt 204
Newburyport, MA 01950-2255

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REGULATING HOMEOWNERS IN COMMON INTEREST COMMUNITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 183B the following
2 chapter:-

3 CHAPTER 183C.

4 BILL OF RIGHTS FOR HOMEOWNERS

5

6 **183C: 1. Application and Definitions**

7 1. *Application.* This statute applies to common-interest communities of single-family detached homes.
8 The provisions protect homeowners with respect to actions by their association or its directors, officers,
9 employees, managers, and other agents, but are not intended to alter the rights of homeowners or
10 associations with respect to lenders, real estate agents, or developers.

11 2. *Definitions*

12 a. "Common-interest community" means a real-estate development or neighborhood in which
13 individually owned lots or units are burdened by a servitude that imposes an obligation that cannot be
14 avoided by nonuse or withdrawal:

15 i. to pay for the use of, or contribute to the maintenance of, property held or enjoyed in common by the
16 individual owners, or

- 17 ii. to pay dues or assessments to an association that provides services or facilities to the common property
18 or to the individually owned property, or that enforces other servitudes burdening the property in the
19 development or neighborhood.
- 20 b. "Homeowner" means the owner of property burdened by a servitude described in
- 21 c. "Association" means an organization, including homeowners as members, created to manage the
22 property or affairs of a common-interest community.
- 23 d. "Common property" means property rights of an identical or a similar kind held by the homeowners as
24 appurtenances to their individually owned lots or units.
- 25 e. "Declaration" means the recorded document or documents containing the servitudes that create and
26 govern the common-interest community.
- 27 f. "Governing documents" means the declaration and other documents, such as the articles of
28 incorporation or articles of association, bylaws, architectural guidelines, and rules and regulations that
29 determine rights or obligations of homeowners or that otherwise govern the management or operation of
30 an association.
- 31 g. "Corporate documents" means the declaration and other governing documents required to be filed or
32 recorded under state law (such as articles of incorporation or articles of association), as well as other
33 governing documents (such as bylaws) that state law requires an association to adopt even if not filed or
34 recorded.
- 35 h. "Operating rule" means any rule or regulation not stated in the corporate documents, whether adopted
36 by the directors or by homeowners in a vote, that applies to the management or operation of the
37 association or to the conduct of the business and affairs of the association, including (without limitation)
38 user fees, charges for any violations of the governing documents of the association, and other fees or
39 charges.
- 40 i. "Rule change" means adoption, amendment, or repeal of an operating rule.
- 41 j. "Directors" means the persons who constitute the association's senior governing body, in articles of
42 incorporation or articles of association, or in other governing documents.
- 43 k. "Ombudsperson" means the chief executive of the state Office of Ombudsperson for Homeowners, or
44 the designated representative.

45 1. "Notice" means, with respect to any person, sending regular and certified mail (return receipt requested)
46 to the person's last known address. For homeowners, it means each address where the association sends
47 its annual assessments, written in plain English.

48

49 **183C: 2. The Right to Security against Foreclosure**

50 1. *Limit on Creating Foreclosure Power.* No association may foreclose against a homeowner on any lien
51 without express authority granted by the declaration. Foreclosure power cannot be added by amendment,
52 except by unanimous homeowner vote.

53 2. *Non-Judicial Foreclosures, and Precipitate Foreclosures, Prohibited.* No association may foreclose
54 against a homeowner on any lien unless, in addition to compliance with all other applicable laws, the
55 association obtains a court order that specifies the assessments due, confirms the association followed
56 proper procedure, and allows at least three months before the sale date for the homeowner to pay the
57 court-specified debt.

58 3. *Predicates for Judicial Foreclosure.* No association may seek an order to foreclose against a
59 homeowner on any lien unless, in addition to compliance with all other laws governing foreclosure of a
60 mortgage on residential real estate, (a) the lien secures only a debt for an assessment authorized by a
61 declaration recorded before the homeowner bought the home, (b) the directors by a two-thirds vote
62 approve the foreclosure action, and (c) the assessment past due on the date of the vote exceeds \$2,500.
63 Notwithstanding the foregoing, any lawfully recorded lien (including liens that do not themselves provide
64 a suitable basis for foreclosure) may be enforced on conveyance of any interest in a home, including
65 conveyance by otherwise proper foreclosure sale.

66 4. *Right to Cure.* Each association shall, in governing documents, establish rights to make payments that
67 ensure the following:

68 a. Homeowners may at any time make full or partial payment on any amount due. Any homeowner
69 payment shall be credited first toward any past due assessment or other amount due to avoid foreclosure.

70 b. At least for homeowners who suffer job loss, disability, divorce, or family medical expenses, the
71 association shall without penalty allow a homeowner 30 days after an assessment to propose an
72 installment plan. Upon receiving the homeowner's installment proposal, the directors shall designate a
73 committee to meet with the homeowner privately, and the association shall provide a written response to
74 the homeowner. If the association does not approve the request in full, the response shall allow the
75 homeowner at least 15 days after denying the request to pay without incurring attorney fees. Nothing
76 prohibits the directors from approving an installment plan more lenient than provided by existing rules, in

77 which case the directors shall amend the existing rules so that all homeowners shall receive fair notice
78 and equal treatment.

79 c. Within five days after any vote by directors to seek foreclosure, the association shall give the affected
80 homeowner notice of the vote, and include the ombudsperson's Notice of Foreclosure Rights. Within five
81 days after filing any lawsuit seeking foreclosure, the association shall give the ombudsperson Notice of
82 Foreclosure Filing.

83 d. If a homeowner pays all overdue assessments after directors properly vote to seek foreclosure, a court
84 order nonetheless may permit foreclosure if (i) the homeowner has not paid all overdue late charges plus
85 all attorney fees actually and reasonably incurred after the directors' vote; and (ii) the declaration
86 authorizes foreclosure for such nonpayment.

87 e. Upon a homeowner's request, within three days, an association shall provide the amount due to avoid
88 foreclosure, including past due assessments and any other amounts allowed by paragraph 4d or approved
89 by court order under paragraph 2.

90 5. *Minimum Bid and Notice of Redemption Rights.* If an association forecloses against a homeowner, and
91 sets the home for sale, the following provisions apply:

92 a. A price below 75 percent of the equity, measured by appraised fair market value less senior liens
93 subject to which the successful bidder takes title, makes the sale void.

94 b. Within 30 days after the sale, the association shall provide the homeowner notice including the date
95 and time of sale, the buyer's name and purchase price, and the ombudsperson's Notice of Right of
96 Redemption. Within ten days after sending this notice, the association shall record, in the real property
97 records of the county where the home is located, an affidavit stating the date on which the association sent
98 the notice and containing a legal description of the lot.

99 6. *Right of Redemption after Foreclosure.* Except to the extent that governing documents provide greater
100 rights, after a foreclosure sale by an association the homeowner has

101 a. a right of redemption not less than if a secured lender foreclosed; and

102 b. at least 180 days, after recording of notice under paragraph 5b, to redeem the home.

103

104 **183C: 3. The Right to Resolve Disputes without Litigation**

105 1. *Required Notice of Violation.* Before an association may seek foreclosure, file suit, charge any fee
106 (including attorney fees), limit common area use, or take other action against a homeowner for violation
107 of governing documents, except for an emergency action as provided in paragraph 9, the association must,
108 in addition to compliance with other law and governing documents, do the following:

109 a. Provide notice to the homeowner twice, at least 21 days apart, that

110 i. describes the basis for the claim, including how the homeowner allegedly violated quoted terms of the
111 governing documents;

112 ii. states any amount the association claims is due, describes how the homeowner can remedy the
113 violation, confirms the right to comply without waiving the right to dispute the violation, and (where
114 applicable) gives notice of the right to request an installment plan for assessments;

115 iii. describes the ombudsperson, including that the ombudsperson has a list of no- and low-cost mediators
116 and other information; and

117 iv. states the homeowner has a reasonable period to cure--of at least 21 days after the second notice,
118 unless the homeowner had an opportunity to cure a similar violation within the past six months, and that
119 during the cure period the homeowner can obtain a hearing as provided in paragraph 2 or mediation as
120 provided in paragraph 3, and can contact the ombudsperson as provided in paragraph 4, without incurring
121 any attorney fees charged by the association; and

122 b. If the certified mail notice is not delivered, reasonably try to confirm the homeowner's current address
123 and either resend the notice as in paragraph 1a or, if no other address can be found, reasonably try to
124 hand-deliver the notice, the period to cure starting anew from this notice.

125 2. *Right to a Hearing.* After notice of paragraph 1a, homeowners have the right at no cost to a hearing to
126 verify facts and seek resolution with the directors or a committee designated by the directors. If the
127 directors use a committee, any agreement must be enforceable, to be ratified by the directors unless it
128 conflicts with law or the governing documents, and the homeowner must be allowed to appeal to the
129 directors. In addition:

130 a. the association shall hold the hearing within 30 days after the association receives the homeowner's
131 request and shall provide notice of the date, time, and place at least 10 days before the hearing; the
132 homeowner may request postponement, which shall be granted if for not longer than ten days; additional
133 postponements may be granted by written agreement of the parties; the homeowner may record the
134 meeting; and the committee (and, on any appeal, the directors) shall issue a written decision including the
135 notice required by paragraph 5; and

136 b. the association shall extend the period to cure under paragraph 1a(iv) until 15 days after notice of the
137 written decision by the committee or directors, whichever is later.

138 3. *Right to Confidential Mediation.* After notice of paragraph 1a, except with respect to disputes involving
139 only an assessment or small monetary charge (less than \$___), homeowners shall have the right to one-
140 half day of neutral mediation, with the proceedings to be kept confidential and not admissible in court
141 except as provided by state law. The requesting homeowner(s) shall pay 50 percent of the mediator's
142 charge and the association shall pay the balance. If after 30 days, the parties cannot agree on a mediator,
143 the homeowner shall have the right to contact the ombudsperson as provided in paragraph

144 4. If the parties agree on a mediator, the association shall extend the period to cure under paragraph
145 1a(iv) until 15 days after the mediation.

146 4. *Right to Petition the Ombudsperson.* After notice of ¶ 1a, except with respect to disputes involving
147 only an assessment or small monetary charge (less than \$___), homeowners shall have the right to
148 petition the ombudsperson upon payment of a filing fee not to exceed \$___. The association shall
149 cooperate in any investigation pursued by the ombudsperson. The association shall extend the period to
150 cure for 30 days, and for a longer period if requested by the ombudsperson.

151 5. *Right to Options.* After receiving notice of a decision under paragraph 2, homeowners shall have the
152 right, within 15 days, to invoke either the procedure of paragraph 3 or paragraph 4. The notice of decision
153 under paragraph 2b shall specify this right.

154 6. *Right to Extend Time to Cure.* During the period to cure as provided in paragraph 1, as extended in
155 paragraphs 2 to 4, the association shall not incur attorney fees chargeable to the homeowner, and shall
156 not take any enforcement action except for emergency action allowed by paragraph 9.

157 7. *No Lawsuit Without Directors Voting.* No association may sue a homeowner without an authorizing
158 vote by a majority of all directors, in compliance with applicable law and governing documents that may
159 set super-majority vote or other requirements.

160 8. *Notice before Litigation.* Except for emergency action allowed by paragraph 9, the association must
161 provide distinct notice at least 15 days before filing suit against a homeowner, that

162 a. describes the basis for the suit, including how the homeowner allegedly violated specified terms of the
163 governing documents; and

164 b. states any amount the association claims due, describes how the homeowner can cure the violation, and
165 (where applicable) gives notice of the right to request an installment plan for assessments.

166 9. *Exception for Emergencies.* Nothing precludes an association from seeking a temporary injunction, or
167 taking temporary enforcement action (such as suspension of rights to use a common property), in a good
168 faith response to an emergency. An emergency is a situation that could not have been reasonably
169 foreseen, poses a significant and immediate threat to the common-interest community, and makes
170 compliance with the preceding paragraphs impractical. Any temporary enforcement action entitles the
171 homeowner to immediate notice and the related rights above, provided enforcement action may remain in
172 place pending (a) the final determination of homeowner rights or (b) the end of the conditions resulting in
173 the immediate and significant threat, whichever comes sooner.

174 10. *Additional Right to Petition the Ombudsperson.* In addition to the rights of paragraph 4 and other
175 rights in this model statute to petition the ombudsperson, except with respect to disputes involving only
176 small monetary charges (less than \$___), and upon paying the ombudsperson a filing fee not to exceed
177 \$___, homeowners shall have the right to petition the ombudsperson to challenge violations of
178 homeowner statutory rights. Before making a petition under this paragraph 10, homeowners first shall
179 give the directors notice of the dispute, and allow two weeks for a response, to be extended by an
180 additional two weeks if needed to complete any procedures for alternative dispute resolution required by
181 the governing documents; provided this shall not require more than one-half day of confidential mediation
182 or require the homeowner to pay a fee. The association shall cooperate in any investigation pursued by the
183 ombudsperson.

184 11. *No Additional Charges, but Additional Options Allowed.* No association may charge homeowners for
185 exercise of the foregoing rights, but associations may offer additional options for alternative dispute
186 resolution (ADR); provided no association may require binding ADR, otherwise require a homeowner to
187 waive the right to go to court, or bill homeowners for mandatory ADR. In any litigation, if a party moves
188 to compel nonbinding ADR, the court may consider the extent to which the parties already have pursued
189 ADR.

190 12. *Annual Notice of Rights to Alternative Dispute Resolution.* Once each year, each association shall alert
191 homeowners of their rights to ADR, including statutory rights and any others available under paragraph
192 11.

193

194 **Section 183C: 3. The Right to Fairness in Litigation**

195 1. *Judicial Protection.* Individual homeowners may sue associations to enforce statutory rights (under this
196 model statute or otherwise) as well as their rights under governing documents, without being required to
197 sue other homeowners; further, the association shall pay for any notice to homeowners that the court finds
198 to be appropriate. Governing documents shall not limit judicial review or court enforcement; provided

199 they may require ADR to the extent permitted by Section 2, The Right to Resolve Disputes without
200 Litigation,.

201 2. *Burden of Proof.* Unless otherwise provided by statute, a homeowner has the burden to prove each
202 breach of duty by a preponderance of the evidence. Except for *ultra vires* actions, or actions otherwise
203 exceeding an association's or director's authority, homeowners must prove a breach caused, or threatens
204 to cause, injury either to the homeowner as an individual or to the interests of any part of the common-
205 interest community.

206 3. *Compliance Under Protest.* Homeowner compliance with an association's demand for action, or
207 demand to cease action, including (but not limited to) any demand to pay assessments or attorney fees,
208 does not waive homeowner rights to challenge such demand.

209 4. *Protected Homeowner Rights to Attorney Fees.* In any case brought by an association or homeowner to
210 enforce governing documents or applicable law (under this model statute or otherwise), the homeowner
211 shall be awarded reasonable attorney fees and costs to the extent that the homeowner prevails. Attorney
212 fees shall reflect counsel's reasonable hourly rate and time worked, and shall not be limited by the amount
213 the homeowner actually paid, if any.

214 5. *Limited Association Rights to Attorney Fees.* In any case brought by an association or homeowner to
215 enforce governing documents or applicable law (under this model statute or otherwise), if authorized by
216 the declaration, the association shall be awarded reasonable attorney fees and costs to the extent that the
217 association prevails; provided that the reasonable attorney fees may be reduced at the discretion of the
218 court based on finding that the judicial review benefited the association or homeowners by clarifying
219 governing documents or applicable law, or other equitable considerations. Attorney fees shall reflect
220 counsel's reasonable hourly rate and time worked, limited by the amount the association actually paid.

221 **Section 183C: 4. The Right to Be Told of All Rules and Charges**

222 1. *Governing Documents.* Associations may not enforce charges or other rules against homeowners,
223 except those set forth in plain English in governing documents. All operating rules shall be compiled in a
224 single document, available to homeowners on request, that at the beginning provides contact information
225 for the ombudsperson and a description of the ombudsperson's role.

226 2. *Disclosure to Buyers.* Unless otherwise provided by statute, the following provisions apply:

227

228 a. At least 21 days before an offer to buy a home becomes binding, the homeowner shall furnish the
229 potential buyer withes

230 i. the information statement prepared by the ombudsperson (including an acknowledgment for the buyer
231 to execute) and all the association's governing documents, excluding plats and plans;

232 ii. a statement of each existing assessment, any unpaid assessment currently due from the selling
233 homeowner, and any other alleged violation of the association's governing documents by external features
234 of the home or landscape as of the date of the certificate, citing applicable rules;

235 iii. the association's current operating budget and financial statement, including any legally required
236 summary of the association's reserves; and iv. a statement of the number of foreclosure lawsuits filed
237 within the past three years, any unsatisfied judgments and pending legal actions against the association or
238 otherwise relating to the common-interest community of

239 which the selling homeowner has actual knowledge.

240

241 b. Upon a homeowner's request, within ten days the association shall furnish a certificate with the
242 information specified in paragraph 2a. A requesting homeowner is not liable for erroneous information in
243 the certificate. A buyer is not liable for any past assessment, any future assessment greater than stated in
244 the certificate (unless lawfully increased after the sale), or for violations of governing documents by
245 external features of the home or landscape not stated in the certificate. For this certificate, the association
246 may charge only actual costs, not to exceed \$__.

247

248 c. Upon request by a homeowner, potential buyer in receipt of a certificate pursuant to paragraph 2b, or
249 homeowner's or buyer's authorized agent, within 21 days the association shall make any legally required
250 study of the association's reserves reasonably available to copy and audit.

251

252 3. *Limits on Default and Implied Powers.* Governing documents, and statutes governing homeowners,
253 shall be construed to favor homeowners' free and unrestricted use of their home, and against any person
254 seeking to enforce a limit on homeowner rights.

255

256 a. Absent specific authorization in the declaration or in paragraph 3(b) or paragraph 3(c), associations do
257 not have power to adopt any rules that restrict the use or occupancy of, or behavior within, individually
258 owned homes.

259

260 b. Except as limited by statute or the governing documents, associations have implied power to adopt
261 reasonable operating rules to govern the use of (i) common property and (ii) individually owned property
262 to protect the common property.

263

264 c. If the declaration grants a general power to adopt rules, an association also has power to adopt
265 reasonable operating rules designed to (i) protect homeowners from unreasonable interference in the
266 enjoyment of their individual homes and the common property caused by use of other individually owned
267 homes; and (ii) restrict the leasing of homes to meet valid underwriting requirements of institutional
268 lenders.

269

270 d. Except to the extent provided by statute or authorized by the declaration, a common-interest
271 community may not impose restrictions on the structures or landscaping that may be placed on
272 individually owned property, or on the design, materials, colors, or plants that may be used.

273

274 e. An association may borrow money subject to any limits stated in the governing documents but, unless
275 the declaration or a court-approved order grants specific authority, the association may not assign future
276 revenues or create a security interest in common property without approval by 51 percent of all
277 homeowners (or more if required by governing documents) in a vote

278 after at least 30 days notice.

279

280 **Section 183C: 5. The Right to Stability in Rules and Charges**

281

282 *1. Seniority of Documents.* In resolving any conflict among governing documents, the senior document
283 controls. Unless the documents otherwise provide, seniority is (a) declaration over (b) articles of
284 incorporation or association over (c) bylaws over (d) operating rules.

285

286 *2. Homeowner Powers to Amend Governing Documents.* For any governing document, the

287 following apply:

288

289 a. Except as limited by the governing document, a senior document, or statute, homeowners have the
290 power to amend subject to the following requirements:

291

292 i. Unless the governing document, a senior document, or statute specifies a different number, an
293 amendment adopted by homeowners holding a majority of the voting power is effective to

294

295 a) extend the term of the governing document,

296

297 b) make administrative changes reasonably necessary for management of the common property or
298 administration of the servitude regime, or

299

300 c) prohibit or materially restrict uses of individually owned homes that threaten to harm or unreasonably
301 interfere with reasonable use and enjoyment of other property in the community, or to amend or repeal
302 such prohibition or restriction adopted by amendment under this paragraph 2a(i)(c).

303

304 ii. Unless the governing document, a senior document, or statute specifies a different number, an
305 amendment adopted by homeowners holding two-thirds of the voting power is effective for all other
306 lawful purposes except as stated in paragraph 2b and paragraph 2c.

307

308 b. Amendments that do not apply uniformly to similar homes and amendments that would violate
309 association duties to homeowners under the model statute are not effective without approval by
310 homeowners whose interests would be adversely affected, unless the declaration clearly and specifically
311 appraises purchasers that such amendments may be made. This paragraph 2b does not apply to non-
312 uniform modifications made under circumstances that would justify judicial modification.

313

314 c. Except as otherwise expressly authorized by the declaration, and except as provided in paragraph 2a,
315 unanimous homeowner approval is required to i. prohibit or materially restrict the use or occupancy of, or
316 behavior within, individually owned lots or units, or ii. change the basis for allocating voting rights or
317 assessments among homeowners.

318

319 d. At least 60 days before voting on any proposed amendment to a governing document, the association
320 shall provide notice to all homeowners, including the specific text proposed and a description of the
321 amendment's purpose and anticipated effects. No amendment takes effect before the association provides
322 notice of adoption to all homeowners, certified by an association

323 officer, and to the extent required by law, the association records the amendment.

324

325 e. Directors have no power to amend a governing document except where expressly authorized by statute
326 or, where not otherwise contrary to statute, expressly authorized by the governing document or a senior
327 document; provided that, if governing documents authorize directors to impose any duty or charge on
328 homeowners, this shall be done by operating rule (as provided in paragraph 3) unless the governing
329 document requires otherwise; and provided further that homeowners only, not directors, shall have power
330 to amend

331

332 i. any provision that affects number, qualifications, powers and duties, terms of office, or manner and
333 time of election or removal of directors; or

334

335 ii. any provision with respect to amendment of any governing document.

336

337 *3. Limits on Operating Rule Changes by Directors.* Directors may adopt, amend, or repeal

338 operating rules only if all of the following requirements are satisfied:

339

340 a. All operating rules must be

341 i. in writing;

- 342 ii. within directors' authority conferred by law or corporate documents;
- 343 iii. not inconsistent with law and corporate documents;
- 344 iv. adopted, amended, or repealed in good faith and in substantial compliance with this model statute; and
- 345 v. reasonable.

346

347 b. Paragraphs 3d and 3e apply only to operating rules that relate to one or more of the following subjects:

348

- 349 i. Use of common property
- 350 ii. Use of a home, including any aesthetic or architectural standards that govern alteration of a home
- 351 iii. Homeowner discipline, including any withdrawal of privileges or charges for violating governing
- 352 documents and any procedure for withdrawing privileges or imposing charges
- 353 iv. Any standard for delinquent assessment installment or other payment
- 354 plans
- 355 v. Any procedure to resolve disputes
- 356 vi. Any procedure for reviewing and approving or disapproving a proposed
- 357 physical change to a home or to the common area
- 358 vii. Any procedure for elections

359 c. For the following actions by directors, ¶¶ 3d and 3e do not apply:

- 360 i. A decision regarding maintenance of the common property
- 361 ii. A decision on a specific matter that is not intended to apply generally
- 362 iii. A decision setting the amount of a regular or special assessment
- 363 iv. A rule change required by law, if directors have no discretion as to the
- 364 substantive effect of the rule change
- 365 v. Issuance of a document that merely repeats existing law or the governing documents

366

367 d. Directors shall provide written notice of a proposed rule change to homeowners at least 30 days before
368 making the rule change. The notice shall include the text, and a description of the purpose and effect of
369 the proposed rule change, except as provided by paragraph 3d(iii).

370

371 i. A decision on a proposed rule change shall be made at a meeting of the directors, after consideration of
372 any comments made by homeowners.

373

374 ii. Not more than 15 days after making the rule change, the directors shall deliver notice of the rule
375 change to every homeowner. If the rule change is an emergency rule change made under paragraph
376 3d(iii), the notice shall include the text of the rule change, a description of the purpose and effect of the
377 rule change, and the date that the rule change expires.

378

379 iii. If directors determine that an immediate rule change is required to address an imminent threat to
380 public health or safety, or an imminent risk of substantial economic loss to the association, directors may
381 make an emergency rule change; and no prior notice is required. An emergency rule change is effective
382 for 120 days, unless the rule change provides for a shorter effective period. A rule change made under this
383 paragraph 3d(iii) may not be readopted under this paragraph.

384

385 e. Homeowners holding 5 percent of the voting power may call a special meeting of the homeowners to
386 reverse any rule change.

387

388 i. To call such special meeting homeowners must, no more than 30 days after being notified of a rule
389 change, deliver a written request to the association's president, secretary, or registered agent, after which
390 the directors shall give notice of the meeting to all homeowners. Homeowners are deemed notified of a
391 rule change after receiving notice of the rule change or enforcement of the resulting rule, whichever
392 happens first. Homeowner requests to copy or review association member lists with addresses, e-mail,
393 and phone numbers for the purpose of seeking support to reverse a rule change shall be honored as soon
394 as reasonably possible, in any event within three business days. Homeowners shall be allowed to use
395 common property reasonably in seeking support to reverse a rule change.

396

397 ii. At such special meeting with a quorum present, the rule change shall be reversed by majority vote of
398 homeowners represented and voting, unless a corporate document or statute requires otherwise.

399

400 iii. Unless otherwise provided by the corporate documents, for this paragraph 3e, one vote may be cast for
401 each home.

402

403 iv. Special meetings under this paragraph 3e shall follow laws generally applicable to special meetings.

404 v. A rule change reversed under this paragraph 3e may not be readopted for one year after the date of the
405 meeting reversing the rule change. Nothing in this paragraph 3e precludes directors from adopting a
406 different rule on the same subject as a rule change that has been reversed.

407

408 vi. As soon as possible and not more than 15 days after the close of voting at a special meeting, the
409 directors shall provide every homeowner with notice of the results of a vote held pursuant to this
410 paragraph 3e.

411

412 vii. This paragraph 3e does not apply to emergency rule changes under paragraph 3d(iii).

413

414 4. *Required Notice for Homeowner Votes on Assessments.* Unless governing documents require a longer
415 period, homeowner votes to impose or increase regular or special assessments require at least 30 days
416 advance notice.

417

418 **Section 183C: 6. The Right to Individual Autonomy**

419 1. *Signs and Flags.* Homeowners have the right to display noncommercial signs, flags, and “for sale”
420 signs on their property, provided the declaration may set reasonable limits so long as, for three months
421 before any election or other vote held by an association, government, or other entity with geographic
422 territory overlapping any part of a common interest community, the association shall not forbid display of
423 reasonable-size signs relating to the election or vote.

424

425 2. *Neighbor Contacts*. Homeowners have the right peacefully to visit, telephone, petition, or otherwise
426 contact their neighbors; provided the declaration may set reasonable restrictions if it permits some
427 weekday afternoon and some weekend hours for such neighbor contacts.

428

429 3. *Peaceful Assembly*. Homeowners have the right to invite guests to assemble peacefully on their
430 property, provided the declaration may set reasonable limits to protect nearby homes.

431

432 4. *Common Property*. Where an association makes any part of common property available for use by
433 homeowners:

434 a. the governing documents shall state any charge for homeowners' use, which shall not exceed the
435 association's marginal cost for use, as well as any other restrictions on such use, which shall be content-
436 neutral and otherwise reasonable; and

437

438 b. the governing documents shall not unreasonably restrict homeowners' rights to invite public officers or
439 candidates for public office to appear or speak in common areas, or unreasonably restrict lawful uses
440 relating to an election or other vote held by the association or any government or quasi-governmental
441 entity with geographic territory overlapping any part of the common-interest community.

442

443 5. *Discrimination Prohibited*. Restrictions on signs and flags, neighbor contacts, peaceful assembly,
444 common property, or other self-expression shall not differ based on the content of a view sought to be
445 expressed by a homeowner. If an association allows homeowners to express views on a topic, in a
446 newsletter or other forum, other homeowners equally shall be allowed to respond with differing views.

447

448 6. *No Forced Membership in Another Organization*. No association may force a homeowner to join a
449 separate organization unless (a) expressly authorized by the declaration before the homeowner's purchase
450 or (b) associations merge in compliance with state law.

451

452 7. *No Mandatory Charitable or Political Funding.* Assessments or other mandatory dues from association
453 members may not be used by the association for charitable or political purposes. Any solicitations for
454 charitable or political purposes by an association will be conducted separately from the billing for
455 customary assessments of fees, and clearly be designated as voluntary.

456

457 8. *Ultimate Limit on Governing Documents.* Governing documents must be created in compliance with
458 law, and not include terms that are illegal or unconstitutional, or that violate public policy. Terms that are
459 invalid because they violate public policy include, but are not limited to, terms

460 a. that are arbitrary, spiteful, or capricious;

461 b. that unreasonably burden a fundamental constitutional right;

462 c. that impose an unreasonable restraint on alienation;109

463 d. that impose an unreasonable restraint on trade or competition; or

464 e. that are unconscionable.

465

466 **Section 183C: 7. The Right to Oversight of Associations and Directors**

467 1. *Open Records.* All association meeting minutes, financial and budget materials, contracts, court filings,
468 and other records must be maintained for at least four years at the association's main business office or
469 other suitable location near homes in the association.

470

471 a. Except as provided in paragraph 1b, the association must make all records available for homeowners,
472 their authorized agents, or the ombudsperson to inspect and copy

473 i. during regular working hours, within ten days of a written request without requiring a statement of
474 purpose or reason; and

475 ii. during an inspection, allowing copying of up to 25 pages at no cost, if the association or its agent has a
476 photocopy machine at the site of the records; and in any event

477 iii. with a charge to the homeowner only for actual copying costs, not to exceed 35 cents per page plus
478 staff time charges not to exceed \$10 per hour.

479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506

b. Documents protected by the attorney-client privilege or as work product are exempt from disclosure to the same extent as they would be in litigation, as are contracts being negotiated. The following records also are exempt from disclosure to homeowners or their agents, except upon court order for good cause shown, provided that the ombudsperson may obtain the following records, and provided further that such records shall be kept confidential except upon court order for good cause shown:

i. staff personnel records, except the association shall make available under paragraph 1a records of time worked and salary and benefits paid; and

ii. records of homeowners other than the requester, except the association shall make available under paragraph 1a the list of homeowners with their mailing addresses and a compilation of violations of the governing documents, other than for nonpayment of an assessment, and this compilation must

a) describe the violation alleged and the sanction sought or imposed; and

b) not identify the person against whom the sanction was sought unless the matter was considered in an open meeting or court.

c. If an association refuses to allow a homeowner, homeowner's agent, or the ombudsperson to review records as provided herein, the requester is entitled to an immediate injunction, a penalty of \$500, or in the court's discretion, more, and attorney fees, even if the association makes records available after filing of a case.

d. Any director may inspect any association records, except attorney-client privileged or work product records concerning potential, ongoing, or past litigation against the director. In addition to their rights under paragraph 1a, directors may make copies of minutes of any meeting during their term of office, and of any other document for purposes reasonably related to their duties as directors.

e. Pending litigation does not reduce the rights provided in this paragraph.

507 2. *Quarterly Review*. Every 90 days (or more frequently if required by governing documents), the
508 directors shall review at one of the association meetings

509 a. the latest statements from financial institutions that hold association accounts;

510 b. current reconciliations of the association's operating and reserve accounts;

511 c. year-to-date income and expense statement for association operating accounts, compared with the
512 budget;

513 d. year-to-date revenues and expenses for the reserve account, compared with the budget; and

514 e. the status of any lawsuit, arbitration, or mediation involving the association.

515

516 3. *Open Meetings*. Except for executive sessions, homeowners may attend, record, and (subject to
517 reasonable limits) speak at any meeting of the association or its directors.

518 a. Directors may meet in executive session only to

519

520 i. approve, modify, terminate or take other action regarding a contract between the association and an
521 attorney;

522 ii. consult with counsel on litigation or otherwise to obtain legal advice, if

523 the discussion would be protected by attorney-client privilege;

524 iii. discuss the character, alleged misconduct, professional competence, or physical or mental health of an
525 association manager or employee;

526 iv. discuss a homeowner's failure to pay an assessment or other alleged violation of governing documents,
527 except as provided in paragraph 3b; or

528 v. discuss ongoing contract negotiations.

529

530 b. Directors shall use executive session to discuss alleged violations of governing documents unless the
531 person who may be sanctioned requests an open meeting in writing. The person who may be sanctioned
532 may attend and testify at any hearing concerning the alleged violation, but has no right to attend director
533 deliberations.

534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563

c. Meeting minutes shall note generally any matter discussed in executive session.

4. *Open Voting.* All votes by directors shall be recorded in the minutes available to all homeowners, except to the extent permitted by paragraph 3. Directors may not vote by proxy or by secret ballot, except a secret ballot to elect officers. This rule also applies to any committee or agent of the association that makes final decisions to spend association funds, or approve or disapprove architectural decisions.

5. *Special Meetings.* In addition to any provisions for special meetings in the governing documents, the following provisions apply:

a. The directors shall provide 30 days notice and convene a special meeting of the association to be held no less than 30 days and no more than 60 days after the chair, the secretary, or the association's registered agent receives a petition stating one or more purposes for such meeting and signed by homeowners holding 10 percent of the voting power, unless other law or the corporate documents state a different percentage. The petition may specify a person to chair the special meeting. Each purpose and, if specified in the petition, the chair of such special meeting shall be stated in its notice.

b. If the directors fail to provide notice and convene the meeting as provided in paragraph 5a, then upon written petition to the ombudsperson (with copy to the association), the ombudsperson shall notice and convene the requested meeting subject to the other provisions of paragraph 5a. The association shall pay costs reasonably incurred by the ombudsperson. Such action shall not disqualify the ombudsperson from exercising any other power.

6. *Election and Ballot Oversight.* If at least 100 homeowners or homeowners holding 15 percent of the voting power in an election or other ballot provide a written request to the ombudsperson (with copy to the association) at least 15 days in advance, the ombudsperson shall supervise the election or ballot, and if so, shall retain copies of the election or ballot records (including all proxies submitted, whether or not counted). The ombudsperson also has discretion to supervise the election or ballot if one or more homeowners provide a written request at least 15 days in advance. The association shall pay costs reasonably incurred by the ombudsperson. Such action shall not disqualify the ombudsperson from exercising any other power.

564

565 7. *Recalls*. Except for directors appointed by the developer and directors elected by cumulative voting,
566 directors shall be subject to recall (without use of proxy votes) as follows:

567 a. Any director may be recalled without cause by persons holding a majority of the total voting power,
568 provided a homeowner's voting power for purposes of recall equals that to elect directors, and when only
569 specific homeowners have power to elect a director, only those homeowners have voting power for recall.

570 b. One or more directors may be recalled by written agreement or ballots without an annual or special
571 meeting.

572 i. The written agreement or ballots, or a copy thereof, shall be served on the association by certified mail
573 or by personal service under process permitted by state law.

574 ii. Within five business days after receipt of the agreement or ballots, the directors shall meet--without
575 excluding directors proposed for recall -- and, as the only business, as to each director proposed for recall
576 shall either (A) certify the recall, in which case recall takes effect immediately and the recalled director
577 shall within five business days turn over to the association all association records and property possessed
578 by the director, or (B) proceed as described in paragraph 7d.

579 iii. If a court or the ombudsperson finds a recall effort defective, written recall agreements or ballots used
580 in that recall effort and not found defective may be reused in only the next recall effort, if any. However,
581 no written recall agreement or ballot shall be valid more than 120 days after being signed by a
582 homeowner.

583 iv. A homeowner may revoke a vote by recall agreement or ballot, but only in writing delivered to the
584 association before service of the recall agreement or ballot.

585

586 c. If corporate documents specifically provide, homeowners may recall a director or directors by a vote
587 taken at an annual or special meeting of homeowners.

588 i. A special meeting of homeowners to recall a director or directors may be called by homeowners with 15
589 percent of voting power (as defined in paragraph 7a) by giving notice as required for a special meeting,
590 except that electronic transmission may not be used, and the notice shall state the purpose of the meeting.

591 ii. Within five business days after the special meeting, the directors shall meet—without excluding all
592 directors proposed for recall--and, as their only business, as to each director proposed for recall shall
593 either (A) certify the vote to recall, in which case recall takes effect immediately and the recalled director

594 shall within five business days turn over to the association all association records and property possessed
595 by the director, or (B) proceed as described in paragraph 7d.

596 d. Separately with respect to each director proposed for recall, if the directors do not certify the recall, the
597 directors shall, within five business days after their meeting, petition the ombudsperson for arbitration,
598 following procedures adopted by the ombudsperson. For purposes of this arbitration, homeowners who
599 voted for recall shall be considered one party under the petition. If the ombudsperson certifies the recall of
600 a director, the recall will be effective upon mailing the final order of arbitration to the association, and
601 each director so recalled shall deliver to the association all records of the association possessed by the
602 director within five business days after notice of the recall. Such decision shall be subject to review in
603 court with jurisdiction in the county where the association maintains its principal office, but such pending
604 action shall not delay implementation of the ombudsperson's decision.

605 e. Vacancies created by recall shall be filled by homeowner vote held within 30 days after the recall is
606 certified by the directors or by the ombudsperson, except that a director whose term expires within 30
607 days need not be replaced, provided

608 i. for recall pursuant to paragraph 7b, no separate vote shall be held if the written agreement or ballot
609 specifies one replacement director for each director recalled, and homeowners holding a majority of the
610 voting power vote for the named replacements; and

611 ii. for recall pursuant to paragraph 7c, the homeowner vote for replacement may take place at the same
612 meeting held for the recall.

613 f. If the directors fail to meet within five business days after service of a written recall agreement or ballot
614 pursuant to paragraph 7b, or within five business days after adjournment of a recall meeting pursuant to
615 paragraph 7c, the recall shall be deemed effective and the directors so recalled shall immediately turn
616 over to the association all records and property of the association. Any homeowner may petition the
617 ombudsperson for certification that directors have been recalled pursuant to this paragraph 7f.

618 g. If a director who is removed fails to relinquish office or turn over records and property as required
619 under this paragraph 7, a court in the county where the association maintains its principal office may,
620 upon the petition by the ombudsperson, the association, or homeowners, summarily order the director to
621 relinquish office and turn over all association records and documents to the association.

622 h. Minutes of the meeting where directors decide whether to certify the recall are an association record.
623 The minutes must record the date and time, each decision, and the vote count separately taken as to each
624 director proposed for recall. In addition, when the directors decide not to certify a recall, as to each
625 rejected recall, the minutes must identify any rejected vote and the specific reason for each

626 such rejection.

627 i. When recall of more than one director is sought, the written agreement, ballot, or vote at a meeting shall
628 provide for a separate vote for each director sought to be recalled.

629 j. Nothing in this paragraph 7 prevents a recalled director from retaining documents lawfully obtained
630 under paragraph 1.

631

632 **Section 183C: 8. The Right to Vote and Run for Office**

633 1. *Voting Rights.* No association may deny a homeowner's right to vote on any issue that affects an
634 assessment or other provision of governing documents that apply to the membership class of the
635 homeowner.

636 a. For a home with multiple owners, unless expressly provided by the declaration: if only one owner seeks
637 to vote, that owner votes for the home; but if more than one owner seeks to vote, votes must be allocated
638 by agreement of a majority of the home's owners or, absent agreement, co-owners shall split votes in
639 proportion to their ownership interest. Agreement exists if any homeowner votes without another
640 homeowner protesting either before the vote in writing or, at the vote, promptly to the person presiding
641 over the vote.

642 b. No vote may be cast except by the homeowner or, where permitted by law and the governing
643 documents, by a person holding a proxy, provided the following applies

644 i. The proxy must be dated and designate a meeting for which it applies.

645 ii. The proxy may not be revocable without notice, and may be revoked only by actual notice to the
646 person presiding over the meeting.

647 iii. The proxy must designate each specific agenda item to which it applies, except a homeowner may
648 execute a proxy without designating any item if used solely to determine whether a quorum exists. For
649 each specific agenda item designated, the proxy must specify a vote for or against the proposition or, in an
650 election or recall, state a specific position regarding who to vote for or whether to vote for or against
651 recall. If a proxy does not state proper instructions to vote on an item, the proxy must be treated as if the
652 homeowner were present but not voting on that item.

653 iv. When a holder casts proxy votes, the holder must disclose the number of proxies held, and the proxies
654 must be kept as part of the public record of the meeting for the period provided by law.

655 v. Association governing documents may provide for homeowner proxy voting by absentee ballot, with
656 the ballot as specific as any other proxy, and with the association's secretary to announce the number of
657 such ballots received for each vote at the meeting, and the ballots kept
658 as part of the public record of the meeting.

659 c. Votes allocated to homes owned by the association may not be cast, by proxy or otherwise, for any
660 purpose.

661 2. *Candidacy*. No homeowner may be denied the right to run for office.

662 a. Unless a person is appointed by the developer: the person may not serve as director (or officer) if the
663 person or any relative (defined under state law) serves as manager for the association or, if a master
664 association, manager of any association that is subject to the governing documents of the master
665 association.

666 b. Each candidate named on a ballot for director must make a good faith effort to disclose in writing, by
667 actual notice to all homeowners or as otherwise provided in the corporate documents, any financial,
668 business, professional or personal relationship or interest that would appear to a reasonable person to
669 result in a potential conflict of interest if the candidate were elected director.

670 3. *Voting Procedure*. Unless state law sets different requirements, and if not otherwise specified by
671 corporate documents, a quorum exists if homeowners with 25 percent of voting power attend, or where
672 permitted, are present by proxy at a meeting; provided, where only a specified class may vote on a
673 particular issue, a quorum to vote on that matter requires 25 percent of voting power of that class. At any
674 meeting, election of directors, recalls, and homeowner votes on assessments, amendment to governing
675 documents, operating rules, or other matters shall be conducted by secret ballot (except as provided with
676 respect to proxies in paragraph 1b), with all ballots kept as part of the records of the election for the
677 period provided by law.

678 4. *Access to Forums*. If any candidate for an election, or homeowner advocating a point of view for
679 purposes reasonably related to a homeowner vote, is permitted to use a forum that is paid for by the
680 community (such as a newsletter, bulletin board, or meeting area) to promote his or her candidacy for a
681 board election, then other candidates and homeowners shall also be permitted equal access to the same
682 forum under the same conditions.

683

684 **Section 183C: 9. The Right to Reasonable Associations and Directors**

685 1. *Duties of Associations.* In addition to compliance with law and governing documents, an association
686 (whether acting through directors, officers, managers, or other agents, by homeowner vote, or otherwise)
687 has the following duties to its homeowners:

688 a. To use ordinary care and prudence in managing property and financial affairs;

689 b. To treat homeowners fairly; and

690 c. To act reasonably in the exercise of discretionary powers, including rule-making, enforcement, and
691 design-control powers.

692

693 2. *Duties of Directors, Officers, Managers, and Other Agents.* In addition to compliance with law and
694 governing documents, association directors, officers, managers, and other agents must act in good faith,
695 deal fairly with the association and its homeowners, and use ordinary care and prudence in performing
696 their functions.

697 a. A director, officer, attorney, manager or other agent of an association shall not solicit or accept any
698 form of compensation, gratuity or other remuneration that

699 i. would improperly influence or would appear to a reasonable person to improperly influence the
700 decisions made by such agent; or

701 ii. would result or would appear to a reasonable person to result in a conflict of interest for such agent.

702 b. Unless appointed by the developer, a director or an officer of an association shall not

703 i. enter into or renew a contract with the association to provide goods or services to the association; or

704 ii. otherwise accept any commission, personal profit, or compensation of any kind from the association
705 for providing goods or services to the association.

706

707 3. *Protection Regarding Attorneys.* In contracting for a lawyer to seek foreclosure or take other
708 enforcement action, no association may make legal fees in whole or part contingent on the amount paid
709 (for fees or otherwise) by a homeowner. Any homeowner payment to the lawyer shall be held for the
710 association. No contract may authorize anyone to prevent a homeowner from seeking to resolve any
711 dispute directly with directors or other agents of an association.

712

713 4. *Protection Regarding Managers.* All association managers must be licensed and bonded
714 where required by law. In contracting with managers, associations may pay a flat fee, hourly rates, or a
715 combination of flat fees and hourly rates. Managers may not be paid any fee, bonus, incentive, or other
716 amount based on the number or value of violations they allege or address. Managers may not impose
717 charges on homeowners, except where reasonable and expressly authorized by governing documents. All
718 homeowner payments to the manager shall be held for the association.

719
720 5. *Determination of Architectural Requests.* A homeowner's request that the association or related
721 architectural body approve the homeowner's planned construction, landscaping, maintenance, or repairs
722 shall be deemed approved unless, within 30 days or such other period as the declaration may specify, the
723 association or architectural body provides written notice specifically detailing a lawful basis for
724 disapproval in whole or part. Such notice shall specify that homeowners have the right to reconsideration
725 by the directors, unless the directors collectively made the original decision. Each year the association in
726 writing shall remind homeowners that rules govern approval of construction, landscaping, maintenance,
727 or repairs.

728
729 6. *Fines and Other Charges*
730 a. Where otherwise authorized by statute, associations may seek a court order to impose fines for a
731 homeowner's willful noncompliance with duties under corporate documents, but may not otherwise
732 impose fines.
733 b. Where authorized by corporate documents, associations may recover reasonable compensation for
734 damages or costs (such as late fees) when a homeowner's rule-breaking actually harms the association;
735 provided that the association cannot place a lien for such charges without a court judgment.
736 c. Nothing here prevents an association from withdrawing homeowner privileges to use recreational and
737 social facilities where otherwise authorized, including withdrawal for nonpayment of fines or other
738 charges authorized in this paragraph 6.

739
740 7. *Retaliation Specifically Forbidden.* No association, director, officer, manager, or other agent of an
741 association may take, or direct, or encourage another person to attempt retaliatory action against a
742 homeowner because the homeowner has

- 743 a. complained about alleged violations of law or governing documents;
- 744 b. requested to review books, records, or other papers of the association; or
- 745 c. taken any other lawful action asserting homeowner rights or otherwise seeking to improve association
- 746 operations. The retaliatory forbidden action includes, without limitation, ill-motivated litigation (e.g.,
- 747 Strategic Lawsuits Against Public Participation, or SLAPP suits) as well as deprivation of other rights
- 748 protected by law or governing documents.

749

750 8. *Remedies.* In addition to other remedies authorized by this model statute or other law, homeowners are

751 entitled to recover compensatory and, for intentional violations, punitive damages from associations, and

752 their directors, officers, managers, or other agents who act unlawfully. In addition, upon proof of

753 intentional violations by directors, officers, managers, or other agents of the association, homeowners are

754 entitled to appropriate relief in equity including (without limitation) removal of offenders from positions

755 with the association, a bar against their return to office for a specified time, and an order requiring the

756 offender to repay the association for expenses including legal fees. The attorney general (and if otherwise

757 authorized, local government officials) may obtain the same relief as any homeowner, as well as other

758 appropriate equitable relief including a bar against the offender's serving in any capacity for an

759 association.

760

761 **Section 183C: 10. The Right to an Ombudsperson for Homeowners**

762 1. *Creation of the Ombudsperson for Homeowners.* The state Office of Ombudsperson for Homeowners

763 shall have powers and duties provided in this model statute.

764 a. Each association annually shall register with the ombudsperson, providing its name and contact

765 information; the same information for each management company; the location of each recorded

766 governing document; the number of the association's homeowners; and other information required by the

767 ombudsperson.

768 b. With the annual registration, each association shall pay to the ombudsperson \$4

769 for each home in the common-interest community.

770

771 2. *Investigation and Oversight.* The ombudsperson shall investigate alleged denials of homeowner rights
772 under this model statute, the Non-Profit Corporation Act, or other statute by associations, their current or
773 former directors, officers, employees, managers, or other agents and, where authorized by law, shall
774 oversee elections and other ballots.

775 a. The ombudsperson has subpoena power for investigations, and shall provide petitioning homeowners
776 and responding associations a statement of facts and legal conclusions, to be completed within 90 days,
777 unless the ombudsperson expressly finds a need for up to twice that time.

778 b. The ombudsperson shall expedite investigations concerning supervised elections or other ballots and
779 arbitration of recalls, to be completed within 15 days, unless the ombudsperson expressly finds a need for
780 up to twice that time.

781 3. *Enforcement.* If the ombudsperson advises the attorney general to pursue litigation concerning an
782 association, the ombudsperson shall so advise all petitioning homeowners and all directors of the
783 association. However, the attorney general, local governments (if otherwise authorized), and homeowners
784 may seek judicial relief with or without such recommendation.

785 a. In addition to enforcement of subpoenas for the ombudsperson, the attorney general shall seek judicial
786 enforcement of the ombudsperson's decisions regarding supervised elections or other ballots, arbitration
787 of recalls, and findings that specified intentional violations of this model statute or other law justify
788 removal of a director, officer, manager, or other agent. With or without a referral from the ombudsperson,
789 upon finding actual or threatened violations of homeowner rights, the attorney general may seek
790 temporary, preliminary, or final injunctions, independent audits, removal of directors, statutory penalties,
791 and other lawful relief. If the homeowner agrees, the attorney general also can present individual claims
792 for relief with government claims.

793 b. If a local government agency has power to enforce governing documents, it also has power to enforce
794 the model statute and other rights for homeowners.

795 4. *Optional Mediation and Supervised Voting.* The ombudsperson may offer to participate in any
796 mediation, or to supervise any election or other ballot, even where not required by law. No such offer,
797 whether or not accepted, disqualifies the ombudsperson from exercising any power or duty under this
798 model statute; provided, by agreement in writing, the ombudsperson and parties can specify
799 confidentiality or other condition on agreed action by the ombudsperson.

800

801 5. *Licensing Managers.* The ombudsperson shall license qualified association managers, with tests to
802 confirm knowledge of the law and, for managers who seek to handle association funds, to confirm
803 knowledge of accounting. The ombudsperson may set requirements for managers to be bonded.

804

805 6. *Forms Updated, Mediators Listed and Homeowner Education.* The ombudsperson shall keep current
806 the information statement and other disclosure forms that sellers must give to buyers as provided in
807 Section 104, The Right to Be Told of All Rules and Charges, the Notice of Foreclosure Rights, the Notice
808 of Foreclosure Filing, the Notice of Right of Redemption, and other forms that may assist homeowners.
809 The ombudsperson also shall be required to maintain lists of available no- or low-cost mediation
810 programs, publish and promote educational materials to secure homeowner rights, and accredit programs
811 to license association management. All such documents prepared by the ombudsperson shall be translated
812 into any language used at one or more polling places during elections, and also made accessible to
813 persons with disabilities.

814

815 7. *Rulemaking.* The ombudsperson shall adopt rules governing investigations, oversight, licensing of
816 managers, and its other functions as appropriate to implement this model statute.

817

818 8. *Annual Reports.* The ombudsperson annually shall publish information on

819 a. the number, kind, and size of associations in this state;

820 b. how state law affects operation and management of associations;

821 c. known violations of this model statute;

822 d. homeowners' use of options for mediation and arbitration, costs incurred, and the decisions and awards
823 made by mediation and arbitration procedures;

824 e. the number of foreclosure cases filed, the number completed, and the reasons for such cases; and

825 f. other issues the ombudsperson considers of concern to homeowners.