

58-4608. Same; association duties; restrictions; board of directors discretion. (a) The association shall:

- (1) Adopt and may amend bylaws and may adopt and amend rules;
 - (2) adopt and may amend budgets;
 - (3) have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;
 - (4) promptly provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules, covenants or declarations of restrictions, or to recover unpaid assessments or other sums due the association;
 - (5) establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association;
 - (6) have the power to suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:
 - (A) Deny a unit owner or other occupant access to the owner's unit;
 - (B) suspend a unit owner's right to vote except involving issues of assessments and fees; or
 - (C) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person; and
 - (7) have all other powers that may be exercised in this state by organizations of the same type as the association.
- (b) The board of directors may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The board of directors does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
- (1) The association's legal position does not justify taking any or further enforcement action;
 - (2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
 - (3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
 - (4) it is not in the association's best interests to pursue an enforcement action.
- (c) The board of directors' decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the board of directors from taking enforcement action under another set of circumstances, but the board of directors may not be arbitrary or capricious in taking enforcement action.
- (d) The provisions of subsection (a)(6)(B) shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.
- (e) This section shall take effect on and after January 1, 2011.

History: L. 2010, ch. 116, § 8; L. 2012, ch. 139, § 1; July 1.