

Appendix J. Comparison of HOA Statutes and Model Acts by Topic.

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
HOA Powers						
HOAs have the power to						
• hire managers, employees, agents, and independent contractors.	No	Yes	Yes	Yes	Yes	NA
• litigate on behalf of itself or two or more home owners.	No	Yes	Yes	Yes	Yes	NA
• make contracts.	No	Yes	Yes	Yes	Yes	NA
• acquire, hold, encumber, and convey any right, title, or interest to real or personal property.	No	Yes	Yes	Yes	Yes	NA
• grant easements, leases, licenses, and concessions through common elements.	No	Yes	Yes	Yes	Yes	NA
• charge to prepare and record amendments and to provide information.	No	Yes	Yes	Yes	Yes	NA
• charge a fee when a home is transferred.	No	Yes	No	No	No	NA
• purchase directors' and officers' liability insurance.	No	Yes	Yes	Yes	Yes	NA
• finance common expenses.	No	Yes	Yes	Yes	Yes	NA
• adopt and amend budgets.	No	Yes	Yes	Yes	Yes	Yes
• require non-binding arbitration.	No	No	No	No	No	Yes
• sell common elements with consent of 80% of non-developer owners.	No	Yes	Yes	Yes	Yes	NA
• initiate litigation, mediation, arbitration, or administrative action against the developer who built the community if there are construction defects.	No	No	No	No	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
<ul style="list-style-type: none"> • terminate unconscionable contracts made by developer-controlled HOAs if the HOA board is owner-elected 	No	Yes	Yes	Yes	Yes	NA
HOA Duties						
HOAs have a duty to	No	No	No	No	No	Yes
<ul style="list-style-type: none"> • to enforce the declaration, bylaws, and rules. 	No	No	No	No	No	Yes
<ul style="list-style-type: none"> • provide notice of litigation. 	No	Yes	Yes	Yes	Yes	NA
<ul style="list-style-type: none"> • carry property and liability insurance. 	No	No	No	No	Yes	NA
<ul style="list-style-type: none"> • carry fidelity insurance. 	Yes	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> • keep financial records. 	Yes	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> • make HOA records available for examination by owners. 	No	No	Yes	Yes	Yes	NA
<ul style="list-style-type: none"> • return surplus funds not allocated to reserves to owners. 	No	No	No	No	Yes	Yes
<ul style="list-style-type: none"> • follow the procedures for adopting a budget when adopting a special assessment. A special assessment must be approved by a two-thirds vote of the board. 	No	No	No	NA	Yes	Yes
<ul style="list-style-type: none"> • give notice before and after a change in rules. 	No	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> • hold an annual meeting 	No	No	No	No	No	Yes
<ul style="list-style-type: none"> • hold open meetings 	No	No	No	No	Yes	Yes
<ul style="list-style-type: none"> • annually adopt a proposed budget. 	No	No	No	No	Yes	NA
Developer-controlled HOAs must meet four times per year.	No	No	No	No	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
Restrictions on HOAs						
HOAs shall not . . . <ul style="list-style-type: none"> deny compliant owners use and enjoyment of the common elements. deny an owner access to their home. 	Yes	No	No	No	Yes	NA
	No	No	No	No	No	Yes
<ul style="list-style-type: none"> deny a member's right to vote in community elections. prevent an owner from seeking election. withhold services if withholding would endanger safety, health, or property. prohibit the display of a state flag or signs regarding candidates for office or ballot questions. 	No	No	No	No	No	Yes
	No	No	No	No	No	Yes
	No	No	No	No	No	Yes
	No	No	No	No	Yes	Yes
HOA Bylaws						
The bylaws must . . . <ul style="list-style-type: none"> state the number and titles of the board of directors. state the qualifications, powers and duties, terms of office, and manner of electing and removing members of the board of directors and officers and filling vacancies. state which powers the board of directors may delegate. assign officers to prepare, execute, certify, and record amendments to the declaration. state the method of amending the bylaws. 	Yes	Yes	Yes	Yes	Yes	Yes
	Yes	Yes	Yes	Yes	Yes	Yes
	No	Yes	Yes	Yes	Yes	Yes
	No	Yes	Yes	Yes	Yes	Yes
	No	Yes	Yes	Yes	Yes	Yes

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
HOA Boards of Directors						
Developer appointed HOA board members shall exercise <ul style="list-style-type: none"> the care and loyalty toward the HOA required of a trustee. the care required of fiduciaries of the unit owners. 	No	No	No	No	Yes	Yes
	No	Yes	No	No	No	NA
Owner-elected HOA board members shall <ul style="list-style-type: none"> exercise the degree of care and loyalty to the HOA required of an officer of a corporation. have a duty of ordinary and reasonable care. 	No	No	No	No	Yes	Yes
	No	Yes	Yes	Yes	No	No
The board of directors must elect a president, secretary, and other officers.	No	Yes	Yes	Yes	Yes	Yes
Any elected board member may be removed if the number of votes cast in favor of removal exceeds those cast in opposition.	No	No	No	No	Yes	Yes
Conduct of HOA Affairs						
HOAs consist exclusively of owners.	No	Yes	Yes	Yes	Yes	Yes
A quorum is 20% of owners and 50% of board members.	No	Yes	Yes	Yes	Yes	Yes
Votes may be cast by proxy.	No	Yes	Yes	Yes	Yes	Yes
A proposed budget may be rejected by a majority of all owners.	No	No	Yes	Yes	Yes	Yes
Each home is a separate parcel [for voting purposes]	Yes	Yes	Yes	Yes	Yes	NA
Rules must be reasonable.	No	No	No	No	Yes	Yes

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
A condominium or home will be subject to a lien by the HOA if the owner fails to pay assessments or fines.	Yes	Yes	Yes	Yes	Yes	NA
HOAs may be unincorporated only if the community has four or fewer units.	No	Yes	Yes	Yes	Yes	NA
The HOA acts as trustee with dealing with insurance proceeds and following termination of the condominium.	No	Yes	Yes	Yes	Yes	NA
HOA Liability						
Any action alleging a wrong done by the HOA must be brought against the HOA and not against any homeowner.	No	Yes	Yes	Yes	Yes	NA
A homeowner is not liable, solely by reason of being a home owner, for an injury or damage arising out of the condition or use of the common elements.	No	No	No	No	Yes	NA
A judgment against the HOA is a lien against all of the HOA's real estate and all of the homes and condominiums in the community.	No	Yes	Yes	Yes	Yes	NA
Developers' Obligations to the HOAs						
Developer pays real estate taxes on property transferred to the HOA.	No	Yes	Yes	Yes	Yes	NA
The developer can be liable for all litigation expenses incurred by the HOA in an action against the developer for breach of contract or	No	No	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
wrongful act or omission.						
Developer pays all common area expenses until the board imposes an assessment.	No	Yes	Yes	Yes	Yes	NA
Lenders and HOAs						
Secured lenders may not control the general administrative affairs of the HOA	No	Yes	Yes	Yes	Yes	NA
HOAs may grant lenders the power to change assessments	No	No	No	No	Yes	NA
Termination and Modification of HOAs						
Consent of owners of 80% of homes needed to terminate community	No	Yes	Yes	Yes	Yes	NA
Any interested party can petition court to terminate the HOA of a community that has been destroyed.	No	No	No	No	Yes	NA
Proceeds from the sale of common elements are allocated according to the fair market value of the homes	No	Yes	Yes	Yes	Yes	NA
Master Associations and Master Planned Communities						
Specific provision for master planned communities.	No	No	No	No	Yes	NA
Provisions that apply to HOAs included in a master association also apply to the master association.	No	Yes	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
Declarations and the Creation of Communities						
HOAs and the communities they govern are created by recording a document known as the declaration.	Yes	Yes	Yes	Yes	Yes	NA
The declaration must contain ...	No	Yes	Yes	Yes	Yes	NA
• the HOA's name and a statement that the common interest community is either a condominium, cooperative, or planned community	No	No	Yes	Yes	Yes	NA
• the number of homes the developer reserves the right to create	Yes	Yes	Yes	Yes	Yes	NA
• a description of the common or limited common elements	No	Yes	Yes	Yes	Yes	NA
• a description of any development rights and a time limit within which those rights must be exercised	Yes	Yes	Yes	Yes	Yes	NA
• an allocation of owners' interests in common elements	No	Yes	Yes	Yes	Yes	NA
• restrictions on use, occupancy, or sale	No	No	Yes	Yes	Yes	NA
• the recording data for easements and licenses that affect the development	No	No	No	No	Yes	NA
• authorization to impose construction and design criteria	No	Yes	Yes	Yes	Yes	NA
The declaration defines the interior and exterior elements that comprise the common elements or limited common elements.	No	Yes	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
If the declaration and bylaws conflict, then the declaration prevails unless otherwise noted by the act.	No	Yes	Yes	Yes	Yes	NA
Declaration Amendments						
Declaration may be amended by approval of owners of 67% or more of the homes.	No	Yes	Yes	Yes	Yes	NA
Challenges to the validity of declaration amendments must be brought within one year.	No	Yes	Yes	Yes	Yes	NA
Consent of owners needed to increase developer rights, increase the number of homes, change boundaries between homes, change the allocated interest of homes, or prohibit the leasing of homes.	No	Yes	Yes	Yes	Yes	NA
Unanimous consent of owners needed to increase the number of homes	No	No	Yes	Yes	Yes	NA
Notice must be provided to home owners that have not consented to an amendment	No	No	No	No	Yes	NA
Developers may amend the declaration to add less than 10% in additional real estate to the development.	No	No	No	Yes	Yes	NA
Developers' Duties						
Any improvement labeled "need not be built" on a plat or plan must be identified as such in any promotional materials.	No	No	Yes	Yes	Yes	NA
The developer must complete all improvements labeled "must be built" on plats or	No	Yes	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
plans.						
The developer or owner must complete and restore any portion of a condominium or home affected by the exercise of development rights, relocation of home boundaries, easements, use of property for sales purposes or alteration of properties.	No	Yes	Yes	Yes	Yes	NA
Any improvement labeled "need not be built" on a plat or plan must be identified as such in any promotional materials.	No	No	Yes	Yes	Yes	NA
The developer must complete all improvements labeled "must be built" on plats or plans.	No	Yes	Yes	Yes	Yes	NA
The developer or owner must complete and restore any portion of a condominium or home affected by the exercise of development rights, relocation of home boundaries, easements, use of property for sales purposes or alteration of properties.	No	Yes	Yes	Yes	Yes	NA
Before conveying a home or condominium, the developer must release all liens on the property or provide a surety bond, collateral or insurance against the lien.	No	No	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
The developer who is converting a community into condominiums or single-family developments with associations must offer them to leasees for purchase.	No	No	Yes	Yes	Yes	NA
A leasee in a converted building or community has to be given notice before vacating.	No	Yes	Yes	Yes	Yes	NA
Information for Purchasers						
A developer must prepare a public offering statement before offering a home or condominium for sale.	No	No	Yes	Yes	Yes	NA
The public offering statement must include the current balance sheet and projected budget for the HOA and other information.	No	No	Yes	Yes	Yes	NA
The public offering statement must be provided to the purchaser before selling a home or condominium.	No	No	Yes	Yes	Yes	NA
Information including HOA rules, balance sheet and income statements, and other information is available to purchasers of residential condominiums on request.	No	Yes	Information is required to be provided even when not requested	Information is required to be provided even when not requested	Information is required to be provided even when not requested	NA
If the condominium is not completed, the public offering statement must include additional information such as the maximum number of homes that may be created and other information.	No	No	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
An owner must deliver a resale certificate to a purchaser before the sale of a home. The certificate must include much of the same information required in a public offering statement.	No	No	Yes	Yes	Yes	NA
A purchaser may cancel the purchase contract within 15 days of receiving the public offering statement.	No	No	Yes	Yes	Yes	NA
Warranties						
An express warranty is created by a promise that relates to the condo or home, descriptions of its characteristics, and a provision the buyer may put the condo or home to a specified use.	No	No	Yes	Yes	Yes	NA
Any seller warrants that a condominium or home will be in at least as good condition at the time of conveyance as it was at the time of contracting, free of defective materials, and constructed in accordance with the law.	No	No	Yes	Yes	Yes	NA
The statute of limitation on a breach of warranty is six years. The parties can reduce this to two years.	No	No	Yes	Yes	Yes	NA
Alteration of Communities						
Provision for creation of multiple units with different declarations from an existing unit.	No	Yes	No	No	No	NA
Two or more communities may merge.	No	Yes	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
Alteration and Reallocation of Common Areas						
Allocation of interest in commons may not favor the developer.	No	Yes	Yes	Yes	Yes	NA
Reallocation by owners of their interest in common elements must be approved by the HOA.	No	Yes	No	No	No	NA
Owners need HOA permission to alter commons.	No	Yes	Yes	Yes	Yes	NA
Owners may amend adjacent home boundaries unless the HOA disapproves.	No	Yes	Yes	Yes	Yes	NA
Legal Remedies						
Punitive damages may be awarded to a party if a developer or other person fails to comply with the law.	No	No	Yes	Yes	Yes	Yes
The court may award reasonable attorney's fees in a lawsuit.	No	Yes	Yes	Yes	Yes	Yes
Remedies under law should be liberally administered, but no punitive damages unless authorized.	No	No	Yes	Yes	Yes	Yes
All obligations under law may be enforced by judge.	No	No	Yes	Yes	Yes	Yes
Miscellaneous Provisions						
No one can waive rights under the act.	No	Yes	Yes	Yes	Yes	Yes
No one can alter rights by agreement.	No	Yes	Yes	Yes	Yes	Yes
Zoning and building codes may not be applied to HOAs if they would not be applied to identical non-HOA developments.	No	Yes	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
Provisions of act do not invalidate any other zoning and building code.	No	Yes	Yes	Yes	Yes	NA
Every obligation or contract under the act imposes a duty of good faith.	No	No	Yes	Yes	Yes	Yes
An agreement between owners to share costs associated with a party wall, driveway, well, or other similar use does not create an HOA unless the owners otherwise agree.	No	No	No	No	Yes	Yes
Owners have an easement to access their homes.	No	No	No	Yes	Yes	NA
Title does not become unmarketable because of failures to comply with the act.	No	Yes	Yes	Yes	Yes	NA
A cost-sharing scheme between . . . • two HOAs does not create a new, separate HOA.	No	No	No	No	Yes	Yes
• an HOA and a private owner who is not part of the HOA does not create a new HOA, but the arrangement must be disclosed to home owners.	No	No	No	No	Yes	Yes
State Oversight of Communities with HOAs						
A developer may not offer or sell a residential property unless the property is registered with a state agency.	No	No	Yes	Yes	Yes	NA

Topics	Tennessee Horizontal Property Act (1963)	Tennessee Condominium Act (2008)	Uniform Condominium Act (1980)	Uniform Planned Community Act (1980)	Uniform Common Interest Ownership Act (2008)	Uniform Common Interest Owners Bill of Rights Act (2008)
Developers must file annual reports for any communities registered with a state agency.	No	No	Yes	Yes	Yes	NA
A state agency may . . .	No	No	Yes	Yes	Yes	NA
• revoke the community's registration under certain conditions.	No	No	Yes	Yes	Yes	NA
• engage in investigations.	No	No	Yes	Yes	Yes	NA
• require developers to alter public offering statements.	No	No	Yes	Yes	Yes	NA