



Protecting the Interests of Homeowners in Planned Developments:

**Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair
and Adequate Regulation**

January 2015



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**Protecting the Interests of Homeowners
in Planned Developments:**

***Insuring and Maintaining Common Property, Completing
Infrastructure, and Providing Fair and Adequate Regulation***

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January 29, 2015

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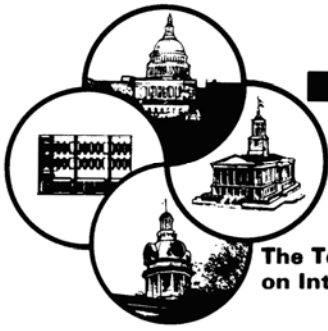
Dear Chairman Carr,

Transmitted herewith is the Commission's report on House Bill 2070 by Representative Andrew Farmer, referred in 2014 by the House Local Government Subcommittee of the 108th General Assembly for study. The bill would have required owners selling residential property in a planned unit development to disclose whether the development is complete, and if not, the date it would be complete. The report, which also responds to House Resolution 170, referred to the Commission by the 107th General Assembly, was approved on January 29, 2015, and is hereby submitted for your consideration.

Respectfully yours,

Senator Mark Norris
Chairman

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MEMORANDUM

TO: Commission Members
FROM:  Lynnis Roehrich-Patrick
Executive Director

DATE: 29 January 2015

SUBJECT: Homeowners Associations (House Bill 2070 by Farmer)—Final Report

The attached report is submitted for your approval. The report was prepared in response to House Bill 2070 by Farmer, which the House Local Government Subcommittee sent to the Commission for study. The bill as introduced would have required sellers to disclose whether their property is located in a planned unit development (PUD), and if so, whether the PUD is complete. The report meets the intent of House Resolution 170, referred to the Commission by the 107th General Assembly, which called on the Commission to study Homeowners Associations' (HOAs) rules and regulations and the responsibility of HOAs to insure their obligations. The report also considers issues raised by Senate Bill 2198 by Johnson and its companion, House Bill 2060 by Durham, which would have prevented HOAs from placing restrictions on parking on public streets and banning political signs on private property without the approval of the city or county legislative body and from imposing fines in excess of the monthly dues owed by property owners within the HOA. Recommendations presented are summarized below.

Requiring Adequate Insurance

- The Condominium Act of 2008 requires HOAs for condominiums created after January 1, 2009, to maintain property and liability insurance on common areas. Adopting such a provision for condominiums built before January 2, 2009, and for single-family developments would help ensure that adequate funds are available to make necessary repairs and pay liability claims for these developments as well as for condominiums built after that date, should the need arise.
- The Condominium Act of 2008 requires all condominium HOAs to provide notice of coverage to all residential condominium owners upon request, but

there is no similar requirement for single-family developments. Adopting such a provision for single-family developments in Tennessee would ensure that all homeowners have access to information about the insurance carried by their HOAs.

Ensuring Maintenance of Common Areas and Completion of Infrastructure

- In order to protect their investment, developers maintain control over HOAs during construction until a date or event specified in the declaration, the governing document of the community. If a developer has become insolvent and does not maintain the common areas, taking it to court might not work because an insolvent developer won't have the resources. Florida, a state with a long history of HOA developments, deals with this problem by requiring transfer of control of HOAs from developers to homeowners when developers abandon their responsibility to maintain the common property or become insolvent. While this gives homeowners control over the common areas, it does not ensure that they have the financial means to maintain them. Nevertheless, providing homeowners this option could increase the likelihood that the common areas will not deteriorate.
- In order to ensure that funds are available to complete infrastructure when homes in new developments don't sell rapidly enough to pay for it, counties and municipalities routinely require developers to guarantee that funds will be available, usually through letters of credit or surety bonds, to avoid having to use taxpayers' dollars to complete the development. Unfortunately, there have been several instances where developers were unable to finish the infrastructure and local governments had allowed the bond or letter of credit to lapse. One way to avoid a lapse is to use automatically renewing letters of credit rather than surety bonds.

Regulating Homeowners' and Others' Conduct

- Because they are not subject to the constraints placed on governmental entities by the Constitution, HOAs can ban or regulate political signs. A number of states restrict their right to do this. Any prohibition against HOAs banning political signs should include authorization to determine the time, place, size, number, and manner of display of those signs. In order to avoid entangling Tennessee's cities and counties unnecessarily in the business of HOAs, any such prohibition should not be subject to local government control.
- Some HOAs forbid parking on the streets within their boundaries, even where those streets are public, for safety and aesthetic reasons. Vehicles parked along the street obscure the view of drivers, potentially endangering pedestrians, and narrow streets are difficult for emergency vehicles to navigate. Forbidding HOAs to prohibit all parking on public streets would shift the burden of keeping them clear for safety reasons to local governments. Only two states limit HOAs'

power to regulate parking on public streets. HOAs in Nevada can prohibit parking only of certain large vehicles, while HOAs in Arizona cannot prohibit any parking on public streets. Restrictions like these would seem to increase the potential for safety problems. Allowing local governments to decide whether HOAs can restrict parking on public streets would seem more prudent.

Imposing and Collecting Fines and Other Assessments

HOA members may be subject to fines if they fail to pay assessments or otherwise don't comply with rules and regulations. Failure to pay fines or assessments can lead to liens or even foreclosures on owners' property. For condominiums governed by the Condominium Act of 2008, fines must be reasonable, but liens for nonpayment of fines or assessments attach automatically and without notice. In other developments governed by HOAs, the same thing may be allowed by the declaration. An HOA could foreclose on a property for failure to pay even a small fine, and the ease with which liens are attached may lead to abuse.

- Extending the reasonableness limitation on fines for newer condominiums to older condominiums and single-family HOAs would protect owners while leaving some discretion to HOAs setting fines.
- HOAs should also be required to notify homeowners when liens attach for unpaid fines and assessments.
- Foreclosure on liens for unpaid fines and assessments should be limited to some minimum amount and some minimum length of time unpaid.

Local Governments Owning Property Subject to HOA Dues

When property owners fail to pay taxes, local governments must hold a tax sale, and if no one bids on the properties, the local governments are required to purchase them for the taxes owed and related costs. Although liens attached for HOA assessments, like all non-tax liens, are extinguished when a property is purchased at a tax sale, the requirements of the declaration, including the requirement to pay assessments, apply to the new owner, even if the new owner is a government. In some communities, paying these assessments has become burdensome for local governments.

Bills that attempted to empower local governments to deal with this issue in different ways failed to pass in 2012 and 2013. One would have exempted state and local governments from HOA assessments. The other was much broader and would have allowed local governments to force the sale of tax delinquent properties for less than the amount of taxes owed and related costs. Allowing local governments to do this would increase the likelihood that they could avoid buying them and assuming responsibility for future HOA assessments.

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Planned Developments and Homeowner Associations: Strategies for Resolving Issues and Conflicts

Most residential developments today are planned to meet community standards, including providing amenities such as clubhouses and other gathering places that belong to everyone who resides in them. These common areas require everyone's help to maintain. This is typically done through homeowners associations (HOAs), which usually have authority to enforce covenants agreed to by homebuyers.

A number of issues and concerns related to properties governed by HOAs have surfaced in recent years, from incomplete infrastructure to overzealous regulation. Responding to some of these concerns, the House of Representatives of the 107th General Assembly passed a resolution asking the Commission to study HOA rules and regulations and their responsibility to insure their obligations. The House Local Government Subcommittee of the 108th General Assembly asked the Commission to study a bill that would have required owners to disclose to buyers whether developments are complete or when they will be completed. Because the issues overlap, the Commission also chose to study a third bill related to regulations and fines. See appendix A.

Homeowners associations are in many ways small, private governments. As Kaid Benfield, writing for *The Atlantic's Citylab*, describes them,

they have taxing power, setting mandatory dues that if not paid can result in the placement of a lien on your property or even foreclosure; they have regulatory authority, setting rules for everything from when you can take out the trash to what color and materials you use in your window treatments to what you can and cannot grow in your yard. They have enforcement power, too, including the right to issue cease and desist orders and to impose financial penalties in the form of fines. One legal observer [Ross Guberman]¹ has called the exercise of quasi-political powers by HOAs “one of the most significant privatizations of local government functions in history.” . . .

¹ Guberman 2004.

Homeowners associations are in many ways small, private governments that maintain common areas and have authority to enforce covenants agreed to by homeowners.

In a lot of places—probably in most—it’s a sort of government-among-friends, where rules are applied and interpreted with good faith and generosity, where neighbors cooperate on upkeep, and where buildings and communities look better and function better because of it.²

Requiring Adequate Insurance

The record flood that struck the Nashville area in May 2010 caused \$1.5 billion in property damage,³ including damage to several condominiums near the Harpeth River. When owners of those condominiums discovered that their HOA did not have adequate insurance to repair the buildings’ exteriors, they complained that their HOA was not responsive. To call attention to this issue, Representative Gary Moore introduced House Resolution 170, which the House passed in 2012, calling for the Commission to study HOA rules and regulations and their responsibility to insure their obligations.

While HOAs for condominiums built under Tennessee’s Condominium Act, adopted in 2008, are required to carry insurance for common areas, those for condominiums built before January 2, 2009, and for single-family developments are not and, consequently, may not have adequate coverage to pay for repairs of common property or to pay liability claims. All condominium owners can require their HOAs to provide notice of coverage, which would allow them at least to discover whether the property was insured; however, homeowners in single-family developments with HOAs cannot. Although property insurance would not have covered damage caused by the May 2010 flood itself, it would have covered damage caused by the rains.

Like the Condominium Act of 2008, all of the model laws developed by the Uniform Law Commission for HOAs except the Uniform Common Interest Owners Bill of Rights require insurance. Adopting such a provision for condominiums built before January 2, 2009, and for single-family developments would help ensure that adequate funds are available to make necessary repairs and pay liability claims for these developments as well as for condominiums built after that date, should the need arise.

The Condominium Act of 2008 also requires HOAs to provide notice of coverage to all residential condominium owners upon request regardless

² Benfield 2013.

³ Edwards 2010.

HOAs for condominiums built before January 2, 2009, and for single-family developments are not required to carry insurance for common areas.

of when they were built, but there is no similar requirement for single-family developments. Almost all of the model laws, including those for single-family developments, require insurers to issue a memorandum of insurance to any owner upon request. Adopting such a provision for single-family developments in Tennessee would ensure that all homeowners have access to information about the insurance carried by their HOAs.

Challenges that Arise when Developers have Financial Problems

With the decline in demand for housing and in housing prices that followed the burst of the housing bubble and the Great Recession of 2007-2009, many residential developers began to struggle to meet their obligations to complete infrastructure and maintain common areas. Without the cash flow from the sale of lots or homes, developers simply did not have enough money. Even now, some homeowners continue to live in neighborhoods where the infrastructure was never completed and where the common areas are not being maintained. House Bill 2070 by Farmer (Senate Bill 2110 by Bowling) would have dealt with this issue by requiring owners to disclose to the buyer whether the development is complete or when it will be completed. The House Local Government Subcommittee sent this bill to the Commission for study in 2014. The Senate State and Local Government Committee amended its bill to require TACIR to study homeowners associations, but it did not receive a vote on the floor.

In order to protect their investment, developers maintain control over HOAs during construction until a date or event specified in the declaration, the governing document of the community. If a developer refuses to complete infrastructure or to maintain common areas while in control of the HOA, the owners' only recourse is to take the developer to court. If the developer has become insolvent, even taking it to court might not work because an insolvent developer won't have the resources. Homeowners need another way to ensure that common areas are maintained.

Empowering Homeowners to Maintain Common Areas

Florida, a state with a long history of HOA developments, deals with this problem by requiring transfer of control of HOAs from developers to homeowners when developers abandon their responsibility to maintain the common property or become insolvent. While this gives homeowners control over the common areas, it does not ensure that they have the financial means to maintain them. Nevertheless, providing homeowners this option could increase the likelihood that the common areas will not deteriorate.

Following the housing bubble and the Great Recession of 2007-2009, many residential developers began to struggle to meet their obligations to complete infrastructure and maintain common areas.

HOAs impose fines to help ensure compliance with restrictions, including restrictions on displaying political signs and parking on streets, that homeowners agree to when they purchase their home.

Ensuring Infrastructure is Completed

In order to ensure that funds are available to complete infrastructure when homes in new developments don't sell rapidly enough to pay for it, counties and municipalities routinely require developers to guarantee that funds will be available, usually through letters of credit or surety bonds, to avoid having to use taxpayers' dollars to complete the development. Unfortunately, there have been several instances where developers were unable to finish the infrastructure and local governments had allowed the bond or letter of credit to lapse. One way to avoid a lapse is to use automatically renewing letters of credit rather than surety bonds.

Regulating Homeowners' and Others' Conduct

The main purpose of HOAs is to protect the investments of the homeowners. One of the ways they do this is by restricting conduct or actions that could adversely affect people living in the neighborhood. Homeowners agree to live by these rules when they purchase their homes and grant HOAs power to impose fines to help ensure compliance with these restrictions. From time to time, tensions arise between HOAs and homeowners who think their HOAs have overstepped their bounds.

Senate Bill 2198 by Johnson and its companion, House Bill 2060 by Durham, would have forbidden HOAs, unless expressly authorized by their local government, to limit or prohibit the display of political signs and parking on public streets. It would have protected homeowners in violation of these rules by limiting fines charged by all HOAs to the amount of one month's assessment and requiring a judicial hearing before an HOA could attach a lien.

Regulation of Political Signs by Homeowners Associations

The federal and state constitutions forbid governments to ban the display of political signs—or any signs, for that matter, based on content—but allow reasonable regulations. Because they are not subject to the constraints placed on governmental entities by constitutions, HOAs can regulate or even ban political signs, but a number of states restrict their right to do this. Tennessee does not. Consequently, people can and do contract away their right to display political signs when they buy homes in areas governed by HOAs.

No state involves local governments in deciding whether to allow HOAs to prohibit political signs. Ten states directly forbid outright bans of political signs by HOAs but allow them to regulate the time, place, and manner of

display of those signs, which is similar to the constitutional constraint on government regulation of signs. These laws appear to be constitutional despite the fact that they single out political signs because the states are protecting the right to display political signs rather than restricting it.

Any prohibition against HOAs banning political signs should authorize HOAs to regulate the time, place, size, number, and manner of display of those signs. In order to avoid entangling Tennessee's cities and counties unnecessarily in the business of HOAs, any such prohibition should not be subject to local government control.

Regulation by Homeowners Associations of Parking on Public Streets

Some HOAs forbid parking on the streets within their boundaries, even where those streets are public, for safety and aesthetic reasons. Vehicles parked along the street obscure the view of drivers, potentially endangering pedestrians, and narrow streets are difficult for emergency vehicles to navigate. Forbidding HOAs to prohibit all parking on public streets would shift the burden of keeping them clear for safety reasons to local governments. Only two states limit HOAs' power to regulate parking on public streets. HOAs in Nevada can ban parking only of certain large vehicles, while HOAs in Arizona cannot ban any parking on public streets. Restrictions like these would seem to increase the potential for safety problems. Allowing local governments to decide whether HOAs can restrict parking on public streets would seem more prudent.

Imposing and Collecting Fines and Other Assessments

HOA members may be subject to fines if they fail to pay assessments or otherwise don't comply with rules and regulations. Fines can be several hundred dollars or more, which some residents feel is excessive. Tennessee law does not limit the fines that can be imposed by single-family HOAs and older condominiums, but for condominiums developed after January 1, 2009, the law requires the fines to be reasonable. Six states set a maximum fine that HOAs may impose, ranging between \$50 and \$500 per violation.

Failure to pay these fines or assessments can lead to liens or even foreclosure. For condominiums governed by the Condominium Act of 2008, liens for nonpayment of fines or assessments attach automatically and without notice. In other developments governed by HOAs, the same thing may be allowed by the declaration. The ease with which liens attach has the potential to lead to abuse. To avoid this, eighteen states require recording and sometimes notice to attach a lien. Two other states completely prohibit the attachment of liens for fines. Maryland is the only

Any prohibition against HOAs banning political signs should authorize HOAs to regulate the time, place, size, number, and manner of display of those signs and should not be subject to local government control.

Extending the reasonableness limitation on fines for newer condominiums to older condominiums and single-family HOAs would protect owners while leaving some discretion to HOAs setting fines.

state that, like Senate Bill 2198 by Johnson, House Bill 2060 by Durham, requires a judicial hearing before a lien may attach.

Once a lien has attached, an HOA can foreclose on the property, and the ease with which an HOA can foreclose could also lead to abuse. Tennessee HOAs can foreclose on a property for failure to pay even a small fine. Ten states limit HOAs' ability to foreclose on homeowners, commonly by requiring a minimum dollar amount or period of delinquency. The Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act model legislation developed by the Uniform Law Commission but not adopted in Tennessee set a minimum lien amount for foreclosure and require a judgment before foreclosing certain liens.

Limiting HOAs' ability to impose fines, put liens on homes, and foreclose on them would protect homeowners and help keep the matters out of the court system. But a specific cap on fines might reduce HOAs' ability to ensure compliance with rules. They need flexibility to decide the appropriate fines, but the fines should be reasonable. Extending the reasonableness limitation on fines for newer condominiums to older condominiums and single-family HOAs would protect owners while leaving some discretion to HOAs setting fines. In any case, HOAs should also be required to notify homeowners when liens attach for unpaid fines and assessments; moreover, foreclosure on liens for unpaid fines and assessments should be limited to some minimum amount and some minimum length of time unpaid.

Local Governments Owning Property Subject to HOA Dues

When property owners fail to pay taxes, local governments must hold a tax sale, and if no one bids on the properties, the local governments are required to purchase them for the taxes owed and related costs. Although liens attached for HOA assessments, like all non-tax liens, are extinguished when a property is purchased at a tax sale, the requirements of the declaration, including the requirement to pay assessments, apply to the new owner, even if the new owner is a government, according to a recent decision by the Tennessee Court of Appeals. In some communities, paying these assessments has become burdensome for local governments. To ensure that other counties are able to reach similar agreements, the legislature passed Public Chapter 814, Acts of 2014, which authorizes local governments to transfer undeveloped properties to HOAs in return for forgiveness of the assessments owed.

Bills that attempted to empower local governments to deal with this issue in different ways failed to pass in 2012 and 2013. One would have exempted state and local governments from HOA assessments. The other was much broader. It would have allowed local governments to force the sale of tax delinquent properties for less than the amount of taxes owed and related costs. Four other states have adopted similar laws. Allowing local governments to do this would increase the likelihood that they could avoid buying them and assuming responsibility for future HOA assessments. Tennessee already allows the sale of properties for less than the taxes and associated costs owed, but only after the one-year redemption period, not at the tax sale.

Allowing local governments to force the sale of tax delinquent property for less than the amount of taxes owed and related costs would increase the likelihood that they could avoid buying them and assuming responsibility for future HOA assessments.

Planned Residential Developments and the HOAs Created to Govern Them: Issues and Conflicts

One of the most significant trends in suburban American history is the use of common ownership and deed restrictions as land-use planning devices. Described by Evan McKenzie in *Privatopia*, the roots of this trend date back to the exclusive neighborhoods with private parks, lakes, and other amenities built in the early 1800s. Examples include Gramercy Park in New York (1831) and Louisburg Square in Boston (1844),⁴ where homeowners created America's first HOA to care for a park after the developer failed to arrange for maintenance. Louisburg Square is unusual in that the owners, not the developer, formed the association. Beginning in the mid-19th century St. Louis developers created hundreds of private neighborhoods with such services as street maintenance, snow removal, mowing, tree trimming, and street lighting provided by "private street associations."⁵

By 1928 scores of luxury subdivisions across the country were using deed restrictions . . . as their legal architecture. To guarantee enforcement of the covenants, developers were organizing "homeowner associations" so that residents could sue those who violated the rules.⁶

The 1989 US Advisory Commission on Intergovernmental Relations publication *Residential Community Associations: Private Governments in the Intergovernmental System?* described five historical periods in the history of "residential community associations" or HOAs:

Origins (1830-1910). During this period the modern community association did not really exist. Some subdivisions did have deed restrictions and attempted to enforce them, and some private property owners' neighborhood organizations did provide basic services and own and maintain common facilities, but no compulsory membership homeowner association was constituted through deed restrictions to perform all three of the basic functions of a community association.

⁴ Weiss and Watts 1989.

⁵ Oakerson 1989.

⁶ McKenzie 1994.

One of the most significant trends in suburban American history is the use of common ownership and deed restrictions as land-use planning devices.

The FHA and the Veterans Administration played an important role in standardizing the implementation of community associations from the 1930s to the 1960s through their mortgage insurance and guarantee functions.

Emergence (1910-1935). In the 1910s and especially the 1920s, the larger scale of high-income suburban subdivision development, and the increased demand for design amenities and sophisticated restrictions, created a greater need for developers to provide for the establishment of homeowner associations. At this time, these associations were generally not standardized and were relatively few in number.

Popularization (1935-1963). Community builders began standardizing homeowner associations, working primarily through the Community Builders' Council of the Urban Land Institute (ULI), and later through the National Association of Home Builders (NAHB). In the 1940s, the ULI strongly endorsed the use of homeowner associations by developers, and published a plan for standardized implementation. At the same time, the Federal Housing Administration (FHA) was strongly promoting the use of deed restrictions in community development, paving the way for homeowner associations as the long-term enforcement mechanism.

Expansion (1963-1973). The FHA and ULI worked together to promote the widespread use of community associations in planned unit developments (PUDs) and in residential condominiums. The latter were first introduced into the US with FHA approval in 1961. During this period of rapid expansion, many of the community associations were poorly organized, often by much smaller scale developers. This led to a good deal of resident dissatisfaction.

Restructuring (1973-1989). . . . The FHA and the Veterans Administration played an important role in standardizing the implementation of community associations from the 1930s to the 1960s through their mortgage insurance and guarantee functions. Beginning in the late 1970s, two key secondary mortgage market institutions, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) have been very influential in the process of restructuring community association organization, financing, and management to conform to new implementation guidelines. Finally, in the past

decade developers have been relinquishing more control of community associations to the property owners at earlier stages, as part of a phased process.

HOAs are organizations created to make and enforce rules and manage common areas in private communities, condominiums as well as single-family residential developments. While they sometimes provide services such as trash pickup, their main purpose is to protect the investment of the property owners in the community. They do this largely through enforcement of rules agreed upon in the community's governing document, the declaration of covenants, conditions, and restrictions (CC&Rs), which all owners must sign and are bound by.

Many HOAs are organized as corporations, though those representing single-family developments or condominiums with four or fewer units are not required to be.⁷ Of the HOAs that are corporations, more than 99% are organized as nonprofit corporations⁸ and are subject to the state's nonprofit corporation law.⁹ The other 1% are for-profit corporations or limited liability corporations (LLCs) and are bound by Tennessee's corporation law¹⁰ and LLC law.¹¹ All of these laws give members of HOAs that are incorporated some control over their boards.

In many ways, HOAs are like small, private governments. Their members—the homeowners—elect boards of directors that enforce their rules—their CC&Rs are the equivalent of laws—and have powers that resemble those of the executive branches of public governments. They collect regular assessments from the owners—the equivalent of taxes—and use them to maintain amenities and provide services, in some cases private roads and security, and they can levy special assessments on property owners to pay for unexpected repairs and other expenses. Moreover, like unpaid taxes owed to governments, unpaid fines and assessments owed to HOAs can become a lien on residents' homes and lead to foreclosure.

Prevalence of Homeowners Associations

The number of homeowners associations grew rapidly during the second half of the last century, largely in response to government laws and regulations encouraging or requiring their use, and it has become increasingly difficult to find homes without HOAs in some communities.

⁷ Tennessee Code Annotated, Section 66-27-401.

⁸ Based on data received from the Tennessee Secretary of State.

⁹ Tennessee Code Annotated, Title 48, Chapter 51 et seq.

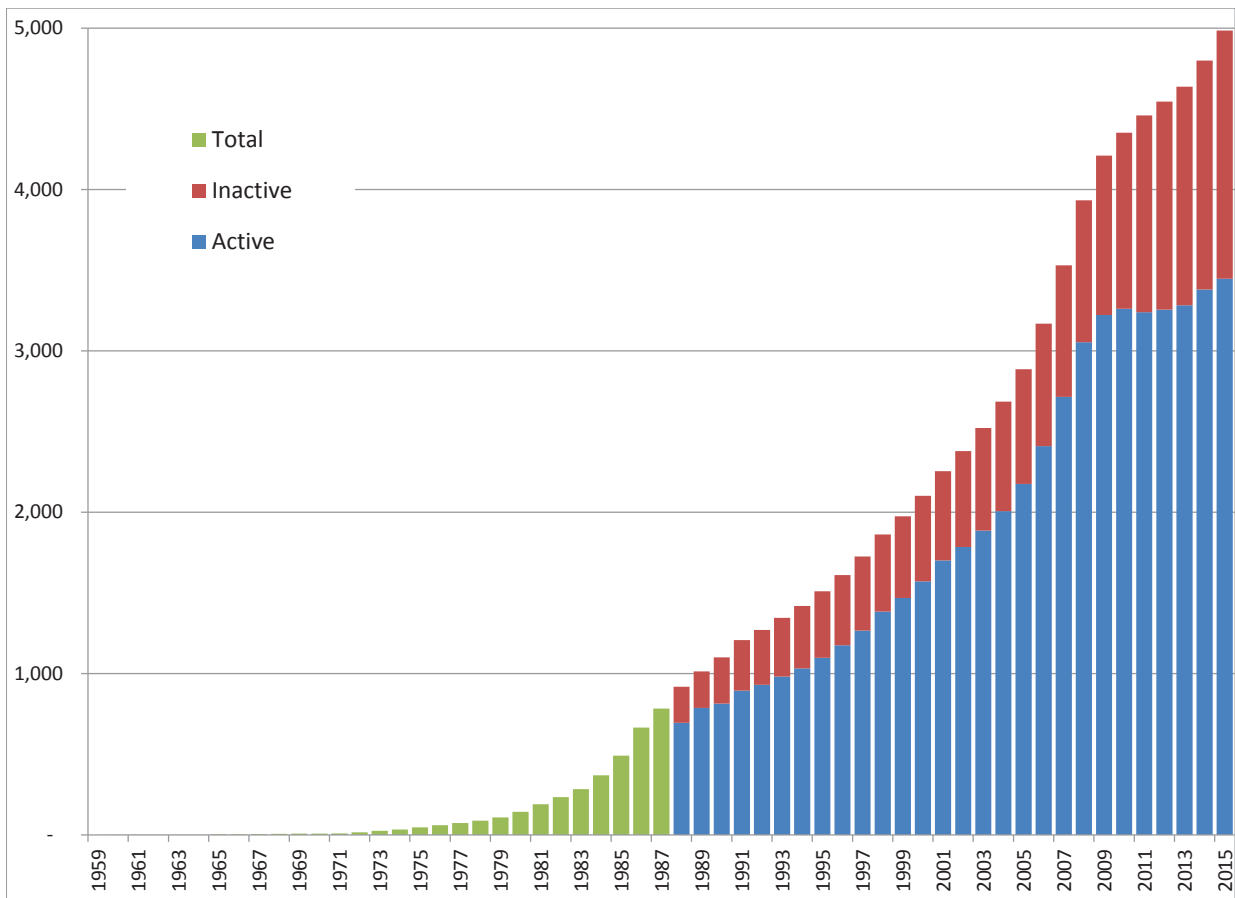
¹⁰ Tennessee Code Annotated, Title 48, Chapter 11 et seq.

¹¹ Tennessee Code Annotated, Title 48, Chapter 201 et seq.

HOAs, many of which are corporations subject to the state's corporation laws, are created to make and enforce rules and manage common areas in private communities.

Although there were still fewer than 500 HOAs nationwide in 1964,¹² by 1970 there were an estimated 10,000 nationwide serving 2.1 million residents in 701,000 units. By 2013 an estimated 65.7 million people (24% of the US population) lived in 26.3 million units in communities governed by 328,500 HOAs.¹³ Single-family residential communities account for about half of those totals, condominiums for 45% to 48%, and cooperatives for 3% to 4%. While a comparable breakdown is not available for Tennessee, an estimated 930,000 Tennesseans now live in communities governed by HOAs,¹⁴ and 3,447 of the 4,985 HOAs formed in Tennessee since 1959 are still active.¹⁵ See figure 1.

Figure 1. Number of Active and Inactive Homeowners Associations in Tennessee



Note: Active/Inactive data not available before 1988.
 Source: Data received from the Tennessee Secretary of State.

¹² McKenzie 2011.
¹³ Foundation for Community Research, 2014a.
¹⁴ Foundation for Community Research, 2014b.
¹⁵ Based on data received from the Tennessee Secretary of State.

Model Homeowners Association Legislation

As the number of HOAs grew, the need for laws to govern them became more evident. Condominium HOAs were the first to be covered. Recognizing the potential for problems affecting the value of condominiums such as maintenance of their common areas, the Federal Housing Administration began requiring states to adopt laws governing their management as a prerequisite for mortgage insurance early on. To assist states drafting laws on condominiums, which are because ownership is split into layers horizontally, the FHA drafted a model horizontal property act in 1962. Tennessee enacted its own horizontal property act the following year.

These first condominium laws made it easier to develop condominiums but did not deal with operational issues. These issues were first addressed by the Uniform Law Commission (ULC)¹⁶ in the Uniform Condominium Act, which was developed in 1977 to cover the creation, alteration, termination, and management of condominiums and protect purchasers. The ULC drafted a model act for planned communities three years later based directly on its model condominium act. The main difference between the Uniform Planned Community Act and the Uniform Condominium Act is the way they treat common areas, the ownership of which are vested directly in homeowners for condominiums and in HOAs for single-family communities. See figure 2.

The FHA began requiring states to adopt its model “horizontal property” act as a prerequisite for mortgage insurance in 1962.

Figure 2. Model Homeowners Association Laws

Condominiums	Single-Family Developments
Uniform Common Interest Ownership Act	
Uniform Common Interest Owners	
Uniform Condominium Act	Bill of Rights Act
	Uniform Planned Community Act
Horizontal Property Act	

Source: The Federal Housing Administration drafted the Model Horizontal Property Act. The Uniform Law Commission drafted the others.

¹⁶ The ULC, also known as the National Conference of Commissioners on Uniform State Laws, is a state-supported organization established in 1892 to provide states with non-partisan legislation to clarify and stabilize critical areas of state statutory law. [http://www.uniformlawcommission.com/Narrative.aspx?title=About the ULC](http://www.uniformlawcommission.com/Narrative.aspx?title=About%20the%20ULC).

Tennessee enacted condominium acts in 1963 and 2008 but still does not have a planned community act.

The ULC followed with its Uniform Common Interest Ownership Act in 1982, which governs both condominiums and planned communities “to address a growing demand in the states for a legislative solution for growing tensions between the elected directors of unit owners’ associations and dissident individual unit owners within those associations.” The ULC intended it to “succeed and subsume” both earlier model acts. The ULC drafted the Uniform Common Interest Owner Bill of Rights Act in 2008 for states unwilling to enact the entire Common Interest Ownership Act. The Bill of Rights Act deals with some of the same issues as the Common Interest Ownership Act but omits some of the general provisions and sections covering the management of communities with HOAs; almost all of those protecting purchasers; all of the sections on the creation, alteration, and termination of communities; and the entire article establishing an administrative state agency to oversee these developments. Summaries of the ULC’s model acts are in appendix B.

Several decades passed before Tennessee adopted its version of the ULC’s model condominium act, and the state still does not have a planned community act. Concerns that the Horizontal Property Act was outdated, left many questions unanswered, and did not adequately anticipate the various forms that condominiums were taking, leaving builders and owners with little certainty about how to deal with the issues that arose as more and more condominiums were created, finally prompted the legislature to act in 2008. The Tennessee Condominium Act, drafted by the Tennessee Bar Association to address these issues, was based on the ULC’s model act but omits some of its sections covering the management of condominiums, most of the sections protecting purchasers, and the entire article establishing an administrative agency to regulate condominiums.

The Tennessee Bar Association is currently working on legislation that would apply to single-family residential developments governed by HOAs based on the ULC’s 1982 Uniform Common Interest Ownership Act. Appendix C compares Tennessee’s current condominium laws with the model acts.

Most HOAs in Tennessee are not required to have insurance

Like most states, Tennessee does not require HOAs for single-family residential communities to carry property or liability insurance. Only

thirteen states do.¹⁷ However, most states require condominium HOAs to carry both property and liability insurance.¹⁸ Tennessee requires this only for condominiums built after January 1, 2009.¹⁹ Older condominiums don't have to carry either. Without insurance, HOAs risk being unable to cover large, unexpected expenses unless they can collect sufficient funds from their residents.

HOAs without property insurance may not be able to pay for repairs or replacements when disasters occur, and the regular assessments that homeowners pay them may not be adequate to cover insurable losses. When that occurs, homeowners may have to pay special assessments or leave the common property unrepaired. Even if cities stepped in and repaired common property to remove health and safety hazards, they would likely assess homeowners for the expense. If HOAs do not carry liability insurance, homeowners are responsible for paying liability claims against their HOAs because they typically do not have reserves that are not needed for other expenses. As with property damage, HOAs would pay the claims but would likely have to charge homeowners a special assessment or increase the amount of the regular assessment to cover liability claims. Regardless of how the HOA chooses to recoup the cost of the claim, homeowners would be paying liability claims that could have been covered by insurance.

Recognizing the importance of adequate insurance coverage, the Tennessee House of Representatives passed House Resolution 170 in 2012 directing the Commission to study the responsibility of HOAs to insure their obligations and recommend solutions to enable individual homeowners, upon request, to obtain at regular intervals from their respective HOAs a report citing a certificate or memorandum of insurance; proof of policy coverage available; and names, addresses, and phone numbers for HOAs' designated insurance carriers and banking institutions holding funds in escrow. Not only is it a good business practice to insure obligations and notify homeowners that you have done so, but the model acts require it as do most states, even those that haven't adopted the model acts.

¹⁷ Alaska, California, Colorado, Connecticut, Delaware, Minnesota, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, and West Virginia.

¹⁸ Thirty-one states require HOAs to carry both property and liability insurance for condominiums: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia. Florida and Hawaii require HOAs to carry property insurance but don't require them to carry liability insurance.

¹⁹ Tennessee Code Annotated, Section 66-27-413.

Without insurance, HOAs risk being unable to cover large, unexpected expenses unless they can collect sufficient funds from their residents.

Tennessee requires condominium HOAs to notify condominium owners about their insurance upon request.

The resolution was the result of concerns raised following the May 2010 flood, when homeowners complained that their HOAs were not adequately insured to cover damage to common areas. Property insurance would have covered damage from the rain but not from the flood. Only flood insurance would cover damage from floods, and unless property is in a flood plain no state requires flood insurance. Only two states require flood insurance for properties in flood plains,²⁰ but mortgage companies generally do.

All of the uniform acts except the Uniform Common Interest Owners Bill of Rights Act, which does not deal with the issue of insurance coverage, require HOAs to maintain property and liability insurance on the common areas²¹ and require insurers to provide information about HOAs' insurance coverage to owners upon request.

Thirty-one states require HOAs to notify condominium owners²² about their insurance either periodically or, as in Tennessee,²³ upon request. Six of those states go further and require that all condominium unit owners be notified of any change in coverage.²⁴ Sixteen states require HOAs in single-family residential communities to provide insurance information when requested by owners.²⁵ California is the only state that extends to single-family HOAs the requirement that they notify homeowners if there is any change in coverage.²⁶ Other states' condominium and homeowners associations laws are listed in Appendix D.

Challenges that Arise when Developers have Financial Problems

With the decline in demand for housing and in housing prices that followed the Great Recession of 2007-2009 and the bursting of the housing bubble, many residential developers began to struggle to meet their obligations to complete infrastructure and maintain common areas. Without the cash

²⁰ Connecticut requires it for all HOAs (Connecticut General Statutes, Sections 47-83, 47-255); Hawaii requires it only for condominiums (Hawaii Revised Statutes Annotated, Section 514A-86(a)).

²¹ Section 3-113.

²² Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

²³ Tennessee Code Annotated, Sections 66-27-202, 66-27-502 and 66-27-503.

²⁴ California, Connecticut, Indiana, New Hampshire, New York, and Virginia.

²⁵ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Minnesota, Nevada, New Mexico, North Carolina, Pennsylvania, Texas, Utah, Vermont, and West Virginia.

²⁶ California Civil Code, Section 5810.

flow from the sale of lots or homes, developers simply did not have enough money. Making matters worse, in some cases the bonds guaranteeing the completion of infrastructure lapsed, and even now, some homeowners continue to live in communities where the infrastructure was never completed and where the common areas are not maintained.

Developers maintain control over HOAs during construction until a date or some other event in order to protect their investment. The event or date is specified in the declaration in single-family residential and older condominium developments in Tennessee; there is no statutory requirement governing the transfer or even requiring that it occur. For newer condominiums, those constructed after January 1, 2009, Tennessee requires developers to transfer control no later than 120 days after 75% of units have sold or either five or seven years after the first sale, depending on the number of units.²⁷ The uniform acts are slightly different, requiring the developer to transfer control after 75% of units have sold but no more than 60 days after the event instead of the 120 days allowed in Tennessee. These acts also require the transfer to occur within two years after the *last* sale instead of the five or seven years after the *first* sale as in Tennessee. The uniform acts also require a transfer to occur two years after the right to add new units was last exercised; there is no similar language in Tennessee's law. The Bill of Rights does not deal with the transfer issue.

Ensuring that Developer-controlled HOAs Maintain Common Areas

Currently, when developer-controlled HOAs fail to maintain common areas, homeowners' only course of action is litigation to enforce the developer's contractual obligations. They can sue for breach of covenant under common law; for a breach of duty to maintain the common areas if the HOA is organized as a nonprofit corporation, for-profit corporation, or director managed LLC;²⁸ or in newer condominium developments, for breach of fiduciary duty.²⁹ These may not be good options if the developer is insolvent or has filed for bankruptcy.

Florida's law provides another option for owners who are dealing with developers who aren't maintaining common areas. Owners can force a transfer of HOA control from the developer to the owners when the developer fails to maintain the common areas.³⁰ There is a rebuttable

Tennessee has no statutes governing the transfer of control over HOAs from developers to homeowners—or even requiring that it occur—in single-family developments and condominiums built before January 2, 2009.

²⁷ Tennessee Code Annotated, Section 66-27-403.

²⁸ Tennessee Code Annotated, Sections 48-58-403, 48-18-403 and 48-239-115.

²⁹ Tennessee Code Annotated, Section 66-27-403.

³⁰ Florida Statutes, Section 720.307(1)(c).

Allowing homeowners to acquire control of HOAs when developers fail or become unable to maintain the common areas could increase the likelihood that the common areas will not deteriorate.

presumption that the developer has abandoned the common areas if he or she failed to pay the assessments for two years or more. Transfer is also required when the developer files Chapter 7 bankruptcy under the United States Bankruptcy Code,³¹ the property is foreclosed on, or a receiver is appointed for the developer. While transferring control of the HOA under these circumstances gives homeowners control over the common areas, it does not ensure that they have the financial means to maintain them. Nevertheless, providing homeowners this option could increase the likelihood that the common areas will not deteriorate.

Adopting a similar law in Tennessee may raise a constitutional issue for existing developments if the event triggering the transfer is specified in the declaration. Article I, Section 10, of the US Constitution and Article I, Section 20, of Tennessee's constitution forbid legislation that would impair the obligations of existing contracts. A contract may be impaired only if the law is an exercise of the state's police power to protect the health, morals, and general welfare of the people.³² Requiring developers to transfer control of HOAs in order to protect the welfare of its residents would probably be a valid exercise of the legislature's police powers and would not violate the US or state constitutions.

Guaranteeing Construction of Subdivision Infrastructure

Local governments that regulate the subdivision of land routinely require developers to guarantee that funds will be available to complete any infrastructure included in subdivision plans,³³ usually through letters of credit or surety bonds. Other methods, including escrow accounts, cashier's checks, and certificates of deposit, are used far less often because they tie up developers' financial resources. The traditional method of guaranteeing infrastructure is through surety bonds, but they are falling out of favor partly because local governments sometimes have to sue to cash the bond. A surety bond is obtained from a surety company, and the company is then obligated to pay the agreed upon amount to complete the project.³⁴

Unfortunately, there have been several instances in Tennessee where developers have become insolvent or have filed for bankruptcy and were unable to complete the planned infrastructure, the local government had allowed the guarantee to lapse, and no funds were available to complete

³¹ United States Code, Title 11.

³² *Marr v. Bank of W. Tenn.*, 72 Tenn. 578 (1880); *Shields v. Clifton Hill Land Co.*, 94 Tenn. 123, 28 S.W. 668 (1894).

³³ Tennessee Code Annotated, Sections 13-4-303 and 13-3-403.

³⁴ Pealer 2006.

the infrastructure. Had the local government required an automatically renewing letter of credit, the funds would have been available.

Letters of credit are used most often because they make it easier for local governments to get the money for completion of the infrastructure and can be less costly for developers. Banks issue letters of credit to credit-worthy customers as a way to ensure the infrastructure work that the customer has promised to complete is actually completed.³⁵ In order to collect on a letter of credit, the local government presents proof of default by the developer, and the bank issues a check for the amount indicated in the letter. Developers with good credit but little performance history may find it easier to get letters of credit. And letters of credit can be made to automatically renew, preventing any lapse in coverage.

Authority of HOAs over Homeowner Conduct and Penalties for Violations

HOAs enforce the rules in the declaration of covenants, conditions, and restrictions. Homeowners contractually agree to follow these rules when they purchase their homes. The declaration typically gives the HOA the power to impose fines to help ensure compliance with these rules. These rules can become a source of tension when some owners do not approve of them. The rules may restrict conduct, such as placing political signs on an owner's private property, and they may even restrict the use of public property, such as public streets, within the development's boundaries. Some homeowners do not believe that this is fair and are especially upset because these restrictions can lead to fines, liens, and eventually foreclosure on their property.

Other states have passed laws limiting HOAs' power to regulate parking, signs, or to impose fines, liens, and foreclose on homeowners' properties. If Tennessee's legislature were to adopt similar laws, there might be an impairment of contracts issue for existing developments. These laws could likely only be applicable to condominiums and single-family developments created after the passage of the law.

Regulation of Political Signs by Homeowners Associations

Residents in some developments want to put up political signs but can't because of their developments' rules. Individuals can contract away their

³⁵ Ibid.

Letters of credit that automatically renew prevent lapses in coverage and ensure that funds are available to complete infrastructure when developers are unable to do so.

Because HOAs are private entities and not an arm of government, they can regulate or even ban political signs.

right to display political signs when they buy homes or condominiums in developments governed by HOAs in Tennessee. Although the First Amendment of the US Constitution and Article 1, Section 19, of Tennessee's constitution protect free speech rights from government restriction, they do not apply to private entities except under very limited circumstances, for example, when private entities serve a public purpose.³⁶ Those constitutional protections, however, are not absolute. Even in the case of governments, both the US Supreme Court³⁷ and the Tennessee Supreme Court have held that all speech is subject to reasonable, content-neutral regulation, such as time, place, and manner restrictions.³⁸ A government-imposed ban on political signs would be subject to the highest judicial scrutiny and would almost certainly be unconstitutional. However, because HOAs are private entities and not an arm of government, they can regulate or even ban political signs.³⁹

Legislation to regulate HOAs' ability to restrict political signs was introduced during the 108th General Assembly. Senate Bill 2198 by Johnson, House Bill 2060 by Durham, would have forbidden HOAs to limit or prohibit the display of political signs unless expressly authorized by local governments. Allowing local governments to authorize rules banning or regulating political signs might qualify as a state action and subject HOAs to state and federal free speech protections. Although court cases indicate that mere permission in general does not amount to state action,⁴⁰ freedom of speech is given greater protection than many other constitutional rights at both the state and the federal level,⁴¹ and courts may find a local government authorization to restrict speech unconstitutional.

No other state involves local governments in these decisions, but ten states limit HOAs to regulating the time, place, and manner of display of political signs. Five of these states—Colorado, Delaware, Kansas, Nevada, and Texas—have laws that apply to all HOAs. Indiana, Maryland, and North Carolina limit HOAs' control over political signs only in single-family HOAs, while Arizona and North Dakota limit them only for condominiums. Of these ten states, all but Maryland allow reasonable size restrictions on

³⁶ *Marsh v. Alabama*, 326 U.S. 501 (1946).

³⁷ *City of Ladue v. Gilleo*, 512 U.S. 43 (1994).

³⁸ *H & L Messengers, Inc. v. Brentwood*, 577 S.W.2d 444 (Tenn. 1979); See also *Freeman v. Burson*, 802 S.W.2d 210 (Tenn. 1990).

³⁹ New Jersey and Missouri courts have held that the free speech provisions of their state constitutions are broader than the protection in the US Constitution. In those states, the state constitutions protect free speech rights from restriction by private actors. See *Lamprecht v. Tiara at the Abbey Homeowners Association*, unpublished, 12 JE-CC00227 (MO Cir. Ct. Oct. 3, 2013) and *Mazdabrook Commons Homeowners' Association v. Khan*, 2010 N.J. Super. Unpub. LEXIS 2170 (App. Div. Sept. 1, 2010).

⁴⁰ *American Manufacturers Mutual Insurance Company v. Sullivan*, 526 US 40, 143 (1999).

⁴¹ *Leech v. American Booksellers Association*, 582 S.W.2d 738 (Tenn. 1979).

political signs. The “reasonable” size of a sign ranges between four and twenty-four square feet or is described as what is “commonly displayed during election campaigns.”⁴² Six states allow restrictions on the number of signs to be displayed, but the number cannot be less than one or the number allowed by applicable city law.⁴³ Eight states allow HOAs to regulate the period during which signs may be displayed.⁴⁴ These states forbid associations to prohibit signage for 30 to 90 days before an election and up to 10 days afterward. Delaware also allows regulation of the time, place, size, number, and manner of displaying signs, but its statute gives no guidance for implementing these restrictions.

The Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act include language that protects homeowners’ right to display political signs. Both acts forbid HOAs to ban “signs regarding candidates for public or association office or ballot questions” but allow reasonable time, place, and manner regulations.⁴⁵ Neither the Uniform Condominium Act nor the Uniform Planned Community Act has provisions governing political sign restrictions.

Both the state laws and the uniform acts appear to be constitutional because they protect the right to display political signs rather than restrict it. While restrictions on speech must normally be content-neutral, and political viewpoints are a type of content, political speech may be afforded more protection than other types of speech as long as all political speech is afforded the same protection.⁴⁶

HOA Regulation of Parking on Public Streets

HOAs often forbid parking on the streets within their boundaries for safety and aesthetic reasons. Vehicles parked along the street obscure the view of drivers, potentially endangering pedestrians by increasing the likelihood of “dart-out” accidents. If streets are clogged with parked vehicles, it might be difficult for emergency vehicles to reach residents. Some people may also not like the look of vehicles parked on the streets.

Tennessee law does not prevent, restrain, or limit the power of HOAs to regulate parking, even on public streets. The condominium laws do not cover this issue, and Tennessee courts have not ruled on it. Owners are free to grant their HOAs the right to regulate parking on streets by

Tennessee law does not prevent, restrain, or limit the power of HOAs to regulate parking, even on public streets.

⁴² Indiana Code Annotated, Section 32-21-13-5.

⁴³ Arizona, Colorado, Indiana, Nevada, North Carolina, and Texas.

⁴⁴ Arizona, Colorado, Delaware, Kansas, Maryland, North Carolina, North Dakota, and Texas.

⁴⁵ Uniform Common Interest Ownership Act, Section 3-120(d); Bill of Rights, Section 17.

⁴⁶ Ammori 2009.

contract. Depending on the language in the covenant, an owner might even be responsible for a guest's violation of the parking rules. Senate Bill 2198 by Johnson, House Bill 2060 by Durham, would have changed this and forbidden HOAs to prohibit parking on public streets unless expressly authorized to do so by the county or municipal legislative body, placing the burden of keeping them clear solely on local governments.

Court decisions in other states allow HOAs to regulate parking on public streets as long there is no state law to the contrary. Courts in Missouri⁴⁷ and New Jersey⁴⁸ have held that HOAs may regulate parking on public streets. In both states, HOAs fined homeowners for parking commercial vehicles on public streets in violation of the associations' regulations. The courts concluded that public ownership of the streets was irrelevant, and the associations were not precluded from enforcing valid contracts between the parties.

Only Arizona and Nevada limit HOAs' power to regulate parking on public streets by statute. A new Arizona law will prohibit HOAs from enforcing parking on public streets once the period of developer control has ended.⁴⁹ It does not apply to condominiums. Nevada HOAs cannot regulate the parking of passenger vehicles on public streets, and their power to regulate the parking of utility vehicles under certain weight limits and emergency and law enforcement vehicles used for official state business is severely restricted. They can, however, regulate the parking of recreational vehicles, trailers, watercraft, and commercial vehicles.⁵⁰

Unpaid Fines Leading to Liens and Even Foreclosure

If owners fail to pay assessments or fail to comply with rules and regulations, they may be subject to fines. Tennessee law does not limit the amount of fines that can be imposed by single-family HOAs and condominiums built before January 2, 2009. For condominiums developed after January 1, 2009, the law requires the fines to be reasonable.⁵¹ However, no statute or case law defines what a reasonable fine is; therefore, fines can be several hundred dollars or more. Some owners feel the fines they have to pay are excessive.

Senate Bill 2198 by Johnson, House Bill 2060 by Durham, would have protected homeowners who have been fined by limiting fines charged

⁴⁷ *Maryland Estates Homeowners' Association v. Puckett*, 936 S.W.2d 218 (Mo. Ct. App. 1996).

⁴⁸ *Verna v. Links at Valleybrook Neighborhood Association*, 371 N.J. Super. 77 (App.Div. 2004).

⁴⁹ Arizona Revised Statutes, Section 33-1818.

⁵⁰ Nevada Revised Statutes Annotated, Section 116.350.

⁵¹ Tennessee Code Annotated, Section 66-27-402.

Tennessee law does not limit the amount of fines imposed by single-family HOAs and HOAs for condominiums built before January 2, 2009.

For condominiums developed after January 1, 2009, the law requires the fines to be reasonable.

by all HOAs to the amount of one month's assessment. This would effectively impose a cap on fines by HOAs and provide owners with a sense of predictability. However, HOAs with low monthly dues could have difficulty using fines as an effective rule-enforcement tool. Because methods for calculating monthly dues may vary within associations, for example based on a home's square footage, it is possible that some members of the association would be subject to heavier penalties than others would be. Furthermore, the bill as written would restrict HOAs' power to levy fines for continuing violations, which could otherwise build up to exceed monthly assessments.

Only six states place a cap on HOA fines by statute; no states tie it to monthly assessments. Florida⁵² and Nevada⁵³ allow HOAs to impose fines up to \$100. Fines for continuing violations are capped at \$1,000 unless specifically authorized in the association's bylaws. If the violation in question has a "substantial adverse effect on the health, safety, or welfare" of the association's members, Nevada will not apply the \$1,000 cap so long as the fine is "commensurate with the severity of the violation." North Carolina caps daily damages at \$100,⁵⁴ and Rhode Island⁵⁵ and Utah⁵⁶ cap daily damages at \$500. Finally, Virginia places the heaviest restrictions on HOAs by capping fines for single occurrences at \$50, by capping fines for continuing violations at \$10 per day, and by limiting the period that HOAs can fine continuing violations to 90 days.⁵⁷

Owners who fail to pay fines or monthly assessments could be subject to liens on their properties. For newer condominiums, liens for nonpayment of fines or assessments attach automatically and without notice as soon as the fine or assessment becomes due, even if it is only a few dollars.⁵⁸ In other developments governed by HOAs, the same thing may be done by the declaration. These liens are automatically removed when the fines or assessments are paid, but homeowners who don't pay will have to go to court to get their liens removed.

Senate Bill 2198 by Johnson, House Bill 2060 by Durham, would have made it more difficult for HOAs to attach liens by requiring a judicial hearing before a lien could attach. The HOA would have to prove by clear and convincing evidence that the homeowner was past due on required

Owners who fail to pay fines or monthly assessments could be subject to liens on their properties.

⁵² Florida Statutes, Section 720.305.

⁵³ Nevada Revised Statutes, Sections 116.31031 and 116B.430.

⁵⁴ North Carolina General Statutes, Sections 47F-3-107.1 and 47C-3-102.

⁵⁵ Rhode Island General Laws, Section 34-36.1-3.20.

⁵⁶ Utah Code Annotated, Section 57-8-37.

⁵⁷ Virginia Code Annotated, Sections 55-513 and 55-79.80:2

⁵⁸ Tennessee Code Annotated, Section 66-27-415.

In Tennessee, once a lien has attached, an HOA can foreclose on a property.

payments before attaching a lien. Maryland is the only state that requires a judicial hearing before attaching a lien.⁵⁹

Many states limit the ability of HOAs to attach liens or require HOAs to provide notice when a lien attaches. Seventeen states require HOAs to record their liens.⁶⁰ Six of these seventeen states also require the HOA to send the homeowner notice of the lien.⁶¹ Oklahoma requires notice but not recording of the lien.⁶² Nevada requires only condominium HOAs to record their liens.⁶³ Michigan⁶⁴ and Oregon⁶⁵ require liens to be recorded before foreclosure but do not otherwise require recording. Arizona⁶⁶ and California⁶⁷ do not allow HOAs to attach liens for fines, only unpaid monthly assessments. Florida single-family HOAs cannot attach liens for fines less than \$1,000 and condominiums cannot attach liens for fines at all.⁶⁸ New Jersey does not allow liens for late fees.⁶⁹

In Tennessee, once a lien has attached, an HOA can foreclose on a property.⁷⁰ An HOA may exercise judicial foreclosure or, if its declaration provides, it may exercise non-judicial foreclosure. The ease with which an HOA can foreclose could lend itself to abuse. Other states protect homeowners by requiring a minimum lien amount before foreclosure can take place or by otherwise restricting the power of HOAs to foreclose. Arizona⁷¹ and California⁷² do not allow foreclosure for liens less than \$1,200 and \$1,800 respectively, or until the amount has been delinquent for one year. Georgia requires at least a \$2,000 lien.⁷³ Delaware⁷⁴ and Vermont⁷⁵ require the lien to be equal to three months' assessments before foreclosing. Maryland does not allow foreclosure of liens that include fines.⁷⁶ Hawaii,⁷⁷ North

⁵⁹ Maryland Real Property Code Annotated, Section 14-203.

⁶⁰ California, Connecticut, Florida, Idaho, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Virginia, West Virginia, and Wisconsin.

⁶¹ California, Maryland, Massachusetts, North Carolina, Virginia, and West Virginia.

⁶² 60 Oklahoma Statutes, Section 856.

⁶³ Nevada Revised Statutes Annotated, Section 117.070.

⁶⁴ Michigan Compiled Laws Service, Section 559.208.

⁶⁵ Oregon Revised Statutes, Sections 94.709 and 100.450.

⁶⁶ Arizona Revised Statutes, Sections 33-1256 and 33-1807.

⁶⁷ California Civil Code, Sections 5725 and 6824.

⁶⁸ Florida Statutes, Sections 718.303 and 720.305.

⁶⁹ New Jersey Statutes, Section 46:8B-21.

⁷⁰ Tennessee Code Annotated, Section 66-27-415.

⁷¹ Arizona Revised Statutes, Sections 33-1256 and 33-1807.

⁷² California Civil Code, Section 5720.

⁷³ Official Code of Georgia Annotated, Sections 44-3-109 and 44-3-232.

⁷⁴ 25 Delaware Code Annotated, Section 81-316.

⁷⁵ 27A Vermont Statutes Annotated, Section 3-116.

⁷⁶ Maryland Real Property Code Annotated, Section 14-204.

⁷⁷ Hawaii Revised Statutes, Section 514B-146.

Carolina,⁷⁸ and Vermont⁷⁹ do not allow non-judicial foreclosure for liens composed entirely of fines while Nevada does not allow single-family HOAs to exercise non-judicial foreclosure on liens for fines unless there is a public safety risk.⁸⁰

Two of the uniform acts, Common Interest Ownership Act and the Bill of Rights, have language in them to prevent abuse of the power of foreclosure by HOAs. They require that the lien be equal to three months' assessments before foreclosing. They also do not allow foreclosure on fines until the HOA has a judgment against the owner.

Local Governments Owning Property Subject to HOA Dues

A complication for local governments that sometimes follows a homeowner's failure to pay assessments or fines is a failure to pay property taxes as well. When property taxes go uncollected for five years, local governments are required to take the properties to a tax sale.⁸¹ To acquire such properties at tax sales, a bidder must pay at a minimum the total taxes, penalties, costs, and interest owed.⁸² If no bidders offer this amount, local governments are required to bid that amount and become the owners.⁸³ If the property is subject to an HOA agreement, the local government must pay the HOA assessments from that point forward.⁸⁴ After purchasing the properties, local governments must hold the properties for one year, during which period the former property owners may redeem the properties by paying the taxes and other costs owed, including any HOA assessments that accrue during the year the local governments own the properties.

In some counties, HOA assessments have become burdensome for local governments, which are bound by the rules in the HOA declaration just as any other owner would be. For example, Loudon County is accumulating about \$36,000 per month in unpaid HOA assessments on undeveloped properties.⁸⁵ When Coffee County purchased over 400 undeveloped lots

In some counties, HOA assessments have become burdensome for local governments that have acquired property subject to those assessments at tax sales.

⁷⁸ North Carolina General Statutes, Sections 47C-3-116 and 47F-3-116.

⁷⁹ 27A Vermont Statutes Annotated, Section 3-116.

⁸⁰ Nevada Revised Statutes Annotated, Section 116.31162.

⁸¹ Tennessee Code Annotated, Section 67-5-2406.

⁸² Tennessee Code Annotated, Section 67-5-2501.

⁸³ The local government is not required to bid if the environmental risk is too great. Also, when any land must be sold for payment of delinquent county taxes only, county legislative bodies may decide not to bid on non-buildable parcels such as common open areas. See Tennessee Code Annotated, Section 67-5-2506.

⁸⁴ *Travis v. Trustees of Lakewood Park*, 2010 Tenn. App. LEXIS 561 (Tenn. Ct. App. Sept. 3, 2010).

⁸⁵ Chip Miller, Loudon County Trustee, Phone interview with Michael Mount, December 2, 2014.

The Tennessee Court of Appeals at Nashville held that the county owed the HOA for unpaid assessments because restrictive covenants are enforceable like any other contract, even against governments.

at tax sales and did not pay the HOA assessments, the HOA sued to collect them. The Tennessee Court of Appeals at Nashville held that the county owed the HOA for unpaid assessments because restrictive covenants are enforceable like any other contract, even against governments.⁸⁶

The General Assembly made it easier for counties to avoid HOA assessments on undeveloped property when it passed Public Chapter 814, Acts of 2014, which allows local governments to transfer undeveloped property acquired at a tax sale to HOAs to satisfy what the county owes the HOA if both parties agree. The idea for this came from a situation in Hickman County where the county did exactly that.⁸⁷ Hickman County acquired more than 100 lots at tax sales when no one bid the minimum, the amount of taxes and other related costs owed. The lots, intended to be lakeside lots, lost most of their value when the proposed lake did not hold water. When the county took ownership of the lots, it began to owe HOA assessments. Hickman County resolved this problem by transferring undeveloped lots to the HOA to settle the amount it owed the HOA.

Two earlier bills that failed to pass attempted to empower local governments to deal with this issue in different ways. Senate Bill 3129 by Stewart, House Bill 2430 by Matheny, introduced in 2012, would have simply exempted state and local governments from HOA assessments. The House State and Local Government Subcommittee discussed rewriting the bill to remove the current statutory requirement that local governments force the sale of the property for the amount of taxes owed and related costs and bid that amount themselves if no one else does. If that amendment had passed and no one bid the minimum, the unpaid taxes would have continued to accrue against delinquent property owners. The House bill failed for lack of a second in the House State and Local Government Subcommittee. The Senate bill was sent to the Senate State and Local Government General Subcommittee and no further action was taken on it. A bill introduced in 2013, Senate Bill 990 by McNally, House Bill 382 by Matheny, would have gone further than the amendment discussed in 2012. It would have created an alternate method for the government selling insolvent property at tax sales, reducing the minimum bid by 10% increments until a bidder other than the local government bids. Four other states⁸⁸ have adopted laws that allow local governments to force the sale for less than the taxes owed. Tennessee already allows the sale of properties for less than the taxes and associated costs owed, but only after the one-year redemption period, not at the tax sale.

⁸⁶ *Travis v. Trustees of Lakewood Park*, 2010 Tenn. App. LEXIS 561 (Tenn. Ct. App. Sept. 3, 2010).

⁸⁷ *Boles v. National Development Company*, 2005 Tenn. App. Lexis 247 (Tenn. Ct. App. 2005).

⁸⁸ Minnesota, North Dakota, Pennsylvania, and Wisconsin.

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Mike Wagner, Mayor
City of Westmoreland

Jenna Watson, President
Rivers Run Villa Homeowners Association

Joe Wise, General Manager
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Appendix A. Legislation Included in This Study

House Resolution 170 (directing TACIR to study HOAs' insurance, rules, and regulations)

HOUSE RESOLUTION 170

By Moore

A RESOLUTION to direct the Tennessee Advisory Committee on Intergovernmental Relations to study the responsibility of homeowners associations to insure their obligations and homeowners associations' rules and regulations.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED SEVENTH GENERAL ASSEMBLY, that the Tennessee Advisory Committee on Intergovernmental Relations (TACIR) is directed to perform a study relative to homeowners associations that shall include, but not be limited to, rules and regulations adopted by homeowners associations that control homeowners' use and enjoyment of their real property, state and local regulations covering homeowners associations, and the responsibility of homeowners associations to insure their obligations against the event of damages, including repair of association owned property.

BE IT FURTHER RESOLVED, that as part of the study TACIR is also directed to conduct a survey of neighboring states as to statutes, rules and regulations that require homeowners associations to maintain insurance coverage to discharge contractual obligations in the event of damage as well as other statutes that regulate the adoption of homeowners associations' rules and regulations.

BE IT FURTHER RESOLVED, that TACIR is also requested to recommend solutions that would enable individual homeowners, upon request, to obtain at regular intervals from their respective homeowners associations a report citing: (1) a certificate or memoranda of insurance; (2) proof of policy coverage available; and (3) names, addresses and phone numbers for the homeowners association's designated insurance carriers and banking institutions holding funds in escrow.

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BE IT FURTHER RESOLVED, that in conducting the study TACIR shall hold public hearings and receive written and oral testimony from individual members of homeowners associations, official representatives of homeowners associations, and any other interested parties.

BE IT FURTHER RESOLVED, that it is the legislative intent that this study be conducted from TACIR's existing resources.

BE IT FURTHER RESOLVED, that all appropriate state departments and agencies shall provide assistance to TACIR.

BE IT FURTHER RESOLVED, that TACIR is requested upon the conclusion of its study to report its findings and recommendations, including any proposed legislation, to the members of the 108th General Assembly.

House Bill 2070/Senate Bill 2110 (disclosure of when PUDs are completed)

SENATE BILL 2110
By Bowling

HOUSE BILL 2070

By Farmer

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 13; Title 48 and Title 66,
relative to homeowners associations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-5-213(b), is amended by adding the following language to the end of the subsection:

The owner of the residential property shall also, prior to entering a contract with a buyer, disclose in writing whether the PUD is complete, and if the PUD is not complete, the date in which all property located in a PUD will be developed.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it.

Senate Bill 2198/House Bill 2060 (parking, fines, liens, and political signs in HOAs)

HOUSE BILL 2060

By Durham

SENATE BILL 2198

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 20;
Title 25; Title 48 and Title 66, relative to
homeowners associations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 27, is amended by adding
the following language as a new part:

66-27-601.

As used in this part, "homeowners' association" means an incorporated
or unincorporated entity upon which responsibilities are imposed, which includes
managing, maintaining, or improving the property, and of which the voting
membership is comprised of persons owning separate lots or units who are
required to pay dues to the association for the purposes delineated in the
governing documents of the association.

66-27-602.

(a) A homeowners' association shall not prohibit any person from parking
on any public street located within any county or municipality of this state unless
expressly authorized by the legislative body of the county or municipality.

(b) Except as provided by subsection (a), any provision of a governing
document of a homeowners' association that restricts parking on any public
street is declared null and void. Unless expressly authorized by the legislative
body of the county or municipality, any fees or fines imposed by any
homeowners' association for any public street parking violation shall be
unenforceable and of no legal effect in a court of law.

(c)

(1) A homeowners' association shall not penalize or fine any persons in an amount exceeding the required monthly amount of dues owed by persons owning separate lots or units within the respective homeowners' association.

(2) Any provision of a governing document of a homeowners' association that penalizes or fines persons in an amount exceeding the required monthly amount of monthly dues owed by persons owning separate lots or units with the respective homeowners' association is declared null and void. Any penalty or fine imposed in violation of this section shall be unenforceable and of no legal effect in a court of law.

66-27-603.

(a) A homeowners' association shall not attach an assessment lien on any real property in this state unless the homeowners' association or its designee demonstrates to a court by clear and convincing evidence that a person owning a separate lot or unit within the homeowners' association is past due on required monthly payments owed to the homeowners' association.

(b) Any provision of a governing document that allows for the automatic creation and attachment of any lien to real property located within a homeowners' association for the nonpayment of required dues is declared null and void.

66-27-604.

Unless expressly authorized by the legislative body of the county or municipality, no governing document of a homeowners' association shall limit or prohibit, or be construed to limit or prohibit, the display of any political sign on privately owned property within the boundaries of the respective homeowners' association. For purposes of this section, "political sign" means a sign advocating for or against a political candidate or a political issue.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, and unless otherwise prohibited by the United States or Tennessee constitution, it is the intent of the general assembly that all applicable provisions be given retroactive application.

Appendix B. Summaries of Uniform Law Commission's Model Legislation⁸⁹

Uniform Condominium Act

The current law pertaining to condominiums remains inchoate and incomplete in most jurisdictions. Even those jurisdictions that have pioneered condominium legislation have not developed fully comprehensive acts. It is the purpose of the Uniform Condominium Act (UCA) (1980) to provide the needed comprehensive body of law.

The character of ownership in condominiums is multiple. There is the individual unit owned by the individual buyer, and there is the common area owned jointly by all. If that seems already complex, there are also the interests of the promoter, who first establishes condominiums as the form of ownership for the project, and of subsequent unit buyers and additions to the ownership group. If a building is converted from other uses, there are the interests of tenants before conversion. Some units may be rented by individual unit owners, creating absolutely new landlord and tenant relationships. In addition, the lenders who financed the total development will have secured interests in the real estate. Each unit owner will generally have a creditor with an interest. Overlaying all of this is the owner's association with governing powers over a development during its life as a condominium. The owners' association also has the power to create liens upon individual units. It is to organize and sort out these interests that the UCA has been developed.

A condominium has four critical phases: creation, financing, management, and termination. A comprehensive act deals with each phase and with the problems of consumer protection and regulation.

A condominium is created by recording a "declaration" in the appropriate land records. The declaration serves as notice of the creation. It describes the property in specific terms, and states a formula for allocation of individual interests in the common property of the condominium.

Of primary importance to financing condominiums is clarification of priorities between creditors. The UCA does not upset ordinary priorities based on recordation and/or the time a lien is created, except in one instance. A limited priority, even over recorded first mortgages, exists for the statutory lien of the owners' association for unpaid assessments. It is prior for the six-month period immediately preceding an action to enforce the lien, only.

This limited first priority, in reality, is designed for protection of all creditors. Interruption of the owners' association cash flow jeopardizes maintenance of the development. That affects the value of other units and the condominium development as a whole. Other creditors, particularly those with secured interests, are thereby threatened. This limited priority to the owners' association helps prevent such loss of value.

Management of a condominium development under the UCA descends from the developer to the owners' association. To assure that the developer cannot unduly control the owners' association, control must be

⁸⁹ The information in this section came directly from the Uniform Law Commission website: <http://www.uniformlawcommission.com/ActSummary.aspx?title=Condominium Act>.

transferred no later than the time 75 percent of the units are sold, or two years after essential declarant interests terminate, whichever comes sooner. The UCA provides broad management powers to the association, which is governed by an elected executive board. It is responsible for upkeep for the budget, and for setting and collecting assessments. The UCA provides the basis for all procedures necessary to govern a development. Included among these provisions are those for limitation of liability and insurance. The bylaws adopted by the association permit further refinement of the governing process.

Nobody buys a condominium unit expecting termination of the project, but it must be considered as a possibility. The UCA provides for termination only by agreement of at least 80 percent of the unit owners. The termination provisions then provide for any sale of real estate, protection of creditors, distribution of proceeds, and division of interests among the owners. Their interests are to be valued, basically, at the fair market value for their shares.

The UCA utilizes two basic concepts for consumer protection, although many of the provisions on management and relinquishment of developer control are really buyer protections, too. But basic to consumer protections are disclosure and warranties.

Disclosure of the terms of sale and of the condition of the property is accomplished through the public offering statement. It is a detailed prospectus concerning the condominium development and the specific unit sold. The information given mainly concerns the financial condition of the owners' association and any restrictions or problems which might affect the development of any units. If a declarant reserves development rights, these must be disclosed in detail. If the building is a conversion, substantial information on the condition of the building should be included.

Warranties include both express warranties, based on asserted facts or promises of the seller, and implied warranties of fitness. Implied warranties may be disclaimed in writing, but no general disclaimer is effective for residential units. Defects must be specifically disclaimed for the residential units.

There are also protections for tenants in residential units of buildings that are to be converted to condominiums. Tenants must be given notice at least 120 days before they must vacate the property. They also have a right to purchase for 60 days after notice is tendered.

The UCA devotes a final article to regulation of condominiums. It is an optional article because the ULC is well aware that new agencies, or even new responsibilities for old ones, are not fiscally possible or desirable in many jurisdictions. For those jurisdictions which desire greater regulation, the UCA provides an agency that registers all condominium developments. It has the power to hear consumer complaints, to investigate for alleged abuses, to issue cease and desist orders, and to go to court. The agency has limited rule-making powers.

No summary can contain the entire range of provisions for an act as comprehensive as the UCA. Only the general character can be outlined. There are many unique features of the UCA which have not been discussed. The UCA answers many questions which have plagued condominium law, and it solves many problems—sometimes in surprising ways. It should have a profound effect as it is considered in all the legislatures.

Uniform Planned Community Act⁹⁰

Although American property law allows an infinite variety of ownership and financing arrangements for real property, little variety appeared in residential real property development until the decade of the 1970s. Sales were characterized by transfers of fee simple ownership. The other alternative was renting.

In the 1970s, the term “condominium” changed all of that. It introduced the American public to a kind of multiple ownership that has become as familiar as the simpler, traditional forms of real estate development. The condominium movement created other opportunities. New ideas, such as real estate time-sharing, followed, but old ideas which had never fully caught on have, also, been dusted off. There is growing interest in real estate cooperatives, for example.

One form to be dusted off for the future is the multiunit residential “planned community.” This common law form couples private ownership of individual units with ownership of the “common elements” or the property used in common by all resident, in the owners’ association. The community is held together with a set of covenants, conditions, and restrictions which accompany each sale of a unit and which “run with the land.” These are the glue which holds the community together.

This is in contrast to condominiums which vest ownership in individual units in each owner, coupled with tenancies-in-common in the common elements, which are then governed by the owners’ association. Ownership is the common glue in a condominium development.

Although condominiums and planned communities are based on differing arrangements of ownership, they function on the practical level pretty much identically. They have the same critical phases—creation, financing, management, and termination. Both depend upon an owners’ association for governance. Usually, the owners are assessed regularly for the maintenance of the development. Similar amenities can be, and are, offered to buyers to make life in these developments attractive. Conversely, most of the potential problems are identical, including inordinate developer control, difficulties with management, and long-term maintenance.

Once the NCCUSL addressed condominiums in the Uniform Condominium Act (UCA), it had to consider planned communities. It has now promulgated the Uniform Planned Community Act (UPCA).

UCA served as the direct model for UPCA. Creation of a planned community occurs when a declaration is recorded in the same manner as a deed. This is exactly the way a condominium development is begun under UCA. The declaration contains the location of the planned community, the name of the planned community, a description of the real estate, and a description of relevant development rights. The declaration is the fundamental instrument in both UPCA and UCA.

For lenders, the basic concern in both Acts is priority between all lenders and those with other liens against the property. The basic principle is simple, that is, reliance upon the existing priorities except where necessary for the operation of the Act. As in the Uniform Condominium Act, UPCA gives a very limited first priority for the owners association’s lien for assessments due. This priority, which exists for only six months of past

⁹⁰ This information came directly from the Uniform Law Commission website: [http://www.uniformlawcommission.com/ActSummary.aspx?title=Planned Community Act](http://www.uniformlawcommission.com/ActSummary.aspx?title=Planned%20Community%20Act).

due assessments, is meant to protect the solvency of the owners' association. Its solvency is essential to the security for all other mortgages and liens on units in the development. This priority, therefore, protects lenders' interests in the whole development.

Power over a planned community transfers from the developer to an owners' association in UPCA exactly as it does under UCA. All power transfers by a set time, when 75% of the units have been sold or two years after essential developer interests end. Management vests in the owners' association. It has broad powers to operate the development. Both Acts handle liability and insurance in a similar fashion.

Termination provisions are, also, nearly identical. Termination cannot occur without the concurrence of at least 80% of the owners. There are similar provisions in each Act for carrying out the termination, including sale of property, taking care of creditors, and distributing proceeds to owners. Again, the parallels between the Acts are very close.

Consumer protection in UPCA follows the basic pattern of UCA. There are two basic concepts—disclosures and warranties. Disclosure is accomplished through the public offering statement, a detailed listing of facts and figures pertinent to purchasing a unit. Special disclosure provisions apply to buildings converted from other uses. Warranties in UPCA include both express and implied warranties of sale. Any affirmation of fact or a promise made by the seller to the buyer is the basis of express warranties. Implied warranties of fitness will apply, without overt affirmation by the seller. Implied warranties may be disclaimed, however, if done clearly for specific defects. The UCA does not vary these provisions in any significant way from UPCA.

Both UCA and UPCA, also, have optional articles which establish an administrative agency for condominiums and planned communities. All projects are registered with the agency. It can investigate complaints, issue cease and desist orders, and sue for violations of the Act. This article is optional, because it is recognized that new administrative agencies or new duties given to old administrative agencies may not be fiscally feasible in many jurisdictions. The Act provides for individual enforcement through the courts so that the need for an agency is minimized.

The differences between UPCA and UCA are rooted in the basic distinction between a planned community annealed by conditions, covenants, and restrictions, and a condominium development bound together by tenancies-in-common. Because a planned community may have limited common elements, physically and fiscally, an exception is created for planned communities with fewer than twelve units, or for which the liability for common expenses is less than \$100 per year per unit. These kinds of planned communities are not subject to the Act except for the provisions on separate titles and taxation, applicability of building codes, and eminent domain. A de minimus planned community is no more than a group of individual units with a minor commitment to some common property or use. For such a planned community, the total application of this Act is overkill.

Condominiums, in contrast, vest ownership rights in all common elements. This kind of joint ownership makes a de minimus condominium not feasible. A planned community is easily tailored to a de minimus regime.

Of course, common elements cannot be dealt with identically under these two forms of ownership, either. Since common elements are owned by the association in a planned community, the declaration and public

offering statement must reflect this. Also, in a planned community, owners must have a statutory easement to protect their individual interests in the common elements.

Under UPCA, as opposed to UCA, real estate may be added without describing its location in the original declaration. An addition may not exceed 10% of the total designated development area, and the declarant cannot increase the number of units established in the original declaration. In effect, it allows added real estate to the common elements. In a condominium development, adding real estate requires adjustment for each unit owner's share. In a planned community, since the owners' association owns the common elements no such adjustment is necessary, and adding small amounts of real estate to the common elements is feasible.

The UPCA and UCA parallels and identical organization are very much intended. The law should favor no particular development scheme over another. Each scheme should stand on the merits of its own advantages versus its own disadvantages. The way UPCA and UCA are structured guarantees this neutrality in the law. It puts the emphasis upon real advantages when a developer contemplates a project and sales to consumers.

Uniform Common Interest Ownership Act⁹¹

The Uniform Law Commission (ULC) promulgated the original version of the Uniform Common Interest Ownership Act in 1982. UCIOA succeeded and subsumed several older ULC acts, including the Uniform Condominium Act (1977 and 1980 versions), the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. UCIOA is a comprehensive act that governs the formation, management, and termination of common interest communities, whether that community is a condominium, planned community, or real estate cooperative.

In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general structure or format of the original act, but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor acts), and scholarly commentary and analyses surrounding the act. Issues addressed by the 1994 act included: increasing declarant responsibility for large and non-residential projects; allowing subdivision and expansion of projects; improving procedures for addressing use and occupancy restrictions in units; easing the process for projects begun in states prior to the adoption of UCIOA to opt in to the act; empowering the association to deal with tenants in rented units; and clarifying the standard of care that applied to association directors.

In 2004, the ULC approved a new drafting committee to consider and promulgate further amendments to UCIOA. The primary purpose of the proposed amendments was to address a growing demand in the states for a legislative solution for growing tensions between the elected directors of unit owners' associations and dissident individual unit owners within those associations. In keeping with the aims of the 1982 and 1994 versions of the act, the new amendments also reflect a comprehensive review of states' experience with UCIOA and its predecessor acts over the last 30 years.

The ULC approved these amendments at its Annual Meeting in 2008. They incorporate non-substantive, style changes to update the act and harmonize it with state legislative developments and terminology changes. The

⁹¹ This information came directly from the Uniform Law Commission website: [http://www.uniformlawcommission.com/ActSummary.aspx?title=Common Interest Ownership Act \(2008\)](http://www.uniformlawcommission.com/ActSummary.aspx?title=Common%20Interest%20Ownership%20Act%20(2008)).

2008 UCIOA amendments also incorporate a considerable number of substantive amendments, including the following highlights:

- Among new general provisions, the definition of “common interest community” is revised to confirm that unit owners’ mutual obligations to share the costs of services provided by the association is sufficient, without more, to create a common interest community. However, by reference to sections 1-209 and 1-210, the definition confirms that cost-sharing agreements between two associations, or an association and a separate owner of real estate, do not require creation of a separate common interest community. The term “special declarant right” adds new rights granted to a declarant. Several new definitions are added, including treatment of the term “record” as a noun for e-signature purposes, and the new act includes standard language on interaction with the federal Electronic Signatures in Global and National Commerce Act (ESIGN).
- Selected 2008 amendments are made retroactive to all residential common interest communities created before adoption of UCIOA in a particular state; these include sections 1-206 (governing instruments for older projects), 2-102 (unit boundaries), 2-117(h) and (i) (amendment to declaration), 2-124 (termination following catastrophe), 3-103 (executive board members and officers), 3-108 (meetings) and 3-124 (litigation involving the declarant). The amendments also grant greater flexibility to nonresidential projects by allowing the declaration to provide that only Articles 1 and 2 of UCIOA (definitions and general provisions, development flexibility, and title safeguards) apply.
- The 2008 amendments revise UCIOA’s treatment of the creation, alteration, and termination of common interest communities. Declarations are now required to authorize a process for association administration of any design criteria and building approval process, or for the enforcement of aesthetic standards; those that fail to do so will not have the authority to enforce such requirements. Also, the declaration may restrict unit owners’ use of common elements, in addition to existing restrictions on limited common elements, and common elements may now be restricted to use for “the purposes for which they were intended.”
- Residential projects may now benefit from increased flexibility in the percentage of unit owners required to amend the declaration. Now, consent may be presumed from lenders, where lender consent is necessary for amendment, with proper notice and 60 days of silence. The amendments also clarify that special declarant rights reserved in the declaration may not be amended without consent of the beneficiary.
- The 2008 amendments expand UCIOA’s treatment of association bylaws, rulemaking, operation and governance, notice methods, meetings, meeting and voting procedures, and the adoption of budgets and special assessments. The Act adopts important ‘open meeting’ requirements for both unit owner and executive board meetings, and greatly limits the use of executive sessions. The changes made by the 2008 amendments mandate that each unit owners association have an executive board, and expand the forms that unit owners associations may organize as, to include limited liability companies or any other form permitted by state law. The declaration may provide for direct election of the association’s executive board officers by unit owners, and also allows the declaration to provide for a limited number of independent outside directors, apart from those elected by unit owners or appointed by the declarant.
- Mandatory and discretionary association actions are clarified, as are certain rules regarding investment and borrowing practice, and an association’s right to suspend a unit owner’s privileges

(within limitations) is confirmed. The executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise them. The association is given greater flexibility to seek payment of the costs for damage resulting from willful misconduct or gross negligence directly from a unit owner instead of filing a claim with the association's insurer. The status of an association's statutory lien for all sums due from unit owners is clarified, and the right of an association to proceed in foreclosure on a lien against a unit owner is significantly limited.

- Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.
- Liability is expanded for declarants for false or misleading statements made in public offering statements, and increased financial disclosures are required. Minor changes are made with regard to express warranties of quality, allowing a model or description to clearly state that it is only "proposed" or "subject to change."

In addition to the 2008 amendments to UCIOA, a new Uniform Common Interest Owners Bill Of Rights Act (UCIOBORA) was also drafted that draws together a number of the existing provisions of UCIOA as well as many of the 2008 amendments that, together, provide significant rights to unit owners in all common interest communities. UCIOBORA can be enacted by states as a stand-alone act when it is deemed not feasible to adopt all of UCIOA. The UCIOBORA would then supplement existing state law with many of the most important updates and protections of the 2008 act.

The 2008 UCIOA amendments seek to address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records. There are a significant number of other amendments, style and substantive, to clarify and modernize the operation and governance of common interest associations. Taken as a whole, the aggregate of these amendments is a stronger UCIOA that better serves those governed by the act's provisions. It should be considered in every jurisdiction that has not already adopted it in the United States.

Uniform Common Interest Owners Bill of Rights Act⁹²

The Uniform Law Commission (ULC) promulgated the original version of the Uniform Common Interest Ownership Act in 1982. UCIOA succeeded and subsumed several older ULC acts, including the Uniform Condominium Act (1977 and 1980 versions), the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. UCIOA is a comprehensive act that governs the formation, management, and termination of common interest communities, whether that community is a condominium, planned community, or real estate cooperative. In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general structure or format of the original act, but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor acts), and scholarly commentary and analyses surrounding the act.

⁹² This information came directly from the Uniform Law Commission website: [http://www.uniformlawcommission.com/ActSummary.aspx?title=Common Interest Owners Bill of Rights](http://www.uniformlawcommission.com/ActSummary.aspx?title=Common%20Interest%20Owners%20Bill%20of%20Rights).

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

In 2004, the ULC approved a new drafting committee to consider and promulgate further amendments to UCIOA. At its Annual Meeting in 2008, the ULC promulgated the amendments to UCIOA, along with a new Common Interest Owners Bill of Rights Act (UCIOBORA).

UCIOBORA was drafted so that it can be enacted by states as a stand-alone act when it is not feasible to enact all of UCIOA. The UCIOBORA is drawn from the provisions of UCIOA, and supplements existing state law with many of the most important updates and protections of the 2008 updates.

Appendix C. 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
• terminate unconscionable contracts made by developer-controlled HOAs if the HOA board is owner-elected.	No	Yes	Yes	Yes	Yes	NA

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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 Duties						
HOAs have a duty to						
• enforce the declaration, bylaws, and rules.	No	No	No	No	No	Yes
• provide notice of litigation.	No	No	No	No	No	Yes
• carry property and liability insurance.	No	Yes	Yes	Yes	Yes	NA
• carry fidelity insurance.	No	No	No	No	Yes	NA
• keep financial records.	Yes	Yes	Yes	Yes	Yes	Yes
• make HOA records available for examination by owners.	Yes	Yes	Yes	Yes	Yes	Yes
• return surplus funds not allocated to reserves to	No	No	Yes	Yes	Yes	NA
• 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	No	Yes	Yes
• give notice before and after a change in rules.	No	No	No	NA	Yes	Yes
• hold an annual meeting.	No	Yes	Yes	Yes	Yes	Yes
• hold open meetings.	No	No	No	No	No	Yes
• annually adopt a proposed budget.	No	No	No	No	Yes	Yes
Developer-controlled HOAs must meet four times per year.	No	No	No	No	Yes	NA
Restrictions on HOAs						
HOAs shall not						
• deny compliant owners use and enjoyment of the common elements.	Yes	No	No	No	Yes	NA
• deny an owner access to their home.	No	No	No	No	No	Yes
• deny a member’s right to vote in community elections.	No	No	No	No	No	Yes
• prevent an owner from seeking election.	No	No	No	No	No	Yes

Protecting the Interests of Homeowners in Planned Developments:
Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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"> withhold services if withholding would endanger safety, health, or property. 	No	No	No	No	No	Yes
<ul style="list-style-type: none"> prohibit the display of a state flag or signs regarding candidates for office or ballot questions. 	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. 	Yes	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> 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. 	Yes	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> state which powers the board of directors may delegate. 	No	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> assign officers to prepare, execute, certify, and record amendments to the declaration. 	No	Yes	Yes	Yes	Yes	Yes
<ul style="list-style-type: none"> state the method of amending the bylaws. 	No	Yes	Yes	Yes	Yes	Yes
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. 	No	No	No	No	Yes	Yes
<ul style="list-style-type: none"> the care required of fiduciaries of the unit owners. 	No	Yes	No	No	No	NA

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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)
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. 	No	No	No	No	Yes	Yes
<ul style="list-style-type: none"> have a duty of ordinary and reasonable care. 	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
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

Protecting the Interests of Homeowners in Planned Developments:
Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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 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 wrongful act or omission.	No	No	Yes	Yes	Yes	NA
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

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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)
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
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						
<ul style="list-style-type: none"> the HOA's name and a statement that the common interest community is either a condominium, cooperative, or planned community. 	No	Yes	Yes	Yes	Yes	NA
<ul style="list-style-type: none"> the number of homes the developer reserves the right to create. 	No	No	Yes	Yes	Yes	NA
<ul style="list-style-type: none"> a description of the common or limited common elements. 	Yes	Yes	Yes	Yes	Yes	NA
<ul style="list-style-type: none"> a description of any development rights and a time limit within which those rights must be exercised. 	No	Yes	Yes	Yes	Yes	NA
<ul style="list-style-type: none"> an allocation of owners' interests in common elements. 	Yes	Yes	Yes	Yes	Yes	NA

Protecting the Interests of Homeowners in Planned Developments:
Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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 use, occupancy, or sale.	No	Yes	Yes	Yes	Yes	NA
• the recording data for easements and licenses that affect the development.	No	No	Yes	Yes	Yes	NA
• authorization to impose construction and design criteria.	No	No	No	No	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
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

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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' 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 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
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

Protecting the Interests of Homeowners in Planned Developments:
Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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

Protecting the Interests of Homeowners in Planned Developments:
Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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

Protecting the Interests of Homeowners in Planned Developments:
Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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
Provisions of act do not invalidate any other zoning and building code.	No	Yes	Yes	Yes	Yes	NA

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

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)
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
Developers must file annual reports for any communities registered with a state agency.	No	No	Yes	Yes	Yes	NA
A state agency may						
• 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

Appendix D. 50 States' Condominium and Homeowners Associations Laws

State	Condominium*	Single-family*
Alabama	<i>Title 35, Chapters 8 and 8A</i>	none
Alaska	Title 34, Chapters 7 and 8	Title 34, Chapter 8
Arizona	<i>Title 33, Chapter 9</i>	Title 33, Chapter 16
Arkansas	Title 18, Subtitle 2, Chapter 13	none
California	Civil Code, Division 4, Part 5	Civil Code, Division 4, Part 5
Colorado	Title 38, Chapters 33 and 33.3	<i>Title 38, Article 33.3</i>
Connecticut	Title 47, Chapters 825 and 828	<i>Title 47, Chapter 828</i>
Delaware	Title 25, Part II, Chapter 22 and Part VII, Chapter 81	Title 25, Part VII, Chapter 81
Florida	Title XL, Chapter 718	Title XL, Chapter 720
Georgia	Title 44 Chapter 3 Article 3	Title 44, Chapter 3, Article 6
Hawaii	Division 3, Title 28, Chapters 514A and 514B	Division 2, Title 23, Chapter 421J
Idaho	Title 55, Chapter 15	none
Illinois	Chapter 765, ILCS 160 and 605	Chapter 765, ILCS 160
Indiana	Title 32, Article 25	Title 32, Article 25.5
Iowa	Title XII, Subtitle 3, Chapter 499B	none
Kansas	Chapter 58, Articles 31, 37, and 46	Chapter 58, Article 46
Kentucky	<i>Title XXXII Chapter 381 Sections 805-910 and 9101-9207</i>	none
Louisiana	Title 9, Book 2, Title 1, Chapter 1, Part 2	Title 9, Book 2, Title 1, Chapter 1, Part 2-B
Maine	<i>Title 33, Chapters 10 and 31</i>	none
Maryland	Real Property Code, Title 11	Real Property Code, Title 11B
Massachusetts	Chapter 183A	none
Michigan	Chapter 559	none
Minnesota	<i>Chapters 515A and 515B</i>	<i>Chapter 515B</i>
Mississippi	Title 89, Chapter 9	none
Missouri	<i>Chapter 448</i>	none
Montana	Title 70, Chapter 23	none
Nebraska	<i>Chapter 76, Article 8</i>	none
Nevada	Title 10, Chapters 116A, 116B, and 117	<i>Title 10, Chapters 116 and 116A</i>

*Italics indicate a Uniform Law Commission model act was adopted.

Protecting the Interests of Homeowners in Planned Developments:

Insuring and Maintaining Common Property, Completing Infrastructure, and Providing Fair and Adequate Regulation

State	Condominium*	Single-family*
New Hampshire	Title XXXI, Chapter 356-B	none
New Jersey	Title 46, Subtitle 2, Chapter 8A and 8B	Title 45, Subtitle 2, Chapter 22A
New Mexico	<i>Chapter 47, Articles 7A-D</i>	Chapter 47, Article 7E
New York	Real Property Law, Article 9-B	none
North Carolina	Chapters 47A and 47C	Chapter 47F
North Dakota	Title 47, Chapter 47-04.1	none
Ohio	Title 53, Chapter 5311	Title 53, Chapter 5312
Oklahoma	Title 60, Chapter 11	Title 60, Chapter 17
Oregon	Title 10, Chapter 100	Title 10, Chapter 94, Planned Communities
Pennsylvania	<i>Title 68, Part 2, Subpart B, Chapter 31-34</i>	Title 68, Part 2, Subpart D
Rhode Island	<i>Title 34, Chapters 36 and 36.1</i>	none
South Carolina	Title 27, Chapter 31	none
South Dakota	Title 43, Chapter 43-15A	none
Tennessee	Title 66, Chapter 27	none
Texas	<i>Property Code, Title 7</i>	Property Code, Title 11
Utah	Title 57, Chapter 8	Title 57, Chapter 8a
Vermont	Title 27, Chapter 15 and Title 27A	<i>Title 27A</i>
Virginia	<i>Title 55, Chapters 4.1 and 4.2</i>	Title 55, Chapters 26 and 29
Washington	<i>Title 64, Chapters 64.32 and 64.34</i>	Title 64, Chapter 64.38
West Virginia	<i>Chapter 36A and 36B</i>	<i>Chapter 36B</i>
Wisconsin	Chapter 703	none
Wyoming	Title 34 Chapter 20	none

*Italics indicate a Uniform Law Commission model act was adopted.