

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 973

Introduced by Kolowski, 31.

Read first time January 13, 2020

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to real estate; to amend section 39-1405,
- 2 Reissue Revised Statutes of Nebraska, and section 52-2001, Revised
- 3 Statutes Cumulative Supplement, 2018; to adopt the Homeowner
- 4 Association Act; to provide for contracts with county boards; to
- 5 provide for liens; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 38 of this act shall be known and may be
2 cited as the Homeowner Association Act.

3 Sec. 2. For purposes of the Homeowner Association Act, the
4 definitions found in sections 3 to 9 of this act apply.

5 Sec. 3. Board means the board of directors of a homeowner
6 association.

7 Sec. 4. Declarant means any person or group of persons acting in
8 concert who (1) as part of a common promotional plan, offers to dispose
9 of an interest in a lot in a development not previously disposed of, or
10 (2) reserves or succeeds to any special declarant right in the governing
11 documents.

12 Sec. 5. Development means the real estate development owned by a
13 private group of fee simple owners of residential real estate and a
14 declarant, if any, which developed the residential real estate.

15 Sec. 6. Governing documents includes the following:

16 (1) The articles of incorporation and bylaws of a homeowner
17 association and all adopted amendments to the articles of incorporation
18 and bylaws; and

19 (2) Any applicable covenants filed with the office of the register
20 of deeds of the applicable county, whether contained in a declaration of
21 covenants, contained in conditions and restrictions or a similarly titled
22 document, or contained within a plat.

23 Sec. 7. (1) Homeowner association means an association whose
24 members consist of a private group of fee simple owners of residential
25 real estate formed for the purpose of imposing and receiving payments,
26 fees, assessments, or other charges for:

27 (a) The use, rental, operation, or maintenance of common elements
28 available to all members and services provided to the member for the
29 benefit of the member or his or her real estate;

30 (b) Late payments of assessments and, after notice and opportunity
31 to be heard, the levying of fines for violations of homeowner association

1 declarations, agreements, bylaws, or rules and regulations; or

2 (c) The preparation and recordation of amendments to declarations,
3 agreements, resale statements, or statements for unpaid assessments.

4 (2) Homeowner association does not include a co-owners association
5 organized under the Condominium Property Act or a unit owners association
6 organized under the Nebraska Condominium Act.

7 Sec. 8. Member means a person who is a fee simple owner of
8 residential real estate in a homeowner association or a declarant, if
9 any, of the development for the homeowner association.

10 Sec. 9. Owner means a person who is a fee simple owner of
11 residential real estate in a homeowner association.

12 Sec. 10. The Homeowner Association Act applies to:

13 (1) A homeowner association established on or after January 1, 2021,
14 that is authorized to impose mandatory dues on the members of the
15 homeowner association; or

16 (2) A homeowner association established before January 1, 2021:

17 (a) If a majority of the members of the homeowner association elect
18 to be governed by the act; or

19 (b) If the number of members required by the governing documents of
20 the homeowner association elect to be governed by the act if a different
21 number of members, other than the number established in subdivision (a)
22 of this subdivision, is required by the governing documents.

23 Sec. 11. (1) A meeting of the members of the homeowner association
24 to elect the board of directors of the homeowner association shall be
25 held within:

26 (a) Sixty days after the date that at least seventy-five percent of
27 the total number of lots that may be part of the development after all
28 phases are complete are sold to members of the public for residential
29 purposes; or

30 (b) If a lesser percentage is specified by the declarant in the
31 governing documents of the homeowner association, sixty days after the

1 date the specified lesser percentage of the total number of lots in the
2 development after all phases are complete are sold to the public for
3 residential purposes.

4 (2)(a) Before the date of the meeting held under subsection (1) of
5 this section, the declarant shall deliver to each lot owner notice that
6 the requirements of subsection (1) of this section have been met.

7 (b) The notice shall include the date, time, and place of the
8 meeting to elect the board of directors of the homeowner association.

9 (3) The term of each member of the board appointed by the declarant
10 shall end ten days after the meeting under subsection (1) of this section
11 is held, if a replacement board member is elected.

12 (4) Within thirty days after the date of the meeting held under
13 subsection (1) of this section, the declarant shall deliver the following
14 items to the association board at the declarant's expense:

15 (a) The deeds to the common areas;

16 (b) Copies of the filed articles of incorporation, declaration, and
17 all recorded covenants, plats, restrictions, and any other records of the
18 primary development and of related developments of the homeowner
19 association;

20 (c) A copy of the bylaws and rules of the primary development and of
21 other related developments as filed in the depository of the county in
22 which the development is located;

23 (d) The minute books, including all minutes;

24 (e) All books and records of the homeowner association, including
25 financial statements, minutes of any meeting of the board, and completed
26 business transactions;

27 (f) Any policies, rules, and regulations adopted by the board;

28 (g) The financial records of the homeowner association from the date
29 of creation to the date of transfer of control, including budget
30 information regarding estimated and actual expenditures by the homeowner
31 association and any report relating to the reserves required for major

- 1 repairs and replacement of the common areas of the homeowner association;
2 (h) A copy of all contracts to which the homeowner association is a
3 party;
4 (i) The name, address, and telephone number of any contractor or
5 subcontractor employed by the homeowner association;
6 (j) Any insurance policies in effect;
7 (k) Any permit or notice of code violations issued to the homeowner
8 association by the county, city, state, or federal government;
9 (l) Any warranty in effect and all prior insurance policies;
10 (m) The funds of the homeowner association, including operating
11 funds, replacement reserves, investment accounts, and working capital;
12 (n) The tangible property of the homeowner association;
13 (o) A roster of current lot owners, including their mailing
14 addresses, telephone numbers, and lot numbers, if known;
15 (p) Individual member files and records, including assessment
16 account records, correspondence, and notices of any violations; and
17 (q) Drawings, architectural plans, or other suitable documents
18 setting forth the necessary information for location, maintenance, and
19 repairs of all common areas.
- 20 (5)(a) This subsection does not apply to a contract entered into
21 before January 1, 2021.
- 22 (b) For purposes of this subsection: (i) Contract means an agreement
23 with a company or individual to handle financial matters, maintenance, or
24 services for the homeowner association; and (ii) contract does not
25 include an agreement relating to the provision of utility services or
26 communication systems.
- 27 (c) Until all members of the board are elected by the lot owners at
28 a transitional meeting under subsection (1) of this section, a contract
29 entered into by the board may be terminated, at the discretion of the
30 board and without liability for the termination, not later than thirty
31 days after notice.

1 (6) If the declarant fails to comply with the requirements of this
2 section, an aggrieved lot owner may submit the dispute to the Consumer
3 Protection Division of the Office of the Attorney General.

4 Sec. 12. (1) Notwithstanding any bylaw, provision of a declaration,
5 rule, or other provision of law, the board, or if control of the board
6 has not yet transitioned to the lot owners, the declarant, shall give
7 notice in accordance with subsection (2) of this section no less than
8 thirty days before the sale, including a tax sale, of any common area
9 located on property that has been transferred to the homeowner
10 association.

11 (2) The notice requirement under subsection (1) of this section
12 shall be satisfied by:

13 (a) Providing written notice about the sale to each lot owner; or

14 (b)(i) Posting a sign about the sale on the property to be sold, in
15 a manner similar to signage required for a zoning modification; and

16 (ii) If the homeowner association has a web site, providing notice
17 about the sale on the home page of the web site of the homeowner
18 association.

19 Sec. 13. (1) A homeowner association shall maintain:

20 (a) A current roster of all members of the association; and

21 (b) The mailing address and legal description of the property owned
22 by each member of the association.

23 (2) The homeowner association shall also maintain any electronic
24 mail addresses or facsimile numbers of those members who have consented
25 to receive notice by electronic mail or facsimile. Electronic mail
26 addresses and facsimile numbers provided by a member to receive notice by
27 electronic mail or facsimile shall be removed from the association's
28 records when the member revokes consent to receive notice by electronic
29 mail or facsimile. However, the association is not liable for an
30 erroneous disclosure of an electronic mail address or a facsimile number
31 for receiving notices.

1 (3) The mailing addresses and legal descriptions maintained by a
2 homeowner association under subsection (1) of this section:

3 (a) Shall be made available to a member of the homeowner association
4 upon request;

5 (b) May be used by a member of the homeowner association only for a
6 purpose related to the operation of the homeowner association; and

7 (c) May not be used by a member of the homeowner association for
8 personal reasons.

9 (4) Except as provided in subsection (3) of this section, a
10 homeowner association may not sell, exchange, or otherwise transfer
11 information maintained by the homeowner association under this section to
12 any person.

13 Sec. 14. (1) In addition to any other meeting held by a board, a
14 board shall hold a special meeting of the members of a homeowner
15 association if at least ten percent of the members of the homeowner
16 association submit to the board at least one written demand for the
17 special meeting that:

18 (a) Describes the purpose for which the meeting is to be held; and

19 (b) Is signed by the members requesting the special meeting.

20 (2) If a board does not send out a notice of the date, time, and
21 place for a special meeting not more than thirty days after the date the
22 board receives a valid written demand for the special meeting under
23 subsection (1) of this section, a member of the homeowner association who
24 signed the written demand may:

25 (a) Set the date, time, and place for the special meeting; and

26 (b) Send out the notice for the special meeting to the other members
27 according to the notice requirements of the bylaws.

28 Sec. 15. (1) A homeowner association shall prepare an annual
29 budget.

30 (2) The annual budget shall reflect:

31 (a) The estimated revenues and expenses for the budget year;

1 (b) The estimated surplus or deficit as of the end of the current
2 budget year; and

3 (c) A preventive maintenance plan for common property of the
4 homeowner association.

5 (3) Before the homeowner association meeting held under subsection
6 (4) of this section, the homeowner association shall provide each member
7 of the homeowner association with:

8 (a)(i) A copy of the proposed annual budget; or

9 (ii) Written notice that a copy of the proposed annual budget is
10 available upon request at no charge to the member; and

11 (b) A written notice of the amount of any increase or decrease in a
12 regular annual assessment paid by the members that would occur if the
13 proposed annual budget is approved.

14 (4) Subject to subsection (6) of this section, a homeowner
15 association budget shall be approved at a meeting of the homeowner
16 association members by a majority of the members of the homeowner
17 association in attendance at a meeting called and conducted in accordance
18 with the requirements of the homeowner association's governing documents.

19 (5) For purposes of this section, a member of a homeowner
20 association is considered to be in attendance at a meeting if the member
21 attends (a) in person, (b) by proxy, or (c) by any other means allowed
22 under (i) state law or (ii) the governing documents of the homeowner
23 association.

24 (6) If the number of members of the homeowner association in
25 attendance at a meeting held under subsection (4) of this section does
26 not constitute a quorum as defined in the governing documents of the
27 homeowner association, the board may adopt an annual budget for the
28 homeowner association for the ensuing year in an amount that does not
29 exceed one hundred percent of the amount of the last approved homeowner
30 association annual budget. However, the board may adopt an annual budget
31 for the homeowner association for the ensuing year in an amount that does

1 not exceed one hundred ten percent of the amount of the last approved
2 homeowner association annual budget if the governing documents of the
3 homeowner association allow the board to adopt an annual budget under
4 this subsection for the ensuing year in an amount that does not exceed
5 one hundred ten percent of the amount of the last approved homeowner
6 association annual budget.

7 (7)(a) Subject to subsection (11) of this section:

8 (i) The financial records, including all contracts, invoices, bills,
9 receipts, and bank records, of a homeowner association shall be available
10 for inspection by each member of the homeowner association upon written
11 request; and

12 (ii) The minutes of meetings of the board, including the annual
13 meeting, shall be available to a member of the homeowner association for
14 inspection upon the homeowner association member's request, which may be
15 submitted (A) in person, (B) in writing, or (C) by electronic mail.

16 (b) In addition to the right to inspect the meeting minutes of the
17 board, a member of a homeowner association has the right to attend any
18 meeting of the board, including an annual meeting of the board. However,
19 the board may meet in private to discuss delinquent assessments. The
20 board may also meet in private with legal counsel to discuss the
21 initiation of litigation or to discuss litigation that either is pending
22 or has been threatened specifically in writing. For purposes of this
23 subsection, litigation includes any judicial action or administrative law
24 proceeding under state or federal law.

25 (c) A written request for inspection shall identify with reasonable
26 particularity the information being requested. A member's ability to
27 inspect records under this section shall not be unreasonably denied or
28 conditioned upon provision of an appropriate purpose for the request. The
29 homeowner association may charge a reasonable fee for the copying of a
30 record requested under this subsection if the homeowner association
31 member requests a written copy of the record.

1 (8) Subject to subsections (10) and (11) of this section, if there
2 is a dispute between a homeowner and a homeowner association, the
3 officers of the homeowner association shall make all communications
4 concerning the dispute available to the homeowner.

5 (9) Subject to subsections (10) and (11) of this section, the
6 following apply:

7 (a) A homeowner association shall make all communications and
8 information concerning a lot available to the owner of the lot or a home
9 on the lot; and

10 (b) If a homeowner association initiates communication with any
11 member about another member's lot, the homeowner association shall give a
12 copy of that communication to the other member whose lot is the subject
13 of the communication. However, this subdivision does not apply if the
14 communication concerns suspected criminal activity, or activity that is
15 the subject of a law enforcement investigation, involving the member
16 whose lot is the subject of the communication.

17 (10) A homeowner association is not required to make the following
18 available to the owner of a lot or home:

19 (a) Communications between the homeowner association and the legal
20 counsel of the homeowner association; and

21 (b) Other communications or attorney work product prepared in
22 anticipation of litigation.

23 (11) A homeowner association is not required to make available to a
24 member for inspection any of the following:

25 (a) Unexecuted contracts;

26 (b) Records regarding contract negotiations;

27 (c) Information regarding an individual member's association account
28 to a person who is not a named party on the account;

29 (d) Any information that is prohibited from release under state or
30 federal law;

31 (e) Any records that were created more than two years before the

1 request; and

2 (f) Information that (i) is provided by a member of the homeowner
3 association about another member of the homeowner association and (ii)
4 concerns suspected criminal activity involving the other member.

5 Except as otherwise provided in the Homeowner Association Act, other
6 applicable law, or the governing documents of the homeowner association,
7 a homeowner association is not required to retain a record of a written
8 or electronic communication for any specific period of time. However, a
9 homeowner association or a member of the board shall retain for at least
10 two years after receipt, and during that period shall make available to a
11 member of the homeowner association at the member's request, any written
12 or electronic communication received by the homeowner association or
13 board member that relates to a financial transaction of the homeowner
14 association and that is not otherwise excepted from disclosure under the
15 act or other applicable law.

16 (12) Nothing in the Homeowner Association Act:

17 (a) Abrogates or eliminates provisions in homeowner association
18 agreements that permit or require additional disclosure or inspection
19 rights not required by the act; or

20 (b) Prevents a homeowner association from agreeing to make
21 disclosures or to provide inspection rights not required by the act.

22 (13) A homeowner association may not charge a fee for the first hour
23 required to search for a record in response to a written request
24 submitted under the Homeowner Association Act. A homeowner association
25 may charge a search fee for any time that exceeds one hour. The following
26 provisions apply if a homeowner association charges a search fee:

27 (a) The homeowner association may charge an hourly fee that does not
28 exceed thirty-five dollars per hour;

29 (b) The homeowner association may charge the fee only for time that
30 the person making the search actually spends in searching for the record;

31 (c) The homeowner association shall prorate the fee to reflect any

1 search time of less than one hour; and

2 (d) The total amount of the fee charged by the homeowner association
3 for a search may not exceed two hundred dollars.

4 Sec. 16. (1) This section does not apply to a contract entered into
5 by a board that would resolve, settle, or otherwise satisfy an act of
6 enforcement against a homeowner association for violating a state or
7 local law.

8 (2) A board may not enter into any contract that would result in a
9 new assessment or the increase in an existing assessment payable by the
10 affected members of the homeowner association in the amount of more than
11 five hundred dollars per year for each affected member of the homeowner
12 association unless:

13 (a) The board holds at least two homeowner association meetings
14 concerning the contract; and

15 (b) The contract is approved by the affirmative vote of at least
16 two-thirds of the affected members of the homeowner association.

17 (3) A board shall give notice of the first homeowner association
18 meeting held under subsection (2) of this section:

19 (a) To each member of the homeowner association; and

20 (b) At least ten calendar days before the date the meeting occurs.

21 Sec. 17. (1) This section does not apply to money borrowed by a
22 homeowner association that is needed to:

23 (a) Resolve, settle, or otherwise satisfy an act of enforcement
24 against the homeowner association for violating a state or local law; or

25 (b) Address a government-declared or board-approved emergency that
26 affects the public health, safety, or welfare.

27 (2)(a) Except as otherwise provided in subdivision (b) of this
28 subsection, a homeowner association may not borrow money during any
29 calendar year on behalf of the homeowner association in an amount that
30 exceeds the greater of:

31 (i) Five thousand dollars during any calendar year; or

1 (ii) If the homeowner association operated under an annual budget in
2 the previous calendar year, an amount equal to at least ten percent of
3 the previous annual budget of the homeowner association.

4 (b) A homeowner association may borrow money in excess of the limit
5 in subdivision (a) of this subsection if it is approved by the
6 affirmative vote of a majority of the members of the homeowner
7 association voting under this section.

8 (3) A person who owns a lot, parcel, tract, or interest in land in a
9 development may cast one vote under this section for each lot, parcel,
10 tract, or interest in land in the development that is owned by the person
11 unless the governing documents provide for a different voting procedure.

12 (4) A vote held under this section shall be conducted by paper
13 ballot.

14 (5) A homeowner association shall distribute paper ballots to
15 persons eligible to vote under this section at least thirty days before
16 the date the votes are to be opened and counted.

17 (6) Votes cast under this section shall be opened and counted at a
18 public meeting held by the homeowner association.

19 Sec. 18. A homeowner association may not suspend the voting rights
20 of a member for nonpayment of any assessments unless:

21 (1) The governing documents provide for suspension; and

22 (2) The assessments are delinquent for more than six months.

23 Sec. 19. The governing documents shall contain a provision allowing
24 the owners to amend the governing documents at any time, from time to
25 time, subject to the following:

26 (1) The declarant's consent to an amendment may be required if:

27 (a) The declarant owns one or more lots within the development; and

28 (b) Not more than seven years have passed since the original
29 governing documents were first recorded;

30 (2)(a) The consent of the members to the amendment has been obtained
31 as evidenced by either of the following:

1 (i) The vote of the members at a meeting duly called for the purpose
2 of considering the amendment; or

3 (ii) A written instrument signed by the owners.

4 (b) The governing documents may not require that the consent of more
5 than seventy-five percent of the members is required for consent under
6 this subdivision;

7 (3) If the consent of first mortgage holders is required, only first
8 mortgage holders that provide an address to the secretary of the board
9 must be notified. The consent of a first mortgage holder shall be
10 indicated in a written instrument signed by the mortgage holder. However,
11 a mortgage holder is considered to have consented to a proposed amendment
12 if the mortgage holder does not respond to a written request for consent
13 within thirty days after the mortgage holder receives the request. The
14 governing documents may not require that the consent of more than
15 seventy-five percent of first mortgage holders eligible to receive notice
16 is required for consent under this subdivision; and

17 (4) Notwithstanding subdivisions (1) through (3) of this section,
18 the governing documents may require the approval of at least ninety-five
19 percent of the members to convey common areas or to dissolve the plan of
20 governance for the homeowner association.

21 Sec. 20. (1) This section applies to a proxy given by a member of a
22 homeowner association.

23 (2) A proxy that does not comply with this subsection is void. A
24 proxy shall include all the following:

25 (a) The name and address of the member giving the proxy;

26 (b) The name of the individual empowered to exercise the member's
27 proxy;

28 (c) The date on which the proxy is given;

29 (d) The date of the meeting for which the proxy is given;

30 (e) The member's signature, whether executed by hand or as an
31 electronic signature; and

1 (f) An affirmation under the penalty for perjury that the individual
2 signing the proxy has the authority to grant the proxy to the individual
3 named in the proxy to exercise the member's proxy.

4 (3) A member may state in a proxy that the proxy is limited in its
5 use to specific matters described in the proxy.

6 (4) A member may give a proxy for the meeting referred to in
7 subdivision (2)(d) of this section and any continuation of that meeting,
8 if the proxy states that it expires on a stated date that may not be more
9 than one hundred eighty days after the date on which the proxy is given.

10 (5) A member may create and use a proxy form designed by the member
11 if the form complies with the requirements of subsection (2) of this
12 section.

13 (6) A proxy, or a copy of the proxy, regardless of whether the copy
14 is a paper copy or an electronic copy, that is exercised for any purpose
15 at a meeting shall be kept with the records of the meeting.

16 (7) Notwithstanding subdivision (2)(f) of this section, a member may
17 submit a proxy that complies with this section by (a) hand delivery, (b)
18 United States mail, (c) facsimile, or (d) electronic mail or other
19 electronic means.

20 Sec. 21. (1)(a) If a meeting of a homeowner association is called
21 in accordance with the requirements of the homeowner association's
22 governing documents, regardless of whether the meeting is (i) an annual
23 meeting, (ii) a special meeting, or (iii) any other meeting called by the
24 board or the members, (b) if a purpose of the meeting is the election or
25 appointment of members of the board of directors of the homeowner
26 association, and (c) if the number of members of the homeowner
27 association in attendance at the meeting does not constitute a quorum as
28 defined in the governing documents of the homeowner association, then the
29 members of the board of directors at the time of the meeting may continue
30 to serve until their successors are selected and qualified, regardless of
31 the length of any member's term or the number of terms the member has

1 served.

2 (2) The failure of a homeowner association to achieve a quorum at a
3 meeting described in subsection (1) of this section does not exempt any
4 member from, or create an affirmative defense for, any member with
5 respect to:

6 (a) The member's obligations under the homeowner association's
7 governing documents; or

8 (b) The member's obligations to otherwise abide by covenants
9 regulating (i) the use of real estate or (ii) the payment of assessments.

10 (3) If a homeowner association's governing documents permit both the
11 homeowner association and members of the homeowner association to enforce
12 provisions of the governing documents, the homeowner association has
13 authority to enforce the governing documents of the homeowner association
14 both (a) as a corporation or an entity and (b) as derived from the
15 members of the homeowner association's board.

16 Sec. 22. Sections 22 to 32 of this act do not apply to an exempt
17 claim unless the parties agree that sections 22 to 32 of this act are
18 applicable to the exempt claim.

19 Sec. 23. For purposes of sections 22 to 32 of this act:

20 (1)(a) Claim refers to any of the following:

21 (i) A claim arising out of or relating to the interpretation,
22 application, or enforcement of the governing documents;

23 (ii) A claim relating to the rights or duties of the homeowner
24 association or the board under the governing documents;

25 (iii) A claim relating to the maintenance of the development; and

26 (iv) Any other claim, grievance, or dispute among the parties
27 involving the development or the homeowner association; and

28 (b) Claim does not include an exempt claim;

29 (2) Claimant refers to a party who has a claim against another
30 party;

31 (3) Exempt claim refers to any of the following claims or actions:

1 (a) A claim by the homeowner association for assessments or dues and
2 any action by the association to collect assessments or dues;

3 (b) An action by a party to obtain a temporary restraining order or
4 equivalent emergency equitable relief:

5 (i) To maintain the status quo and preserve the party's ability to
6 enforce the governing documents; or

7 (ii) When an emergency condition exists that jeopardizes the health
8 or safety of any of the residents within the development governed by the
9 homeowner association;

10 (c) A suit to which an applicable statute of limitations would
11 expire within the notice period. This subdivision does not apply if a
12 party against which the claim is made agrees to toll the statute of
13 limitations as to the claim for the period reasonably necessary to comply
14 with sections 22 to 32 of this act;

15 (d) A dispute that is subject to mediation, arbitration, or other
16 alternate dispute resolution under applicable law, contract, warranty
17 agreement, or other instrument; or

18 (e) A claim that is substantively identical to a claim:

19 (i) That was previously addressed by the parties; or

20 (ii) That was resolved by a judicial determination in favor of one
21 of the parties;

22 (4) Legal proceeding refers to either of the following:

23 (a) An action maintained in a court; or

24 (b) An administrative proceeding initiated under an applicable law;

25 (5) Party refers to any of the following:

26 (a) The homeowner association;

27 (b) A member of the homeowner association; or

28 (c) The board; and

29 (6) Respondent refers to the party against whom a claimant has a
30 claim.

31 Sec. 24. A claimant may not initiate a legal proceeding seeking

1 redress or resolution of a claim until the claimant has complied with the
2 procedures described in sections 22 to 32 of this act.

3 Sec. 25. A claimant shall provide notice of the claim to the
4 respondent, stating plainly and concisely the following information:

5 (1) The nature of the claim, including the date, time, location,
6 persons involved, and the respondent's role in the claim;

7 (2) The basis of the claim, including the provision of the governing
8 documents or other authority out of which the claim arises;

9 (3) What the claimant wants the respondent to do or not to do to
10 resolve the claim;

11 (4) That the respondent has a right to meet with the claimant, if
12 the respondent makes a written request for a meeting; and

13 (5) The name and address of the person from whom the respondent must
14 request a meeting under subdivision (4) of this section.

15 Sec. 26. (1) This section applies if a respondent has requested a
16 meeting under section 25 of this act not later than ten business days
17 after the date of the notice of the claim given under section 25 of this
18 act.

19 (2) The claimant and the respondent shall meet in person to resolve
20 the claim by good faith negotiation, at the time and place agreed to by
21 the claimant and the respondent.

22 (3) During the meeting, the parties shall have full access to the
23 property that is the subject of the claim to inspect the property, if
24 appropriate or necessary. If the respondent agrees to take corrective
25 action, the claimant shall provide the respondent and the respondent's
26 agents with full access to the property to take and complete corrective
27 action.

28 Sec. 27. (1) The parties are considered to be at an impasse if:

29 (a) The respondent does not request a meeting under section 25 of
30 this act;

31 (b) Either party fails to attend a meeting agreed upon under section

1 26 of this act; or

2 (c) The parties are unable to settle the claim at a meeting held
3 under section 26 of this act.

4 (2) Either party may, not later than ten days after an impasse is
5 reached, request in writing to the other party that the other party
6 submit the claim to mediation or binding arbitration.

7 (3) The party making the request under subsection (2) of this
8 section is responsible for the costs of the mediator or arbitrator.

9 Sec. 28. The claimant may begin legal proceedings if an impasse is
10 reached and:

11 (1) Neither party requests mediation or arbitration; or

12 (2) Mediation or arbitration does not result in a settlement of the
13 claim.

14 Sec. 29. (1) This section applies if a claim is settled through
15 negotiation, mediation, or arbitration.

16 (2) The settlement of the claim shall be documented in a written
17 agreement signed by each of the parties.

18 (3) If a party fails to abide by the settlement agreement signed
19 under subsection (2) of this section, the other party may begin legal
20 proceedings without again complying with sections 22 to 32 of this act.

21 (4) If a party who begins legal proceedings under subsection (3) of
22 this section prevails in those legal proceedings, the party is entitled
23 to recover from the other party (a) court costs, (b) attorney's fees, and
24 (c) all other reasonable costs incurred in enforcing the settlement
25 agreement.

26 Sec. 30. A release or discharge of a respondent from liability to
27 the claimant with respect to the claim does not release or discharge the
28 respondent with respect to any other person who is not a party to the
29 claim.

30 Sec. 31. The board, on behalf of the homeowner association, and
31 without the consent of the members of the homeowner association, may do

1 any of the following:

2 (1) Negotiate settlements of claims or legal proceedings under
3 sections 22 to 32 of this act; and

4 (2) Execute settlement agreements, waivers, releases of claims, or
5 any other documents resulting from application of sections 22 to 32 of
6 this act.

7 Sec. 32. Except as otherwise provided in sections 22 to 32 of this
8 act, each party shall bear its own costs for application of sections 22
9 to 32 of this act, including attorney's fees.

10 Sec. 33. A member who believes that the board has failed to comply
11 with the election procedures of the governing documents or the Homeowner
12 Association Act may submit the dispute to the Consumer Protection
13 Division of the Office of the Attorney General if the provisions concern:

14 (1) Notice about the date, time, and place for the election of the
15 board;

16 (2) The manner in which a call is made for nominations for the
17 board;

18 (3) The format of the election ballot;

19 (4) The format, provision, and use of proxies during the election
20 process; or

21 (5) The manner in which a quorum is determined for election
22 purposes.

23 Sec. 34. (1) Notwithstanding any provision in the governing
24 documents, a homeowner association shall not prohibit the installation or
25 use of a solar energy system as defined in section 66-905.

26 (2) A homeowner association may adopt reasonable rules regarding the
27 placement of a solar energy system if the rules do not prevent the
28 installation, impair the functioning, or restrict the use of the system,
29 adversely affect the cost of the system by more than fifteen percent, or
30 adversely affect the efficiency of the system.

31 Sec. 35. (1) For purposes of this section:

1 (a) Rule refers to any of the following:

2 (i) A restrictive covenant; or

3 (ii) A homeowner association rule; and

4 (b) Sign refers only to a sign advocating:

5 (i) The election or defeat of one or more candidates for nomination
6 or election to a public office;

7 (ii) Support for or opposition to a political party or a political
8 party's candidates; or

9 (iii) The approval or disapproval of a ballot question.

10 (2) Except as provided in subsection (3) of this section, a
11 homeowner association may not adopt or enforce a rule that prohibits a
12 member of the homeowner association from displaying a sign on the
13 member's property during the period beginning thirty days before and
14 ending five days after the date of the election to which the sign
15 relates.

16 (3) A homeowner association may adopt and enforce rules relating to
17 a sign if the rules do any of the following:

18 (a) Restrict the size of a sign if the rule permits a homeowner to
19 display a sign that is at least as large as signs commonly displayed
20 during election campaigns;

21 (b) Restrict the number of signs that may be displayed if the rule
22 permits a homeowner to display a reasonable number of signs; or

23 (c) Restrict the locations where a sign may be displayed. However, a
24 restriction under this subdivision may not prohibit the display of a sign
25 (i) in a window on the homeowner's property or (ii) on the ground that is
26 part of the homeowner's property.

27 (4) A homeowner association may remove a sign that violates the
28 rules permitted by this section.

29 Sec. 36. (1) This section does not apply to homeowner association
30 property if:

31 (a) Access to the property from the outside is controlled by gates

1 or other means; and

2 (b) The common areas, including roads and sidewalks, are privately
3 owned and maintained.

4 (2) For purposes of this section, homeowner association property
5 refers to real property owned by any of the following:

6 (a) A member of the homeowner association;

7 (b) The homeowner association; or

8 (c) The members of the homeowner association in common.

9 (3) A homeowner association shall not adopt or enforce a rule or
10 covenant that prohibits, or has the effect of prohibiting (a) a
11 candidate, (b) an individual who holds an elected office, (c) the spouse
12 of a candidate or individual who holds an elected office, or (d) a
13 volunteer worker of a candidate or individual who holds an elected office
14 from entering onto homeowner association property for purposes of
15 conducting political activity.

16 Sec. 37. (1) For purposes of this section, candidate sign means a
17 sign on behalf of a candidate for public office or a slate of candidates
18 for public office.

19 (2) Except as provided in subsection (3) of this section, a
20 provision in the governing documents or rules of a homeowner association
21 shall not restrict or prohibit the display of (a) a candidate sign or (b)
22 a sign that advertises the support or defeat of any question submitted to
23 the voters in accordance with the Election Act.

24 (3) A provision in the governing documents or rules of a homeowner
25 association may restrict the display of a candidate sign or a sign that
26 advertises the support or defeat of any proposition (a) in the common
27 areas, (b) in accordance with provisions of federal, state, and local
28 law, or (c) if a limitation to the time period during which signs may be
29 displayed is not specified by a law of the jurisdiction in which the
30 homeowner association is located, to a time period not less than (i)
31 thirty days before the primary election, general election, or vote on the

1 proposition and (ii) seven days after the primary election, general
2 election, or vote on the proposition.

3 Sec. 38. (1) If a homeowner association is dissolved, any
4 municipality may bring an action to be appointed as custodian to manage
5 the affairs of the homeowner association as set forth in this section.

6 (2) The district court of the county in which a dissolved homeowner
7 association was previously existing shall, in a proceeding brought by a
8 municipality by petition to the district court, appoint the municipality
9 as custodian to manage the affairs of the homeowner association upon a
10 finding that:

11 (a) The homeowner association has been administratively dissolved by
12 the Secretary of State;

13 (b) The homeowner association has failed in one or more of the
14 following ways:

15 (i) To maintain the common area as required by the municipality's
16 conditions of approval for the development;

17 (ii) To maintain the common area or private improvements located
18 outside of the common area on the real property in the development in
19 accordance with all terms and conditions of any agreement with the
20 municipality; or

21 (iii) To comply with any applicable laws, rules, or regulations
22 pertaining to maintenance of the common area or private improvements
23 located outside of the common area on the real property in development
24 such that the noncompliance is adverse to the interests of the
25 municipality and may result in expenditures by the municipality not
26 otherwise required;

27 (c) The municipality has made a demand on the members to hold a
28 special meeting to remove and elect new directors and to approve a
29 submission of an application to the Secretary of State for reinstatement;
30 and

31 (d) The members have failed to reinstate the homeowner association

1 within six months after the demand.

2 (3) The district court shall hold a hearing, after written
3 notification thereof by the petitioner to all parties to the proceeding
4 and any interested persons designated by the court, before appointing a
5 custodian, and the petitioner shall provide sufficient proof of service
6 to the court. Service by first-class mail shall be deemed sufficient
7 service. The district court appointing the custodian shall have exclusive
8 jurisdiction over the homeowner association and all of its property
9 wherever located.

10 (4) The district court shall describe the powers and duties of the
11 custodian in its appointing order, which order may be amended upon motion
12 and notice to the parties from time to time. Among other powers, the
13 appointing order shall provide that the custodian may exercise all of the
14 powers of the homeowner association, through or in place of its board of
15 directors or officers, to the extent necessary to manage the affairs of
16 the association in the best interests of its members. The custodian shall
17 not be liable for the actions or inactions of the homeowner association
18 and shall maintain all immunities granted to municipalities by applicable
19 law.

20 (5) Upon application of the custodian, the district court from time
21 to time during the custodianship may order compensation paid and expense
22 disbursements or reimbursements made to the custodian from the assets of
23 the association or proceeds from the sale of the assets. Notice of a
24 hearing to determine compensation and costs shall be provided to all
25 owners and interested parties by the custodian as set forth in subsection
26 (3) of this section, with proof of service provided by the custodian. If
27 the district court awards compensation or reimbursement of costs, all
28 such compensation and costs shall be a lien on each and all of the lots
29 in the manner as set forth in subsection (6) of this section. Any court
30 order awarding compensation or reimbursement of costs shall identify each
31 lot and the amount of compensation or reimbursement of costs each lot

1 shall be charged as a lien.

2 (6)(a) A lien created under subsection (5) of this section shall be
3 effective from the time the district court awards the compensation or
4 reimbursement of costs and a notice containing the dollar amount of the
5 lien is recorded in the office where mortgages or deeds of trust are
6 recorded. The lien may be foreclosed in like manner as a mortgage on real
7 estate, but the municipality shall give reasonable notice of its action
8 to all other lienholders whose interest would be affected.

9 (b) A lien created under subsection (5) of this section is prior to
10 all other liens and encumbrances on real estate except (i) liens and
11 encumbrances recorded before the recordation of the declaration or
12 agreement, (ii) a first mortgage or deed of trust on real estate recorded
13 before the notice required under subdivision (6)(a) of this section has
14 been recorded, and (iii) liens for real estate taxes.

15 (7) If the homeowner association is reinstated after appointment of
16 a custodian, any interested party may make a request to the district
17 court for termination of the custodianship.

18 (8) A custodian may be allowed to withdraw from or terminate the
19 custodianship upon an order from the district court permitting such
20 withdrawal or termination following a hearing for which notice is
21 provided to all owners and interested parties by the custodian.

22 Sec. 39. Section 39-1405, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 39-1405 (1) All public streets of unincorporated villages are a part
25 of the public roads and shall be worked and maintained by the respective
26 county or township authorities.

27 (2) The county board may, after the clearance of snow and ice from
28 the county road system, clear snow and ice from all public streets of
29 incorporated sanitary and improvement districts in the same manner as if
30 such streets were part of the county road system. Any county board
31 performing such snow and ice clearance in a sanitary and improvement

1 district shall not be held liable for any damages arising from such snow
2 and ice clearance unless damages arise as a result of gross negligence.

3 (3) The county board of commissioners in counties having a
4 population of sixty thousand inhabitants or more may enter into contracts
5 with incorporated associations of homeowners representing at least fifty
6 individual housing units which are located wholly within the county and
7 are not part of any sanitary and improvement district or incorporated
8 municipality for the provision of road maintenance services or snow and
9 ice removal services on nonpublic roads which serve the homeowner
10 association. Such contracts shall provide for payment to the county of an
11 amount which fairly represents the cost to the county of providing such
12 additional services.

13 (4) The county board may enter into a contract with a homeowner
14 association subject to the Homeowner Association Act for the provision of
15 road maintenance services or snow and ice removal services on nonpublic
16 roads which serve the homeowner association. Such contracts shall provide
17 for payment to the county of an amount which fairly represents the cost
18 to the county of providing such additional services.

19 Sec. 40. Section 52-2001, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 52-2001 (1) A homeowners' association has a lien on a member's real
22 estate for any assessment levied against real estate from the time the
23 assessment becomes due and a notice containing the dollar amount of such
24 lien is recorded in the office where mortgages or deeds of trust are
25 recorded. The homeowners' association's lien may be foreclosed in like
26 manner as a mortgage on real estate but the homeowners' association shall
27 give reasonable notice of its action to all lienholders of real estate
28 whose interest would be affected. Unless the homeowners' association
29 declaration or agreement otherwise provides, fees, charges, late charges,
30 and interest charged are enforceable as assessments under this section.
31 If an assessment is payable in installments, the full amount of the

1 assessment may be a lien from the time the first installment thereof
2 becomes due.

3 (2) A lien under this section is prior to all other liens and
4 encumbrances on real estate except (a) liens and encumbrances recorded
5 before the recordation of the declaration or agreement, (b) a first
6 mortgage or deed of trust on real estate recorded before the notice
7 required under subsection (1) of this section has been recorded for a
8 delinquent assessment for which enforcement is sought, and (c) liens for
9 real estate taxes and other governmental assessments or charges against
10 real estate. The lien under this section is not subject to the homestead
11 exemption pursuant to section 40-101.

12 (3) Unless the declaration or agreement otherwise provides, if two
13 or more homeowners' associations have liens for assessments created at
14 any time on the same real estate, those liens have equal priority.

15 (4) A lien for unpaid assessments is extinguished unless proceedings
16 to enforce the lien are instituted within three years after the full
17 amount of the assessments becomes due.

18 (5) This section does not prohibit actions to recover sums for which
19 subsection (1) of this section creates a lien or prohibit a homeowners'
20 association from taking a deed in lieu of foreclosure.

21 (6) A judgment or decree in any action brought under this section
22 must include costs and reasonable attorney's fees for the prevailing
23 party.

24 (7) The homeowners' association, upon written request, shall furnish
25 to a homeowners' association member a recordable statement setting forth
26 the amount of unpaid assessments against his or her real estate. The
27 statement must be furnished within ten business days after receipt of the
28 request and is binding on the homeowners' association, the governing
29 board, and every homeowners' association member.

30 (8) The homeowners' association declaration, agreements, bylaws,
31 rules, or regulations may not provide that a lien on a member's real

1 estate for any assessment levied against real estate relates back to the
2 date of filing of the declaration or that such lien takes priority over
3 any mortgage or deed of trust on real estate recorded subsequent to the
4 filing of the declaration and prior to the recording by the association
5 of the notice required under subsection (1) of this section.

6 (9) In the event of a conflict between the provisions of the
7 declaration and the bylaws, rules, or regulations or any other agreement
8 of the homeowners' association, the declaration prevails except to the
9 extent the declaration is inconsistent with this section.

10 (10)(a) The homeowners' association may require a person who
11 purchases restricted real estate on or after September 6, 2013, to make
12 payments into an escrow account established by the homeowners'
13 association until the balance in the escrow account for that restricted
14 real estate is in an amount not to exceed six months of assessments.

15 (b) All payments made under this subsection and received on or after
16 September 6, 2013, shall be held in an interest-bearing checking account
17 in a bank, savings bank, building and loan association, or savings and
18 loan association in this state under terms that place these payments
19 beyond the claim of creditors of the homeowners' association. Upon
20 request by an owner of restricted real estate, the homeowners'
21 association shall disclose the name of the financial institution and the
22 account number where the payments made under this subsection are being
23 held. The homeowners' association may maintain a single escrow account to
24 hold payments made under this subsection from all of the owners of
25 restricted real estate. If a single escrow account is maintained, the
26 homeowners' association shall maintain separate accounting records for
27 each owner of restricted real estate.

28 (c) The payments made under this subsection may be used by the
29 homeowners' association to satisfy any assessments attributable to an
30 owner of restricted real estate for which assessment payments are
31 delinquent. To the extent that the escrow deposit or any part thereof is

1 applied to offset any unpaid assessments of an owner of restricted real
2 estate, the homeowners' association may require such owner to replenish
3 the escrow deposit.

4 (d) The homeowners' association shall return the payments made under
5 this subsection, together with any interest earned on such payments, to
6 the owner of restricted real estate when the owner sells the restricted
7 real estate and has fully paid all assessments.

8 (e) Nothing in this subsection shall prohibit the homeowners'
9 association from establishing escrow deposit requirements in excess of
10 the amounts authorized in this subsection pursuant to provisions in the
11 homeowners' association's declaration.

12 (11) For purposes of this section:

13 (a) Declaration means any instruments, however denominated, that
14 create the homeowners' association and any amendments to those
15 instruments;

16 (b)(i) Homeowners' association means an association whose members
17 consist of a private group of fee simple owners of residential real
18 estate formed for the purpose of imposing and receiving payments, fees,
19 or other charges for:

20 (A) The use, rental, operation, or maintenance of common elements
21 available to all members and services provided to the member for the
22 benefit of the member or his or her real estate;

23 (B) Late payments of assessments and, after notice and opportunity
24 to be heard, the levying of fines for violations of homeowners'
25 association declarations, agreements, bylaws, or rules and regulations;
26 or

27 (C) The preparation and recordation of amendments to declarations,
28 agreements, resale statements, or statements for unpaid assessments; ~~and~~

29 (ii) Homeowners' association includes a homeowner association which
30 is subject to the Homeowner Association Act; and

31 (iii) (ii) Homeowners' association does not include a co-owners

1 association organized under the Condominium Property Act or a unit owners
2 association organized under the Nebraska Condominium Act; and

3 (c) Real estate means the real estate of a homeowners' association
4 member as such real estate is specifically described in the member's
5 homeowners' association declaration or agreement.

6 Sec. 41. Original section 39-1405, Reissue Revised Statutes of
7 Nebraska, and section 52-2001, Revised Statutes Cumulative Supplement,
8 2018, are repealed.