

By: Representatives Eubanks, Foster, Hale,
Kinkade

To: Judiciary A

HOUSE BILL NO. 720

1 AN ACT TO PROVIDE FOR FORMATION AND LEGAL ADMINISTRATION OF
2 HOMEOWNERS' ASSOCIATIONS; TO ENACT DEFINITIONS; TO PROVIDE
3 GUIDELINES FOR MEMBERSHIP AND ORGANIZATION OF ASSOCIATIONS; TO
4 PROVIDE GUIDELINES FOR DEVELOPERS RETAINING AN INTEREST; TO
5 SPECIFY THE ASSOCIATION FORMATION AND POWERS; TO PROVIDE FOR A
6 BOARD OF DIRECTORS; TO INVALIDATE UNCONSTITUTIONAL RESTRICTIONS IN
7 GOVERNING DOCUMENTS; TO PROVIDE FOR BYLAWS; TO CREATE DEVELOPER
8 LIABILITY FOR MISAPPROPRIATION OF ASSOCIATION FUNDS; TO CREATE A
9 LIEN FOR UNPAID ASSESSMENTS; TO BRING FORWARD SECTION 19-5-10,
10 MISSISSIPPI CODE OF 1972, WHICH PERTAINS TO MASTER PLANNED
11 COMMUNITIES FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED
12 PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1. Intent.** It is the policy of this state to give
15 developers flexible development rights, but subject to local
16 governing authorities' ability to establish specific obligations
17 within a uniform structure of development that extends through the
18 transition from developer to owner control. Thus, the intent of
19 this act is to provide consistent laws regarding the formation and
20 legal administration of homeowners' associations.

21 **SECTION 2. Definitions.** For purposes of this act:

22 (a) "Assessment" means all sums chargeable to an owner
23 by an association.



24 (b) "Board of directors" or "board" means the body,
25 regardless of name, with primary authority to manage the affairs
26 of the association.

27 (c) "Common areas" means property owned, or otherwise
28 maintained, repaired or administered by the association.

29 (d) "Common expense" means the costs incurred by the
30 association to exercise any of the powers provided for in this
31 act.

32 (e) "Governing documents" means the articles of
33 incorporation, bylaws, plat, declaration of covenants, conditions,
34 restrictions, rules and regulations of the association, or other
35 written instrument by which the association has the authority to
36 exercise any of the powers provided for in this act or to manage,
37 maintain, or otherwise affect the property under its jurisdiction.

38 (f) "Homeowners' association" or "association" means a
39 corporation, unincorporated association, or other legal entity,
40 composed of members which are owners of residential reserve
41 property located within the association's jurisdiction, as
42 described in the governing documents, and by virtue of membership
43 or ownership of property are obligated to pay real property taxes,
44 insurance premiums, maintenance costs, or for improvement of
45 common areas or other real property within the association's
46 jurisdiction other than that which is owned by the member.



47 (g) "Lot" means a physical portion of the real property
48 located within an association's jurisdiction designated for
49 separate ownership.

50 (h) "Owner" means the titleholder of a lot, but does
51 not include a person who has an interest in a lot solely as
52 security for an obligation.

53 (i) "Replacement cost" means the current cost of
54 replacing, repairing or restoring a reserve component to its
55 original functional condition.

56 (j) "Reserve component" means a common element whose
57 cost of maintenance, repair or replacement is infrequent,
58 significant, and impractical to include in an annual budget.

59 (k) "Residential real property" means any real
60 property, the use of which is limited by law, covenant or
61 otherwise to primarily residential or recreational purposes.

62 (l) "Significant assets" means that the current
63 replacement value of the major reserve components which are
64 seventy-five percent (75%) or more of the gross budget of the
65 association, excluding the association's reserve account funds.

66 **SECTION 3. Association membership.** The membership of an
67 association at all times shall consist exclusively of the owners
68 of all real property over which the association has jurisdiction,
69 both developed and undeveloped.

70 **SECTION 4. Organization of associations.** (1) For the
71 purpose of promoting the general welfare of the community and to



72 accomplish the legitimate purposes of organized community growth,
73 development and aesthetics, while fostering the public welfare,
74 the governing authority of any county or municipality, in its
75 discretion, is empowered to adopt by order spread upon its
76 minutes, the homeowners' association regulations set forth herein,
77 or sections thereof. Within one hundred eighty (180) days after
78 adoption of these regulations, or sections thereof, all
79 preexisting homeowners associations will come into compliance with
80 this act. Notwithstanding the foregoing, after adoption of the
81 regulations set forth herein or sections thereof, the governing
82 authorities may waive application of the adopted regulations as
83 part of the approval of any development of land.

84 (2) When homeowners' associations are required by a
85 governing authority as a condition of the approval for development
86 of land, such association shall be organized by the developer no
87 later than the date the first lot in the subdivision is conveyed
88 to a purchaser. The membership of the association at all times
89 shall consist exclusively of all owners or their heirs, personal
90 representatives, successors or assigns. The association shall be
91 organized as a nonprofit, not-for-profit, or for-profit
92 corporation or as a limited liability company in accordance with
93 the laws of the State of Mississippi, with approved written
94 bylaws; except that the failure of the association to incorporate
95 or organize as a limited liability company will not adversely
96 affect either the existence of the subdivision for purposes of



97 this act or the rights of persons acting in reliance upon such
98 existence. Neither the choice of entity nor the organizational
99 structure of the association shall be deemed to affect its
100 substantive rights and obligations under this act.

101 (3) Not later than sixty (60) days after conveyance of
102 twenty-five percent (25%) of the lots that may be created within
103 the subdivision to owners other than the developer, a board of
104 directors of the association shall be established with at least
105 one (1) member and not less than twenty-five percent (25%) of the
106 members of a board of directors who must be elected by the owners
107 other than the developer.

108 (4) Not later than sixty (60) days after conveyance of fifty
109 percent (50%) of the lots that may be created within the
110 subdivision to owners other than the developer. Thereafter, the
111 procedure for electing the board of directors shall be as set
112 forth in the bylaws of the association.

113 **SECTION 5. Contracts voidable.** The following contracts and
114 leases, if entered into before the board of directors elected by
115 the owners pursuant to Section 4 of this act takes office, may be
116 terminated without penalty by the association, at any time after
117 the board of directors elected by the owners pursuant to Section 4
118 of this act takes office, upon not less than ninety (90) days'
119 notice to the other party:

120 (a) Any management contract, employment contract or
121 lease of recreational or parking areas or facilities;



122 (b) Any other contractor lease between the association,
123 the developer or an affiliate of the developer; or

124 (c) Any contract or lease that is not bona fide or was
125 unconscionable to the owners at the time entered into under the
126 circumstances then prevailing.

127 **SECTION 6. Association formation and powers.** Unless
128 otherwise provided in this act or the governing documents, an
129 association:

130 (a) Shall adopt and amend bylaws, rules and
131 regulations;

132 (b) May adopt and amend budgets for revenues,
133 expenditures and reserves, and impose and collect assessments for
134 common expenses from owners;

135 (c) May hire and discharge or contract with managing
136 agents and other employees, agents and independent contractors;

137 (d) May institute, defend or intervene in litigation or
138 administrative proceedings in its own name on behalf of itself or
139 two (2) or more owners on matters affecting the homeowners'
140 association, but not on behalf of owners involved in disputes that
141 are not the responsibility of the association;

142 (e) May make contracts and incur liabilities;

143 (f) May regulate the use, maintenance, repair,
144 replacement and modification of common areas;

145 (g) May cause additional improvements to be made as a
146 part of the common areas;



147 (h) May acquire, hold, encumber and convey in its own
148 name any right, chapter or interest to real or personal property
149 that it possesses;

150 (i) May grant easements, leases, licenses and
151 concessions through or over the common areas and petition for or
152 consent to the vacation of streets and alleys;

153 (j) May impose and collect any payments, fees or
154 charges for the use, rental or operation of the common areas;

155 (k) May impose and collect charges for late payments of
156 assessments and, after notice and an opportunity to be heard by
157 the board of directors or by the representative designated by the
158 board of directors and in accordance with the procedures as
159 provided in the bylaws or rules and regulations adopted by the
160 board of directors, levy reasonable fines in accordance with a
161 previously established schedule adopted by the board of directors
162 and furnished to the owners for violation of the bylaws, rules and
163 regulations of the association;

164 (l) May exercise any other powers conferred by the
165 bylaws;

166 (m) May exercise all other powers that may be exercised
167 in this state by the same type of corporation as the association;

168 (n) May exercise any other powers necessary and proper
169 for the governance and operation of the association; and

170 (o) Shall properly maintain in good and safe condition
171 all drainage, public structures and common areas required by the



172 local governmental entity as a condition of development of the
173 property, which are subject to and within the association's
174 jurisdiction, as required by Section 29 of this act.

175 **SECTION 7. Board of directors; standard of care;**
176 **restrictions; budget; removal from board.** (1) Except as provided
177 in the association's governing documents or this act, the board of
178 directors shall act in all instances on behalf of the association.
179 In the performance of their duties, the officers and members of
180 the board of directors shall exercise the degree of care and
181 loyalty required of an officer or director of a corporation.

182 (2) The board of directors shall not act on behalf of the
183 association to amend the articles of incorporation, to take any
184 action that requires the vote or approval of the owners, to
185 terminate the association, to elect members of the board of
186 directors, or to determine the qualifications, powers and duties
187 or terms of office of members of the board of directors; but the
188 board of directors may fill vacancies in its membership of the
189 unexpired portion of any term.

190 (3) Within thirty (30) days after adoption by the board of
191 directors of any proposed regular or special budget of the
192 association, the board shall mail to all homeowners a summary of
193 the budget and set a date for a meeting of the owners to consider
194 ratification of the budget, which meeting shall be not less than
195 fourteen (14) nor more than sixty (60) days after mailing of the
196 summary. Unless at that meeting the owners of a majority of the



197 votes in the association are allocated or any larger percentage
198 specified in the governing documents reject the budget, in person
199 or by proxy, the budget is ratified, whether or not a quorum is
200 present. In the event the proposed budget is rejected or the
201 required notice is not given, the periodic budget last ratified by
202 the owners shall be continued until such time as the owners ratify
203 a subsequent budget proposed by the board of directors.

204 (4) As part of the summary of the budget provided to all
205 owners, the board of directors shall disclose to the owners:

206 (a) The current amount of regular assessments budgeted
207 for contribution to a reserve account, the recommended
208 contribution rate, and the funding plan upon which the recommended
209 contribution rate is based;

210 (b) If additional regular or special assessments are
211 scheduled to be imposed, the date the assessments are due, the
212 amount of the assessments per owner per month or year, and the
213 purpose of the assessments;

214 (c) Based upon the most recent reserve study, if any,
215 and other information, whether currently projected reserve account
216 balances will be sufficient at the end of each year to meet the
217 association's obligation for major maintenance, repair or
218 replacement of reserve components during the next thirty (30)
219 years;

220 (d) If reserve account balances are not projected to be
221 sufficient, what additional assessments may be necessary to ensure



222 that sufficient reserve account funds will be available each year
223 during the next thirty (30) years, the approximate dates
224 assessments may be due, and the amount of the assessments per
225 owner per month or year;

226 (e) The estimated amount recommended to be held in the
227 reserve account at the end of the current fiscal year based on
228 current and projected demands and the most recent reserve study,
229 if any are performed, the projected reserve account cash balance
230 at the end of the current fiscal year, and the percent funded at
231 the date of the latest reserve study;

232 (f) The estimated amount recommended to be held in the
233 reserve account based upon the most recent reserve study, if any
234 are performed, at the end of each of the next five (5) budget
235 years, the projected reserve account cash balance in each of those
236 years, and the projected percent funded for each of those years;
237 and

238 (5) The owners by a majority vote of the voting power in the
239 association present, in person or by proxy, and entitled to vote
240 at any meeting of the owners at which a quorum is present, may
241 remove any member of the board of directors with or without cause.

242 **SECTION 8. Removal of discriminatory provisions in governing**
243 **documents; procedure.** (1) The association, acting through a
244 simple majority vote of its board of directors, may amend the
245 association's governing documents for the purpose of removing:



246 (a) Every covenant, condition or restriction that
247 purports to forbid or restrict the conveyance, encumbrance,
248 occupancy, or lease thereof to individuals of a specified race,
249 creed, color, sex or national origin; families with children
250 status; individuals with any sensory, mental or physical
251 disability; or the use of a trained guide dog or service animal by
252 a person with a physical disability or who is blind or deaf; and

253 (b) Every covenant, condition, restriction or
254 prohibition, including a right of entry or possibility of
255 reverter, that directly or indirectly limits the use or occupancy
256 of real property on the basis of race, creed, color, sex, national
257 origin; families with children status, unless the lot is part of
258 an age restricted community under the Housing for Older Persons
259 Act of 1995; the presence of any sensory, mental or physical
260 disability; or the use of a trained dog guide or service animal by
261 a person with a physical disability or who is blind or deaf.

262 (2) Upon the board of directors' receipt of a written
263 request by a member of the association that the board exercise its
264 amending authority granted under subsection (1) of this section,
265 the board must, within a reasonable time, amend the governing
266 documents, as provided under this section.

267 (3) Amendments under subsection (1) of this section may be
268 executed by any board officer.



269 (4) Amendments made under subsection (1) of this section
270 must be recorded in the association's records and state the
271 following:

272 "This amendment strikes from these covenants, conditions, and
273 restrictions those provisions that are void under Section 8 of
274 this act. Specifically, this amendment strikes:

275 (a) Those provisions that forbid or restrict use,
276 occupancy, conveyance, encumbrance or lease of real property to
277 individuals of a specified race, creed, color, sex or national
278 origin; families with children status; individuals with any
279 sensory, mental or physical disability; or individuals who use a
280 trained dog guide or service animal because they are blind or deaf
281 or have a physical disability; and

282 (b) Every covenant, condition, restriction or
283 prohibition, including a right of entry or possibility of
284 reverter, that directly or indirectly limits the use or occupancy
285 of real property on the basis of race, creed, color, sex, national
286 origin; families with children status; the presence of any
287 sensory, mental or physical disability; or the use of a trained
288 dog guide or service animal by a person with a physical disability
289 or who is blind or deaf."

290 (5) Board action under this section does not require the
291 vote or approval of the owners.

292 (6) Any owner, occupant or tenant in the association or
293 board may bring an action in chancery court to have any provision



294 of a written instrument that is void pursuant to Section 8 of this
295 act stricken from the public records.

296 (7) Nothing in this section prohibiting discrimination based
297 on families with children status applies to housing for older
298 persons as defined by the federal Fair Housing Amendments Act of
299 1988, 42 USC Section 3607(b) (1) through (3), as amended by the
300 Housing for Older Persons Act of 1995, Public Law 104-76, as
301 enacted on December 28, 1995. Nothing in this section authorizes
302 requirements for housing for older persons different than the
303 requirements in the federal Fair Housing Amendments Act of 1988,
304 42 USC Section 3607(b) (1) through (3), as amended by the Housing
305 For Older Persons Act of 1995, Public Law 104-76, as enacted on
306 December 28, 1995.

307 (8) Nothing in this section: (a) creates a duty on the part
308 of owners, occupants, tenants, associations or boards to amend the
309 governing documents as provided in this section, or to bring an
310 action as authorized under this section; and (b) an owner,
311 occupant, tenant, association or board is not liable for failing
312 to amend the governing documents or to pursue an action in court
313 as authorized under this section.

314 **SECTION 9. Unconscionable agreement or term of contract.**

315 The court, upon finding as a matter of law that a clause within
316 the governing documents is unconscionable, may refuse to enforce
317 the clause, enforce the remainder of the governing documents



318 without the unconscionable clause, or limit the application of any
319 unconscionable clause in order to avoid an unconscionable result.

320 **SECTION 10. Association bylaws.** Every association shall
321 adopt bylaws of the association which shall, at a minimum, provide
322 for:

323 (a) The number, qualifications, powers and duties,
324 terms of office, and manner of electing the board of directors
325 subsequent to the election set forth in Section 4 of this act the
326 manner of removing the board of directors, the manner of electing
327 and removing officers and the method of filling vacancies;

328 (b) Manner of election by the board of directors of the
329 officers of the association;

330 (c) Which, if any, of its powers the board of directors
331 or officers may delegate to other persons or to a managing agent;

332 (d) Which of its officers may prepare, execute, certify
333 and record amendments to the governing documents on behalf of the
334 association;

335 (e) The method of amending the bylaws; and

336 (f) Subject to the provisions of the governing
337 documents, any other matters the association deems necessary and
338 appropriate.

339 **SECTION 11. Flag of the United States; outdoor display;**
340 **governing documents.** (1) The governing documents may not
341 prohibit the outdoor display of the flag of the United States by
342 an owner or resident on the owner's or resident's property if the



343 flag is displayed in a manner consistent with federal flag display
344 law, 4 USC Section 1 et seq. The governing documents may include
345 reasonable rules and regulations, consistent with 4 USC Section 1
346 et seq., regarding the placement and manner of display of the flag
347 of the United States.

348 (2) The governing documents may not prohibit the
349 installation of a flagpole for the display of the flag of the
350 United States. The governing documents may include reasonable
351 rules and regulations regarding the location and the size of the
352 flagpole.

353 (3) For purposes of this section, "flag of the United
354 States" means the flag of the United States as defined in federal
355 flag display law, 4 USC Section 1 et seq., that is made of fabric,
356 cloth or paper and that is displayed from a staff or flagpole or
357 in a window. For purposes of this section, "flag of the United
358 States" does not mean a flag depiction or emblem made of lights,
359 paint, roofing, siding, paving materials, flora or balloons, or of
360 any similar building, landscaping or decorative component.

361 **SECTION 12. Unreasonable restrictions on energy efficiency**

362 **measures.** (1) (a) Notwithstanding any provision in the
363 declaration, bylaws or rules and regulations of the association to
364 the contrary, an association shall not effectively prohibit the
365 installation or use of an energy efficiency measure.

366 (b) As used in this section, "energy efficiency
367 measure" means a device or structure that reduces the amount of



368 energy derived from fossil fuels that is consumed by a residence
369 or business located on the real property. "Energy efficiency
370 measure" is further limited to include only the following types of
371 devices or structures:

372 (i) An awning, shutter, trellis, ramada or other
373 shade structure that is marketed for the purpose of reducing
374 energy consumption;

375 (ii) A garage or attic fan and any associated
376 vents or louvers;

377 (iii) An evaporative cooler; and

378 (iv) An energy-efficient outdoor lighting device,
379 including, without limitation, a light fixture containing a coiled
380 or straight fluorescent light bulb, and any solar recharging
381 panel, motion detector, or other equipment connected to the
382 lighting device.

383 (2) Subsection (1) of this section shall not apply to:

384 (a) Reasonable aesthetic provisions that govern the
385 dimensions, placement or external appearance of an energy
386 efficiency measure. In creating reasonable aesthetic provisions,
387 associations shall consider:

388 (i) The impact on the purchase price and operating
389 costs of the energy efficiency measure;

390 (ii) The impact on the performance of the energy
391 efficiency measure; and



392 (iii) The criteria contained in the governing
393 documents of the property within the association's jurisdiction.

394 (b) Bona fide safety requirements, consistent with an
395 applicable building code or recognized safety standard, for the
396 protection of persons and property.

397 (3) This section shall not be construed to confer upon any
398 owner the right to place an energy efficiency measure on property
399 that is;

400 (a) Owned by another person;

401 (b) Leased, except with permission of the lessor;

402 (c) Collateral for a commercial loan, except with
403 permission of the secured party; or

404 (d) A limited common element or general common element
405 of property within the association's jurisdiction.

406 **SECTION 13. Association meetings; notice; board of**

407 **directors.** (1) A meeting of the association must be held at
408 least once each year. Special meetings of the association may be
409 called by the president, a majority of the board of directors, or
410 by owners having ten percent (10%) of the votes in the
411 association. Not less than fourteen (14) nor more than sixty (60)
412 days in advance of any meeting, the secretary or other officers of
413 the board of directors specified in the bylaws shall cause notice
414 to be hand-delivered or sent prepaid by first-class United States
415 mail to the mailing address of each owner or to any other mailing
416 address designated in writing by the owner. The notice of any



417 meeting shall state the date, time and place of the meeting and
418 the business to be placed on the agenda by the board of directors
419 for a vote by the owners, including the general nature of any
420 proposed amendment to the articles of incorporation, bylaws, any
421 budget or changes in the previously approved budget that result in
422 a change in assessment obligation, and any proposal to remove a
423 director.

424 (2) Except as provided in this subsection, all meetings of
425 the board of directors shall be open for observation by all owners
426 of record and their authorized agents. The board of directors
427 shall not take up for consideration any matter not set forth in
428 the notice of meeting. The board of directors shall keep minutes
429 of all actions taken by the board, which shall be available to all
430 owners. Upon the affirmative vote in open meeting to assemble in
431 closed session, the board of directors may convene in closed
432 executive session to consider personnel matters; consult with
433 legal counsel or consider communications with legal counsel; and
434 discuss likely or pending litigation, matters involving possible
435 violations of the governing documents of the association, and
436 matters involving the possible liability of an owner to the
437 association. The motion shall state specifically the purpose for
438 the closed session. Reference to the motion and the stated
439 purpose for the closed session shall be included in the minutes.
440 The board of directors shall restrict the consideration of matters
441 during the closed portions of meetings only to those purposes



442 specifically exempted and stated in the motion. No motion or
443 other action adopted, passed or agreed to in closed session may
444 become effective unless the board of directors, following the
445 closed session, reconvenes in open meeting and votes in the open
446 meeting on such motion, or other action which is reasonably
447 identified. The requirements of this subsection shall not require
448 the disclosure of information in violation of law or which is
449 otherwise exempt from disclosure.

450 **SECTION 14. Quorum for meeting.** Unless the governing
451 documents specify a different percentage, a quorum is present
452 throughout any meeting of the association if the owners to which
453 thirty-four percent (34%) of the votes of the association are
454 allocated are present in person or by proxy at the beginning of
455 the meeting.

456 **SECTION 15. Proxy voting.** Votes allocated to an owner may
457 be cast pursuant to a proxy duly executed by the owner and
458 presented at the meeting or meetings for which the proxy is
459 designated. A proxy shall not be valid if obtained through fraud
460 or misrepresentation.

461 **SECTION 16. Financial and other records; property of**
462 **association; copies; examination; annual financial statement;**
463 **accounts.** (1) The association or its managing agent shall keep
464 financial and other records sufficiently detailed to enable the
465 association to fully declare to each owner the true statement of
466 its financial status. All financial and other records of the



467 association, including, but not limited to, checks, bank records
468 and invoices, in whatever form they are kept are the property of
469 the association. Each association managing agent shall turn over
470 all original books and records to the association immediately upon
471 termination of the management relationship with the association,
472 or upon such other demand as is made by the board of directors.
473 An association's managing agent is entitled to keep copies of
474 association records. All records that the managing agent has
475 turned over to the association shall be made reasonably available
476 for the examination and copying by the managing agent.

477 (2) All records of the association, including the names and
478 addresses of owners and other occupants of the lots, shall be
479 available for examination by all owners, holders of mortgages on
480 the lots, and their respective authorized agents on reasonable
481 advance notice during normal working hours at the offices of the
482 association or its managing agent. The association shall not
483 release the unlisted telephone number of any owner. The
484 association may impose and collect a reasonable charge for copies
485 and any reasonable costs incurred by the association in providing
486 access to records.

487 (3) At least annually, the association shall prepare, or
488 cause to be prepared, a financial statement of the association.
489 The financial statements of associations with annual assessments
490 of Fifty Thousand Dollars (\$50,000.00) or more shall be audited at
491 least annually by an independent certified public accountant, but



492 the audit may be waived if sixty-seven percent (67%) of the votes
493 cast by owners, in person or by proxy, at a meeting of the
494 association at which a quorum is present, vote each year to waive
495 the audit.

496 (4) The funds of the association shall be kept in accounts
497 in the name of the association and shall not be comingled with the
498 funds of any other association, nor with the funds of any manager
499 of the association, nor any member of the association or members
500 of the board of directors, nor any other person responsible for
501 the custody of such funds.

502 **SECTION 17. Disclosure of association information.** (1) The
503 association shall annually provide the following information to
504 all owners and the designated office of the governing authority:

505 (a) The name of the association;

506 (b) The name of the association's designated agent or
507 management company, if any;

508 (c) A valid physical address and telephone number for
509 the association, its board of directors and the designated agent
510 or management company, if any.

511 In addition, if the association's address, designated agent,
512 or management company changes, the association shall make updated
513 information available within ninety (90) days after the change.

514 (2) The association shall make the following information
515 available to owners, within a reasonable time upon request made:



516 (a) A list of all association insurance policies,
517 including, but not limited to, property, general liability,
518 association director and officer professional liability and
519 fidelity policies. Such list shall include the company names,
520 policy limits, policy deductibles, additional named insureds, and
521 expiration dates of the policies listed;

522 (b) All the association's bylaws, articles and rules
523 and regulations;

524 (c) The minutes of the executive board and member
525 meetings for the fiscal year immediately preceding the current
526 annual disclosure; and

527 (d) The association's responsible governance policies.

528 (3) Every prospective purchaser of a lot must be presented
529 with an association disclosure summary by the seller of the lot
530 before the contract for sale is executed. The disclosure summary
531 must be in a form substantially similar to the following form:
532 DISCLOSURE SUMMARY FOR (NAME OF COMMUNITY); DEVELOPER (NAME,
533 ADDRESS)

534 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE
535 OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION. THE BYLAWS
536 OF THE HOMEOWNERS' ASSOCIATION ARE PROVIDED HEREWITH.

537 2. THERE HAVE BEEN RECORDED RESTRICTIVE COVENANTS GOVERNING
538 THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY, WHICH MAY
539 BE FOUND IN THE LAND RECORDS OF THE CHANCERY CLERK'S OFFICE OF



540 _____ COUNTY RECORDED IN BOOK _____ PAGE _____; A COPY OF WHICH
541 IS PROVIDED HEREWITH.

542 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
543 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
544 APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____. YOU WILL
545 ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
546 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
547 IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.

548 4. YOUR FAILURE TO PAY ASSESSMENTS OR SPECIAL ASSESSMENTS
549 LEVIED BY THE HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON
550 YOUR PROPERTY.

551 5. THE HOMEOWNERS' ASSOCIATION MAY HAVE THE RIGHT TO AMEND
552 CERTAIN RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE
553 ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

554 6. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY
555 SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD
556 REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS
557 BEFORE PURCHASING PROPERTY. THESE DOCUMENTS ARE EITHER MATTERS OF
558 PUBLIC RECORD AND CAN BE OBTAINED FROM THE CHANCERY CLERK'S OFFICE
559 IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED
560 AND CAN BE OBTAINED FROM THE DEVELOPER WHOSE ADDRESS IS

561 _____

562 DATE: _____

563 SELLER: _____

564 PURCHASER: _____



565 The disclosure, association bylaws and restrictive covenants
566 must be supplied by the developer, or by the lot owner if the sale
567 is by an owner that is not the developer. Any contract or
568 agreement for sale shall refer to and incorporate the disclosure
569 summary and shall include, in prominent language, a statement that
570 the potential buyer should not execute the contract or agreement
571 until they have received and read the disclosure summary required
572 by this section.

573 (b) Each contract entered into for the sale of property
574 governed by covenants subject to disclosure required by this
575 section must contain in conspicuous type a clause that states:
576 IF THE DISCLOSURE SUMMARY, ASSOCIATION BYLAWS AND RESTRICTIVE
577 COVENANTS REQUIRED BY MISS. CODE ANN. § _____ HAVE NOT BEEN
578 PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS
579 CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY
580 DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN
581 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER
582 RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER
583 OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS
584 NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT
585 CLOSING.

586 (c) If the disclosure summary is not provided to a
587 prospective purchaser before the purchaser executes a contract for
588 the sale of property governed by covenants that are subject to
589 disclosure pursuant to this section, the purchaser may void the



590 contract by delivering to the seller or the seller's agent or
591 representative written notice canceling the contract within three
592 (3) days after receipt of the disclosure summary or prior to
593 closing, whichever occurs first. This right may not be waived by
594 the purchaser but terminates at closing.

595 **SECTION 18. Violation; remedy; attorney's fees.** Any
596 violation of the provisions of this act entitles an aggrieved
597 party to any remedy provided by law or in equity. The court in an
598 appropriate case, may award reasonable attorney's fees to the
599 prevailing party.

600 **SECTION 19. Reserve account.** An association shall, unless
601 doing so would impose an unreasonable hardship, establish a
602 reserve account with a financial institution to fund major
603 maintenance, repair and replacement of common elements, including
604 limited common elements that will require major maintenance,
605 repair or replacement within thirty (30) years. If the
606 association establishes a reserve account, the account must be in
607 the name of the association. The board of directors is
608 responsible for administering the reserve account.

609 **SECTION 20. Reserve study; requirements.** A reserve study is
610 supplemental to the association's operating and maintenance
611 budget. The association shall prepare a reserve study not less
612 frequently than every three (3) years. In preparing a reserve
613 study, the association shall estimate the anticipated major
614 maintenance, repair and replacement costs, whose infrequent and



615 significant nature make them impractical to be included in an
616 annual budget, and shall include any reserve component that would
617 cost more than five percent (5%) of the annual budget of the
618 association, not including the reserve account, for major
619 maintenance, repair or replacement.

620 **SECTION 21. Reserve study; demand for preparation and**
621 **inclusion in budget.** (1) When more than three (3) years have
622 passed since the date of the last reserve study, the owners to
623 which at least thirty-five percent (35%) of the votes are
624 allocated may demand, in writing, to the board of directors that
625 the study be prepared by the end of that budget year. The board
626 of directors shall, upon receipt of the written demand, provide
627 the owners reasonable assurance that the board will include a
628 reserve study in the next budget and will arrange for the
629 completion of a reserve study.

630 (2) If a written demand under this section is made and a
631 reserve study is not timely prepared, a court may order specific
632 performance and award reasonable attorney's fees to the prevailing
633 party in any legal action brought to enforce this section. An
634 association may assert unreasonable hardship as an affirmative
635 defense in any action brought against it under this section.
636 Without limiting this affirmative defense, an unreasonable
637 hardship exists where the cost of preparing a reserve study would
638 exceed five percent (5%) of the association's annual budget.



639 (3) An owner's duty to pay for common expenses is not
640 excused because of the board of directors' failure to comply with
641 this section or this act. A budget ratified by the owners is not
642 invalidated because of the board of directors' failure to comply
643 with this section or this act.

644 **SECTION 22. Reserve account; withdrawals.** An association
645 may withdraw funds from its reserve account to pay for unforeseen
646 or unbudgeted costs that are unrelated to maintenance, repair or
647 replacement of the reserve components. The board of directors
648 shall record any such withdrawal in the minute books of the
649 association, cause notice of any such withdrawal to be
650 hand-delivered or sent prepaid by first-class United States mail
651 to the mailing address of each owner or to any other mailing
652 address designated in writing by the owner, and adopt a repayment
653 schedule not to exceed twenty-four (24) months unless it
654 determines that repayment within twenty-four (24) months would
655 impose an unreasonable burden on the owners. Payment for major
656 maintenance, repair or replacement of the reserve components out
657 of cycle with the reserve study projections or not included in the
658 reserve study may be made from the reserve account without meeting
659 the notification or repayment requirements under this section.

660 **SECTION 23. Reserve account and study; liability.** Monetary
661 damages or any other liability may not be awarded against or
662 imposed upon the association, the officers or board of directors
663 of the association, or those persons who may have provided advice



664 or assistance to the association or its officers or directors, for
665 failure to: establish a reserve account; have a current reserve
666 study prepared or updated in accordance with the requirements of
667 this act; or make the reserve disclosures in accordance with this
668 act.

669 **SECTION 24. Reserve study; exemptions.** An association is
670 not required to follow the reserve study requirements under
671 Section 19 of this act if the cost of the reserve study exceeds
672 five percent (5%) of the associations annual budget, the
673 association does not have significant assets, or there are ten
674 (10) or fewer homes in the association.

675 **SECTION 25. Good faith.** Every contract or duty governed by
676 this act imposes an obligation of good faith in its performance or
677 enforcement.

678 **SECTION 26. Limitation of enforcement.** (1) Notwithstanding
679 any law to the contrary, no action shall be commenced or
680 maintained to enforce the terms of any building restriction
681 contained in the provisions of the governing documents or to
682 compel the removal of any building or improvement because of the
683 violation of the terms of any such building restriction unless the
684 action is commenced within one (1) year from the date from which
685 the person commencing the action knew or in the exercise of
686 reasonable diligence should have known of the violation for which
687 the action is sought to be brought or maintained.



688 (2) The governing documents of an association must be
689 recorded in the land records of every county in which any portion
690 of the property subject to the association's jurisdiction is
691 located and must be indexed in the grantee's index in the name of
692 the development making up the property subject to the
693 association's jurisdiction and in the name of the association and
694 in the grantor's index.

695 **SECTION 27. Inapplicability of rule against perpetuities.**

696 The rule against perpetuities does not apply to defeat any
697 provision of the declaration, bylaws or rules and regulations.

698 **SECTION 28. Limitations on owners fines.** Notwithstanding
699 any provision of the declaration, bylaws, articles or rules and
700 regulations to the contrary, the association may not fine any
701 owner for an alleged violation unless:

702 (a) The association has adopted, and follows, a written
703 policy governing the imposition of fines; and

704 (b) The policy includes a fair and impartial fact
705 finding process concerning whether the alleged violation actually
706 occurred and whether the owner is the one who should be held
707 responsible for the violation. This process may be informal but
708 shall, at a minimum, guarantee the owner notice and an opportunity
709 to be heard before an impartial decision maker.

710 **SECTION 29. Drainage and public structures.** (1)

711 Maintenance, repair or replacement of any drainage structure or
712 facilities, or other public improvements required by the local



713 governmental entity as a condition of development of the property
714 subject to the association's jurisdiction or any part thereof
715 shall be the responsibility of the association, unless such
716 improvements have been dedicated to and accepted by the local
717 governmental entity for the purpose of maintenance, repair or
718 replacement or unless such maintenance, repair or replacement has
719 been authorized by law to be performed by a special district or
720 other body politic.

721 (2) Until such time as a board of directors is established
722 with not less than twenty-five percent (25%) of the members who
723 are elected by owners other than the developer, the developer
724 alone is liable for all expenses in connection with maintaining,
725 repairing and replacing all existing drainage structures, public
726 structures and common areas and no other owner is subject to a
727 claim for payment of those expenses. Thereafter the association
728 shall assume the responsibilities of maintaining, repairing and
729 replacing all existing and completed drainage structures, public
730 structures and common areas.

731 If the developer fails to pay all expenses in connection with
732 maintaining, repairing and replacing all drainage structures,
733 public structures and common areas, the association may pay such
734 expenses, and such expenses shall be assessed as a lien against
735 all property in the development owned by the developer, and the
736 association may enforce the assessment in the same manner set
737 forth in Section 32 of this act.



738 Upon establishment of a board of directors comprised of not
739 less than twenty-five percent (25%) of the members who are elected
740 by the owners other than the developer, the board of directors
741 shall, within sixty (60) days, review the established budget of
742 the association and amend the same as determined appropriate for
743 the association to meet its obligations of maintaining, repairing
744 and replacing property for which it is responsible, and shall
745 follow the procedures of Section 7 of this act in adopting such
746 budgetary amendments. Upon approval of the budget, as may be
747 amended, the board shall approve a schedule of assessments to
748 satisfy budgetary needs and the association shall begin collecting
749 such assessments no less frequently than annually.

750 (3) Upon the election of a board of directors consisting of
751 members with not less than fifty percent (50%) elected by owners
752 other than the developer, as set forth in Section 4(3) of this
753 act, the developer and the association shall negotiate and enter
754 into a contract setting out the rights and obligations of each
755 relating to the completion of the common areas, and the transfer
756 of title thereto from the developer to the association. Such
757 contract shall establish the manner and time of: (a) the
758 conveyance of title to the common area in a manner providing for
759 good and marketable title; (b) completion of each common area to
760 be within the association's jurisdiction; (c) the release of any
761 funds held by the developer for maintenance of common areas to the
762 association; (d) establishing the manner and time of transfer of



763 title, possession, warranties of all amenities within the common
764 area and; (e) reserving the beneficial interest of any mortgagee
765 or holder of any debt or lien secured by the common area. The
766 developer shall not transfer title of the common area to the
767 association prior to entering into the contract described in this
768 subsection (3). Further, the developer shall not unreasonably
769 refuse to transfer title of the common area to the association,
770 and the association shall not unreasonably refuse to accept
771 transfer of title from the developer. No transfer of title of
772 common area to the association, prior to the contract required by
773 this subsection (3) being entered into, shall relieve the
774 developer from the duty, obligation and responsibility to ensure
775 completion of the common areas according to the standards and
776 conditions imposed by the governing authority as a part of the
777 subdivision approval, or as set forth in the final recorded plat
778 or covenants for the subdivision.

779 **SECTION 30. Actions against association.** Neither the
780 association nor any owner except the developer is liable for any
781 cause of action based upon the developer's acts or omissions in
782 connection with any part of the common areas which that developer
783 has the responsibility to maintain. Otherwise, any action
784 alleging an act or omission by the association must be brought
785 against the association and not against any owner. If the act or
786 omission occurred during any period of developer control and the
787 association gives the developer reasonable notice of and an



788 opportunity to defend against the action, the developer is liable
789 to the association or to any owner for all tort losses not covered
790 by insurance suffered by the association or that owner and all
791 costs that the association would not have incurred but for such
792 act or omission. Whenever the developer is liable to the
793 association or owner under this section, the developer is also
794 liable for all expenses of litigation, including reasonable
795 attorney fees, incurred by the association or owner. Any statute
796 of limitation affecting the association's right of action under
797 this section is tolled until the period of developer control
798 terminates. An owner is not precluded from maintaining an action
799 contemplated by this section by being a member or officer of the
800 association.

801 **SECTION 31. Developer liability for accounts.** The developer
802 is liable to the association for all funds of the association
803 collected during the period of developer control which were not
804 expended for the benefit of the association or the property that
805 is the subject of the association's concern.

806 **SECTION 32. Lien for assessments.** (1) The association, if
807 the association is incorporated or organized as a limited
808 liability company, has a statutory lien on a lot for any
809 assessment levied against that lot. The amount of the lien shall
810 include all those items set forth in this act from the time such
811 items become due. If an assessment is payable in installments,
812 each installment is a lien from the time it becomes due, including



813 the due date set by any valid association's acceleration of
814 installment obligations.

815 (2) Recording of the declaration constitutes record notice
816 and perfection of the lien. No further recordation of any claim
817 of lien for assessments is required.

818 (3) A lien for unpaid assessments is extinguished unless
819 proceedings to enforce the lien are instituted within six (6)
820 years after the full amount of assessments become due.

821 (4) The association shall be entitled to costs and
822 reasonable attorney fees incurred by the association in a judgment
823 or decree in any action or suit brought by the association under
824 this section.

825 (5) The association shall furnish to an owner or such
826 owner's designee or to a holder of a security interest or its
827 designee upon written request, delivered personally or by
828 certified mail, first-class postage prepaid, return receipt
829 requested, to the association's registered agent, a written
830 statement setting forth the amount of unpaid assessments currently
831 levied against such owner's lot. The statement shall be furnished
832 within fourteen (14) calendar days after receipt of the request
833 and is binding on the association, the board of directors, and
834 every owner. If no statement is furnished to the owner or holder
835 of a security interest or his or her designee, delivered
836 personally or by certified mail, first-class postage prepaid,
837 return receipt requested, to the inquiring party, then the



838 association shall have no right to assert a lien upon the unit for
839 unpaid assessments which were due as of the date of the request.

840 (6) In any action by an association to collect assessments
841 or to foreclose a lien for unpaid assessments, the court may
842 appoint a receiver of the owner to collect all sums alleged to be
843 due from the owner prior to or during the pending of the action.
844 The court may order the receiver to pay any sums held by the
845 receiver to the association during the pending of the action to
846 the extent of the association's common expense assessments.

847 (7) The association's lien against an owner may be
848 foreclosed in like manner as a mortgage on real estate.

849 **SECTION 33.** Section 19-5-10, Mississippi Code of 1972, is
850 brought forward as follows:

851 19-5-10. (1) The board of supervisors of any county is
852 authorized to enter into one or more development agreements with
853 the developer or developers of a master planned community in order
854 to authorize, in addition to any other matters to which the board
855 of supervisors may lawfully obligate the county, the master
856 planned community, through a community self-governing entity
857 created by the owners of the property, to administer, manage and
858 enforce the land use restrictions and covenants, land use
859 regulations, subdivision regulations, building codes and
860 regulations, and any other limitations and restrictions on land
861 and buildings provided in the master plan for the master planned
862 community, in lieu of the real estate and property owners within



863 the master planned community being subject to the county
864 ordinances and regulations pertaining to buildings, subdivisions,
865 zoning, the county's comprehensive plan, and any other county
866 ordinances and regulations pertaining thereto. Prior to entering
867 into any such development agreement, the board of supervisors
868 shall review the master plan for the master planned community and
869 find that the provisions of the master plan providing for
870 regulations, restrictions, covenants and limitations pertaining to
871 buildings, subdivisions, zoning and comprehensive planning shall
872 be comparable to, or greater than, similar provisions in the
873 ordinances and regulations of the county. The term of such a
874 development agreement may be not more than thirty (30) years or
875 the number of years allowed in the county's subdivision ordinance
876 for terms of subdivision covenants, whichever is greater. The
877 development agreement shall have attached to it a boundary survey
878 made by a registered land surveyor, and upon approval of the
879 development agreement by the board of supervisors, the boundary
880 survey shall be recorded in the land records of the chancery clerk
881 of the county. The recorded boundary survey shall serve as the
882 description of the property within the master planned community
883 which shall not be subject to the county's zoning map, and the
884 county's zoning map shall simply recognize the territory described
885 in such boundary survey as a "master planned community." Whenever
886 there may be a conflict between the county ordinances and
887 regulations pertaining to buildings, subdivisions, zoning, the



888 county's comprehensive plan, and any other county ordinances and
889 regulations pertaining thereto, and the provisions of such a
890 development agreement, including the provisions of the master plan
891 providing for regulations, restrictions, covenants and limitations
892 pertaining to buildings, subdivisions, zoning and comprehensive
893 planning, the provisions of the development agreement shall
894 prevail if the provisions of the development agreement are
895 comparable to or greater than similar provisions of county
896 ordinances and regulations.

897 (2) As used in this section, the term "master planned
898 community" means a development by one or more developers of real
899 estate consisting of residential, commercial, educational, health
900 care, open space and recreational components that is developed
901 pursuant to a long range, multi-phase master plan providing
902 comprehensive land use planning and staged implementation and
903 development and the master plan must include the following minimum
904 provisions:

905 (a) The real estate described in the master plan must
906 consist of not less than two thousand five hundred (2,500) acres.
907 The master plan may require that not less than fifty percent (50%)
908 of the total dwelling units planned for such acreage must be:

909 (i) Dwelling units within a certified retirement
910 community certified by the Mississippi Development Authority; or

911 (ii) Dwelling units where at least one (1)
912 occupant:



- 913 1. Is sixty-two (62) years of age; or
914 2. Receives pension income reported on his or
915 her most recent federal income tax return filed prior to
916 occupancy; or
917 3. Declares himself to be retired.

918 (b) The real estate described in the master plan must
919 be subjected to a set of land use restrictions imposed by deed
920 restriction or restrictive covenants recorded by the developer in
921 the land records of the chancery clerk of the county as land is
922 developed and sold in phases to users. Such restrictions shall
923 include design guidelines and standards that provide for:

924 (i) Internal community self-governance by the
925 owners of the property;

926 (ii) The establishment of one or more legal
927 persons endowed with the powers, rights and duties to administer,
928 manage, own and maintain common areas, establish community
929 activities and enforce the land use restrictions on the common
930 areas and private property; and

931 (iii) The establishment of assessments and lien
932 rights to fund amenities, services and maintenance of common
933 areas.

934 (c) The real estate described in the master plan must
935 be within the territorial boundaries of one or more public utility
936 districts established by the county for the provision of water and
937 sewer facilities and water and sewer services.



938 (3) The master plan for a master planned community shall be
939 subject to modification from time to time by the original owner or
940 owners of the real estate described in the initial master plan,
941 its affiliates, successors or assigns to meet changing economic
942 and market conditions; provided, however, any such modifications
943 in the master plan which materially change the regulations,
944 restrictions, covenants and limitations pertaining to buildings,
945 subdivisions and land use regulations approved in the development
946 agreement, or which significantly change the overall plan concept,
947 shall be subject to, and shall not take effect until, approved by
948 the board of supervisors of the county.

949 (4) As used in this section, the term "dwelling unit" means
950 single-family residences, apartments or other units within a
951 multi-family residence, or a room or apartment in a nursing home
952 or congregate-care facility.

953 **SECTION 34.** This act shall take effect and be in force from
954 and after its passage.

