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Homeowner Association Consent to be Governed Agreement

A Model Act

(to be known as the "Truth in HOAs" Act)

Be it enacted by the Legislature of the State of []:

[section number]. Homeowner Association Consent to be Governed Agreement mandatory disclosure.

Notwithstanding any provision of [insert the appropriate planned community or condominium acts] to the contrary,

1. No provision of any contract or any declaration of covenants, conditions, and restrictions affecting lawful property uses of residences in a subdivision or condominium is enforceable in this state unless the party seeking to enforce the provision proves by clear and convincing evidence that 1) the provision being enforced was knowingly and voluntarily agreed to by all parties against whom it is being enforced; or 2) all parties against whom the provision is being enforced knowingly and voluntarily agreed to be bound by the provision without reading or understanding it.

2. any vote for any amendment to the governing documents shall be accomplished by the inclusion with any notice or ballot of an advisory statement, signed by the president of the HOA, addressing the impact of the amendment on the mandatory "agreement statement" provisions in subsection D(3).

3. Any representation or statement offered as clear and convincing evidence as required in subsection (1) shall include a signed statement containing the following, beginning with "I understand that I can ask that the following be read and explained to my satisfaction. By my signature below, I understand the following ",

(a). that the declaration of covenants, conditions and restrictions (CC&Rs), the bylaws, and any written rules and regulations are treated as binding private contracts by the courts; and that to enforce my rights under or compliance with the governing documents I must file suit in civil court, and that such a civil suit involves no state agency official, attorney general, or county attorney ;

(b). that under current court holdings, I am legally bound by any and all amendment to these documents validly enacted in accordance with the governing documents, with or without my vote or consent, provided that they are found not to be unreasonable, contrary to public policy or

unconstitutional; and that an amendment may alter the CC&Rs at the time of purchase, binding me to the amendment without my consent;

(c). that under current law, there are no penalties against violations of the governing documents or state laws by the officers or directors of the association sufficient to serve as a detriment to future violations,

(d). I understand that the association, as a private entity and not an arm of the state, is not subject to the restrictions and prohibitions of the 14th Amendment to the US Constitution that otherwise protects the rights of the people against actions by public government entities; and that the governing documents in all legal practicality serve as the subdivision's "constitution," taking precedence over state laws and the state and US Constitutions, unless specifically denied by any such laws or legal precedence;

(e). that the governing documents contain due process protections, in instances of alleged violations of the governing documents, that are less than as required under public laws and civil court procedures, lacking requirements for an independent tribunal, for the right to introduce or confront witnesses, for the right to introduce and challenge contrary evidence;

(f). that, contrary to your federal fair debts collection practices act (FDCPA) rights in any dispute with the HOA, the courts require continued payment of your assessments even while the dispute continues;

(g) that there are no equivalent clean or fair elections procedures to protect the integrity of the HOA election process as found in public government elections;

(h) that the practicable ability to institute member "initiatives" and make changes to the governing documents or ACC rules is highly dependent upon the active participation of your neighbors who have been widely described as indifferent and apathetic; and that there are no provisions for HOA board "referendums" on issues that ethically should be put to a vote of the members;



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