



2021 AMENDMENTS TO THE UNIFORM COMMON INTEREST OWNERSHIP ACT

- A Summary -

The Uniform Common Interest Ownership Act (UCIOA) is a comprehensive statute that governs three types of “common interest communities” – condominiums, planned communities of single-family homes, and real estate cooperatives. UCIOA was initially drafted in 1982 to establish rules for the creation, management, alteration, and termination of common interest communities, and has been periodically amended in the years since its approval. In 2021, the Uniform Law Commission approved a new set of amendments to UCIOA, which are designed to further modernize the law on common interest communities and incorporate best practices established by the real property industry.

In Article 1 of UCIOA, Section 1-104 previously outlined 33 rules that a common interest community could change “by agreement.” Under the new amendments, Section 1-117 of UCIOA now includes 27 rules that can only be changed in the governing instrument (declaration or bylaws) of a common interest community. These provisions, which include rules for elections and voting, reallocation of boundaries between units and limited common elements, and other aspects of the day-to-day administration of a common interest community, are “default” rules that will apply to all common interest communities unless the declaration or bylaws provide otherwise.

Under the amended UCIOA, common interest communities maintain the flexibility to change their governing instruments to meet their needs, while unit owners will be able to rely on the predictability of certain default rules. UCIOA’s mandatory rules have not been amended: a common interest community remains unable to change any provision of the act that gives rights to or imposes obligations or liabilities upon unit owners, building developers, associations, or executive boards.

In Article 2, which governs the creation, alteration, and termination of common interest communities, Section 2-118 was amended to better protect residential unit owners from unilateral action by a property developer who wishes to dissolve the common interest community (sometimes referred to as deconversion). Previously, UCIOA stated that a common interest community could be terminated if 80% of the unit owners agreed. This threshold remains unchanged, and will have the same effect for common interest communities where each unit has been sold by the developer, and the period of developer control has ended.

However, for common interest communities that are still under developer control, not only do 80% of unit owners have to agree to terminate the common interest community, but 80% of the unit owners *other than the developer* must agree as well. This prevents the developer of a new community who was unable to sell as many units as anticipated, and who therefore still owns a substantial voting percentage, from terminating the common interest community without the consent of 80% of the independent unit owners. Similarly, the amendments expand the scope of

which common interest communities can be partially terminated, allowing the sale of only some common elements and units.

Additionally, Section 2-108 of UCIOA was amended to make it easier to convert a common element (a part of the property that all tenants are entitled to access) to a limited common element that can only be accessed by a subset of unit owners, because this is often a minor change that has minimal impact on other unit owners. Furthermore, under Section 2-120, a majority of unit owners can now override an executive board's decision to delegate duties to a master association.

The amendments to Article 2 also include the addition of Section 2-125, which was added to expressly prevent a unit owner from acquiring title to a common element through adverse possession or easement by prescription. This significant update is designed to protect the rights of all unit owners from bad actors.

UCIOA Article 3 provides management rules. Section 3-108 was amended to allow association meetings by videoconference, and Section 3-110 was amended to permit electronic voting. Section 3-115 has been restructured to clarify that a declaration can only disproportionately allocate assessment fees in accordance with each unit owner's benefit from common elements if the declaration specifically states that common expenses "must be assessed" differently.

Article 3 contains a new Section 3-125, which outlines an association's duties and powers in the event of an emergency. Under Section 3-125, an emergency constitutes both government-declared emergencies and imminent threats to the health of residents, habitability of the common interest community's units, or a risk of substantial loss to the association. In an emergency, the association is entitled to call meetings with limited notice and without a quorum under certain circumstances, and is empowered to take necessary actions, including the imposition of immediate special assessments, to protect the interests of unit owners and other interest holders.

Finally, Section 5 of UCIOA, which covered registration of common interest communities and was previously optional but had not been incorporated into any state's law, has been removed.

The 2021 amendments to UCIOA respond to the changing real estate landscape by clarifying existing law, incorporating best practices, and ensuring that UCIOA remains up to date with technological advances. Additionally, these amendments address the need for an association to remain nimble in the face of unpredictability while still protecting the assets and interests of all stakeholders.

For further information about UCIOA, please contact ULC Legislative Counsel Jane Sternecky at (312) 450-6622 or jsternecky@uniformlaws.org.

UNIFORM COMMON INTEREST OWNERSHIP ACT (2021)*

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UNIFORM COMMON INTEREST OWNERSHIP ACT (2021)

[ARTICLE] 1

GENERAL PROVISIONS

[PART] 1

DEFINITIONS AND OTHER GENERAL PROVISIONS

SECTION 1-101. SHORT TITLE. This [act] may be cited as the Uniform Common Interest Ownership Act (2021).

SECTION 1-102. APPLICABILITY. Applicability of this [act] is governed by [Part] 2 of this [article].

SECTION 1-103. DEFINITIONS. In this [act]:

(1) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant. For purposes of this definition:

(A) a person controls a declarant if the person:

(i) is a general partner, officer, director, or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20 percent of the capital of the declarant;

(B) a person is controlled by a declarant if the declarant:

(i) is a general partner, officer, director, or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other

persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20 percent of the capital of the person; and

(C) control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) “Allocated interests” means the following interests allocated to each unit:

(A) in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(B) in a cooperative, the common expense liability, the ownership interest, and votes in the association; and

(C) in a planned community, the common expense liability and votes in the association.

(3) “Assessment” means the sum attributable to each unit and due to the association pursuant to Section 3-115.

(4) “Association” or “unit owners association” means the unit owners association organized under Section 3-101.

(5) “Bylaws” means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association regardless of the form in which the association is organized, including any amendments to the instruments.

(6) “Common elements” means:

(A) in the case of:

(i) a condominium or cooperative, all portions of the common interest community other than the units; and

(ii) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit; and

(B) in all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration.

(7) “Common expense liability” means the liability for common expenses allocated to each unit pursuant to Section 2-107.

(8) “Common expenses” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(9) “Common interest community” means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. The term does not include an arrangement described in Section 1-209 or 1–210. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest of less than [20] years in a unit, including renewal options.

(10) “Condominium” means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(11) “Conversion building” means a building that at any time before creation of the

common interest community was occupied wholly or partially by persons other than purchasers and persons that occupy with the consent of purchasers.

(12) “Cooperative” means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member’s ownership interest in the association to exclusive possession of a unit.

(13) “Dealer” means a person in the business of selling units for the person’s own account.

(14) “Declarant” means any person or group of persons acting in concert that:

(A) as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or

(B) reserves or succeeds to any special declarant right.

(15) “Declaration” means the instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

(16) “Development rights” means any right or combination of rights reserved by a declarant in the declaration to:

(A) add real estate to a common interest community;

(B) create units, common elements, or limited common elements within a common interest community;

(C) subdivide units or convert units into common elements; or

(D) withdraw real estate from a common interest community

(17) “Dispose” or “disposition” means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(17A) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(18) “Executive board” means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

(19) “Identifying number” means a symbol or address that identifies only one unit in a common interest community.

(20) “Leasehold common interest community” means a common interest community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the common interest community or reduce its size.

(21) “Limited common element” means a portion of the common elements allocated by the declaration or by operation of Section 2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(22) “Master association” means:

(A) a unit owners association that serves more than one common interest community; or

(B) an organization that holds a power delegated under Section 2-120(a)(1).

(23) “Offering” means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common interest community not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.

(24) “Person” means an individual, corporation, business trust, estate, trust, partnership,

limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. [In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.]

(25) “Planned community” means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(26) “Proprietary lease” means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(27) “Purchaser” means a person, other than a declarant or a dealer, that by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

(A) a leasehold interest, including renewal options, of less than 20 years; or

(B) as security for an obligation.

(28) “Real estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

(29) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(30) “Residential purposes” means use for dwelling or recreational purposes, or both.

(31) “Rule” means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws.

(32) “Security interest” means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(33) “Special declarant rights” means rights reserved for the benefit of a declarant to:

(A) complete improvements the declarant is not obligated to make that are indicated on plats and plans filed with the declaration or described in the public offering statement;

(B) under Section 2-110, exercise any development right;

(C) under Section 2-115, maintain sales offices, management offices, signs advertising the common interest community, and models;

(D) under Section 2-116, use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community;

(E) under Section 2-120, make the common interest community subject to a master association;

(F) under Section 2-121, merge or consolidate a common interest community with another common interest community of the same form of ownership

(G) under Section 3-103(d), appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control;

(H) under Section 3-120(c), control any construction, design review, or aesthetic

standards committee or process;

(I) under Section 3-108, attend meetings of the unit owners and, except during an executive session, the executive board; and

(J) under Section 3-118, have access to the records of the association to the same extent as a unit owner.

(34) “Time share” [has the meaning in [cite to definition of “time share” in appropriate state statute]] [means an ownership right in, or right to use, a unit for less than a full year during any year on a recurring basis for more than one year, even if the years are not consecutive].

(35) “Unit” means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 2-105(a)(5). If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association’s interest in that unit is not thereby affected.

(36) “Unit owner” means a declarant or other person that owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

Legislative Note: A state that defines “time share” or a similar term such as “timeshare plan” or “time-share interest” in another statute should cross-reference the definition in the first

bracketed option of paragraph (34). A state that does not define the term should use the second bracketed option of paragraph (34).

SECTION 1-104. NO VARIATION BY AGREEMENT. Except as expressly provided in this [act], the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as otherwise provided in Section 1-207, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this [act] or the declaration.

SECTION 1-105. SEPARATE TITLES AND TAXATION.

(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. [That interest is subject to the provisions of [insert reference to state homestead exemptions], even if it is personal property.]

(b) In a condominium or planned community:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

**SECTION 1-106. APPLICABILITY OF LOCAL ORDINANCES,
REGULATIONS, AND BUILDING CODES.**

(a) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership.

(b) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

(c) Except as provided in subsections (a) and (b), the provisions of this [act] do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

SECTION 1-107. EMINENT DOMAIN.

(a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain,

the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially-acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court [decree] must be recorded in every [county] in which any portion of the common interest community is located.

Legislative Note: *The practice of the states may vary with respect to the documentation of eminent domain awards, and the word "decree" should therefore be considered for amendment as appropriate.*

SECTION 1-108. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW

APPLICABLE. The principles of law and equity, including the law of corporations [,] [and] any other form of organization authorized by the law of this state [,and unincorporated associations], the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this [act],

except to the extent inconsistent with this [act].

SECTION 1-109. CONSTRUCTION AGAINST IMPLICIT REPEAL. This [act] being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

SECTION 1-110. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [act] shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this [act] among states enacting it.

SECTION 1-111. SEVERABILITY. If any provision of this [act] or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provisions or application, and to this end the provisions of this [act] are severable.

***Legislative Note:** Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

SECTION 1-112. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;

(3) the effect and purpose of the contract or clause; and

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

SECTION 1-113. OBLIGATION OF GOOD FAITH. Every contract or duty governed by this [act] imposes an obligation of good faith in its performance or enforcement.

SECTION 1-114. REMEDIES TO BE LIBERALLY ADMINISTERED. The remedies provided by this [act] shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this [act] or by other rule of law.

SECTION 1-115. ADJUSTMENT OF DOLLAR AMOUNTS.

(a) From time to time the dollar amount specified in Section 1-203 must change, as provided in subsections (b) and (c), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the “Index”). The Index for December, 1979, which was 230, is the Reference Base Index.

(b) The dollar amount specified in Section 1-203 and any amount stated in the declaration

pursuant to that section, must change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 percent or more, but (i) the portion of the percentage change in the Index in excess of a multiple of 10 percent must be disregarded and the dollar amount shall change only in multiples of 10 percent of the amount appearing in this [act] on the date of enactment; (ii) the dollar amount must not change if the amount required by this section is that currently in effect pursuant to this [act] as a result of earlier application of this section; and (iii) in no event may the dollar amount be reduced below the amount appearing in this [act] on the date of enactment.

(c) If the Index is revised after December, 1979, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

SECTION 1-116. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1-117. MANDATORY AND DEFAULT RULES.

(a) Except as provided in subsection (b), the declaration or bylaws may not vary a provision of this [act] that gives a right to or imposes an obligation or liability on a unit owner, declarant, association, or executive board.

(b) The declaration or bylaws may vary the following provisions as provided in the provision:

(1) Section 1-105(a), concerning classification of a cooperative unit as real estate or personal property;

(2) Section 1-107(b) and (c), concerning reallocation of allocated interests and allocation of proceeds after a taking by eminent domain;

(3) Sections 1-202, 1-203, 1-206, 1-207, and 5-101, concerning elections regarding applicability of this [act];

(4) Section 2-102, concerning boundaries between units and common elements;

(5) Section 2-108(b), concerning reallocation of limited common elements;

(6) Section 2-109(e), concerning horizontal boundaries of units;

(7) Section 2-111, concerning alterations of units and common elements made by unit owners;

(8) Section 2-112(a), concerning relocation of boundaries between units;

(9) Section 2-113(a), concerning subdivision of units;

(10) Section 2-115, concerning signs maintained by a declarant;

(11) Section 2-116(a) and (c), concerning easements through, and rights to use, common elements;

(12) Section 2-117(a), concerning the percentage of votes required to amend the declaration;

- (13) Section 2-118(a) and (i), concerning the percentage of votes required to terminate a common interest community and priority of creditors of a cooperative;
- (14) Section 3-102(a)(14), concerning an association's assignment of rights to future income;
- (15) Section 3-103(a), concerning the executive board acting on behalf of the association;
- (16) Section 3-107(a), concerning responsibility for maintenance, repair, and replacement of units and common elements;
- (17) Section 3-108, concerning meetings;
- (18) Section 3-109, concerning quorum requirements for meetings;
- (19) Section 3-110, concerning voting, proxies, and ballots;
- (20) Section 3-112(a), (b), and (g), concerning the percentage of votes required to convey or encumber common elements and the effect of conveyance or encumbrance of common elements;
- (21) Section 3-113, concerning insurance for a nonresidential common interest community;
- (22) Section 3-114, concerning payment of surplus funds of the association;
- (23) Section 3-116(a), concerning treatment of fees, costs, charges, and other sums as assessments for lien purposes; and
- (24) Section 3-123(a), concerning the percentage of votes required to reject a budget.

[PART] 2

APPLICABILITY

SECTION 1-201. GENERAL APPLICABILITY TO COMMON INTEREST

COMMUNITIES. Except as otherwise provided in this [part] and [Article] 5, this [act] applies to all common interest communities. An amendment to this [act] applies to all common interest communities subject to the [act], regardless of when the amendment becomes effective.

SECTION 1-202. EXCEPTION FOR SMALL COOPERATIVES. If a cooperative contains no more than 12 units and is not subject to any development rights, it is subject only to Sections 1-106 (Applicability of Local Ordinances, Regulations, and Building Codes) and 1-107 (Eminent Domain) of this [act] unless the declaration provides that the entire [act] is applicable.

**SECTION 1-203. EXCEPTION FOR SMALL AND LIMITED EXPENSE
LIABILITY PLANNED COMMUNITIES.**

(a) Unless the declaration provides that this entire [act] is applicable, a planned community that is not subject to any development right is subject only to Sections 1-105, 1-106, and 1-107, if the community:

(1) contains no more than 12 units; or

(2) provides in its declaration that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed \$300, as adjusted pursuant to Section 1-115.

(b) The exemption provided in subsection (a)(2) applies only if:

(1) the declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community; and

(2) the declaration provides that the assessment may not be increased above the limitation in subsection (a)(2) during the period of declarant control without the consent of all unit owners.

SECTION 1-204. [RESERVED].

SECTION 1-205. [RESERVED].

SECTION 1-206. AMENDMENTS TO GOVERNING INSTRUMENTS.

(a) The declaration or bylaws of a cooperative under Section 1-202 or a planned community under Section 1-203 may be amended to:

(1) provide that all the sections listed in Section 5-104(a) apply to the cooperative or planned community; or

(2) achieve any other result permitted by this [act], regardless of what applicable law provided before this [act] was adopted.

(b) Except as otherwise provided in Section 2-117(i) and (j), an amendment under this section to the declaration or bylaws of a common interest community created before [the effective date of this [act]] must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this [act]. If an amendment grants to a person a right, power, or privilege permitted by this [act], any correlative obligation, liability, or restriction in this [act] also applies to the person.

SECTION 1-207. APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE COMMON INTEREST COMMUNITIES.

(a) Except as otherwise provided in subsection (d), this section applies only to a common interest community in which all units are restricted exclusively to nonresidential purposes.

(b) A nonresidential common interest community is not subject to this [act] except to the extent the declaration provides that:

(1) this entire [act] applies to the community;

(2) [Articles] 1 and 2 apply to the community; or

(3) in the case of a planned community or a cooperative, only Sections 1-105, 1-106, and 1-107 apply to the community.

(c) If this entire [act] applies to a nonresidential common interest community, the declaration may also require, subject to Section 1-112, that:

(1) notwithstanding Section 3-105, any management, maintenance, operations, or employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(2) notwithstanding Section 1-104, purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(d) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this [act] unless the units that may be used for residential purposes would comprise a common interest community that would be subject to this [act] in the absence of the nonresidential units or the declaration provides that this [act] applies as provided in subsection (b) or (c).

SECTION 1-208. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST COMMUNITIES. This [act] does not apply to a common interest community located outside this state, but Sections 4-102 and 4-103 and, to the extent applicable, Sections 4-104 through 4-106, apply to a contract for the disposition of a unit in that common interest community signed in this state by any party unless exempt under Section 4-101(b).

SECTION 1-209. OTHER EXEMPT REAL ESTATE ARRANGEMENTS.

(a) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by this [act].

SECTION 1-210. OTHER EXEMPT COVENANTS. A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

[ARTICLE] 2

CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES

SECTION 2-101. CREATION OF COMMON INTEREST COMMUNITIES.

(a) A common interest community may be created pursuant to this [act] only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every [county] in which any portion of the common interest community is located and must be indexed [in the grantee's index] in the name of the common interest community and the association and [in the grantor's index] in the name of each person executing the declaration.

(b) In a condominium, a declaration, or an amendment to a declaration, adding units may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent [registered] engineer, surveyor, or architect.

SECTION 2-102. UNIT BOUNDARIES. Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the

common elements.

(3) Subject to paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

SECTION 2-103. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws or rules.

(c) If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this [act].

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this [act]. Whether a substantial failure impairs marketability is not affected by this [act].

SECTION 2-104. DESCRIPTION OF UNITS. A description of a unit which sets forth the name of the common interest community, the [recording data] for the declaration, the [county] in which the common interest community is located, and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

SECTION 2-105. CONTENTS OF DECLARATION.

(a) The declaration must contain:

(1) the names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) the name of every [county] in which any part of the common interest community is situated;

(3) a legally sufficient description of the real estate included in the common interest community;

(4) a statement of the maximum number of units that the declarant reserves the right to create;

(5) in a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(6) a description of any limited common elements, other than those specified in Section 2-102(2) and (4), as provided in Section 2-109(b)(10) and, in a planned community, any real estate that is or must become common elements;

(7) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in Section 2-102(2) and (4), together with a statement that they may be so allocated;

(8) a description of any development right and any other special declarant rights reserved by the declarant, a time limit within which each of those rights must be exercised, and a

legally sufficient description of the real estate to which each development right applies;

(9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(A) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and

(B) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;

(11) an allocation to each unit of the allocated interests in the manner described in Section 2-107;

(12) any restrictions on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to Section 3-120(d) and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(13) the [recording data] for recorded easements and licenses appurtenant to or included in the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(14) any authorization pursuant to which the association may establish and enforce construction and design criteria and aesthetic standards as provided in Sections 3-106

and 3-120; and

(15) all matters required by Sections 2-106, 2-107, 2-108, 2-109, 2-115, 2-116, and 3-103.

(b) The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

SECTION 2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.

(a) Any lease the expiration or termination of which may terminate the common interest community or reduce its size [, or a memorandum thereof,] must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

(1) the [recording data] for the lease [or a statement of where the complete lease may be inspected];

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium or leasehold planned community is

recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with Section 1-107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

SECTION 2-107. ALLOCATION OF ALLOCATED INTERESTS.

(a) The declaration must allocate to each unit:

(1) in a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association;

(2) in a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association; and

(3) in a planned community, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests.

Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(c) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(d) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this [act] nor may units constitute a class because they are owned by a declarant.

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

(g) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

SECTION 2-108. LIMITED COMMON ELEMENTS.

(a) Except for the limited common elements described in Section 2-102(2) and (4), the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association.

(c) A common element not previously allocated as a limited common element may be so allocated only by an amendment to the declaration. A unit owner may request the executive board to amend the declaration to allocate all or part of a common element as a limited common element for the exclusive use of the owner's unit. The board may prescribe in the amendment a condition or obligation, including an obligation to maintain the new limited common element or pay a fee or charge to the association. If the board approves the amendment, the board shall give notice to all unit owners of its action and include a statement that unit owners may object in a record to the amendment not later than 30 days after delivery of the notice. The amendment becomes effective if the board does not receive a timely objection. If the board receives a timely objection, the amendment becomes effective only if the unit owners vote under Section 3-110, whether or not a quorum is present, to approve the amendment by a vote of at least 67 percent of the votes cast, including at least 67 percent of the votes cast that are allocated to units not owned by the declarant. If the amendment becomes effective, the association and the owner of the benefitted unit shall execute the amendment.

(d) The association shall record the amendment as provided in Section 2-117. If an

amendment changes information shown in a plat or plan concerning a common element or limited common element other than a common wall between units, the association shall prepare and record a revised plat or plan.

SECTION 2-109. PLATS AND PLANS.

(a) Plats and plans are a part of the declaration, and are required for all common interest communities except cooperatives. Separate plats and plans are not required by this [act] if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show or project:

(1) the name and a survey or general schematic map of the entire common interest community;

(2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel, but plats and plans need not designate or label which development rights are applicable to each parcel if that information is clearly delineated in the declaration;

(4) the extent of any encroachments by or upon any portion of the common interest community;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(6) except as otherwise provided in subsection (h), the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(7) except as otherwise provided in subsection (h), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as leasehold real estate;

(9) the distance between non-contiguous parcels of real estate comprising the common interest community;

(10) the approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements, and show or contain a narrative description of any other limited common elements; and

(11) for real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community. Any contemplated improvement shown must be labeled either MUST BE BUILT or NEED NOT BE BUILT.

(d) Except as otherwise provided in subsection (h), to the extent not shown or projected on the plats, plans of the units must show or project:

(1) the approximate location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(2) the approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) the approximate location of any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) A certification of a plat or plan required by this section or Section 2-101(b) must be made by an independent [registered] surveyor, architect, or engineer.

(h) Plats and plans need not show the location and dimensions of the units' boundaries or their limited common elements if:

(1) the plat shows the location and dimensions of all buildings containing or comprising the units; and

(2) the declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.

SECTION 2-110. EXERCISE OF DEVELOPMENT RIGHTS.

(a) To exercise any development right reserved under Section 2-105(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration (Section 2-117) and in a

condominium or planned community comply with Section 2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 2-108 (Limited Common Elements).

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by Section 2-105 or 2-106, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by Section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Section 2-105(a)(8).

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (Section 1-107); and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides, pursuant to Section 2-105(a)(8), that all or a portion of the

real estate is subject to a right of withdrawal:

(1) if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

SECTION 2-111. ALTERATIONS OF UNITS. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community;

(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common interest community, without permission of the association;

(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

SECTION 2-112. RELOCATION OF UNIT BOUNDARIES.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units

have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations.

(b) The boundary of a unit may be relocated only by an amendment to the declaration. A unit owner may request the executive board to amend the declaration to include all or part of a common element within the owner's unit. The board may prescribe in the amendment a fee or charge payable by the unit owner to the association in connection with the relocation. The board may approve the amendment only if the unit owners vote under Section 3-110, whether or not a quorum is present, to approve the amendment by a vote of at least 67 percent of the votes cast, including at least 67 percent of the votes cast that are allocated to units not owned by the declarant.

(c) The association and the owners of the units whose boundaries are relocated shall execute an amendment under this section. The amendment must contain words of conveyance between the parties. The association shall record the amendment as provided in Section 2-117. The association (i) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers, and (ii) in a cooperative shall prepare and record amendments to the declaration, including any plans necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

SECTION 2-113. SUBDIVISION OF UNITS.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the declaration and law other than this [act], upon application of a unit owner

to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration including, in a condominium or planned community, the plats and plans subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

SECTION 2-114. BUILDING ENCROACHMENT.

Alternative A

(a) Except as provided in subsection (b), if the construction, reconstruction, or alteration of a building or the vertical or lateral movement of a building results in an encroachment due to a divergence between the existing physical boundaries of a unit and the boundaries described in the declaration under Section 2-105(a)(5), an easement for the encroachment exists between adjacent units and between units and adjacent common areas.

Alternative B

(a) Except as provided in subsection (b), if the construction, reconstruction, or alteration of a building or the vertical or lateral movement of a building results in an encroachment due to a divergence between the existing physical boundaries of a unit and the boundaries described in the declaration under Section 2-105(a)(5), the existing physical boundaries of the unit are its legal boundaries, rather than the boundaries described in the declaration.

End of Alternatives

(b) Subsection (a) does not apply if the encroachment:

(1) extends beyond five feet, as measured from any point on the common

boundary along a line perpendicular to the boundary; or

(2) results from willful misconduct of the unit owner that claims a benefit under subsection (a).

(c) This section does not relieve a declarant or other person of liability for failure to adhere to plats or plans or a representation in the public offering statement.

Legislative Note: Two approaches are presented as alternatives because a number of states have previously adopted the “easement solution” of Alternative A or the “adjustment of boundary” solution of Alternative B. A state may choose to continue its existing law on the topic.

SECTION 2-115. USE FOR SALES PURPOSES. A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. In a cooperative or condominium, any sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state law and to local ordinances.

SECTION 2-116. EASEMENT AND USE RIGHTS.

(a) Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant’s obligations or exercising special declarant rights, whether arising under this [act] or reserved in the declaration.

(b) Subject to Sections 3-102(a)(6) and 3-112, the unit owners have an easement in the common elements for access to their units.

(c) Subject to the declaration and rules, the unit owners have a right to use the common elements that are not limited common elements and all real estate that must become common elements for the purposes for which they were intended.

SECTION 2-117. AMENDMENT OF DECLARATION.

(a) Except in cases of amendments that may be executed by a declarant under Section 2-109(f) or 2-110, the association under Section 1-107, 2-106(d), 2-108(c), 2-112, or 2-113, or certain unit owners under Section 2-108(b), 2-113(b), or 2-118(b), and except as limited by subsections (d), (f), (g), and (h), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least [67] percent of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every [county] in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed [in the grantee's index] in the name of the common interest community and the association and [in the grantor's index] in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this [act], no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit, in the absence of

unanimous consent of the unit owners.

(e) Amendments to the declaration required by this [act] to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) An amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by unit owners of units having at least 80 percent of the votes of a specified group of units that would be affected by the amendment. An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to Section 2-105(a)(8) within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

(h) A provision in the declaration creating special declarant rights that have not expired

may not be amended without the consent of the declarant.

(i) If any provision of this [act] or of the declaration requires the consent of a holder of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if a refusal to consent in a record is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided to the association an address for notice, the association shall provide notice to the address in the security interest of record. Notwithstanding this section, an amendment to the declaration that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(j) If the declaration contains a provision requiring that amendments to the declaration may be adopted only by the vote or agreement of unit owners of units to which more than 80 percent of the votes in the association are allocated, the amendment is approved:

(1) if:

(A) unit owners of units to which at least 80 percent of the votes in the association are allocated vote for or agree to the proposed amendment;

(B) no unit owner votes against the proposed amendment; and

(C) notice of the proposed amendment is delivered to the unit owners holding the votes in the association which have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within 60 days after the association delivers notice; or

(2) unit owners of units to which at least 80 per cent of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in [insert appropriate court] against all objecting unit owners, the court finds that the objecting unit owners do not have an interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.

SECTION 2-118. TERMINATION OF COMMON INTEREST COMMUNITY.

(a) Except for a taking of all the units by eminent domain, foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in Section 2-124, a common interest community may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, including at least 80 percent of the votes allocated to units not owned by the declarant, and with any other approvals required by the declaration. The declaration may require a larger percentage of total votes in the association for approval, but termination requires approval by at least 80 percent of the votes allocated to units not owned by the declarant. The declaration may specify smaller percentages only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement is void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every [county] in which a portion of the common interest community is situated and is effective only upon recordation.

(c) A termination agreement may provide for the sale of some or all of the common

elements and units of the common interest community following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

[(d) Reserved.]

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate is to be sold following termination, title to that real estate not already owned by the association vests on termination in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (h), (i), (j), and (m). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this [act] or the declaration.

(f) Termination does not change title to a unit or common element not to be sold following termination unless the termination agreement otherwise provides.

(g) Following termination of the common interest community, the proceeds of sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(h) Following termination of a condominium or planned community, creditors of the association holding liens on the units which were [recorded] [docketed] [insert other procedures required under state law to perfect a lien on real estate as a result of a judgment] before termination may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(i) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were [recorded] [docketed] [insert other procedures required under state law to perfect a lien on real estate as a result of a judgment] before termination may enforce their liens in the same manner as any lien holder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) the lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(2) any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(3) the amount of the lien of an association's creditor described in paragraphs (1) and (2) against each of the unit owners' interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(4) the lien of each creditor of each unit owner which was perfected before

termination continues as a lien against that unit owner's unit as of the date the lien was perfected;

(5) the assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above; and

(6) creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), (i), and (m) are as follows:

(1) Except as otherwise provided in paragraph (4), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by appraisal made by one or more independent appraisers selected by the association. The appraisal must be distributed to the unit owners and becomes final unless:

(A) disapproved not later than 30 days after distribution by unit owners of units to which at least 25 percent of the votes in the association are allocated; or

(B) a unit owner objects in a record not later than 30 days after distribution to the determination of value of the owner's unit.

(2) A unit owner that objects under paragraph (1)(B) may select an appraiser to represent the owner and make an appraisal of the owner's unit. If the association's appraisal and the unit owner's appraisal of the fair market value of the owner's interest differ, a panel consisting of an appraiser selected by the association, the unit owner's appraiser, and a third appraiser mutually selected by the first two appraisers shall determine, by majority vote, the value of the unit owner's interest. The determination of value by the panel is final.

(3) The proportion of any unit owner's interest to that of all unit owners is

determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(4) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are:

(A) in a condominium, their respective common element interests immediately before the termination;

(B) in a cooperative, their respective ownership interests immediately before the termination; and

(C) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as otherwise provided in subsection (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under Section 3-112, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration

and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

(m) A termination agreement complying with this section may provide for termination of fewer than all of the units in a common interest community, subject to the following rules:

(1) In addition to the approval required by subsection (a), the termination agreement must be approved by at least 80 percent of the votes allocated to the units being terminated.

(2) The termination agreement must reallocate under Section 2-107 the allocated interests for the units that remain in the common interest community after termination.

(3) The aggregate values of the units and common elements being terminated must be determined under subsection (j). The termination agreement must specify the allocation of the proceeds of sale for the units and common elements being terminated and sold.

(4) Security interests and liens on remaining units and remaining common elements continue, and security interests and liens on units being terminated no longer extend to any remaining common elements.

(5) The unit owners association continues as the association for the remaining units.

(6) The association shall record with the termination agreement under subsection (b) an amendment to the declaration or an amended and restated declaration.

SECTION 2-119. RIGHTS OF SECURED LENDERS.

(a) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association

approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to Section 3-113.

(b) A lender who has extended credit to an association secured by an assignment of income (Section 3-102(14)) or an encumbrance on the common elements (Section 3-112) may enforce its security agreement in accordance with its terms, subject to the requirements of this [act] and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection (a).

SECTION 2-120. MASTER ASSOCIATIONS.

(a) A declaration may:

(1) delegate a power under Section 3-102(a) from the unit owners association to a master association;

(2) provide for exercise of the powers under Section 3-102(a) by a master association that also serves as the unit owners association for the common interest community; and

(3) reserve a special declarant right to make the common interest community subject to a master association.

(b) All provisions of this [act] applicable to unit owners associations apply to the master association, except as modified by this section.

(c) A unit owners association may delegate a power under Section 3-102(a) to a master association without amending the declaration. The executive board of the unit owners association shall give notice to the unit owners of a proposed delegation and include a statement that unit owners may object in a record to the delegation not later than 30 days after delivery of the notice. The delegation becomes effective if the board does not receive a timely objection from unit owners of units to which at least 10 percent of the votes in the association are allocated. If the board receives a timely objection by at least 10 percent of the votes, the delegation becomes effective only if the unit owners vote under Section 3-110 to approve the delegation by a majority vote. The delegation is not effective until the master association accepts the delegation.

(d) A delegation under subsection (a)(1) may be revoked only by an amendment to the declaration.

(e) At a meeting of the unit owners which lists in the notice of the meeting the subject of delegation of powers from the executive board to a master association, the unit owners may revoke the delegation by a majority of the votes cast at the meeting. The effect of revocation on the rights and obligations of parties under a contract between a unit owners association and a master association is determined by law of this state other than this [act].

(f) Unless it is acting in the capacity of a unit owners association, a master association may exercise the powers set forth in Section 3-102(a)(2) only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(g) After a unit owners association delegates a power to a master association, the unit owners association, its executive board members, and its officers are not liable for an act or omission of the master association with respect to the delegated power.

(h) The rights and responsibilities of unit owners with respect to the unit owners association set forth in Sections 3-103, 3-108, 3-109, 3-110, and 3-112 apply in the conduct of the affairs of a master association only to persons who elect the executive board of a master association, whether or not those persons are otherwise unit owners within the meaning of this [act].

(i) Not later than 90 days after termination of a period of declarant control of the master association, the executive board of the master association must be elected in one of the following ways:

(1) The unit owners of all common interest communities subject to the master association elect all members of the master association's executive board.

(2) The unit owners in, or the executive board of, each common interest community subject to the master association elect one or more members of the master association's executive board if the instruments governing the master association apportion the seats on the board to each common interest community in a manner roughly proportional to the number of units in each common interest community.

(j) A period of declarant control of the master association under subsection (i) terminates not later than the earlier of:

(1) the termination under Section 3-103 of all periods of declarant control of all common interest communities subject to the master association under Section 3-103; or

(2) [60] days after conveyance to unit owners other than a declarant of [three-

fourths] of the units that may be created in all common interest communities subject to the master association.

SECTION 2-121. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES.

(a) Any two or more common interest communities may be merged or consolidated under subsection (b) into a single common interest community by agreement of the unit owners or exercise of a special declarant right. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the pre-existing common interest communities, and the operations and activities of all associations of the pre-existing common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

(b) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the pre-existing common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. If a special declarant right is exercised in a common interest community, approval by the unit owners is not required and the declarant may execute the agreement on behalf of the common interest community. The agreement must be recorded in every [county] in which a portion of the common interest community is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest

community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the pre-existing common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing common interest community.

SECTION 2-122. ADDITION OF UNSPECIFIED REAL ESTATE. In a planned community, if the right is originally reserved in the declaration, the declarant in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but, the amount of real estate added to the planned community pursuant to this section may not exceed 10 percent of the real estate described in Section 2-105(a)(3) and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to Section 2-105(a)(5).

SECTION 2-123. MASTER PLANNED COMMUNITIES.

(a) The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least [500] units that may be used for residential purposes, and at the time of the reservation that declarant owns or controls more than [500] acres on which the units may be built.

(b) If the requirements of subsection (a) are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the

information required by Section 2-105(a)(3) through (14) until the declaration is amended under subsection (c).

(c) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain:

(1) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser; and

(2) all the information required by Section 2-105(a)(3) through (14) with respect to that real estate.

(d) The only real estate in a master planned community subject to this [act] are units that have been declared or which are being offered for sale and any other real estate described pursuant to subsection (c). Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in [Article] 4 apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection (c).

(f) Limitations in this [act] on the addition of unspecified real estate do not apply to a master planned community.

(g) The period of declarant control of the association for a master planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving notice in a record to all the unit owners, voluntarily surrenders all rights to control the activities of the association.

SECTION 2-124. TERMINATION FOLLOWING CATASTROPHE. If substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice under Section 3-121 of a meeting of unit owners to consider termination under Section 2-118 will not likely result in receipt of the notice, the executive board or any other interested person may commence an action in [insert appropriate court] seeking to terminate the common interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may issue any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

SECTION 2-125. ADVERSE POSSESSION; PRESCRIPTIVE EASEMENT. A unit owner or person claiming through a unit owner may not acquire title by adverse possession to, or an easement by prescription in, a common element in derogation of the title of another unit owner or the association.

[ARTICLE] 3

MANAGEMENT OF THE COMMON INTEREST COMMUNITY

SECTION 3-101. ORGANIZATION OF UNIT OWNERS ASSOCIATION. A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under Section 2-118 or their heirs, successors, or assigns. The association must have an executive board. The association must be organized as a profit or nonprofit corporation, trust, limited liability company, partnership, [unincorporated association,] or any other form of organization authorized by the law of this state.

SECTION 3-102. POWERS AND DUTIES OF UNIT OWNERS ASSOCIATION.

(a) Except as otherwise provided in subsection (b) and other provisions of this [act], the association

(1) shall adopt and may amend bylaws and may adopt and amend rules;

(2) shall adopt and may amend budgets under Section 3-123, may collect assessments for common expenses from unit owners, and may invest funds of the association;

(3) may hire and discharge managing agents and other employees, agents, and independent contractors;

(4) may institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community, subject to Section 3-124;

(5) may make contracts and incur liabilities;

(6) may regulate the use, maintenance, repair, replacement, and modification of

common elements;

(7) may cause additional improvements to be made as a part of the common elements;

(8) may acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but:

(A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to Section 3-112; and

(B) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to Section 3-112;

(9) may grant easements, leases, and licenses through or over the common elements, but a grant to a unit owner that benefits the owner's unit is allowed only by reallocation under Section 2-108(c) of the common element to a limited common element;

(10) may impose and receive any payments, fees, or charges for:

(A) the use, rental, or operation of the common elements, other than limited common elements described in Section 2-102(2) and (4); and

(B) services provided to unit owners;

(11) may impose charges for late payment of assessments and, after notice and an opportunity to be heard, may impose reasonable fines for violations of the declaration, bylaws, and rules of the association;

(12) may impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by Section 4-109, or statements of unpaid assessments;

(13) may provide for the indemnification of its officers and executive board and

maintain directors and officers liability insurance;

(14) except to the extent limited by the declaration, may assign its right to future income, including the right to receive assessments;

(15) may exercise any other powers conferred by the declaration or bylaws;

(16) may exercise all other powers that may be exercised in this state by organizations of the same type as the association;

(17) may exercise any other powers necessary and proper for the governance and operation of the association;

(18) may require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; and

(19) may suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:

(A) deny a unit owner or other occupant access to the owner's unit;

(B) suspend a unit owner's right to vote;

(C) prevent a unit owner from seeking election as a director or officer of the association; or

(D) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person.

(b) The declaration may not limit the power of the association beyond the limit authorized in subsection (a)(18) to:

(1) deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons; or

(2) institute litigation or an arbitration, mediation, or administrative proceeding against any person, subject to the following:

(A) the association shall comply with Section 3-124, if applicable, before instituting any proceeding described in Section 3-124 (a) in connection with construction defects; and

(B) the executive board promptly shall provide notice to the unit owners of any legal proceeding in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association.

(c) If a tenant of a unit owner violates the declaration, bylaws, or rules of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) exercise directly against the tenant the powers described in subsection (a)(11);

(2) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and

(3) enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

(d) The rights referred to in subsection (c)(3) may be exercised only if the tenant or unit owner fails to cure the violation within 10 days after the association notifies the tenant and unit owner of that violation.

(e) Unless a lease otherwise provides, this section does not:

(1) affect rights that the unit owner has to enforce the lease or that the association

has under other law; or

(2) permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules.

(f) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) the association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(g) The executive board's decision under subsection (f) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

(h) The executive board shall establish a reasonable method for unit owners to communicate among themselves and with the executive board on matters concerning the association.

SECTION 3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS.

(a) Except as otherwise provided in the declaration, the bylaws, subsection (b), or other provisions of this [act], the executive board acts on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under [insert reference to state nonprofit corporation law]. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) The executive board may not:

- (1) amend the declaration except as provided in Section 2-117;
- (2) amend the bylaws;
- (3) terminate the common interest community;
- (4) elect members of the executive board but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or
- (5) determine the qualifications, powers, duties, or terms of office of executive board members.

(c) The executive board shall adopt budgets as provided in Section 3-123.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before the

period ends. In that event, the declarant may require during the remainder of the period that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

Regardless of the period provided in the declaration, and except as provided in Section 2-123(g), a period of declarant control terminates no later than the earliest of:

(1) [60] days after conveyance of [three-fourths] of the units that may be created to unit owners other than a declarant;

(2) two years after all declarants have ceased to offer units for sale in the ordinary course of business;

(3) two years after any right to add new units was last exercised; or

(4) the day the declarant, after giving notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

(e) Not later than 60 days after conveyance of [one-fourth] of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of [one-half] of the units that may be created to unit owners other than a declarant, not less than [one-third] of the members of the executive board must be elected by unit owners other than the declarant.

(f) Except as otherwise provided in Section 2-120(i), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. Unless the declaration provides for the election of officers by the unit owners, the executive board shall elect the officers. The executive board members and officers shall take office upon election or appointment.

(g) A declaration may provide for the appointment of specified positions on the executive board by persons other than the declarant during or after the period of declarant control. It also may provide a method for filling vacancies in those positions, other than by election by the unit owners. However, after the period of declarant control, appointed members:

- (1) may not comprise more than [one third] of the board; and
- (2) have no greater authority than any other member of the board.

SECTION 3-104. SPECIAL DECLARANT RIGHTS.

(a) In this section:

(1) “Involuntary transfer” means a transfer by foreclosure of a mortgage, deed in lieu of foreclosure, tax sale, judicial sale, or sale in a bankruptcy or receivership proceeding of real estate owned by a declarant.

(2) “Non-affiliate successor” means a person that succeeds to a special declarant right and is not an affiliate of the declarant that transferred the special declarant right to the person.

(b) A special declarant right is an interest in real estate. The interest is appurtenant to:

- (1) all units owned by the declarant, and
- (2) real estate that is subject to a development right.

(c) A declarant that no longer owns a unit or a development right ceases to have any special declarant rights.

(d) A declarant may voluntarily transfer part or all of a special declarant right only by an instrument that describes the special declarant right being transferred. The transfer becomes effective when recorded in every [county] in which any portion of the common interest community is located.

(e) Except as otherwise provided subsection (h), (i), (k), or (l), a successor to a special declarant right is subject to all obligations and liabilities imposed on the transferor by this [act] or the declaration.

(f) If a declarant transfers a special declarant right to an affiliate of the declarant, the transferor and the successor are jointly and severally liable for all obligations and liabilities imposed on either person by this [act] or the declaration. Lack of privity does not deprive a unit owner of standing to maintain an action to enforce any obligation or liability of the transferor or successor.

(g) A declarant that transfers a special declarant right to a non-affiliate successor:

(1) remains liable for an obligation or liability imposed by this [act] or the declaration, including a warranty obligation, that arose before the transfer; and

(2) is not liable for an obligation or liability imposed on the successor by this [act] or the declaration that arose after the transfer.

(h) A non-affiliate successor that succeeds to fewer than all special declarant rights held by the transferor is not subject to an obligation or liability that relates to a special declarant right not transferred to the successor.

(i) A non-affiliate successor is not liable for an obligation or liability imposed by this [act] or the declaration that relates to:

(1) a misrepresentation by a previous declarant;

(2) a warranty obligation on an improvement made by a previous declarant or before the common interest community was created;

(3) breach of a fiduciary obligation by a previous declarant or the previous declarant's appointees to the executive board; or

(4) an obligation or liability imposed on the transferor as a result of the transferor's act or omission after the transfer.

(j) If an involuntary transfer includes a special declarant right, the transferee may elect to acquire or reject the special declarant right. A transferee that elects to acquire the special declarant right is a successor declarant. The election is effective only if the judgment or instrument conveying title describes the special declarant right.

(k) A successor to a special declarant right by an involuntary transfer may declare in a recorded instrument the successor's intent to hold the right solely for transfer to another person. After recording the instrument, the successor may not exercise a special declarant right, other than a right under Section 3-103(d) to control the executive board, and an attempt to exercise a special declarant right in violation of this subsection is void. A successor that complies with this subsection is not liable for an obligation or liability imposed by this [act] or the declaration other than liability for the successor's act or omission under Section 3-103(d).

(l) This section does not subject a successor to a special declarant right to a claim against or obligation of a transferor, other than a claim or obligation imposed by this [act] or the declaration.

SECTION 3-105. TERMINATION OF CONTRACTS AND LEASES.

(a) Within two years after the executive board elected by the unit owners pursuant to Section 3-103(f) takes office, the association may terminate without penalty, upon not less than [90] days' notice to the other party, any of the following if it was entered into before the executive board was elected:

(1) any management, maintenance, operations, or employment contract, or lease of recreational or parking areas or facilities; or

(2) any other contract or lease between the association and a declarant or an affiliate of a declarant;

(b) The association may terminate without penalty, at any time after the executive board elected by the unit owners pursuant to Section 3-103(f) takes office upon not less than [90] days' notice to the other party, any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into.

(c) This section does not apply to:

(1) any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or

(2) a proprietary lease.

SECTION 3-106. BYLAWS.

(a) The bylaws of the association must:

(1) provide the number of members of the executive board and the titles of the officers of the association;

(2) provide for election by the executive board or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) specify the powers the executive board or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in this [act] or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for any matter required by law of this state other than this [act] to appear in the bylaws of organizations of the same type as the association.

(b) Subject to the declaration and this [act], the bylaws may provide for any other necessary or appropriate matters, including matters that could be adopted as rules.

SECTION 3-107. UPKEEP OF COMMON INTEREST COMMUNITY.

(a) Except to the extent provided by the declaration, subsection (b), or Section 3-113(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit owner has under this [act], the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

SECTION 3-108. MEETINGS.

(a) The following requirements apply to unit owner meetings:

(1) An association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws.

(2) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the executive board, or unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. The unit owners may discuss at a special meeting a matter not described in the notice under paragraph (3) but may not take action on the matter without the consent of all unit owners.

(3) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any means described in Section 3-121. The notice of any meeting must state the time, date and place of the meeting and the items on the agenda, including:

(A) a statement of the general nature of any proposed amendment to the declaration or bylaws;

(B) any budget changes; and

(C) any proposal to remove an officer or member of the executive board.

(4) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

(5) A meeting of unit owners is not required to be held at a physical location if:

(A) the meeting is conducted by a means of communication that enables owners in different locations to communicate in real time to the same extent as if they were physically present in the same location; and

(B) the declaration or bylaws do not require that the owners meet at a physical location.

(6) In the notice for a meeting held at a physical location, the executive board may notify all unit owners that they may participate remotely in the meeting by a means of communication described in paragraph (5).

(b) The following requirements apply to meetings of the executive board and committees of the association authorized to act for the association:

(1) Meetings must be open to the unit owners except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

(A) consult with the association's attorney concerning legal matters;

(B) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(C) discuss labor or personnel matters;

(D) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(E) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

(2) For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the executive board. The executive board and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(3) During the period of declarant control, the executive board shall meet at least four times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. After termination of the period of declarant control, all executive board meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings.

(4) At each executive board meeting, the executive board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association.

(5) Unless the meeting is included in a schedule given to the unit owners, the secretary or other officer specified in the bylaws shall give notice of each executive board meeting to each board member and to the unit owners. The notice must be given at least 10 days before the meeting and must state the time, date, place, and agenda of the meeting.

(6) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(7) Unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process if:

(A) the meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(B) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in paragraph (4).

(8) After termination of the period of declarant control, unit owners may amend the bylaws to vary the procedures for meetings described in paragraph (7).

(9) During the period of declarant control, without meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent. After termination of the period of declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board.

(10) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. An action seeking relief for failure of the executive board to comply with this section may not be brought more than [60] days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of

that action is distributed to unit owners, whichever is later.

SECTION 3-109. QUORUM.

(a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if at the beginning of the meeting persons entitled to cast [20] percent of the votes in the association attend in person, by proxy, or by means of communication under Section 3-108(a)(5) or (6).

(b) Unless the bylaws specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

SECTION 3-110. VOTING; PROXIES; BALLOTS.

(a) Unit owners may vote at a meeting under subsection (b) or (c) or, when a vote is conducted without a meeting, by ballot in the manner provided in subsection (d).

(b) At a meeting of unit owners the following requirements apply:

(1) Unless the declaration or bylaws otherwise provide, unit owners may vote by voice vote, show of hands, standing, or any other method authorized at the meeting.

(2) If unit owners attend the meeting by a means of communication under Section 3-108(a)(5) or (6), the association shall implement reasonable measures to verify the identity of each unit owner attending remotely.

(c) Unless the declaration or bylaws otherwise provide, unit owners may vote by proxy subject to the following requirements:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy executed by a unit owner.

(2) When a unit owner votes by proxy, the association shall implement reasonable measures to verify the identity of the unit owner and the proxy holder.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding at a meeting.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person may not cast undirected proxies representing more than [15] percent of the votes in the association.

(d) Unless the declaration or bylaws otherwise provide, an association may conduct a vote without a meeting. The following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot without a meeting.

(2) The association shall deliver with the notice:

(A) instructions for casting a ballot;

(B) a paper ballot to every unit owner except a unit owner that has consented in a record to electronic voting; and

(C) if the association allows electronic voting, instructions for electronic voting.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) In the notice under paragraph (1) the association shall:

(A) state the percent of votes necessary to approve each matter other than election of directors;

(B) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than [three] days after the date the association delivers the ballot; and

(C) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) A unit owner may revoke a ballot before the time and date under paragraph (4) by which the ballot must be delivered to the association. Unless the declaration or bylaws otherwise provide, a ballot is not revoked by death or disability after delivery to the association.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(7) The association shall verify that each paper and electronic ballot is cast by the unit owner having a right to do so.

(8) A unit owner consents in a record to electronic voting by casting an electronic ballot.

(9) An association that allows electronic ballots shall create a record of electronic votes capable of retention, retrieval, and review.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) this section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters;

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners are entitled to notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

(h) Unless a different number or fraction of the votes in an association is required by this [act] or the declaration, a majority of the votes cast determines the outcome of a vote taken at a meeting or without a meeting.

(i) If a unit is owned by more than one person and:

(1) only one owner casts a vote, that vote must be counted as casting all votes allocated to the unit by the declaration; and

(2) more than one owner casts a vote for the unit, no vote from any owner of the unit may be counted unless the declaration provides a manner for allocating votes cast by multiple owners of a unit.

SECTION 3-111. TORT AND CONTRACT LIABILITY; TOLLING OF LIMITATION PERIOD.

(a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the common interest community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner, and all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

(c) Except as provided in Section 4-116(d) with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under this [act] is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by Section 3-117.

SECTION 3-112. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least [80] percent of the votes in the association, including [80] percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to

convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to non-residential uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least [80] percent of the votes in the association, including [80] percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to Section 2-118, is void.

(c) An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every [county] in which a portion of the common interest community is situated, and is effective only

upon recordation.

(d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (a), but the contract is not enforceable against the association until approved pursuant to subsections (a), (b), and (c). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(e) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

(f) A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not deprive any unit of its rights of access and support.

(g) Unless the declaration otherwise provides, if the holders of first security interests on 80 percent of the units that are subject to security interests on the day the unit owners' agreement under subsection (c) is recorded consent in writing:

(1) a conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and

(2) an encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

(h) The consents by holders of first security interests on units described in subsection (g), or a certificate of the secretary affirming that those consents have been received by the association, may be recorded at any time before the date on which the agreement under

subsection (c) becomes void. Consents or certificates so recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting first security interest holders, regardless of later sales or encumbrances on those units. Even if the required percentage of first security interest holders so consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration, or created by the association after the declaration was recorded.

(i) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

SECTION 3-113. INSURANCE.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available and subject to reasonable deductibles:

(1) property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies;

(2) commercial general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units; and

(3) fidelity insurance.

(b) In the case of a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, the insurance maintained under subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be given to all unit owners. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsections (a) and (b) must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against any unit owner or member of the owner's household;

(3) no act or omission by a unit owner, unless acting within the owner's scope of authority on behalf of the association, voids the policy or is a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any

holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to subsection (h), the proceeds must be disbursed first for the repair or replacement of the damaged property, and the association, unit owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced, or the common interest community is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request made in a record, to any unit owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until [30] days after notice of the proposed cancellation or non-renewal has been mailed to the association, each unit owner, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

- (1) the common interest community is terminated, in which case Section 2-118 applies;
- (2) repair or replacement would be illegal; or
- (3) [80] percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild.

(i) The cost of repair or replacement in excess of insurance proceeds, deductibles, and reserves is a common expense. If the entire common interest community is not repaired or replaced:

(1) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community; and

(2) except to the extent that other persons will be distributees:

(A) the insurance proceeds attributable to units and limited common elements that are not repaired or replaced must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear; and

(B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows:

(i) in a condominium, in proportion to the common element interests of all the units; and

(ii) in a cooperative or planned community, in proportion to the common expense liabilities of all the units.

(j) If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under Section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(k) This section may be varied or waived in the case of a common interest community all of whose units are restricted to nonresidential use.

SECTION 3-114. SURPLUS FUNDS. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid annually to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

SECTION 3-115. ASSESSMENTS.

(a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c) through (f), or as otherwise provided in this [act], all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to Section 2-107(a) and (b). The association may charge interest on any past due assessment or portion thereof at the rate established by the association, not exceeding [18] percent per year.

(c) The declaration may provide that:

(1) a common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) a common expense identified in the declaration benefitting fewer than all of the units or their owners must be assessed exclusively against the units or unit owners benefitted, but if the common expense is for the maintenance, repair, or replacement of a common element other than a limited common element, the expense may be assessed exclusively against them only if the declaration reasonably identifies the common expense by specific listing or category;

(3) the costs of insurance must be assessed in proportion to risk; and

(4) the costs of utilities must be assessed in proportion to usage, whether metered or reasonably estimated.

(d) Assessments to pay a judgment against the association may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) The association may assess exclusively against an owner's unit a common expense, including expense relating to damage to or loss of property, caused by:

(1) willful misconduct of the unit owner or a guest or invitee of the unit owner; or

(2) failure of the unit owner to comply with a maintenance standard prescribed by the declaration or a rule, if the standard contains a statement that an owner may be liable for damage or loss caused by failure to comply with the standard.

(f) Before an association makes an assessment under subsection (e), the association must give notice to the unit owner and provide an opportunity for a hearing. The assessment is limited to the expense the association incurred under subsection (e) less any insurance proceeds received by the association, whether the difference results from the application of a deductible or otherwise.

(g) If common expense liabilities are reallocated, common expense assessments and any instalment thereof not yet due must be recalculated in accordance with the reallocated common expense liabilities.

(h) The association may adopt a rule that allows unit owners to prepay assessments at a reasonable discount.

SECTION 3-116. LIEN FOR SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Any priority accorded to the association's lien under this section is a priority in right and not merely a priority in payment from the proceeds of the sale of the unit by a competing lienholder or encumbrancer. Unless the declaration provides otherwise, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. [A lien under this section is not subject to [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

(b) A lien under this section has priority over all other liens and encumbrances on a unit except:

(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances that the association creates, assumes, or takes subject to;

(2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent;

(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and

(4) mechanics' or materialmen's liens to the extent that law of this state other than this [act] gives priority to mechanics' or materialmen's liens.

(c) A lien under this section also has priority over a security interest described in subsection (b)(2), but only to the extent of:

(1) the unpaid amount of assessments for common expenses, not to exceed six months for each budget year of the association, as based on the periodic budget adopted by the association under Section 3-115(a) for the applicable year; and

(2) reasonable attorney's fees and costs incurred by the association in enforcing the association's lien.

(d) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(e) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(f) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within [three] years after the full amount of the assessments becomes due.

(g) This section does not prohibit an action by an association against a unit owner to recover past due sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

(i) The association upon request made in a record shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished

within [10] business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(j) On nonpayment of an assessment on a unit, the association is entitled to obtain possession of the unit under [insert reference to forcible entry and detainer act of this State].

(k) The association's lien may be foreclosed as provided in this subsection and subsection (p):

(1) in a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under [insert appropriate state statute]];

(2) in a cooperative whose unit owners' interests in the units are real estate, the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under [insert appropriate state statute]] [or by power of sale under subsection (1)]; [and]

(3) in a cooperative whose unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under [insert reference to Article 9, Uniform Commercial Code][;and]

[(4) in a foreclosure under [insert reference to state power of sale statute], the association shall give the notice required by statute or, if there is no such requirement, reasonable notice of its action to all lien holders of the unit whose interest would be affected].

[(l) If the unit owner's interest in a unit in a cooperative is real estate, the following requirements apply:

(1) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation and at any time, date, and place. The association shall give to the unit owner and any lessee of the unit owner reasonable

notice in a record of the time, date, and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time and date after which a private disposition may be made. The same notice must also be sent to any other person that has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. A sale may not be held until five weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure sale.

(3) The proceeds of a foreclosure sale must be applied in the following order:

(A) the reasonable expenses of sale;

(B) the reasonable expenses of securing possession before sale; the reasonable expenses of holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges and premiums on insurance; and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney's fees, costs, and other legal expenses incurred by the association;

(C) satisfaction of the association's lien;

(D) satisfaction in the order of priority of any subordinate claim of record;

and

(E) remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

(5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees and costs of the creditor.]

(m) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The receivership is governed by [insert state law generally applicable to receiverships]. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted

by the association pursuant to Section 3-115.

(n) An association may not commence an action to foreclose a lien on a unit under this section or to evict a unit owner under subsection (j) unless:

(1) the unit owner, at the time the action is commenced, owes a sum equal to at least [three] months of common expense assessments based on the periodic budget last adopted by the association pursuant to Section 3-115(a) and the unit owner has failed to accept or comply with a payment plan offered by the association; and

(2) the executive board votes to commence a foreclosure action specifically against that unit or to evict the unit owner.

(o) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

(1) unpaid assessments;

(2) late charges;

(3) reasonable attorney's fees and costs and other reasonable collection charges;

and

(4) all other unpaid fees, charges, fines, penalties, interest, and late charges.

(p) If the only sums due with respect to a unit are fines and related sums imposed against the unit, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner for the fines and related sums and has perfected a judgment lien against the unit under [insert reference to state statute on perfection of judgments].

(q) Every aspect of a foreclosure, sale, or other disposition under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

[(r) Foreclosure of a lien under this section does not terminate an interest that is

subordinate to the lien to any extent unless the association provides notice of the foreclosure to the record holder of the subordinate interest.]

Legislative Note: *In a state that permits only judicial foreclosure of an association's lien, subsection (r) should be omitted. In a state that permits nonjudicial foreclosure, but by statute provides that a foreclosure sale does not extinguish a subordinate lien unless the subordinate lienholder was provided notice of the sale, subsection (r) should be omitted.*

SECTION 3-117. OTHER LIENS.

(a) In a condominium or planned community:

(1) Except as otherwise provided in paragraph (2), a judgment for money against the association [if recorded] [if docketed] [if [insert other procedures required under state law to perfect a lien on real estate as a result of a judgment]], is not a lien on the common elements, but is a lien in favor of the judgment lien holder against all of the other real estate of the association and all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lien holder the amount of the lien attributable to the unit, and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio that the unit owner's common expense liability

bears to the common expense liabilities of all unit owners the units of which are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association must be indexed in the name of the common interest community and the association and, when so indexed, is notice of the lien against the units.

(b) In a cooperative:

(1) If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(2) Whether a unit owner's unit is subject to the claims of the association's creditors, no other property of a unit owner is subject to those claims.

SECTION 3-118. ASSOCIATION RECORDS.

(a) An association must retain the following:

(1) detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and executive board other than executive sessions, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association;

(3) the names of unit owners in a form that permits preparation of a list of the names of all owners and the addresses at which the association communicates with them, in

alphabetical order showing the number of votes each owner is entitled to cast;

(4) its original or restated organizational documents, if required by law other than this [act], bylaws and all amendments to them, and all rules currently in effect;

(5) all financial statements and tax returns of the association for the past three years;

(6) a list of the names and addresses of its current executive board members and officers;

(7) its most recent annual report delivered to the [Secretary of State], if any;

(8) financial and other records sufficiently detailed to enable the association to comply with Section 4-109;

(9) copies of current contracts to which it is a party;

(10) records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

(11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) and (d), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1) during reasonable business hours or at a mutually convenient time and location; and

(2) upon [five] days' notice in a record reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

- (1) personnel, salary, and medical records relating to specific individuals;
- (2) contracts, leases, and other commercial transactions to purchase or provide goods or services, currently being negotiated;
- (3) existing or potential litigation or mediation, arbitration, or administrative proceedings;
- (4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;
- (5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
- (6) information the disclosure of which would violate law other than this [act];
- (7) records of an executive session of the executive board; or
- (8) individual unit files other than those of the requesting owner.

(d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner.

(f) An association is not obligated to compile or synthesize information.

(g) Information provided pursuant to this section may not be used for commercial purposes.

SECTION 3-119. ASSOCIATION AS TRUSTEE. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust

powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

SECTION 3-120. RULES.

(a) Before adopting, amending, or repealing any rule, the executive board shall give all unit owners notice of:

(1) its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(2) a date on which the executive board will act on the proposed rule or amendment after considering comments from unit owners.

(b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule.

(c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited

common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number, and manner of those displays.

(e) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(f) An association may adopt rules that affect the use of or behavior in units that may be used for residential purposes, only to:

(1) implement a provision of the declaration;

(2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or

(3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable.

SECTION 3-121. NOTICE TO UNIT OWNERS.

(a) An association shall deliver any notice required to be given by the association under this [act] to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

(1) hand delivery to each unit owner;

(2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(3) electronic means, if the unit owner has given the association an electronic address; or

(4) any other method reasonably calculated to provide notice to the unit owner.

(b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

SECTION 3-122. REMOVAL OF OFFICERS AND DIRECTORS.

(a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners, at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

(1) a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) a member appointed under Section 3-103(g) may be removed only by the person that appointed that member; and

(3) the unit owners may not consider whether to remove a member of the executive board or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the executive board or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

SECTION 3-123. ADOPTION OF BUDGETS; SPECIAL ASSESSMENTS.

(a) The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than [30] days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting a majority of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. The assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) and the unit owners do not reject the proposed assessment.

SECTION 3-124. LITIGATION INVOLVING DECLARANT.

(a) The following requirements apply to an association's authority under Section 3-102 (a)(4) to institute and maintain a proceeding alleging a construction defect with respect to the common interest community, whether by litigation, mediation, arbitration, or administratively, against a declarant or an employee, independent contractor, or other person directly or indirectly providing labor or materials to a declarant:

(1) Subject to subsection (e), before the association institutes a proceeding described in this section, it shall provide notice in a record of its claims to the declarant and those persons that the association seeks to hold liable for the claimed defects. The text of the notice

may be in any form reasonably calculated to give notice of the general nature of the association's claims, including a list of the claimed defects. The notice may be delivered by any method of service and may be addressed to any person if the method of service used:

(A) provides actual notice to the person named in the claim; or

(B) would be sufficient to give notice to the person in connection with commencement of an action by the association against the person.

(2) Subject to subsection (e), the association may not institute a proceeding against a person until [45] days after the association sends notice of its claim to that person.

(3) During the period described in paragraph (2), the declarant and any other person to which the association gave notice may present to the association a plan to repair or otherwise remedy the construction defects described in the notice. If the association does not receive a timely remediation plan from a person to which it gave notice, or if the association does not accept the terms of any plan submitted, the association may institute a proceeding against the person.

(4) If the association receives one or more timely remediation plans, the executive board shall consider promptly those plans and notify the persons to which it directed notice whether the plan is acceptable as presented, acceptable with stated conditions, or not accepted.

(5) If the association accepts a remediation plan from a person the association seeks to hold liable for the claimed defect, or if a person agrees to stated conditions to an otherwise acceptable plan, the parties shall agree on a period for implementation of the plan. The association may not institute a proceeding against the person during the time the plan is being diligently implemented.

(6) Except as otherwise provided in Section 4-116(d) for warranty claims, any

statute of limitation affecting the association's right of action against a declarant or other person is tolled during the period described in paragraph (2) and during any extension of that time because a person to which notice was directed has commenced and is diligently pursuing the remediation plan.

(b) After the time described in subsection (a)(2) expires, whether or not the association agrees to any remediation plan, a proceeding may be instituted by:

(1) the association against a person to which notice was directed which fails to submit a timely remediation plan, the plan of which is not acceptable, or which fails to pursue diligent implementation of that plan; or

(2) a unit owner with respect to the owner's unit and any limited common elements assigned to that unit, regardless of any action of the association.

(c) This section does not preclude the association from making repairs necessary to mitigate damages or to correct any defect that poses a significant and immediate health or safety risk.

(d) Subject to the other provisions of this section, the determination of whether and when the association may institute a proceeding described in this section may be made by the executive board. The declaration may not require a vote by any number or percent of unit owners as a condition to institution of a proceeding.

(e) This section does not prevent an association from seeking equitable relief at any time without complying with subsection (a)(1) or (2).

SECTION 3-125. EMERGENCY POWERS.

(a) In this section, "emergency" means:

(1) a state of emergency declared by a government for an area that includes the

common interest community; or

(2) an event or condition that constitutes an imminent:

(A) threat to the health or safety of the public or residents of the common interest community;

(B) threat to the habitability of units; or

(C) risk of substantial economic loss to the association.

(b) In an emergency, this section governs the authority of an executive board to respond to the emergency. If another provision of this [act] is inconsistent with this section, this section prevails.

(c) The executive board may call a unit owners meeting to respond to an emergency by giving notice to the unit owners in a manner that is practicable and appropriate under the circumstances.

(d) The executive board may call a board meeting to respond to an emergency by giving notice to the unit owners and board members in a manner that is practicable and appropriate under the circumstances. A quorum is not required for a meeting under this subsection. After giving notice under this subsection, the board may take action by vote without a meeting.

(e) In an emergency, the executive board may, without regard to limitations in the declaration, bylaws, or rules, take action it considers necessary to protect the interests of the unit owners and other persons holding interests in the common interest community, acting in a manner reasonable under the circumstances.

(f) If, under subsection (e), the board determines by a two-thirds vote that a special assessment is necessary:

(1) the assessment becomes effective immediately or in accordance with the terms

of the vote; and

(2) the board may spend funds paid on the assessment only in accordance with the action taken by the board.

(g) The executive board may use funds of the association, including reserves, to pay the reasonable costs of an action under subsection (e).

(h) After taking an action under this section, the executive board promptly shall notify the unit owners of the action in a manner that is practicable and appropriate under the circumstances.

[ARTICLE] 4

PROTECTION OF PURCHASERS

SECTION 4-101. APPLICABILITY; WAIVER.

(a) This [article] applies to all units subject to this [act], except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to non-residential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- (1) a gratuitous disposition of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition to a dealer;
- (6) a disposition that may be canceled at any time and for any reason by the purchase without penalty; or
- (7) a disposition of a unit restricted to nonresidential purposes.

SECTION 4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.

(a) Except as otherwise provided in subsection (b), a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of Sections 4-103, 4-104, 4-105, and 4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (Section 3-104) or to a dealer that intends to offer

units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or dealer that offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in Section 4-108(a). The declarant or dealer that prepared all or a part of the public offering statement is liable under Sections 4-108 and 4-117 for any false or misleading statement set forth therein or for any omission of a material fact therefrom.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of Sections 4-103, 4-104, 4-105, and 4-106 as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

SECTION 4-103. PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS.

(a) Except as otherwise provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) the name and principal address of the declarant and of the common interest community, and a statement that the common interest community is a condominium, cooperative, or planned community;

(2) a general description of the common interest community, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common interest community;

(3) the number of units in the common interest community;

(4) copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; the bylaws and any rules of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under Section 3-105;

(5) the financial information required by subsection (b);

(6) any services not reflected in the budget that the declarant provides, or expenses that the declarant pays and which the declarant expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(7) any initial or special fee due from the purchaser or seller at the time of sale, together with a description of the purpose and method of calculating the fee;

(8) a description of any liens, defects, or encumbrances on or affecting the title to the common interest community;

(9) a description of any financing offered or arranged by the declarant;

(10) the terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(11) a statement that:

(A) within 15 days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

(B) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant [10] percent of the sales price of the unit plus [10] percent of the share, proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community; and

(C) if a purchaser receives the public offering statement more than 15 days before signing a contract, the purchaser may not cancel the contract;

(12) a statement of any unsatisfied judgment or pending action against the association, and the status of any pending action material to the common interest community of which a declarant has actual knowledge;

(13) a statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to Section 4-108, together with the name and address of the escrow agent;

(14) any restraints on alienation of any portion of the common interest community and any restrictions:

(A) on use, occupancy, and alienation of the units; and

(B) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(15) a description of the insurance coverage provided for the benefit of unit owners;

(16) any current or expected fees or charges to be paid by unit owners for the use

of the common elements and other facilities related to the common interest community;

(17) the extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to Section 4-119;

(18) a brief narrative description of any zoning and other land use requirements affecting the common interest community;

(19) any other unusual and material circumstances, features, and characteristics of the common interest community and the units;

(20) in a cooperative, a statement whether the unit owners will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative and a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative;

(21) a description of any arrangement described in Section 1-209 binding the association; and

(22) in a condominium or planned community containing a unit not having horizontal boundaries described in the declaration, a statement whether the unit may be sold after termination under Section 2-118 of the common interest community without consent of all the unit owners.

(b) The public offering statement must contain any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for [one] year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's

assumptions concerning occupancy and inflation factors. The budget must include:

- (A) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;
 - (B) a statement of any other reserves;
 - (C) the projected common expense assessment by category of expenditures for the association; and
 - (D) the projected monthly common expense assessment for each type of unit.
- (c) If a common interest community composed of not more than 12 units is not subject to any development right and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may include the information otherwise required by subsection (a) (9), (10), (15), (16), (17), (18), and (19) and the narrative descriptions of documents required by subsection (a)(4).
- (d) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

SECTION 4-104. SAME; COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS. If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by Section 4-103:

- (1) the maximum number of units, and the maximum number of units per acre, that may be created;
- (2) a statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding

use restrictions;

(3) if any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

(4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) a statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in paragraph (3);

(6) a statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the common interest community will be compatible with existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

(7) general descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(8) a statement of any limitations as to the locations of any building or other improvement that may be made within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(9) a statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

(10) a statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(12) a statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

SECTION 4-105. SAME; TIME SHARES. If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by Section 4-103:

- (1) the number and identity of units in which time shares may be created;
- (2) the total number of time shares that may be created;
- (3) the minimum duration of any time shares that may be created; and
- (4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in Section 3-116.

SECTION 4-106. SAME; COMMON INTEREST COMMUNITIES CONTAINING

CONVERSION BUILDINGS.

(a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by Section 4-103:

(1) a statement by the declarant, based on a report prepared by an independent [registered] architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

SECTION 4-107. SAME; REGISTRATION WITH GOVERNMENT AGENCY. If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States [or with the state under [cite to appropriate state time-share statute or other state statute]], a declarant satisfies all requirements of this [act] relating to the preparation of a public offering statement if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission [or [the appropriate state agency]]. [An interest in a common interest community is not a security under [cite to appropriate state securities regulation statutes].]

Legislative Note: *A state that has an agency that regulates time-share developments or other types of common interest communities and requires the preparation of a public offering statement should refer in the brackets in the first sentence to the statute and provide the name of the state agency. If a state's securities regulation statute classifies an interest in a common interest community as a security, the second sentence should be inserted if the state considers that classification inappropriate.*

SECTION 4-108. PURCHASER'S RIGHT TO CANCEL.

(a) A person required to deliver a public offering statement pursuant to Section 4-102(c) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement pursuant to Section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to [10] percent of the sale price of the unit, plus [10] percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community.

SECTION 4-109. RESALES OF UNITS.

(a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under Section 4-101(b), a unit owner shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the bylaws, the rules of the association, and the declaration other than plats and plans. The unit

owner also shall furnish a certificate containing:

(1) a statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association;

(2) a statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(3) a statement of any other fees payable by the owner of the unit being sold;

(4) a statement of any capital expenditures approved by the association for the current and succeeding fiscal years;

(5) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

(6) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(7) the current operating budget of the association;

(8) a statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(9) a statement describing any insurance coverage provided for the benefit of unit owners;

(10) a statement as to whether the executive board has given or received notice in a record that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

(11) a statement as to whether the executive board has received notice in a record from a governmental agency of any violation of environmental, health, or building codes with

respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community which has not been cured;

(12) a statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;

(13) a statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or termination of the common interest community;

(14) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association;

(15) a statement describing any pending sale or encumbrance of common elements; and

(16) a statement disclosing the effect on the unit to be conveyed of any restriction on the right to use or occupy the unit, including a restriction on a lease or other rental of the unit.

(b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for

[five] days thereafter or until conveyance, whichever first occurs.

SECTION 4-110. ESCROW OF DEPOSITS. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to Section 4-102(c) must be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by [a licensed title insurance company] [an attorney] [a licensed real estate broker] [an independent bonded escrow company or] an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser.

SECTION 4-111. RELEASE OF LIENS.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to Section 4-102(c), a seller:

(1) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

(A) in a condominium, that unit and its common element interest; and

(B) in a cooperative or planned community, that unit and any limited common elements assigned thereto; or

(2) shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate in [cite to appropriate references to general state law].

(b) Before conveying real estate to the association, the declarant shall have that real estate

released from:

(1) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and

(2) all other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

SECTION 4-112. CONVERSION BUILDINGS.

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For [60] days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that [60]-day period, the offeror may not offer to dispose of an interest in that unit during the following [180] days at a price or on terms more favorable to the offeree than the price or terms

offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to non-residential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of [insert appropriate state summary process statute], the notice also constitutes a notice to vacate specified by that statute.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

SECTION 4-113. EXPRESS WARRANTIES OF QUALITY.

(a) Express warranties made by a declarant to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the common interest community that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the common interest community, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(2) any model or description of the physical characteristics of the common interest

community, including plans and specifications of or for improvements, creates an express warranty that the common interest community will conform to the model or description unless the model or description clearly discloses that it is only proposed or is subject to change;

(3) any description of the quantity or extent of the real estate comprising the common interest community, including plats or surveys, creates an express warranty that the common interest community will conform to the description, subject to customary tolerances; and

(4) a provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

(b) Neither formal words, such as “warranty” or “guarantee”, nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by the declarant.

SECTION 4-114. IMPLIED WARRANTIES OF QUALITY.

(a) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant and any dealer impliedly warrants that a unit and the common elements in the common interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant or dealer or made by any person before the creation of the common interest community, will be:

(1) free from defective materials; and

(2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in Section 4-115.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

SECTION 4-115. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY.

(a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) may be excluded or modified by agreement of the parties; and

(2) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified

failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

SECTION 4-116. STATUTE OF LIMITATIONS FOR WARRANTIES.

(a) Unless a period of limitation is tolled under Section 3-111 or affected by subsection (d), a judicial proceeding for breach of any obligation arising under Section 4-113 or 4-114 must be commenced within six years after the [claim for relief][cause of action] accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a [claim for relief] [cause of action] for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, as to:

(A) a common element that is added to the common interest community by exercise of development rights, at the time the first unit which was added to the condominium by the same exercise of development rights is conveyed to a bona fide purchaser; or

(B) a common element within any other portion of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common interest community, the [claim for relief] [cause of

action] accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce any warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney's fees, are common expenses, and must be added to the budget annually adopted by the association under Section 3-115. If the committee is so created, the period of limitation for a warranty claim considered by the committee begins to run from the date of the first meeting of the committee.

**SECTION 4-117. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION;
ATTORNEY'S FEES.**

(a) A declarant, association, unit owner, or any other person subject to this [act] may bring an action to enforce a right granted or obligation imposed by this [act], the declaration, or the bylaws. [Punitive damages may be awarded for a willful failure to comply with this [act].] The court may award reasonable attorney's fees and costs.

(b) Parties to a dispute arising under this [act], the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) a declarant may agree with the association to do so only after the period of declarant control has expired unless the agreement is made with an independent committee of the executive board elected pursuant to Section 4-116(d); and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

SECTION 4-118. LABELING OF PROMOTIONAL MATERIAL. No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as “MUST BE BUILT” or as “NEED NOT BE BUILT.”

SECTION 4-119. DECLARANT’S OBLIGATION TO COMPLETE AND RESTORE.

(a) Except for improvements labeled “NEED NOT BE BUILT,” the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to Section 2-109, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by Section 2-110, 2-111, 2-112, 2-113, 2-115, or 2-116.

SECTION 4-120. SUBSTANTIAL COMPLETION OF UNITS. In the case of a sale of a unit in which delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent [registered] architect, surveyor, or engineer, or by issuance of a

certificate of occupancy authorized by law.

[ARTICLE] 5

APPLICABILITY AND TRANSITION

SECTION 5-101. EFFECTIVE DATE.

Alternative A

(a) This amendment to this [act] takes effect on [the effective date of this [amendment]].

(b) Before [all-inclusive date], this amendment to this [act] applies only to:

(1) a common interest community created on or after [the effective date of this [act]]; and

(2) a common interest community created before [the effective date of this [act]] that amends its declaration to elect to be subject to this [act] as amended.

(c) [Except as provided in subsection (d), on] [On] and after [all-inclusive date] this amendment to this [act] applies to all common interest communities.

[(d) This amendment to this [act] does not apply to a common interest community created before [the effective date of this [act]] that elects not to be subject to this [act] by amending its declaration by vote or agreement of unit owners of units to which more than 50 percent of the votes in the association are allocated and recording the amendment before [all-inclusive date]. This subsection supersedes Section 2-117(a), any inconsistent provision of other law of this state, and any inconsistent provision in the declaration or bylaws of the common interest community.]

Alternative B

(a) This [act] takes effect on [the effective date of this [act]].

(b) Before [all-inclusive date], this [act] applies only to:

(1) a common interest community created on or after [the effective date of this

[act]]; and

(2) a common interest community created before [the effective date of this [act]] that amends its declaration to elect to be subject to this [act].

(c) [Except as provided in subsection (d), on] [On] and after [all-inclusive date] this [act] applies to all common interest communities.

[(d) This [act] does not apply to a common interest community created before [the effective date of this [act]] that elects not to be subject to this [act] by amending its declaration by vote or agreement of unit owners of units to which more than 50 percent of the votes in the association are allocated and recording the amendment before [all-inclusive date]. This subsection supersedes Section 2-117(a), any inconsistent provision of other law of this state, and any inconsistent provision in the declaration or bylaws of the common interest community.]

Legislative Note: *A state that has previously adopted the Uniform Common Interest Ownership Act should use Alternative A. A state that has no previous version of the Uniform Common Interest Ownership Act (2021) should use Alternative B.*

The “all-inclusive” date should be three years after the effective date of the act.

If a state decides that full application of the act to all pre-existing common interest communities is not appropriate, subsection (d) provides a procedure for pre-existing communities to elect to opt out of the act.

SECTION 5-102. PRIOR STATUTES. [Section] [Sections] [cite to all statutes expressly applicable to a planned community, condominium, cooperative, or horizontal property regime]:

(1) do not apply to a common interest community that is subject to this [act]; and

(2) apply to a common interest community created before [the effective date of this [act]] only until the community becomes subject to this [act].

Legislative Note: *For a state that previously adopted the Uniform Common Interest Ownership Act, the effective date in this section should be the effective date stated in the earlier adoption.*

After the all-inclusive date, unless the state adopts the optional bracketed provision in Section 5-101(d), the state should repeal any previous condominium statute identified in this section because this act will then apply to all condominiums in the state.

SECTION 5-103. RETROACTIVE APPLICATION.

(a) Except as provided in subsection (b), if a common interest community created before [the effective date of this [act]] becomes subject to this [act] on [all-inclusive date] or earlier, a provision of its declaration or bylaws inconsistent with this [act] is invalid unless:

(1) the provision is expressly permitted under Section 1-117; or

(2) the common interest community is a cooperative described in Section 1-202, a planned community described in Section 1-203, or a nonresidential or mixed-use common interest community described in Section 1-207.

(b) This [act] does not require a common interest community validly created before [the effective date of this [act]] to:

(1) comply with the requirements of this [act] for creation of a common interest community; or

(2) prepare or amend surveys, plats, or plans.

(c) This [act] does not invalidate an action validly taken or transaction validly entered into before a common interest community becomes subject to this [act].

Legislative Note: *For a state that previously adopted the Uniform Common Interest Ownership Act, the effective date in this section should be the effective date stated in the earlier adoption.*

SECTION 5-104. APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITY.

(a) Except for a cooperative described in Section 1-202, a planned community described in Section 1-203, and a nonresidential or mixed-use common interest community described in Section 1-207, the following sections apply to a common interest community created before [the

effective date of this [act]]:

- (1) Section 1-105;
- (2) Section 1-106;
- (3) Section 1-107;
- (4) Section 1-206;
- (5) Section 2-102;
- (6) Section 2-103;
- (7) Section 2-104;
- (8) Section 2-117(h) and (i);
- (9) Section 2-121;
- (10) Section 2-124;
- (11) Section 3-102(a)(1) through (6) and (11) through (16);
- (12) Section 3-103;
- (13) Section 3-111;
- (14) Section 3-116;
- (15) Section 3-118;
- (16) Section 3-124;
- (17) Section 4-109;
- (18) Section 4-117; and
- (19) Section 1-103 to the extent necessary to construe the sections listed in

paragraphs (1) through (18).

(b) The sections listed in subsection (a) apply only to an event or circumstance that occurs after [the effective date of this [act]] and do not invalidate provisions of the declaration or bylaws

of the common interest community existing on [the effective date of this [act]].

(c) This section does not apply to a common interest community that becomes subject to this [act] under Section 5-101 or by election under Section 1-202, 1-203, or 1-207.

Legislative Note: *For a state that previously adopted the Uniform Common Interest Ownership Act, the effective date in this section should be the effective date stated in the earlier adoption.*