

Amendments to the Uniform Common Interest Ownership Act*

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AMENDMENTS TO THE UNIFORM COMMON INTEREST OWNERSHIP ACT

[ARTICLE] 1

GENERAL PROVISIONS

[PART] 1

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 [; or

(C) applies for registration of a common interest community under [Article] 5].

(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 an organization described in Section 2-120, whether or not it is also an association described in Section 3-101.~~ means:

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

(B) an organization holding a power delegated under Section 2-120(a).

(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 ~~and which governs the conduct of persons or the use or appearance of property.~~

(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, ~~in a cooperative, to complete improvements~~ described in the public offering statement ~~pursuant to Section 4-103(a)(2)~~;

(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” ~~means a right to occupy a unit or any of several units during [five] or more separated time periods over a period of at least [five] years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof. [has the meaning in [cite to definition of “time share” in appropriate state statute]] [means any ownership right in, or the right to use, a unit for less than a full year during any year, and, on a recurring basis for more than one year, even if the years are not consecutive].~~

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. A state that does not define the term should use the second bracketed option.*

(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.

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 1-117. MANDATORY AND DEFAULT RULES.

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

(b) The declaration or bylaws may vary the following provisions:

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

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

(3) [Article] 1, [Part] 2, and [Article] 5, concerning elections with respect to applicability of this [act];

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

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

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

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

unit owners;

(8) Section 2-112(a) and (b), concerning the relocation of boundaries of units;

(9) Section 2-113(a), concerning the 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, concerning the percentage of votes required to terminate a

common interest community;

(14) Section 2-119, concerning lender approval of actions of unit owners and the

association;

(15) Section 2-120(a), concerning an executive board's delegation of powers by

the executive board to a master association;

(16) Section 2-122, concerning a declarant's addition of real estate to a planned

community;

(17) Section 3-102(a)(14), concerning an association's assignment of future

income;

(18) Section 3-103(a), concerning the extent to which the executive board acts on

behalf of the association;

(19) Section 3-107(a), concerning responsibility for maintenance, repair, and

replacement of units and common elements;

(20) Section 3-108(a)(2), concerning the percentage of unit owners who may

request a special meeting;

(21) Section 3-109, concerning quorum requirements for meetings and rules for conducting meetings;

(22) Section 3-110, concerning voting by proxies, voting by ballots, voting without a meeting, and voting by lessees;

(23) Section 3-112 (a), (b), and (g), concerning the percentage of votes required to convey or encumber common elements;

(24) Section 3-113(k), concerning a nonresidential common interest community's waiver or variance of insurance requirements;

(25) Section 3-114, concerning the payment of surplus funds of the association.

(26) Section 3-115, concerning changes in assessments of common expenses; and

(27) Section 3-116(a), concerning the treatment of fees, costs, charges, and other sums as assessments for lien purposes.

[PART] 2

APPLICABILITY

SECTION 1-201. GENERAL APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES. Except as otherwise provided in this [part] and in [Article] 5, this [act] applies to all common interest communities ~~created within this state after [the effective date of this act] [act]].~~ The provisions of ~~[insert reference to all present statutes expressly applicable to planned communities, condominiums, cooperatives, or horizontal property regimes]~~ do not apply to common interest communities created after ~~[the effective date of this act].~~ Amendments to this [act] apply to all common interest communities ~~created after [the effective date of this act] or made subject to this [act] by amendment of the declaration of the common-~~

~~interest community~~, regardless of when the amendment to this ~~[act]~~ becomes effective.

SECTION 1-204. ~~APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES. [RESERVED].~~

~~(a) Except for a cooperative or planned community described Section 1-205 or a nonresidential common interest community described in Section 1-207, the following sections apply to a common interest community created in this state 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 those sections.~~

~~(b) The sections described in subsection (a) apply only to events and circumstances occurring after the effective date of this [act] and do not invalidate existing provisions of the [declaration, bylaws, or plats or plans] of those common interest communities.~~

~~SECTION 1-205. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES AND PLANNED COMMUNITIES. [RESERVED].~~

~~If a cooperative or planned community created within this state before [the effective date of this act] contains no more than 12 units and is not subject to any development right, it is subject only to Sections 1-105, 1-106, and 1-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of Section 1-206, in which case, all the sections enumerated in Section 1-204(a) apply to that cooperative or planned community.~~

SECTION 1-206. AMENDMENTS TO GOVERNING INSTRUMENTS.

(a) ~~The declaration, or bylaws, or plats and plans of any common interest community created before [the effective date of this act] of a cooperative described in Section 1-202 or a planned community described in Section 1-203 may be amended to:~~

~~(1) state that all the sections enumerated in Section 5-104(a) apply to that 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, or plats and plans ~~authorized by this section~~ 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.

[ARTICLE] 2

CREATION, ALTERATION, AND

TERMINATION OF COMMON INTEREST COMMUNITIES

* * *

SECTION 2-105. CONTENTS OF DECLARATION.

(a) The declaration must contain:

* * *

(8) a description of any development right and any other special declarant rights reserved by the declarant, ~~together with a legally sufficient description of the real estate to which each of those rights applies, and~~ 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;

* * *

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, ~~which shall record it. The amendment must be recorded in the names of the parties and the common interest community.~~

(c) A common element not previously allocated as a limited common element may be so allocated only ~~pursuant to provisions in the declaration made in accordance with Section 2-105(a)(7). The allocations must be made by amendment~~ 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 to pay a fee or charge to the association. If the board approves the proposed 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 proposed 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 a timely objection is received, 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 and 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 an amendment to the declaration made under this section in the manner provided in Section 2-117. If an amendment changes any 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 2-112. 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. ~~The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and [in the grantee's index] in the name of the association.~~

~~(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least [67] percent of the votes in the association, including [67] percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.~~

(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 and 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 made under this section to the declaration. The amendment must contain words of conveyance between the parties. The association shall record an amendment made under this section in the manner 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.

* * *

Alternative A

~~[SECTION 2-114. EASEMENT FOR ENCROACHMENTS. To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.]~~

Alternative B

~~SECTION 2-114. MONUMENTS AS BOUNDARIES.~~ The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.]

End of Alternatives

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 another 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 2-117. AMENDMENT OF DECLARATION.

* * *

(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, ~~except an amendment pursuant to Section 2-112(a),~~ 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.

* * *

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,

~~or any larger percentage the declaration specifies, 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 a smaller percentage 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) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration,~~ a termination agreement may provide that for the sale of some or all of the common elements and units of the common interest community must be sold 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) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration,~~ a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to 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, ~~upon termination,~~ 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), ~~and (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) In a condominium or planned community, if the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (j), and liens on the units shift accordingly. While the tenancy in common exists, 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.~~ 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), ~~and (i)~~, and (m) are as follows:

(1) Except as otherwise provided in paragraph (2), 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 ~~decision of the independent appraisers~~ appraisal must be distributed to the unit owners and becomes final unless:

(A) disapproved within 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 to the determination of value of the owner's unit not later than 30 days after distribution.

A unit owner that objects 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 differ as to the fair market value of the owner's interest, 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. 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.

(2) 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 ~~(h)~~(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 a termination of fewer than all of the units in a common interest community subject to the following:

(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 an amendment to the declaration or an amended and restated declaration with the termination agreement under subsection (b).

SECTION 2-120. MASTER ASSOCIATIONS.

~~(a) If the declaration provides that any of the powers described in Section 3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation [or unincorporated association] that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities,~~
all A declaration may:

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

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

(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 any such corporation [or unincorporated the master association], except as modified by this section.

(c) A unit owners association may delegate a power described in 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 timely objections from unit owners of units to which at least 10 percent of the votes in the association are allocated. If

the board receives timely objections 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) Revocation of a delegation set forth in the declaration may be made only by an amendment to the declaration.

(e) At a meeting of the unit owners for which the subject of delegation of powers from the executive board to a master association is listed in the notice of the meeting, the unit owners by a majority of the votes cast at the meeting may revoke the delegation. 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].

~~(b)~~ (f) Unless it is acting in the capacity of an a unit owners association described in Section 3-101, 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.

~~(e)~~ (g) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation. After a unit owners association delegates a power to a master association, the unit owners association and its executive board members and its officers have no liability for an act or omission of the master association with respect to the delegated power.

~~(d)~~ (h) The rights and responsibilities of unit owners with respect to the unit owners² 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].

~~(e) (i) Even if a master association is also an association described in Section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that 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 ~~after the period of declarant control in any~~ in one of the following ways:~~

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

~~(2) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.~~

~~(3)~~ (2) All unit owners in, or the executive board of, each common interest community subject to the master association ~~may~~ elect specified 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.

~~(4) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.~~

(j) A period of declarant control of the master association under subsection (i) terminates no 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 ~~of the same form of ownership, by agreement of the unit owners as provided in subsection (b),~~ may be merged or consolidated into a single common interest community under subsection (b) by agreement of the unit owners or by the 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 2-125. 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 3-102. 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, ~~and concessions~~ 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.

* * *

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(e)~~ 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. ~~TRANSFER OF SPECIAL DECLARANT RIGHTS.~~

~~(a) A special declarant right (Section 1-103(29)) created or reserved under this [act] may be transferred only by an instrument evidencing the transfer recorded in every [county] in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.~~

~~(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:~~

~~(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this [act]. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.~~

~~(2) If a successor to any special declarant right is an affiliate of a declarant (Section 1-103(1)), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common interest community.~~

~~(3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this [act] or by the declaration relating to the retained special declarant rights and arising after the transfer.~~

~~(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.~~

~~(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to~~

~~Section 2-115 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.~~

~~(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all interests in a common interest community owned by a declarant:~~

~~(1) the declarant ceases to have any special declarant rights, an~~

~~(2) the period of declarant control (Section 3-103(d)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.~~

~~(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:~~

~~(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this [act] or by the declaration.~~

~~(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this [act] or the declaration:~~

~~(i) on a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or~~

~~(ii) on his transferor, other than:~~

~~(A) misrepresentations by any previous declarant;~~

~~(B) warranty obligations on improvements made by any previous~~

declarant, or made before the common interest community was created;

~~(C) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or~~

~~(D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.~~

~~(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (Section 2-115), may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement [,] and any liability arising as a result thereof [, and obligations under [Article] 5].~~

~~(4) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with Section 3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under Section 3-103(d).~~

(a) In this section:

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

(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, which is appurtenant to all units owned by the declarant and to real estate subject to a development right to create additional units.

(c) A declarant that no longer owns a unit or a development right to create additional units 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 in this section, 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 transferee.

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

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

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

(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 subject to 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 made before the common interest community was created;

(3) breach of a fiduciary obligation by a previous declarant or its 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 a 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 its intention in a recorded instrument 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 to control the executive board under Section 3-103(d), and an attempt to exercise a special declarant right in violation of this subsection is void. As long as the successor complies with this subsection, the successor is not subject to an obligation or liability imposed by this [act] or the declaration other than liability for its act or omission under Section 3-103(d).

(F) (L) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this [act] or the declaration.

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. ~~Only matters described in the meeting notice required by paragraph (3) may be considered at a special meeting.~~ The unit owners may discuss at a special meeting matters not described in the notice under paragraph (3), but may not take action on a matter not described in the notice 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) The minimum time to give notice required by paragraph (3) may be reduced or waived for a meeting called to deal with an emergency.~~

~~(5)~~ (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.

~~(6)~~ (5) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with subsection (b)(7). A meeting of unit owners is not required to be held at a physical location if the meeting:

(A) 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) is not expressly prohibited by the declaration or bylaws.

(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 consistent with paragraph (5).

~~(7) Except as otherwise provided in the bylaws, meetings of the association must~~

~~be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.~~

(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 ~~or the meeting is called to deal with an emergency~~, 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) ~~Instead of meeting,~~ During the period of declarant control, the executive board may act, without a meeting, 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. ~~A challenge to the validity of an action of the executive board for failure~~ An action seeking relief for the 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:

~~(1) are present attend~~ in person, ~~or~~ by proxy, or by means of communication under Section 3-108(a)(6) or (7) ~~at the beginning of the meeting;~~

~~(2) have cast absentee ballots solicited in accordance with Section 3-110 (c)(4) which have been delivered to the secretary in a timely manner; or~~

~~(3) are present by any combination of paragraphs (1) and (2).~~

(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.

~~(c) Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.~~

SECTION 3-110. VOTING; PROXIES; BALLOTS.

~~(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c) or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d). Unit owners may vote at a meeting under subsection (b) or (c) or, when a vote is conducted without a meeting, by ballot under subsection (d).~~

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

(1) ~~Unit owners who are present in person~~ Unless the declaration or bylaws otherwise provide, unit owners may vote by voice vote, show of hands, standing, or any other method ~~for determining the votes of unit owners, as designated by the person presiding~~ authorized at the meeting.

~~(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the~~

~~owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.~~

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

~~(3) Unless a greater number or fraction of the votes in the association is required by this [act] or the declaration, a majority of the votes cast determines the outcome of any action of the association.~~

~~(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least [three] days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.~~

~~(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.~~

(c) Except as otherwise provided in the declaration or bylaws, unit owners may vote by proxy subject to the following requirements apply with respect to proxy voting:

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

~~(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. When a unit owner votes by proxy, the association must be able 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 prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, 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 a paper or electronic ballot to every unit owner entitled to vote on the matter.~~ With the notice the association shall deliver instructions for casting a ballot and:

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

(B) if the association allows electronic voting, instructions for electronic voting. A unit owner's casting an electronic ballot is consent to the owner's use of electronic voting.

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

(4) ~~When~~ In the notice the association delivers the ballots, it shall also:

~~(A) indicate the number of responses needed to meet the quorum~~

requirements;

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

~~(C)~~ (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

~~(D)~~ (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 by which the ballot must be delivered to the association under paragraph (4). Except as otherwise provided in the declaration or bylaws, a ballot is not revoked by death or disability after delivery to the association ~~by death or disability or attempted revocation by the person that cast that vote.~~

(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) If the association allows electronic ballots, the association shall create a record of electronic votes that is 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 any vote taken at a meeting or without a meeting.

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

(1) if only one of those owners casts a vote, that vote shall be counted as casting all votes allocated to that unit by the declaration; and

(2) unless the declaration requires that all votes cast by multiple owners of a unit shall be counted in the manner described in the declaration, if more than one of the owners of a unit casts a vote for that unit, no votes from any owner of that unit shall be counted.

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), ~~(d), and (e)~~ 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) ~~To the extent required by the declaration:~~ 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 ~~benefiting~~ identified in the declaration benefitting fewer than all of the units or their owners ~~may~~ 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; and

(3) the costs of insurance must be assessed in proportion to risk, and 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) If damage to a unit or other part of the common interest community, or if any other common expense is caused by the willful misconduct or gross negligence of any unit owner or a guest or invitee of a unit owner, the association may assess that expense exclusively against that owner's unit, even if the association maintains insurance with respect to that damage or common expense.~~ The association may assess either or both of the following common expenses, including expenses relating to damage to or loss of property, exclusively against an owner's unit:

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

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

(f) Before the association makes an assessment under subsection (e), the association shall give notice to the unit owner and an opportunity for a hearing. The assessment is limited to the expenses of 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.

~~(f)~~ (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 3-123. 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. ~~Except as otherwise provided in subsection (c), the~~ 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.

~~(c) If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency:~~

~~(1) the special assessment becomes effective immediately in accordance with the terms of the vote;~~

~~(2) notice of the emergency assessment must be provided promptly to all unit owners; and~~

~~(3) the executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.~~

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 public health or safety or to the health or safety of residents of the common interest community;

(B) threat to the habitability of units; or

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

(b) Notwithstanding any other provision of this [act], this section governs an emergency.

(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. No quorum is required for a meeting under this subsection. Instead of meeting, after giving notice under this subsection, the board may take action by vote without a meeting.

(e) In an emergency, the executive board may 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 and without consideration of limitations contained in the declaration, bylaws, or rules. If the board determines by a two-thirds vote that a special assessment is necessary:

(1) the special assessment becomes effective immediately in accordance with the terms of the vote; and

(2) the board may spend funds paid on account of the emergency assessment only for the purposes described in the vote.

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

(g) After taking an action under this section, the executive board promptly shall notify the unit owners of the action in any practicable manner.

[ARTICLE] 4

PROTECTION OF PURCHASERS

* * *

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; ~~and~~

(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 without the consent of all the unit owners after termination under Section 2-118 of the common interest community.

(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~~ periodic 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 4-105. 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 4-107. SAME; COMMON INTEREST COMMUNITY SECURITIES REGISTERED 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 pursuant to [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 ~~of this [act]~~ if the declarant delivers to the purchaser ~~[and files with the agency]~~ 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 ~~the provisions of~~ [insert 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 to statute and provide the name of the state agency in the brackets in the first sentence.

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 declaration, other than any plats and plans, the bylaws, the rules or regulations 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

~~restrictions~~ restriction on the owner's right to use or occupy the unit ~~or to~~, including a restriction on a lease or other rental of the unit to another person.

(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.

~~{OPTIONAL}~~

[ARTICLE] 5

~~ADMINISTRATION AND REGISTRATION OF COMMON INTEREST~~

~~COMMUNITIES~~ TRANSITION

SECTION 5-101. EFFECTIVE DATE.

(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 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]] which 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 the requirements of Section 2-117(a), any inconsistent provisions of other laws of this State, and any inconsistent provisions in the declaration or bylaws of the common interest community.]

Legislative Note: The “all-inclusive” date should be three years after the effective date of the act. For a state that previously adopted UCIOA (2014) or an earlier version of UCIOA, the effective date in subsection (b) should be the effective date stated in the earlier adoption. Subsection (d) is an optional provision. If a state decides that full applicability of the act to all preexisting common interest communities is not appropriate, subsection (d) provides for a procedure for preexisting communities to make an election to opt out of the act.

SECTION 5-102. PRIOR STATUTES. The provisions of [insert reference to all present statutes expressly applicable to planned communities, condominiums, cooperatives, or horizontal property regimes]:

(1) do not apply to common interest communities that are subject to this [act]; and

(2) apply to common interest communities 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 UCIOA (2014) or an earlier version of UCIOA, 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 within 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 that is 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]]:

(1) to comply with the requirements of this [act] for the creation of a common interest community; or

(2) to 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 UCIOA (2014) or an earlier version of UCIOA, 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 COMMUNITIES.

(a) Except for 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, 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 those sections.

(b) The sections listed in subsection (a) apply only to events and circumstances occurring after [the effective date of this [act]] and do not invalidate existing provisions of the declaration or bylaws of the common interest community.

(c) This section does not apply to a common interest community that becomes subject to this entire [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 UCIOA (2014) or an earlier version of UCIOA, the effective date in this section should be the effective date stated in the earlier*

adoption.