



**The Uniform Condominium Act (UCA) (1977, amended in 1980)<sup>1</sup>**

**Article 1. General Provisions**

§ 1-101. [Short Title]. This Act shall be known and may be cited as the Uniform Condominium Act.

§ 1-102. [Applicability]. (a) This Act applies to all condominiums created within this State after the effective date of this Act. Sections 1-105 (Separate Titles and Taxation), 1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 1-107 (Eminent Domain), 2-103 (Construction and Validity of Declaration and Bylaws), 2-104 (Description of Units), 3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 3-111 (Tort and Contract Liability), 3-116 (Lien for Assessments), 3-118 (Association Records), 4-109 (Resales of Units), and 4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and Section 1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State before the effective date of this Act; but those sections apply only with respect 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 condominiums.

(b) The provisions of (insert reference to all present statutes expressly applicable to condominiums or horizontal property regimes) do not apply to condominiums created after the effective date of this Act and do not invalidate any amendment to the (declaration, bylaws, and plats and plans) of any condominium created before the effective date of this Act if the amendment would be permitted by this Act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by (insert reference to all present statutes expressly applicable to condominiums or horizontal property regimes). If the amendment grants to any person any rights, powers, or privileges permitted by this Act, all correlative obligations, liabilities, and restrictions in this Act also apply to that person.

(c) This Act does not apply to condominiums or units located outside this State, but the public offering statement provisions (Sections 4-102 through 4-108) apply to all contracts for the disposition thereof signed in this State by any party unless exempt under Section

---

<sup>1</sup> Note: The exact wording may vary from state-to-state. Consult legal counsel in the project state to verify.

4-101(b) [and the agency regulation provisions under Article 5 apply to any offering thereof in this State.]

**§ 1-103. [Definitions].** In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Act:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. 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. 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. 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 undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Association" or "unit owners' association" means the unit owners' association organized under Section 3-101.

(4) "Common elements" means all portions of a condominium other than the units.

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

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

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(8) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(9) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of, [or] (ii) reserves or succeeds to any special declarant right [, or (iii) applies for registration of a condominium under Article 5.]

- (10) "Declaration" means any instruments, however denominated, that create a condominium, and any amendments to those instruments.
- (11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a condominium; (ii) to create units, common elements, or limited common elements within a condominium; (iii) to subdivide units or convert units into common elements; or (iv) to withdraw real estate from a condominium.
- (12) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.
- (13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.
- (14) "Identifying number" means a symbol or address that identifies only one unit in a condominium.
- (15) "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.
- (16) "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.
- (17) "Master association" means an organization described in Section 2-120, whether or not it is also an association described in Section 3-101.
- (18) "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 condominium 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 condominium is located.
- (19) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. [In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.]
- (20) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.
- (21) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(22) "Residential purposes" means use for dwelling or recreational purposes, or both.

(23) "Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration (Section 2-109); (ii) to exercise any development right (Section 2-110); (iii) to maintain sales offices, management offices, signs advertising the condominium, and models (Section 2-115); (iv) to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (Section 2-116); (v) to make the condominium part of a larger condominium or a planned community (Section 2-121); (vi) to make the condominium subject to a master association (Section 2-120); (vii) or to appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (Section 3-103(c)).

(24) "Time share" means a right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

(25) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 2-105(a)(5).

(26) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

**§ 1-104. [Variation by Agreement].** Except as expressly provided in this Act, provisions of this Act may not be varied by agreement, and rights conferred by this Act may not be waived. 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.

**§ 1-105. [Separate Titles and Taxation].** (a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

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

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

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

**§ 1-106. [Applicability of Local Ordinances, Regulations, and Building Codes].** A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this Act invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

**§ 1-107. [Eminent Domain].** (a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

(d) The court decree shall be recorded in every (county) in which any portion of the condominium is located.

**§ 1-108. [Supplemental General Principles of Law Applicable].** The principles of law and equity, including the law of corporations (and unincorporated associations), the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,

receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this Act, except to the extent inconsistent with this Act.

**§ 1-109. [Construction Against Implicit Repeal].** This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

**§ 1-110. [Uniformity of Application and Construction].** This Act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

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

**§ 1-112. [Unconscionable Agreement or Term of Contract].** (a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

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

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;
- (3) the effect and purpose of the contract or clause; and
- (4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

**§ 1-113. [Obligation of Good Faith].** Every contract or duty governed by this Act imposes an obligation of good faith in its performance or enforcement.

**§ 1-114. [Remedies To Be Liberally Administered].** (a) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this Act or by other rule of law.

(b) Any right or obligation declared by this Act is enforceable by judicial proceeding. Article 2. Creation, Alteration, and Termination of Condominiums.

**§ 2-101. [Creation of Condominium].** (a) A condominium may be created pursuant to this Act only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every [county] in which any portion of the condominium is located, and must be indexed [in the Grantee's index] in the name of the condominium and the association and [in the Grantor's index] in the name of each person executing the declaration.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent (registered) engineer, surveyor, or architect [, or unless the agency has approved the declaration or amendment in the manner prescribed in Section 5-103(b).]

**§ 2-102. [Unit Boundaries].** Except as provided by the declaration:

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

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

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

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

**§ 2-103. [Construction and Validity of Declaration and Bylaws].** (a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to Section 3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Act.

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

**§ 2-104. [Description of Units].** A description of a unit which sets forth the name of the condominium, the [recording data] for the declaration, the [county] in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

**§ 2-105. [Contents of Declaration].** (a) The declaration for a condominium must contain:

(1) the names of the condominium, which must include the word "condominium" or be followed by the words "a condominium", and the association;

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

(3) a legally sufficient description of the real estate included in the condominium;

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

(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) a description of any limited common elements, other than those specified in Section 2-102(2) and (4), as provided in Section 2-109(b)(10);

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

(8) a description of any development rights and other special declarant rights (Section 1-103(23) ) 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;

(9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any

development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

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

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

(12) any restrictions on use, occupancy, and alienation of the units;

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

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

(b) The declaration may contain any other matters the declarant deems appropriate.

**§ 2-106. [Leasehold Condominiums].** (a) Any lease the expiration or termination of which may terminate the condominium or reduce its size [, or a memorandum thereof,] shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

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

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

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

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

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

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

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

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

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with Section 1-

107(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

**§ 2-107. [Allocation of Common Element Interests, Votes, and Common Expense Liabilities].**

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

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

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

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

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

**§ 2-108. [Limited Common Elements].** (a) Except for the limited common elements described in Section 2-102(2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That 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 shall be recorded in the names of the parties and the condominium.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with Section 2-105(a)(7). The allocations shall be made by amendments to the declaration.

**§ 2-109. [Plats and Plans].** (a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

- (1) the name and a survey or general schematic map of the entire condominium;
- (2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;
- (3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;
- (4) the extent of any encroachments by or upon any portion of the condominium;
- (5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;
- (6) the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;
- (7) the location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;
- (8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";
- (9) the distance between non-contiguous parcels of real estate comprising the condominium;
- (10) the location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in Sections 2-102(2) and (4);
- (11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium.

Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".

(d) To the extent not shown or projected on the plats, plans of the units must show or project:

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

- (2) any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and
- (3) any units in which the declarant has reserved the right to create additional units or common elements (Section 2-110(c) ), identified appropriately.
- (e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.
- (f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.
- (g) Any certification of a plat or plan required by this Section or Section 2-101(b) must be made by an independent (registered) surveyor, architect, or engineer.

**§ 2-110. [Exercise of Development Rights].** (a) To exercise any development right reserved under Section 2-105(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration (Section 2-117) and comply with Section 2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 2-108 (Limited Common Elements).

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

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

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

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

(d) If the declaration provides, pursuant to Section 2-105(a)(8), that all or a portion of the real estate is subject to the development right of withdrawal:

- (1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and
- (2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

**§ 2-111. [Alterations of Units].** Subject to the provisions of the declaration and other provisions of law, a unit owner:

- (1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;
- (2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;
- (3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

**§ 2-112. [Relocation of Boundaries Between Adjoining Units].** (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, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

**§ 2-113. [Subdivision of Units].** (a) If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated

interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

**§ 2-114. [Easement for Encroachments][ALTERNATIVE A].** [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 the plats and plans.]

**§ 2-114. [Monuments as Boundaries][ALTERNATIVE B].** [The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building. This section 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 the plats and plans.]

**§ 2-115. [Use for Sales Purposes].** A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law, and to local ordinances.

**§ 2-116. [Easement Rights].** Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this Act or reserved in the declaration.

**§ 2-117. [Amendment of Declaration].** (a) Except in cases of amendments that may be executed by a declarant under Section 2-109(f) or 2-110; the association under Section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113; or certain unit owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least [67] percent of the votes in the association are

allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to non-residential use.

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

(c) Every amendment to the declaration must be recorded in every [county] in which any portion of the condominium is located, and is effective only upon recordation. An amendment shall be indexed [in the Grantee's index] in the name of the condominium and the association and [in the Grantor's index] in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this Act, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

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

**§ 2-118. [Termination of Condominium].** (a) Except in the case of a taking of all the units by eminent domain (Section 1-107), a condominium 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. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential 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 will be 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 condominium is situated, and is effective only upon recordation.

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium 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 containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests 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 proportion to the respective interests of unit owners as provided in subsection (h). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Act or the declaration.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(g) Following termination of the condominium, the proceeds of any 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. Following termination, 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.

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

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. 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 common element interest by the total fair market values of all the units and common elements.

(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 their respective common element interests immediately before the termination.

(i) Except as provided in subsection (j), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

**§ 2-119. [Rights of Secured Lenders].** The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to Section 3-113.

**§ 2-120. [Master Associations].** (a) If the declaration for a condominium 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) which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this Act applicable to unit owners' associations apply to any such corporation (or unincorporated association), except as modified by this Section.

(b) Unless a master association is acting in the capacity of an association described in Section 3-101, it may exercise the powers set forth in Section 3-102(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the

master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium 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.

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

(e) Notwithstanding the provisions of Section 3-103(f) with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and 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 condominium the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

**§ 2-121. [Merger or Consolidation of Condominiums].** (a) Any 2 or more condominiums, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single condominium. in the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

(b) An agreement of two or more condominiums 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 condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must

be recorded in every (county) in which a portion of the condominium 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 condominium 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 condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

### Article 3. Management of Condominium

**§ 3-101. [Organization of Unit Owners' Association].** A unit owners' association must be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under Section 2-118, or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation [or as an unincorporated association.]

**§ 3-102. [Powers of Unit Owners' Association].** (a) Except as provided in subsection (b), and subject to the provisions of the declaration, the association [, even if unincorporated,] may:

- (1) adopt and amend bylaws and rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the condominium;
- (5) make contracts and incur liabilities;
- (6) regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) cause additional improvements to be made as a part of the common elements;
- (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to Section 3-112;
- (9) grant easements, leases, licenses, and concessions through or over the common elements;

- (10) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements (other than limited common elements described in Sections 2-102(2) and (4) ) and for services provided to unit owners;
- (11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;
- (12) 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) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- (14) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
- (15) exercise any other powers conferred by the declaration or bylaws;
- (16) exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
- (17) exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

**§ 3-103. [Executive Board Members and Officers].** (a) Except as provided in the declaration, the bylaws, in subsection (b), or other provisions of this Act, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners and (ii) if elected by the unit owners, ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to amend the declaration (Section 2-117), to terminate the condominium (Section 2- 118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (Section 3-103(f) ), but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Within [30] days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be

continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) [60] days after conveyance of [75] percent of the units which may be created to unit owners other than a declarant; (ii) [2] years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) [2] years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, 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.

(e) Not later than [60] days after conveyance of [25] percent of the units which 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 [50] percent of the units which may be created to unit owners other than a declarant, not less than [33 1/3 ] percent of the members of the executive board must be elected by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least 3 members, at least a majority of who must be unit owners. The executive board shall elect the officers. The executive board members and officers shall taken office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

**§ 3-104. [Transfer of Special Declarant Rights].** (a) No special declarant right (Section 1-103(23) ) created or reserved under this Act may be transferred except by an instrument evidencing the transfer recorded in every (county) in which any portion of the condominium 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 condominium.

(3) If a transferor retains any special declarant right, 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 or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate 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 shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

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

(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 paragraphs (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this Act or the declaration:

(i) on a declarant which relate to his exercise or non-exercise 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 condominium 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), if he is not an affiliate of a declarant, 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 his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument 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 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 the provisions of 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, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under Section 3-103(d).

(f) 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.

**§ 3-105. [Termination of Contracts and Leases of Declarant].** If entered into before the executive board elected by the unit owners pursuant to Section 3-103(f) takes offices, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to Section 3-103(f) takes office upon not less than (90) days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

**§ 3-106. [Bylaws].** (a) The bylaws of the association must provide for:

- (1) the number of members of the executive board and the titles of the officers of the association;
  - (2) election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
  - (3) the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
  - (4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
  - (5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
  - (6) the method of amending the bylaws.
- (b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

**§ 3-107. [Upkeep of Condominium].** (a) Except to the extent provided by the declaration, subsection (b), or Section 3-113(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

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

**§ 3-108. [Meetings].** A meeting of the association must be held at least one each year. Special meetings of the association may be called by the president, a majority of the executive board or by unit owners having 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than (10) nor more than [60] days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or

bylaws, any budget changes, and any proposal to remove a director or officer.

**§ 3-109. [Quorums].** (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [20] percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast [50] percent of the votes on that board are present at the beginning of the meeting.

**§ 3-110. [Voting; Proxies].** (a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple 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 multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to proxy duly executed by a unit owner. 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. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units; (i) the provisions of subsection (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in Section 3-108, of all meetings at which lessees may be entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

**§ 3-111. [Tort and Contract Liability].** Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to

the association or to any unit owner: (i) for all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by Section 3-117 (Other Liens Affecting the Condominium).

**§ 3-112. [Conveyance or Encumbrance of Common Elements].** (a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least [80] percent of the votes in the association, including [80] percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to non-residential uses. Proceeds of the sale are an asset of the association.

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

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

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is void.

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

(f) [Unless the declaration otherwise provides,] a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

**§ 3-113. [Insurance].** (a) Commencing not later than the time of the first conveyance of

a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

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

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a) must provide that:

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

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

(3) no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

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

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lien holders as their interests may appear. Subject to the provisions of subsection (h), the proceeds must

be disbursed first for the repair or restoration of the damaged property, and unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

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

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

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) [80] percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under Section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, Section 2-118 (Termination of Condominium) governs the distribution of insurance proceeds if the condominium is terminated.

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to non-residential use.

**§ 3-114. [Surplus Funds].** Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their

common expense liabilities or credited to them to reduce their future common expense assessments.

**§ 3-115. [Assessments for Common Expenses].** (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any 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), 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). Any past due common expense assessment or instalment thereof bears interest at the rate established by the association not exceeding [18] percent per year.

(c) To the extent required by the declaration:

(1) any 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 that the declaration provides;

(2) any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; 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.

(d) Assessments to pay a judgment against the association (Section 3- 117(a) ) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

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

**§ 3-116. [Lien for Assessments].** (a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate [or a power of sale under (insert appropriate state statute) ] [but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected]. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in instalments, the full amount of the assessment is a lien from the time the first instalment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien is also prior to the mortgages and deeds of trust described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).]

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

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

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within [3] years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

(h) The association upon written request shall furnish to a unit owner a recordable statement setting forth the amount of unpaid assessments against his unit. The statement must be furnished within (10) business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

**§ 3-117. [Other Liens Affecting the Condominium].** (a) Except as provided in subsection (b), a judgment for money against the association [if recorded] [if docketed] [if (insert other procedures required under state law to perfect a lien on real property as a result of a judgment) ], is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

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

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work

performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) A judgment against the association must be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.

**§ 3-118. [Association Records].** The association shall keep financial records sufficiently detailed to enable the association to comply with Section 4-109. All financial and other records shall be made reasonable available for examination by any unit owner and his authorized agents.

**§ 3-119. [Association as Trustee].** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

#### Article 4. Protection of Condominium Purchasers

**§ 4-101. [Applicability; Waiver].** (a) This Article applies to all units subject to this Act, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to non-residential use.

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

- (1) a gratuitous disposition of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition to a person in the business of selling real estate who intends to offer those units to purchasers; or

(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty.

**§ 4-102. [Liability for Public Offering Statement Requirements].** (a) Except as provided in subsection (b), a declarant, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of Sections 4-103, 4-104, 4- 105 and 4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (Section 3-104) or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 4-108(a). The person who prepared all or a part of the public offering statement is liable under Sections 4-108 [and] [,] 4-117 [, 5-105, and 5-106] for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of Sections 4-103, 4-104, 4- 105, and 4-106 as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing 2 or more public offering statements.

**§ 4-103. [Public Offering Statement; General Provisions].** (a) Except as 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 condominium;

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

(3) the number of units in the condominium;

(4) copies and a brief narrative description of the significant features of the declaration (other than the plats and plans) and any other recorded covenants, conditions,

restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations 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) 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, without limitation:

(i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(ii) a statement of any other reserves;

(iii) the projected common expense assessment by category of expenditures for the association; and

(iv) the projected monthly common expense assessment for each type of unit;

(6) any services not reflected in the budget that the declarant provides, or expenses that he pays, and that he 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 at closing, 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 condominium;

(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:

(i) 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,

(ii) 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, and

(iii) if a purchaser receives the public offering statement more than 15 days before signing a contract, he cannot cancel the contract;

(12) a statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium 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 condominium;
  - (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 condominium;
  - (17) the extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to Section 4-119 (Declarant's Obligation to Complete and Restore); and
  - (18) a brief narrative description of any zoning and other land use requirements affecting the condominium; and
  - (19) all unusual and material circumstances, features, and characteristics of the condominium and the units.
- (b) If a condominium composed of not more than 12 units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16), (17), (18), and (19) of subsection (a) and the narrative descriptions of documents required by paragraph (a)(4).
- (c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

**§ 4-104. [Same; Condominiums Subject to Development Rights].** If the declaration provides that a condominium is subject to any development rights, the public offering statement must disclose, in addition to the information required by Section 4-103:

- (1) the maximum number of units, and the maximum number of units per acre, that may be created;
- (2) a statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) if any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;
- (4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;
- (5) a statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in paragraph (3);
- (6) a statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of

architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

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

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

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

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

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

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

**§ 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.

**§ 4-106. [Same; Condominiums Containing Conversion Buildings].** (a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by Section 4-103:

(1) a statement by the declarant, based on a report prepared by an independent (registered) architect or engineer, describing the present condition of all structural

components and mechanical and electrical installations material to the use and enjoyment of the building;

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

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

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

**§ 4-107. [Same; Condominium Securities].** If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this Act if he delivers to the purchaser [and files with the Agency] a copy of the public offering statement filed with the Securities and Exchange Commission. [An interest in a condominium is not a security under the provisions of (insert appropriate state securities regulation statutes.) ]

**§ 4-108. [Purchaser's Right to Cancel].** (a) A person required to deliver a public offering statement pursuant to Section 4-102(c) shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before conveyance of that unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

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

(c) If a person required to deliver a public offering statement pursuant to Section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to [10] percent of the sales price of the unit.

**§ 4-109. [Resales of Units].** (a) Except in the case of a sale where 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 execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than the plats and plans), the bylaws, the rules or regulations of the association, and 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;
  - (2) a statement setting forth the amount of the monthly 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 unit owners;
  - (4) a statement of any capital expenditures anticipated by the association for the current and 2 next 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 knowledge that any alterations or improvements 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 knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and
  - (12) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.
- (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 purchaser contract is voidable by the purchaser until the certificate has been provided and for (5) days thereafter or until conveyance, whichever first occurs.

**§ 4-110. [Escrow of Deposits].** Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to Section 4-102(c) shall be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by [a licensed title insurance company] [an attorney] [a licensed real estate broker] [an

independent bonded escrow company or] an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser.

**§ 4-111. [Release of Liens].** (a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to Section 4-102(c), a seller shall, before conveying a unit, record or furnish to the purchaser, releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume [, or shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate in (insert appropriate references to general state law or Sections 5-211 and 5-212 of the State Uniform Simplification of Land Transfers Act).] This subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association the declarant shall have that real estate released from: (1) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

**§ 4-112. [Conversion Buildings].** (a) A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For [60] days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that [60]-day period, the offeror may not offer to dispose of an interest in that unit during the following [180] days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to non-

residential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of (insert appropriate state summary process statute), the notice also constitutes a notice to vacate specified by that statute.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

**§ 4-113. [Express Warranties of Quality].** (a) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(2) any model or description of the physical characteristics of the condominium, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description;

(3) any description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(4) a provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(b) Neither formal words, such as "warranty" or "guarantee", nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

**§ 4-114. [Implied Warranties of Quality].** (a) A declarant and any person in the business of selling real estate for his own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant and any person in the business of selling real estate for his own account impliedly warrants that a unit and the common elements in the condominium are suitable

for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the condominium, will be:

- (1) free from defective materials; and
  - (2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.
- (c) In addition, a declarant and any person in the business of selling real estate for his own account warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.
- (d) Warranties imposed by this section may be excluded or modified as specified in Section 4-115.
- (e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant (Section 1-103(1) ) are made or contracted for by the declarant.
- (f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

**§ 4-115. [Exclusion or Modification of Implied Warranties of Quality].** (a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

- (1) may be excluded or modified by agreement of the parties; and
  - (2) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.
- (b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any person in the business of selling real estate for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

**§ 4-116. [Statute of Limitations for Warranties].** (a) A judicial proceeding for breach of any obligation arising under Section 4-113 or 4-114 must be commenced within 6 years after the [claim for relief] [cause of action] accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a [claim for relief] [cause of action] for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

- (1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and
- (2) as to each common element, at the time the common element is completed or: if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.
- (c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the [claim for relief] [cause of action] accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

**§ 4-117. [Effect of Violations on Rights of Action; Attorney's Fees].** If a declarant or any other person subject to this Act fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this Act. The court, in an appropriate case, may award reasonable attorney's fees.

**§ 4-118. [Labeling of Promotional Material].** If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT."

**§ 4-119. [Declarant's Obligation to Complete and Restore].** (a) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to Section 2-109.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by Sections 2-110, 2-111, 2-112, 2-113, 2-115, and 2-116.

**§ 4-120. [Substantial Completion of Units].** In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, [except pursuant to Section 5-103(b) ], until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded

certificate of substantial completion executed by an independent [registered] architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.

Article 5 [Optional]. Administration and Registration of Condominiums.

**§ 5-101. [Administrative Agency].** As used in this Act, "agency" means (insert appropriate administrative agency), which is an agency within the meaning of (insert appropriate reference to state administrative procedure act). (Insert any related provisions on creation, selection, and remuneration of personnel, budget, annual reports, fees, and other administrative provisions appropriate to the particular state).

**§ 5-102. [Registration Required].** A declarant may not offer or dispose of a unit intended for residential use unless the condominium and the unit are registered with the agency, but a condominium consisting of no more than 12 units and which is not subject to development rights is exempt from the requirements of this section and Section 5-103(a).

**§ 5-103. [Application for Registration; Approval of Uncompleted Units].** (a) An application for registration must contain the information and be accompanied by any reasonable fees required by the agency's [rules] [regulations.] A declarant promptly shall file amendments to report any factual or expected material change in any document or information contained in his application.

(b) If a declarant files with the agency a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units which he proposes to convey before they are substantially completed in the manner required by Sections 2-101(b) and 4-120, the declarant shall also file with the agency:

- (1) a verified statement showing all costs involved in completing the buildings containing those units;
- (2) a verified estimate of the time of completion of construction of the buildings containing those units;
- (3) satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;
- (4) a copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;
- (5) a 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;
- (6) plans for the units conforming to the requirements of Section 2-109(c);
- (7) if purchasers' funds are to be utilized for the construction of the condominium, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides that:

(i) disbursements of purchasers' funds may be made from time to time to pay for construction of the condominium, architectural, engineering finance, and legal fees, and other costs for the completion of the condominium in proportion to the value of the work completed by the contractor as certified by an independent (registered) architect or engineer, or bills submitted and approved by the lender of construction funds or the escrow agent;

(ii) disbursement of the balance of purchasers' funds remaining after completion of the condominium shall be made only when the escrow agent or lender receives satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

(iii) any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

(8) any other materials or information the agency may require by its [rules] [regulations.] The agency may not register the units described in the declaration or the amendment unless the agency determines, on the basis of the material submitted by declarant and any other information available to the agency, that there is a reasonable basis to expect that the units to be conveyed will be completed by the declarant following conveyance.

**§ 5-104. [Receipt of Application; Order of Registration].** (a) The agency shall acknowledge receipt of an application for registration within [5] business days after receiving it. Within [60] days after receiving the application, the agency shall determine whether:

(1) the application and the proposed public offering statement satisfy the requirements of this Act and the agency's rules;

(2) the declaration and bylaws comply with this Act; and

(3) it is likely that the improvements the declarant has undertaken to make can be completed as represented.

(b) If the agency makes a favorable determination, it shall issue promptly an order registering the condominium. Otherwise, unless the declarant has consented in writing to a delay, the agency shall issue promptly an order rejecting registration.

**§ 5-105. [Cease and Desist Orders].** If the agency determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a condominium, or that any person has otherwise violated any provision of this Act or the agency's [rules] [regulations] or orders, the agency may issue an order to cease and desist from that conduct, to comply with the provisions of this Act and the agency's [rules] [regulations] and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

**§ 5-106. [Revocation of Registration].** (a) The agency, after notice and hearing, may issue an order revoking the registration of a condominium upon determination that a declarant or any officer or principal of a declarant has:

(1) failed to comply with a cease and desist order issued by the agency affecting that condominium;

(2) concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that condominium;

(3) failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that condominium;

(4) misrepresented or failed to disclose a material fact in the application for registration;  
or

(5) failed to meet any of the conditions described in Sections 5-103 and 5-104 necessary to qualify for registration.

(b) A declarant shall not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the condominium is in effect, without the consent of the agency.

(c) In appropriate cases the agency, in its discretion, may issue a cease and desist order in lieu of an order of revocation.

**§ 5-107. [General Powers and Duties of Agency].** (a) The agency may adopt, amend, and repeal [rules] [regulations] and issue orders consistent with and in furtherance of the objectives of this Act, but the agency may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this Act. The agency may prescribe forms and procedures for submitting information to the agency.

(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this Act or any of the agency's rules or orders, the agency without prior administrative proceedings may bring suit in the [appropriate court] to enjoin that act or practice or for other appropriate relief. The agency is not required to post a bond or prove that no adequate remedy at law exists.

(c) The agency may intervene in any action or suit involving the powers or responsibilities of a declarant in connection with any condominium for which an application for registration is on file.

(d) The agency may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this Act.

(e) The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the agency's duties.

(f) In issuing any cease and desist order or order rejecting or revoking registration of a condominium, the agency shall state the basis for the adverse determination and the underlying facts.

(g) The agency, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its [rules] [regulations] to guarantee completion of all improvements labeled "MUST BE BUILT" pursuant to Section 4-119 (Declarant's Obligation to Complete and Restore).

**§ 5-108. [Investigative Powers of Agency].** (a) The agency may initiate public or private investigations within or outside this State to determine whether any representation in any document or information filed with the agency is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

(b) In the course of any investigation or hearing, the agency may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the agency may apply to the [appropriate court] for a contempt order or injunctive or other appropriate relief to secure compliance.

**§ 5-109. [Annual Report and Amendments].** (a) A declarant, within 30 days after the anniversary date of the order of registration, annually shall file a report to bring up-to-date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection (b).

(b) A declarant promptly shall file amendments to the public offering statement with the agency.

(c) If an annual report reveals that a declarant owns or controls units representing less than (25) percent of the voting power in the association and that a declarant has no power to increase the number of units in the condominium, or to cause a merger or confederation of the condominium with other condominiums, the agency shall issue an order relieving the declarant of any further obligation to file annual reports. Thereafter, so long as the declarant is offering any units for sale, the agency has jurisdiction over the declarant's activities, but has no other authority to regulate the condominium.

**§ 5-110. [Agency Regulation of Public Offering Statement].** (a) The agency at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(b) The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the condominium, the

disclosure statement, or any of the documents contained in the application for registration.

(c) In the case of a condominium situated wholly outside of this State, no application for registration or proposed public offering statement filed with the agency which has been approved by an agency in the State where the condominium is located and substantially complies with the requirements of this Act may be rejected by the agency on the grounds of non-compliance with any different or additional requirements imposed by this Act or by the agency's [rules] [regulations.] However, the agency may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.