

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 1366

1 AN ACT TO CREATE THE UNIFORM COMMON INTEREST OWNERSHIP ACT;
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE APPLICABILITY OF THE
3 ACT; TO ADDRESS SEPARATE TITLES AND TAXATION; TO ADDRESS THE
4 EFFECT OF EMINENT DOMAIN AND OTHER SUPPLEMENTAL PROVISIONS OF LAW;
5 TO PROVIDE FOR UNIFORMITY IN THE APPLICATION OF THIS ACT; TO
6 ADDRESS UNCONSCIONABLE PROVISIONS; TO REQUIRE GOOD FAITH; TO
7 PROVIDE FOR MONETARY ADJUSTMENTS; TO PROVIDE FOR CERTAIN
8 EXCEPTIONS; TO PROVIDE FOR THE APPLICABILITY OF PREEXISTING COMMON
9 INTEREST COMMUNITIES; TO PROVIDE FOR GOVERNING INSTRUMENTS AND
10 AMENDMENTS THERETO; TO PROVIDE FOR THE APPLICABILITY TO
11 NONRESIDENTIAL AND MIXED USE COMMUNITIES; TO PROVIDE FOR EXEMPT
12 COVENANTS; TO PROVIDE FOR THE CREATION OF COMMON INTEREST
13 COMMUNITIES; TO ADDRESS BOUNDARIES; TO PROVIDE FOR THE
14 CONSTRUCTION AND VALIDITY OF DECLARATIONS AND BYLAWS; TO PROVIDE
15 FOR LEASEHOLD COMMON INTEREST COMMUNITIES; TO PROVIDE FOR THE
16 ALLOCATION OF ALLOCATED INTERESTS; TO ADDRESS PLATS AND PLANS; TO
17 PROVIDE FOR THE EXERCISE OF DEVELOPMENT RIGHTS; TO PROVIDE FOR THE
18 ALTERATION OF UNITS; TO PROVIDE FOR THE REALLOCATION OF UNIT
19 BOUNDARIES; TO PROVIDE FOR EASEMENTS AND USE RIGHTS; TO ALLOW
20 AMENDMENTS TO DECLARATIONS; TO PROVIDE FOR THE TERMINATION OF A
21 COMMON INTEREST COMMUNITY; TO PROVIDE FOR THE RIGHTS OF SECURED
22 LENDERS; TO PROVIDE FOR MERGERS AND CONSOLIDATIONS; TO PROVIDE FOR
23 THE MANAGEMENT OF COMMON INTEREST COMMUNITIES; TO PROVIDE FOR UNIT
24 ASSOCIATIONS AND PRESCRIBE THEIR DUTIES AND POWERS; TO PROVIDE FOR
25 THE GOVERNANCE OF ASSOCIATIONS; TO PROVIDE FOR THE TRANSFER OF
26 RIGHTS; TO PROVIDE FOR TERMINATION; TO PROVIDE FOR UPKEEP; TO
27 ADDRESS MEETING QUORUMS; TO ADDRESS LIABILITY OF ASSOCIATIONS; TO
28 ADDRESS CONVEYANCES AND ENCUMBERANCES; TO REQUIRE INSURANCE; TO
29 ALLOW ASSESSMENTS AND LIENS; TO REQUIRE RECORD KEEPING; TO PROVIDE
30 RULE MAKING AUTHORITY; TO PROVIDE FOR THE REMOVAL OF OFFICERS; TO
31 ADDRESS BUDGETING AND LITIGATION ISSUES; TO PROVIDE FOR THE
32 PROTECTION OF PURCHASERS; TO ADDRESS WARRANTIES; TO BRING FORWARD
33 SECTIONS 89-9-1 THROUGH 89-9-37, MISSISSIPPI CODE OF 1972, FOR
34 PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

36 **SECTION 1.** The following shall be codified in Title 89,
37 Mississippi Code of 1972:

38 **ARTICLE I**

39 **PART 1**

40 **Section 1-101. SHORT TITLE.** This act may be cited as the
41 Uniform Common Interest Ownership Act.



42 **Section 1-102. APPLICABILITY.** Applicability of this act is
43 governed by Part 2 of this act.

44 **Section 1-103. DEFINITIONS.** In this act: (1) "Affiliate
45 of a declarant" means any person who controls, is controlled by,
46 or is under common control with a declarant.

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

48 (i) Is a general partner, officer, director, or
49 employer of the declarant;

50 (ii) Directly or indirectly or acting in concert
51 with one or more other persons, or through one or more
52 subsidiaries, owns, controls, holds with power to vote, or holds
53 proxies representing, more than twenty percent (20%) of the voting
54 interest in the declarant;

55 (iii) Controls in any manner the election of a
56 majority of the directors of the declarant; or

57 (iv) Has contributed more than twenty percent
58 (20%) of the capital of the declarant.

59 (b) A person "is controlled by" a declarant if the
60 declarant:

61 (i) Is a general partner, officer, director, or
62 employer of the person;

63 (ii) Directly or indirectly or acting in concert
64 with one or more other persons, or through one or more
65 subsidiaries, owns, controls, holds with power to vote, or holds
66 proxies representing, more than twenty percent (20%) of the voting
67 interest in the person;

68 (iii) Controls in any manner the election of a
69 majority of the directors of the person; or

70 (iv) Has contributed more than twenty percent
71 (20%) of the capital of the person. Control does not exist if the
72 powers described in this paragraph are held solely as security for
73 an obligation and are not exercised.



74 (2) "Allocated interests" means the following interests
75 allocated to each unit:

76 (a) In a condominium, the undivided interest in the
77 common elements, the common expense liability, and votes in the
78 association;

79 (b) In a cooperative, the common expense liability, the
80 ownership interest, and votes in the association; and

81 (c) In a planned community, the common expense
82 liability and votes in the association.

83 (3) "Assessment" means the sum attributable to each unit and
84 due to the association pursuant to Section 3-115.

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

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

91 (6) "Common elements" means:

92 (a) In the case of:

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

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

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

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

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



106 (9) "Common interest community" means real estate described
107 in a declaration with respect to which a person, by virtue of the
108 person's ownership of a unit, is obligated to pay for a share of
109 real estate taxes, insurance premiums, maintenance, or improvement
110 of, or services or other expenses related to, common elements,
111 other units, or other real estate described in a that declaration.
112 The term does not include an arrangement described in Section
113 1-209 or 1-210. For purposes of this paragraph, "ownership of a
114 unit" does not include holding a leasehold interest of less than
115 twenty (20) years in a unit, including renewal options.

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

122 (11) "Conversion building" means a building that at any time
123 before creation of the common interest community was occupied
124 wholly or partially by persons other than purchasers and persons
125 who occupy with the consent of purchasers.

126 (12) "Cooperative" means a common interest community in
127 which the real estate is owned by an association, each of whose
128 members is entitled by virtue of the member's ownership interest
129 in the association to exclusive possession of a unit.

130 (13) "Dealer" means a person in the business of selling
131 units for the person's own account.

132 (14) "Declarant" means any person or group of persons acting
133 in concert who:

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

137 (b) Reserves or succeeds to any special declarant
138 right.



139 (15) "Declaration" means the instruments, however
140 denominated, that creates a common interest community, including
141 any amendments to that instrument.

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

144 (a) Add real estate to a common interest community;

145 (b) Create units, common elements, or limited common
146 elements within a common interest community;

147 (c) Subdivide units or convert units into common
148 elements; or

149 (d) Withdraw real estate from a common interest
150 community.

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

155 (18) "Executive board" means the body, regardless of name,
156 designated in the declaration or bylaws to act on behalf of the
157 association.

158 (19) "Identifying number" means a symbol or address that
159 identifies only one (1) unit in a common interest community.

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

164 (21) "Limited common element" means a portion of the common
165 elements allocated by the declaration or by operation of Section
166 2-102(2) or (4) for the exclusive use of one or more but fewer
167 than all of the units.

168 (22) "Master association" means an organization described in
169 Section 2-120, whether or not it is also an association described
170 in Section 3-101.



171 (23) "Nonresidential purposes" means use for a purpose other
172 than a residential purpose.

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

182 (25) "Person" means an individual, corporation, business
183 trust, estate, trust, partnership, limited liability company,
184 association, joint venture, public corporation, government or
185 governmental subdivision, agency, or instrumentality, or any other
186 legal or commercial entity. In the case of a land trust, "person"
187 means the beneficiary of the trust rather than the trust or the
188 trustee.

189 (26) "Planned community" means a common interest community
190 that is not a condominium or a cooperative. A condominium or
191 cooperative may be part of a planned community.

192 (27) "Proprietary lease" means an agreement with the
193 association pursuant to which a member is entitled to exclusive
194 possession of a unit in a cooperative.

195 (28) "Purchaser" means a person, other than a declarant or a
196 dealer, who by means of a voluntary transfer acquires a legal or
197 equitable interest in a unit other than:

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

200 (b) As security for an obligation.

201 (29) "Real estate" means any leasehold or other estate or
202 interest in, over, or under land, including structures, fixtures,
203 and other improvements and interests that by custom, usage, or law



204 pass with a conveyance of land though not described in the
205 contract of sale or instrument of conveyance. The term includes
206 parcels with or without upper or lower boundaries and spaces that
207 may be filled with air or water.

208 (30) "Record," when used as a noun, means information that
209 is inscribed on a tangible medium or that is stored in an
210 electronic or other medium and is retrievable in perceivable form.

211 (31) "Residential purposes" means use for dwelling or
212 recreational purposes, or both.

213 (32) "Rule" means any policy, guideline, restriction,
214 procedure, or regulation of an association, however denominated,
215 which is not set forth in the declaration or bylaws and which
216 governs the conduct of persons or the use or appearance of
217 property.

218 (33) "Security interest" means an interest in real estate or
219 personal property, created by contract or conveyance, which
220 secures payment or performance of an obligation. The term
221 includes a lien created by a mortgage, deed of trust, trust deed,
222 security deed, contract for deed, land sales contract, lease
223 intended as security, assignment of lease or rents intended as
224 security, pledge of an ownership interest in an association, and
225 any other consensual lien or title retention contract intended as
226 security for an obligation.

227 (34) "Special declarant rights" means rights reserved for
228 the benefit of a declarant to:

229 (a) Complete improvements indicated on plats and plans
230 filed with the declaration or, in a cooperative, to complete
231 improvements described in the public offering statement pursuant
232 to Section 4-103(a) (2);

233 (b) Exercise any development right;

234 (c) Maintain sales offices, management offices, signs
235 advertising the common interest community, and models;



236 (d) Use easements through the common elements for the
237 purpose of making improvements within the common interest
238 community or within real estate which may be added to the common
239 interest community;

240 (e) Make the common interest community subject to a
241 master association;

242 (f) Merge or consolidate a common interest community
243 with another common interest community of the same form of
244 ownership;

245 (g) Appoint or remove any officer of the association or
246 any master association or any executive board member during any
247 period of declarant control;

248 (h) Control any construction, design review, or
249 aesthetic standards committee or process;

250 (i) Attend meetings of the unit owners and, except
251 during an executive session, the executive board; and

252 (j) Have access to the records of the association to
253 the same extent as a unit owner.

254 (35) "Time share" means a right to occupy a unit or any of
255 several units during five (5) or more separated time periods over
256 a period of at least five (5) years, including renewal options,
257 whether or not coupled with an estate or interest in a common
258 interest community or a specified portion thereof.

259 (36) "Unit" means a physical portion of the common interest
260 community designated for separate ownership or occupancy, the
261 boundaries of which are described pursuant to Section 2-105(a)(5).
262 If a unit in a cooperative is owned by a unit owner or is sold,
263 conveyed, voluntarily or involuntarily encumbered, or otherwise
264 transferred by a unit owner, the interest in that unit which is
265 owned, sold, conveyed, encumbered, or otherwise transferred is the
266 right to possession of that unit under a proprietary lease,
267 coupled with the allocated interests of that unit, and the
268 association's interest in that unit is not thereby affected.



269 (37) "Unit owner" means a declarant or other person who owns
270 a unit, or a lessee of a unit in a leasehold common interest
271 community whose lease expires simultaneously with any lease the
272 expiration or termination of which will remove the unit from the
273 common interest community, but does not include a person having an
274 interest in a unit solely as security for an obligation. In a
275 condominium or planned community, the declarant is the owner of
276 any unit created by the declaration. In a cooperative, the
277 declarant is treated as the owner of any unit to which allocated
278 interests have been allocated until that unit has been conveyed to
279 another person.

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

286 **Section 1-105. SEPARATE TITLES AND TAXATION.** (a) In a
287 cooperative, unless the declaration provides that a unit owner's
288 interest in a unit and its allocated interests is real estate for
289 all purposes, that interest is personal property.

290 (b) In a condominium or planned community:

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

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

299 (c) Any portion of the common elements for which the
300 declarant has reserved any development right must be separately



301 taxed and assessed against the declarant, and the declarant alone
302 is liable for payment of those taxes.

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

306 **Section 1-106. APPLICABILITY OF LOCAL ORDINANCES,**
307 **REGULATIONS AND BUILDING CODES.** (a) A building code may not
308 impose any requirement upon any structure in a common interest
309 community which it would not impose upon a physically identical
310 development under a different form of ownership.

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

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

322 **Section 1-107. EMINENT DOMAIN.** (a) If a unit is acquired
323 by eminent domain or part of a unit is acquired by eminent domain
324 leaving the unit owner with a remnant that may not practically or
325 lawfully be used for any purpose permitted by the declaration, the
326 award must include compensation to the unit owner for that unit
327 and its allocated interests, whether or not any common elements
328 are acquired. Upon acquisition, unless the decree otherwise
329 provides, that unit's allocated interests are automatically
330 reallocated to the remaining units in proportion to the respective
331 allocated interests of those units before the taking, and the
332 association shall promptly prepare, execute, and record an
333 amendment to the declaration reflecting the reallocations. Any



334 remnant of a unit remaining after part of a unit is taken under
335 this subsection is thereafter a common element.

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

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

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

359 **Section 1-108. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW**

360 **APPLICABLE.** The principles of law and equity, including the law
361 of corporations, any other form of organization authorized by law
362 in this state, the law of real property, and the law relative to
363 capacity to contract, principal and agent, eminent domain,
364 estoppel, fraud, misrepresentation, duress, coercion, mistake,
365 receivership, substantial performance, or other validating or



366 invalidating cause supplement the provisions of this act, except
367 to the extent inconsistent with this act.

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

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

377 **Section 1-111. SEVERABILITY.** If any provision of this act
378 or the application thereof to any person or circumstances is held
379 invalid, the invalidity does not affect other provisions or
380 applications of this act which can be given effect without the
381 invalid provisions or applications, and to this end the provisions
382 of this act are severable.

383 **Section 1-112. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.**

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

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

- 395 (1) The commercial setting of the negotiations;
- 396 (2) Whether a party has knowingly taken advantage of
397 the inability of the other party reasonably to protect his
398 interests by reason of physical or mental infirmity, illiteracy,



399 inability to understand the language of the agreement, or similar
400 factors;

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

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

411 **Section 1-113. OBLIGATION OF GOOD FAITH.** Every contract or
412 duty governed by this act imposes an obligation of good faith in
413 its performance or enforcement.

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

420 **Section 1-115. ADJUSTMENT OF DOLLAR AMOUNTS.** (a) From time
421 to time the dollar amount specified in Section 1-203 must change,
422 as provided in subsections (b) and (c), according to and to the
423 extent of changes in the Consumer Price Index for Urban Wage
424 Earners and Clerical Workers: U.S. City Average, All Items 1967 =
425 100, compiled by the Bureau of Labor Statistics, United States
426 Department of Labor, (the "Index"). The Index for December 1979,
427 which was 230, is the Reference Base Index.

428 (b) The dollar amount specified in Section 1-203 and any
429 amount stated in the declaration pursuant to that section, must
430 change on July 1 of each year if the percentage of change,
431 calculated to the nearest whole percentage point, between the



432 Index at the end of the preceding year and the Reference Base
433 Index is ten percent (10%) or more, but (i) the portion of the
434 percentage change in the Index in excess of a multiple of ten
435 percent (10%) must be disregarded and the dollar amount shall
436 change only in multiples of ten percent (10%) of the amount
437 appearing in this act on the date of enactment; (ii) the dollar
438 amount must not change if the amount required by this section is
439 that currently in effect pursuant to this act as a result of
440 earlier application of this section; and (iii) in no event may the
441 dollar amount be reduced below the amount appearing in this act on
442 the date of enactment.

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

453 **Section 1-116. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
454 **AND NATIONAL COMMERCE ACT.** This act modifies, limits, and
455 supercedes the federal Electronic Signatures in Global and
456 National Commerce Act (15 USCS Section 7001, et seq.) but does not
457 modify, limit, or supercede Section 101(c) of that act (15 USCS
458 Section 7001(c)) or authorize electronic delivery of any of the
459 notices described in Section 103(b) of that act (15 USCS Section
460 7003(b)).

461 **PART 2**

462 **APPLICABILITY**

463 **Section 1-201. APPLICABILITY TO NEW COMMON INTEREST**
464 **COMMUNITIES.** Except as otherwise provided in this part, this act



465 applies to all common interest communities created within this
466 state after the effective date of this act. The provisions of
467 Section 89-9-1 et seq. do not apply to common interest communities
468 created after July 1, 2011. Amendments to this act apply to all
469 common interest communities created after July 1, 2011, or
470 subjected to this act, regardless of when the amendment is adopted
471 in this state.

472 **Section 1-202. EXCEPTION FOR SMALL COOPERATIVES.** If a
473 cooperative contains no more than twelve (12) units and is not
474 subject to any development rights, it is subject only to Sections
475 1-106 (Applicability of Local Ordinances, Regulations, and
476 Building Codes) and 1-107 (Eminent Domain) unless the declaration
477 provides that the entire act is applicable.

478 **Section 1-203. EXCEPTION FOR SMALL AND LIMITED EXPENSE**
479 **LIABILITY PLANNED COMMUNITIES.** (a) Unless the declaration
480 provides that this entire act is applicable, a planned community
481 that is not subject to any development right is subject only to
482 Sections 1-105, 1-106, and 1-107, if the community:

483 (1) Contains no more than twelve (12) units; or
484 (2) Provides in its declaration that the annual average
485 common expense liability of all units restricted to residential
486 purposes, exclusive of optional user fees and any insurance
487 premiums paid by the association, may not exceed Three Hundred
488 Dollars (\$300.00), as adjusted pursuant to Section 1-115.

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

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

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



498 **Section 1-204. APPLICABILITY TO PREEXISTING COMMON INTEREST**
499 **COMMUNITIES.** (a) Except for a cooperative and planned community
500 described in Section 1-205 and a nonresidential common interest
501 community described in Section 1-207, the following sections apply
502 to a common interest community created in this state before July
503 1, 2011:

504 1-105;
505 1-106;
506 1-107;
507 1-206;
508 2-102;
509 2-103;
510 2-104;
511 2-117 (h) and (i);
512 2-121;
513 2-124;
514 3-102(a)(1) through (6) and (11) through (16);
515 3-103;
516 3-116;
517 3-118;
518 3-124;
519 4-109;
520 4-117; and
521 1-103 to the extent necessary to construe those
522 sections.

523 (b) The sections described in subsection (a) apply only with
524 respect to events and circumstances occurring after July 1, 2011,
525 and do not invalidate existing provisions of the declaration,
526 bylaws, or plats or plans of those common interest communities.

527 **Section 1-205. APPLICABILITY TO SMALL PREEXISTING**
528 **COOPERATIVES AND PLANNED COMMUNITIES.** If a cooperative or planned
529 community created within this state before July 1, 2011, contains
530 no more than twelve (12) units and is not subject to any



531 development right, it is subject only to Sections 1-105, 1-106,
532 and 1-107 unless the declaration is amended in conformity with
533 applicable law and with the procedures and requirements of the
534 declaration to take advantage of Section 1-206, in which case, all
535 the sections enumerated in Section 1-204 apply to that cooperative
536 or planned community.

537 **Section 1-206. AMENDMENTS TO GOVERNING INSTRUMENTS.** (a)
538 The declaration, bylaws, or plats and plans of any common interest
539 community created before July 1, 2011, may be amended to achieve
540 any result permitted by this act, regardless of what applicable
541 law provided before this act was adopted.

542 (b) Except as otherwise provided in Section 2-117(i) and
543 (j), an amendment to the declaration, bylaws, or plats and plans
544 authorized by this section must be adopted in conformity with any
545 procedures and requirements for amending the instruments specified
546 by those instruments or, if there are none, in conformity with the
547 amendment procedures of this act. If an amendment grants to a
548 person a right, power, or privilege permitted by this act, any
549 correlative obligation, liability, or restriction in this act also
550 applies to the person.

551 **Section 1-207. APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE**
552 **COMMON INTEREST COMMUNITIES.** (a) Except as otherwise provided in
553 subsection (d), this section applies only to nonresidential common
554 interest communities.

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

- 558 (1) This entire act applies to the community;
559 (2) Articles 1 and 2 apply to the community; or
560 (3) In the case of a planned community or a
561 cooperative, Sections 1-105, 1-106, and 1-107 apply to the
562 community.



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

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

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

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

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

591 **Section 1-209. OTHER EXEMPT REAL ESTATE ARRANGEMENTS.** (a)
592 An arrangement between the associations for two (2) or more common
593 interest communities to share the costs of real estate taxes,
594 insurance premiums, services, maintenance or improvements of real
595 estate, or other activities specified in their arrangement or



596 declarations does not create a separate common interest community.
597 If the declarants of the common interest communities are
598 affiliates, the arrangement may not unreasonably allocate the
599 costs among the common interest communities.

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

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

616 **ARTICLE 2**

617 **CREATION, ALTERATION, AND**

618 **TERMINATION OF COMMON INTEREST COMMUNITIES**

619 **Section 2-101. CREATION OF COMMON INTEREST COMMUNITIES.** (a)
620 A common interest community may be created pursuant to this act
621 only by recording a declaration executed in the same manner as a
622 deed and, in a cooperative, by conveying the real estate subject
623 to that declaration to the association. The declaration must be
624 recorded in every county in which any portion of the common
625 interest community is located and must be indexed in the grantee's
626 index in the name of the common interest community and the
627 association and in the grantor's index in the name of each person
628 executing the declaration.



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

636 **Section 2-102. UNIT BOUNDARIES.** Except as provided by the
637 declaration:

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

644 (2) If any chute, flue, duct, wire, conduit, bearing wall,
645 bearing column, or any other fixture lies partially within and
646 partially outside the designated boundaries of a unit, any portion
647 thereof serving only that unit is a limited common element
648 allocated solely to that unit, and any portion thereof serving
649 more than one (1) unit or any portion of the common elements is a
650 part of the common elements.

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

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

659 **Section 2-103. CONSTRUCTION AND VALIDITY OF DECLARATION AND**
660 **BYLAWS.** (a) All provisions of the declaration and bylaws are
661 severable.



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

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

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

672 **Section 2-104. DESCRIPTION OF UNITS.** A description of a
673 unit which sets forth the name of the common interest community,
674 the recording data for the declaration, the county in which the
675 common interest community is located, and the identifying number
676 of the unit, is a legally sufficient description of that unit and
677 all rights, obligations, and interests appurtenant to that unit
678 which were created by the declaration or bylaws.

679 **Section 2-105. CONTENTS OF DECLARATION.** (a) The declaration
680 must contain:

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

684 (2) The name of every county in which any part of the
685 common interest community is situated;

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

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

690 (5) In a condominium or planned community, a
691 description of the boundaries of each unit created by the
692 declaration, including the unit's identifying number or, in a
693 cooperative, a description, which may be by plats or plans, of
694 each unit created by the declaration, including the unit's



695 identifying number, its size or number of rooms, and its location
696 within a building if it is within a building containing more than
697 one (1) unit;

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

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

707 (8) A description of any development right and other
708 special declarant rights reserved by the declarant, together with
709 a legally sufficient description of the real estate to which each
710 of those rights applies, and a time limit within which each of
711 those rights must be exercised;

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

715 (i) Either a statement fixing the boundaries of
716 those portions and regulating the order in which those portions
717 may be subjected to the exercise of each development right or a
718 statement that no assurances are made in those regards; and

719 (ii) A statement as to whether, if any development
720 right is exercised in any portion of the real estate subject to
721 that development right, that development right must be exercised
722 in all or in any other portion of the remainder of that real
723 estate;

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



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

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

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

742 (14) Any authorization pursuant to which the
743 association may establish and enforce construction and design
744 criteria and aesthetic standards in the manner provided in
745 Sections 3-106 and 3-120; and

746 (15) All matters required by Sections 2-106, 2-107,
747 2-108, 2-109, 2-115, 2-116, and 3-103.

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

752 **Section 2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.** (a)
753 Any lease the expiration or termination of which may terminate the
754 common interest community or reduce its size, or a memorandum
755 thereof, must be recorded. Every lessor of those leases in a
756 condominium or planned community shall sign the declaration. The
757 declaration must state:

758 (1) The recording data for the lease or a statement of
759 where the complete lease may be inspected;



760 (2) The date on which the lease is scheduled to expire;
761 (3) A legally sufficient description of the real estate
762 subject to the lease;
763 (4) Any right of the unit owners to redeem the
764 reversion and the manner whereby those rights may be exercised, or
765 a statement that they do not have those rights;
766 (5) Any right of the unit owners to remove any
767 improvements within a reasonable time after the expiration or
768 termination of the lease, or a statement that they do not have
769 those rights; and
770 (6) Any rights of the unit owners to renew the lease
771 and the conditions of any renewal, or a statement that they do not
772 have those rights.

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

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

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



793 **Section 2-107. ALLOCATION OF ALLOCATED INTERESTS.** (a) The
794 declaration must allocate to each unit:

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

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

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

806 (b) The declaration must state the formulas used to
807 establish allocations of interests. Those allocations may not
808 discriminate in favor of units owned by the declarant or an
809 affiliate of the declarant.

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

815 (d) The declaration may provide: (1) that different
816 allocations of votes shall be made to the units on particular
817 matters specified in the declaration; (2) for cumulative voting
818 only for the purpose of electing members of the executive board;
819 and (3) for class voting on specified issues affecting the class
820 if necessary to protect valid interests of the class. A declarant
821 may not utilize cumulative or class voting for the purpose of
822 evading any limitation imposed on declarants by this act nor may
823 units constitute a class because they are owned by a declarant.

824 (e) Except for minor variations due to rounding, the sum of
825 the common expense liabilities and, in a condominium, the sum of



826 the undivided interests in the common elements allocated at any
827 time to all the units must each equal one (1) if stated as a
828 fraction or one hundred percent (100%) if stated as a percentage.
829 In the event of discrepancy between an allocated interest and the
830 result derived from application of the pertinent formula, the
831 allocated interest prevails.

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

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

841 **Section 2-108. LIMITED COMMON ELEMENTS.** (a) Except for the
842 limited common elements described in Section 2-102(2) and (4), the
843 declaration must specify to which unit or units each limited
844 common element is allocated. An allocation may not be altered
845 without the consent of the unit owners whose units are affected.

846 (b) Except as the declaration otherwise provides, a limited
847 common element may be reallocated by an amendment to the
848 declaration executed by the unit owners between or among whose
849 units the reallocation is made. The persons executing the
850 amendment shall provide a copy thereof to the association, which
851 shall record it. The amendment must be recorded in the names of
852 the parties and the common interest community.

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

857 **Section 2-109. PLATS AND PLANS.** (a) Plats and plans are a
858 part of the declaration, and are required for all common interest



859 communities except cooperatives. Separate plats and plans are not
860 required by this act if all the information required by this
861 section is contained in either a plat or plan. Each plat and plan
862 must be clear and legible and contain a certification that the
863 plat or plan contains all information required by this section.

864 (b) Each plat must show or project:

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

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

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

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

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

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

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



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

893 (9) The distance between noncontiguous parcels of real
894 estate comprising the common interest community;

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

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

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

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

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

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

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

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



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

928 (g) Any certification of a plat or plan required by this
929 section or Section 2-101(b) must be made by an independent
930 surveyor, architect, or engineer.

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

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

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

940 **Section 2-110. EXERCISE OF DEVELOPMENT RIGHTS.** (a) To
941 exercise any development right reserved under Section 2-105(a)(8),
942 the declarant shall prepare, execute, and record an amendment to
943 the declaration and in a condominium or planned community comply
944 with Section 2-109. The declarant is the unit owner of any units
945 thereby created. The amendment to the declaration must assign an
946 identifying number to each new unit created, and, except in the
947 case of subdivision or conversion of units described in subsection
948 (b), reallocate the allocated interests among all units. The
949 amendment must describe any common elements and any limited common
950 elements thereby created and, in the case of limited common
951 elements, designate the unit to which each is allocated to the
952 extent required by Section 2-108.

953 (b) Development rights may be reserved within any real
954 estate added to the common interest community if the amendment



955 adding that real estate includes all matters required by Section
956 2-105 or 2-106, as the case may be, and, in a condominium or
957 planned community, the plats and plans include all matters
958 required by Section 2-109. This provision does not extend the
959 time limit on the exercise of development rights imposed by the
960 declaration pursuant to Section 2-105(a) (8).

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

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

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

974 (d) If the declaration provides, pursuant to Section
975 2-105(a) (8), that all or a portion of the real estate is subject
976 to a right of withdrawal:

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

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

984 **Section 2-111. ALTERATIONS OF UNITS.** Subject to the
985 provisions of the declaration and other provisions of law, a unit
986 owner:



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

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

994 (3) After acquiring an adjoining unit or an adjoining part
995 of an adjoining unit, may remove or alter any intervening
996 partition or create apertures therein, even if the partition in
997 whole or in part is a common element, if those acts do not impair
998 the structural integrity or mechanical systems or lessen the
999 support of any portion of the common interest community. Removal
1000 of partitions or creation of apertures under this paragraph is not
1001 an alteration of boundaries.

1002 **Section 2-112. RELOCATION OF UNIT BOUNDARIES.** (a) Subject
1003 to the provisions of the declaration and other provisions of law,
1004 the boundaries between adjoining units may be relocated by an
1005 amendment to the declaration upon application to the association
1006 by the owners of those units. If the owners of the adjoining
1007 units have specified a reallocation between their units of their
1008 allocated interests, the application must state the proposed
1009 reallocations. Unless the executive board determines, within
1010 thirty (30) days, that the reallocations are unreasonable, the
1011 association shall prepare an amendment that identifies the units
1012 involved and states the reallocations. The amendment must be
1013 executed by those unit owners, contain words of conveyance between
1014 them, and, on recordation, be indexed in the name of the grantor
1015 and the grantee, and in the grantee's index in the name of the
1016 association.

1017 (b) Subject to the provisions of the declaration and other
1018 provisions of law, boundaries between units and common elements
1019 may be relocated to incorporate common elements within a unit by



1020 an amendment to the declaration upon application to the
1021 association by the owner of the unit who proposes to relocate a
1022 boundary. Unless the declaration provides otherwise, the
1023 amendment may be approved only if persons entitled to cast at
1024 least sixty-seven percent (67%) of the votes in the association,
1025 including sixty-seven percent (67%) of the votes allocated to
1026 units not owned by the declarant, agree to the action. The
1027 amendment may describe any fees or charges payable by the owner of
1028 the affected unit in connection with the boundary relocation and
1029 the fees and charges are assets of the association. The amendment
1030 must be executed by the unit owner of the unit whose boundary is
1031 being relocated and by the association, contain words of
1032 conveyance between them, and on recordation be indexed in the name
1033 of the unit owner and the association as grantor or grantee, as
1034 appropriate.

1035 (c) The association (i) in a condominium or planned
1036 community shall prepare and record plats or plans necessary to
1037 show the altered boundaries of affected units, and their
1038 dimensions and identifying numbers, and (ii) in a cooperative
1039 shall prepare and record amendments to the declaration, including
1040 any plans, necessary to show or describe the altered boundaries of
1041 affected units, and their dimensions and identifying numbers.

1042 **Section 2-113. SUBDIVISION OF UNITS.** (a) If the
1043 declaration expressly permits, a unit may be subdivided into two
1044 (2) or more units. Subject to the declaration and law other than
1045 this act, upon application of a unit owner to subdivide a unit,
1046 the association shall prepare, execute, and record an amendment to
1047 the declaration, including, in a condominium or planned community,
1048 the plats and plans, subdividing that unit.

1049 (b) The amendment to the declaration must be executed by the
1050 owner of the unit to be subdivided, assign an identifying number
1051 to each unit created, and reallocate the allocated interests
1052 formerly allocated to the subdivided unit to the new units in any



1053 reasonable manner prescribed by the owner of the subdivided unit
1054 or on any other basis the declaration requires.

1055 **Section 2-114. EASEMENT FOR ENCROACHMENTS.** To the extent
1056 that any unit or common element encroaches on any other unit or
1057 common element, a valid easement for the encroachment exists. The
1058 easement does not relieve a unit owner of liability in case of his
1059 willful misconduct nor relieve a declarant or any other person of
1060 liability for failure to adhere to any plats and plans or, in a
1061 cooperative, to any representation in the public offering
1062 statement.

1063 **Section 2-115. USE FOR SALES PURPOSES.** A declarant may
1064 maintain sales offices, management offices, and models in units or
1065 on common elements in the common interest community only if the
1066 declaration so provides and specifies the rights of a declarant
1067 with regard to the number, size, location, and relocation thereof.
1068 In a cooperative or condominium, any sales office, management
1069 office, or model not designated a unit by the declaration is a
1070 common element. If a declarant ceases to be a unit owner, he
1071 ceases to have any rights with regard thereto unless it is removed
1072 promptly from the common interest community in accordance with a
1073 right to remove reserved in the declaration. Subject to any
1074 limitations in the declaration, a declarant may maintain signs on
1075 the common elements advertising the common interest community.
1076 This section is subject to the provisions of other state law and
1077 to local ordinances.

1078 **Section 2-116. EASEMENT AND USE RIGHTS.** (a) Subject to the
1079 declaration, a declarant has an easement through the common
1080 elements as may be reasonably necessary for the purpose of
1081 discharging the declarant's obligations or exercising special
1082 declarant rights, whether arising under this act or reserved in
1083 the declaration.



1084 (b) Subject to Sections 3-102(a)(6) and 3-112, the unit
1085 owners have an easement in the common elements for access to their
1086 units.

1087 (c) Subject to the declaration and rules, the unit owners
1088 have a right to use the common elements that are not limited
1089 common elements and all real estate that must become common
1090 elements for the purposes for which they were intended.

1091 **Section 2-117. AMENDMENT OF DECLARATION.** (a) Except in
1092 cases of amendments that may be executed by a declarant under
1093 Section 2-109(f) or 2-110, or by the association under Section
1094 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, by certain unit
1095 owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b),
1096 and except as limited by subsections (d), (f), (g), and (h), the
1097 declaration, including any plats and plans, may be amended by vote
1098 or agreement of unit owners of units to which at least sixty-seven
1099 percent (67%) of the votes in the association are allocated,
1100 unless the declaration specifies a different percentage for all
1101 amendments or for specific subjects of amendment. If the
1102 declaration requires the approval of another person as a condition
1103 of its effectiveness, the amendment is not valid without the
1104 approval.

1105 (b) No action to challenge the validity of an amendment
1106 adopted by the association pursuant to this section may be brought
1107 more than one (1) year after the amendment is recorded.

1108 (c) Every amendment to the declaration must be recorded in
1109 every county in which any portion of the common interest community
1110 is located and is effective only upon recordation. An amendment,
1111 except an amendment pursuant to Section 2-112(a), must be indexed
1112 in the grantee's index in the name of the common interest
1113 community and the association and in the grantor's index in the
1114 name of the parties executing the amendment.

1115 (d) Except to the extent expressly permitted or required by
1116 other provisions of this act, no amendment may create or increase



1117 special declarant rights, increase the number of units, change the
1118 boundaries of any unit, or change the allocated interests of a
1119 unit, in the absence of unanimous consent of the unit owners.

1120 (e) Amendments to the declaration required by this act to be
1121 recorded by the association must be prepared, executed, recorded,
1122 and certified on behalf of the association by any officer of the
1123 association designated for that purpose or, in the absence of
1124 designation, by the president of the association.

1125 (f) An amendment to the declaration may prohibit or
1126 materially restrict the permitted uses of or behavior in a unit or
1127 the number or other qualifications of persons who may occupy units
1128 only by vote or agreement of unit owners of units to which at
1129 least eighty percent (80%) of the votes in the association are
1130 allocated, unless the declaration specifies that (i) a larger
1131 percentage of unit owners must vote or agree to that amendment or
1132 (ii) such an amendment may be approved by unit owners of units
1133 having at least eighty percent (80%) of the votes of a specified
1134 group of units that would be affected by the amendment. An
1135 amendment approved under this subsection must provide reasonable
1136 protection for a use or occupancy permitted at the time the
1137 amendment was adopted.

1138 (g) The time limits specified in the declaration pursuant to
1139 Section 2-105(a) (8) within which reserved development rights must
1140 be exercised may be extended, and additional development rights
1141 may be created, if persons entitled to cast at least eighty
1142 percent (80%) of the votes in the association, including eighty
1143 percent (80%) of the votes allocated to units not owned by the
1144 declarant, agree to that action. The agreement is effective
1145 thirty (30) days after an amendment to the declaration reflecting
1146 the terms of the agreement is recorded unless all the persons
1147 holding the affected special declarant rights, or security
1148 interests in those rights, record a written objection within the
1149 30-day period, in which case the amendment is void, or consent in



1150 writing at the time the amendment is recorded, in which case the
1151 amendment is effective when recorded.

1152 (h) A provision in the declaration creating special
1153 declarant rights that have not expired may not be amended without
1154 the consent of the declarant.

1155 (i) If any provision of this act or of the declaration
1156 requires the consent of a holder of a security interest in a unit
1157 as a condition to the effectiveness of an amendment to the
1158 declaration, that consent is granted if no refusal to consent in a
1159 record is received by the association within sixty (60) days after
1160 the association delivers notice of the proposed amendment to the
1161 holder at an address for notice provided by the holder or mails
1162 the notice to the holder by certified mail, return receipt
1163 requested at that address. If the holder has not provided to the
1164 association an address for notice, the association must provide
1165 notice to the address in the security interest of record.
1166 Notwithstanding this section, no amendment to the declaration that
1167 affects the priority of a holder's security interest or the
1168 ability of that holder to foreclose its security interest may be
1169 adopted without that holder's consent in a record if the
1170 declaration requires that consent as a condition to the
1171 effectiveness of the amendment.

1172 (j) If the declaration contains a provision requiring that
1173 amendments to the declaration may be adopted only by the vote or
1174 agreement of unit owners of units to which more than eighty
1175 percent (80%) of the votes in the association are allocated, such
1176 a proposed amendment is approved:

1177 (1) If:

1178 (i) Unit owners of units to which at least eighty
1179 percent (80%) of the votes in the association are allocated vote
1180 for or agree to the proposed amendment;

1181 (ii) No unit owner votes against the proposed
1182 amendment; and



1183 (iii) Notice of the proposed amendment is
1184 delivered to the unit owners holding the votes in the association
1185 which have not voted or agreed to the proposed amendment and no
1186 written objection to the proposed amendment is received by the
1187 association within sixty (60) days after the association delivers
1188 notice; or

1189 (2) If unit owners of units to which at least eighty
1190 percent (80%) of the votes in the association are allocated vote
1191 for or agree to the proposed amendment but at least one (1) unit
1192 owner objects to the proposed amendment and, pursuant to an action
1193 brought by the association in the appropriate court against all
1194 objecting unit owners, the court finds that the objecting unit
1195 owners do not have a unique minority interest, different in kind
1196 from the interests of the other unit owners, that the voting
1197 requirement of the declaration was intended to protect.

1198 **Section 2-118. TERMINATION OF COMMON INTEREST COMMUNITY.**

1199 (a) Except for a taking of all the units by eminent domain,
1200 foreclosure against an entire cooperative of a security interest
1201 that has priority over the declaration, or in the circumstances
1202 described in Section 2-124, a common interest community may be
1203 terminated only by agreement of unit owners of units to which at
1204 least eighty percent (80%) of the votes in the association are
1205 allocated, or any larger percentage the declaration specifies, and
1206 with any other approvals required by the declaration. The
1207 declaration may specify a smaller percentage only if all of the
1208 units are restricted exclusively to nonresidential uses.

1209 (b) An agreement to terminate must be evidenced by the
1210 execution of a termination agreement, or ratifications thereof, in
1211 the same manner as a deed, by the requisite number of unit owners.
1212 The termination agreement must specify a date after which the
1213 agreement will be void unless it is recorded before that date. A
1214 termination agreement and all ratifications thereof must be



1215 recorded in every county in which a portion of the common interest
1216 community is situated and is effective only upon recordation.

1217 (c) In the case of a condominium or planned community
1218 containing only units having horizontal boundaries described in
1219 the declaration, a termination agreement may provide that all of
1220 the common elements and units of the common interest community
1221 must be sold following termination. If, pursuant to the
1222 agreement, any real estate in the common interest community is to
1223 be sold following termination, the termination agreement must set
1224 forth the minimum terms of the sale.

1225 (d) In the case of a condominium or planned community
1226 containing any units not having horizontal boundaries described in
1227 the declaration, a termination agreement may provide for sale of
1228 the common elements, but it may not require that the units be sold
1229 following termination, unless the declaration as originally
1230 recorded provided otherwise or all the unit owners consent to the
1231 sale.

1232 (e) The association, on behalf of the unit owners, may
1233 contract for the sale of real estate in a common interest
1234 community, but the contract is not binding on the unit owners
1235 until approved pursuant to subsections (a) and (b). If any real
1236 estate is to be sold following termination, title to that real
1237 estate, upon termination, vests in the association as trustee for
1238 the holders of all interests in the units. Thereafter, the
1239 association has all powers necessary and appropriate to effect the
1240 sale. Until the sale has been concluded and the proceeds thereof
1241 distributed, the association continues in existence with all
1242 powers it had before termination. Proceeds of the sale must be
1243 distributed to unit owners and lien holders as their interests may
1244 appear, in accordance with subsections (h), (i), and (j). Unless
1245 otherwise specified in the termination agreement, as long as the
1246 association holds title to the real estate, each unit owner and
1247 the unit owner's successors in interest have an exclusive right to



1248 occupancy of the portion of the real estate that formerly
1249 constituted the unit. During the period of that occupancy, each
1250 unit owner and the unit owner's successors in interest remain
1251 liable for all assessments and other obligations imposed on unit
1252 owners by this act or the declaration.

1253 (f) In a condominium or planned community, if the real
1254 estate constituting the common interest community is not to be
1255 sold following termination, title to the common elements and, in a
1256 common interest community containing only units having horizontal
1257 boundaries described in the declaration, title to all the real
1258 estate in the common interest community, vests in the unit owners
1259 upon termination as tenants in common in proportion to their
1260 respective interests as provided in subsection (j), and liens on
1261 the units shift accordingly. While the tenancy in common exists,
1262 each unit owner and the unit owner's successors in interest have
1263 an exclusive right to occupancy of the portion of the real estate
1264 that formerly constituted the unit.

1265 (g) Following termination of the common interest community,
1266 the proceeds of a sale of real estate, together with the assets of
1267 the association, are held by the association as trustee for unit
1268 owners and holders of liens on the units as their interests may
1269 appear.

1270 (h) Following termination of a condominium or planned
1271 community, creditors of the association holding liens on the
1272 units, which were recorded before termination, may enforce those
1273 liens in the same manner as any lien holder. All other creditors
1274 of the association are to be treated as if they had perfected
1275 liens on the units immediately before termination.

1276 (i) In a cooperative, the declaration may provide that all
1277 creditors of the association have priority over any interests of
1278 unit owners and creditors of unit owners. In that event,
1279 following termination, creditors of the association holding liens
1280 on the cooperative which were recorded before termination may



1281 enforce their liens in the same manner as any lien holder, and any
1282 other creditor of the association is to be treated as if he had
1283 perfected a lien against the cooperative immediately before
1284 termination. Unless the declaration provides that all creditors
1285 of the association have that priority:

1286 (1) The lien of each creditor of the association which
1287 was perfected against the association before termination becomes,
1288 upon termination, a lien against each unit owner's interest in the
1289 unit as of the date the lien was perfected;

1290 (2) Any other creditor of the association is to be
1291 treated upon termination as if the creditor had perfected a lien
1292 against each unit owner's interest immediately before termination;

1293 (3) The amount of the lien of an association's creditor
1294 described in paragraphs (1) and (2) against each of the unit
1295 owners' interest must be proportionate to the ratio which each
1296 unit's common expense liability bears to the common expense
1297 liability of all of the units;

1298 (4) The lien of each creditor of each unit owner which
1299 was perfected before termination continues as a lien against that
1300 unit owner's unit as of the date the lien was perfected; and

1301 (5) The assets of the association must be distributed
1302 to all unit owners and all lien holders as their interests may
1303 appear in the order described above. Creditors of the association
1304 are not entitled to payment from any unit owner in excess of the
1305 amount of the creditor's lien against that unit owner's interest.

1306 (j) The respective interests of unit owners referred to in
1307 subsections (e), (f), (g), (h), and (i) are as follows:

1308 (1) Except as provided in paragraph (2), the respective
1309 interests of unit owners are the fair market values of their
1310 units, allocated interests, and any limited common elements
1311 immediately before the termination, as determined by one or more
1312 independent appraisers selected by the association. The decision
1313 of the independent appraisers must be distributed to the unit



1314 owners and becomes final unless disapproved within thirty (30)
1315 days after distribution by unit owners of units to which
1316 twenty-five percent (25%) of the votes in the association are
1317 allocated. The proportion of any unit owner's interest to that of
1318 all unit owners is determined by dividing the fair market value of
1319 that unit owner's unit and its allocated interests by the total
1320 fair market values of all the units and their allocated interests.

1321 (2) If any unit or any limited common element is
1322 destroyed to the extent that an appraisal of the fair market value
1323 thereof before destruction cannot be made, the interests of all
1324 unit owners are:

1325 (i) In a condominium, their respective common
1326 element interests immediately before the termination;

1327 (ii) In a cooperative, their respective ownership
1328 interests immediately before the termination; and

1329 (iii) In a planned community, their respective
1330 common expense liabilities immediately before the termination.

1331 (k) In a condominium or planned community, except as
1332 provided in subsection (l), foreclosure or enforcement of a lien
1333 or encumbrance against the entire common interest community does
1334 not terminate, of itself, the common interest community, and
1335 foreclosure or enforcement of a lien or encumbrance against a
1336 portion of the common interest community, other than withdrawable
1337 real estate, does not withdraw that portion from the common
1338 interest community. Foreclosure or enforcement of a lien or
1339 encumbrance against withdrawable real estate, or against common
1340 elements that have been subjected to a security interest by the
1341 association under Section 3-112, does not withdraw, of itself,
1342 that real estate from the common interest community, but the
1343 person taking title thereto may require from the association, upon
1344 request, an amendment excluding the real estate from the common
1345 interest community.



1346 (1) In a condominium or planned community, if a lien or
1347 encumbrance against a portion of the real estate comprising the
1348 common interest community has priority over the declaration and
1349 the lien or encumbrance has not been partially released, the
1350 parties foreclosing the lien or encumbrance, upon foreclosure, may
1351 record an instrument excluding the real estate subject to that
1352 lien or encumbrance from the common interest community.

1353 **Section 2-119. RIGHTS OF SECURED LENDERS.** (a) The
1354 declaration may require that all or a specified number or
1355 percentage of the lenders who hold security interests encumbering
1356 the units or who have extended credit to the association approve
1357 specified actions of the unit owners or the association as a
1358 condition to the effectiveness of those actions, but no
1359 requirement for approval may operate to (i) deny or delegate
1360 control over the general administrative affairs of the association
1361 by the unit owners or the executive board, or (ii) prevent the
1362 association or the executive board from commencing, intervening
1363 in, or settling any litigation or proceeding, or (iii) prevent any
1364 insurance trustee or the association from receiving and
1365 distributing any insurance proceeds except pursuant to Section
1366 3-113.

1367 (b) A lender who has extended credit to an association
1368 secured by an assignment of income or an encumbrance on the common
1369 elements may enforce its security agreement in accordance with its
1370 terms, subject to the requirements of this act and other law.
1371 Requirements that the association must deposit its periodic common
1372 charges before default with the lender to which the association's
1373 income has been assigned, or increase its common charges at the
1374 lender's direction by amounts reasonably necessary to amortize the
1375 loan in accordance with its terms, do not violate the prohibitions
1376 on lender approval contained in subsection (a).

1377 **Section 2-120. MASTER ASSOCIATIONS.** (a) If the declaration
1378 provides that any of the powers described in Section 3-102 are to



1379 be exercised by or may be delegated to a profit or nonprofit
1380 corporation or unincorporated association that exercises those or
1381 other powers on behalf of one or more common interest communities
1382 or for the benefit of the unit owners of one or more common
1383 interest communities, all provisions of this act applicable to
1384 unit owners' associations apply to any such corporation or
1385 unincorporated association, except as modified by this section.

1386 (b) Unless it is acting in the capacity of an association
1387 described in Section 3-101, a master association may exercise the
1388 powers set forth in Section 3-102(a)(2) only to the extent
1389 expressly permitted in the declarations of common interest
1390 communities which are part of the master association or expressly
1391 described in the delegations of power from those common interest
1392 communities to the master association.

1393 (c) If the declaration of any common interest community
1394 provides that the executive board may delegate certain powers to a
1395 master association, the members of the executive board have no
1396 liability for the acts or omissions of the master association with
1397 respect to those powers following delegation.

1398 (d) The rights and responsibilities of unit owners with
1399 respect to the unit owners' association set forth in Sections
1400 3-103, 3-108, 3-109, 3-110, and 3-112 apply in the conduct of the
1401 affairs of a master association only to persons who elect the
1402 board of a master association, whether or not those persons are
1403 otherwise unit owners within the meaning of this act.

1404 (e) Even if a master association is also an association
1405 described in Section 3-101, the certificate of incorporation or
1406 other instrument creating the master association and the
1407 declaration of each common interest community, the powers of which
1408 are assigned by the declaration or delegated to the master
1409 association, may provide that the executive board of the master
1410 association must be elected after the period of declarant control
1411 in any of the following ways:



1412 (1) All unit owners of all common interest communities
1413 subject to the master association may elect all members of the
1414 master association's executive board.

1415 (2) All members of the executive boards of all common
1416 interest communities subject to the master association may elect
1417 all members of the master association's executive board.

1418 (3) All unit owners of each common interest community
1419 subject to the master association may elect specified members of
1420 the master association's executive board.

1421 (4) All members of the executive board of each common
1422 interest community subject to the master association may elect
1423 specified members of the master association's executive board.

1424 **Section 2-121. MERGER OR CONSOLIDATION OF COMMON INTEREST**

1425 **COMMUNITIES.** (a) Any two (2) or more common interest communities
1426 of the same form of ownership, by agreement of the unit owners as
1427 provided in subsection (b), may be merged or consolidated into a
1428 single common interest community. In the event of a merger or
1429 consolidation, unless the agreement otherwise provides, the
1430 resultant common interest community is the legal successor, for
1431 all purposes, of all of the preexisting common interest
1432 communities, and the operations and activities of all associations
1433 of the preexisting common interest communities are merged or
1434 consolidated into a single association that holds all powers,
1435 rights, obligations, assets, and liabilities of all preexisting
1436 associations.

1437 (b) An agreement of two (2) or more common interest
1438 communities to merge or consolidate pursuant to subsection (a)
1439 must be evidenced by an agreement prepared, executed, recorded,
1440 and certified by the president of the association of each of the
1441 preexisting common interest communities following approval by
1442 owners of units to which are allocated the percentage of votes in
1443 each common interest community required to terminate that common
1444 interest community. The agreement must be recorded in every



1445 county in which a portion of the common interest community is
1446 located and is not effective until recorded.

1447 (c) Every merger or consolidation agreement must provide for
1448 the reallocation of the allocated interests in the new association
1449 among the units of the resultant common interest community either
1450 (i) by stating the reallocations or the formulas upon which they
1451 are based or (ii) by stating the percentage of overall allocated
1452 interests of the new common interest community which are allocated
1453 to all of the units comprising each of the preexisting common
1454 interest communities, and providing that the portion of the
1455 percentages allocated to each unit formerly comprising a part of
1456 the preexisting common interest community must be equal to the
1457 percentages of allocated interests allocated to that unit by the
1458 declaration of the preexisting common interest community.

1459 **Section 2-122. ADDITION OF UNSPECIFIED REAL ESTATE.** In a
1460 planned community, if the right is originally reserved in the
1461 declaration, the declarant in addition to any other development
1462 right, may amend the declaration at any time during as many years
1463 as are specified in the declaration for adding additional real
1464 estate to the planned community without describing the location of
1465 that real estate in the original declaration; but, the amount of
1466 real estate added to the planned community pursuant to this
1467 section may not exceed ten percent (10%) of the real estate
1468 described in Section 2-105(a) (3) and the declarant may not in any
1469 event increase the number of units in the planned community beyond
1470 the number stated in the original declaration pursuant to Section
1471 2-105(a) (5).

1472 **Section 2-123. MASTER PLANNED COMMUNITIES.** (a) The
1473 declaration for a common interest community may state that it is a
1474 master planned community if the declarant has reserved the
1475 development right to create at least five hundred (500) units that
1476 may be used for residential purposes, and at the time of the



1477 reservation that declarant owns or controls more than five hundred
1478 (500) acres on which the units may be built.

1479 (b) If the requirements of subsection (a) are satisfied, the
1480 declaration for the master planned community need not state a
1481 maximum number of units and need not contain any of the
1482 information required by Section 2-105(a) (3) through (14) until the
1483 declaration is amended under subsection (c).

1484 (c) When each unit in a master planned community is conveyed
1485 to a purchaser, the declaration must contain (i) a sufficient
1486 legal description of the unit and all portions of the master
1487 planned community in which any other units have been conveyed to a
1488 purchaser; and (ii) all the information required by Section
1489 2-105(a) (3) through (14) with respect to that real estate.

1490 (d) The only real estate in a master planned community which
1491 is subject to this act are units that have been declared or which
1492 are being offered for sale and any other real estate described
1493 pursuant to subsection (c). Other real estate that is or may
1494 become part of the master planned community is only subject to
1495 other law and to any other restrictions and limitations that
1496 appear of record.

1497 (e) If the public offering statement conspicuously
1498 identifies the fact that the community is a master planned
1499 community, the disclosure requirements contained in Article 4
1500 apply only with respect to units that have been declared or are
1501 being offered for sale in connection with the public offering
1502 statement and to the real estate described pursuant to subsection
1503 (c).

1504 (f) Limitations in this act on the addition of unspecified
1505 real estate do not apply to a master planned community.

1506 (g) The period of declarant control of the association for a
1507 master planned community terminates in accordance with any
1508 conditions specified in the declaration or otherwise at the time
1509 the declarant, in a recorded instrument and after giving notice in



1510 a record to all the unit owners, voluntarily surrenders all rights
1511 to control the activities of the association.

1512 **Section 2-124. TERMINATION FOLLOWING CATASTROPHE.** If
1513 substantially all the units in a common interest community have
1514 been destroyed or are uninhabitable and the available methods for
1515 giving notice of a meeting of unit owners pursuant to Section
1516 3-121 to consider termination under Section 2-118 will not likely
1517 result in receipt of the notice, the executive board or any other
1518 interested person may commence an action in the appropriate court
1519 seeking to terminate the common interest community. During the
1520 pendency of the action, the court may enter whatever orders it
1521 considers appropriate, including appointment of a receiver. After
1522 a hearing, the court may terminate the common interest community
1523 or reduce its size and may enter any other order the court
1524 considers to be in the best interests of the unit owners and
1525 persons holding an interest in the common interest community.

1526 **ARTICLE 3**

1527 **MANAGEMENT OF THE COMMON INTEREST COMMUNITY**

1528 **Section 3-101. ORGANIZATION OF UNIT OWNERS ASSOCIATION.** A
1529 unit owners association must be organized no later than the date
1530 the first unit in the common interest community is conveyed. The
1531 membership of the association at all times consists exclusively of
1532 all unit owners or, following termination of the common interest
1533 community, of all former unit owners entitled to distributions of
1534 proceeds under Section 2-118 or their heirs, successors, or
1535 assigns. The association must have an executive board. The
1536 association must be organized as a profit or nonprofit
1537 corporation, trust, limited liability company, partnership,
1538 unincorporated association, or any other form of organization
1539 authorized by the laws of this state.

1540 **Section 3-102. POWERS AND DUTIES OF UNIT OWNERS ASSOCIATION.**

1541 (a) Except as otherwise provided in subsection (b) and other
1542 provisions of this act, the association:



1543 (1) Shall adopt and may amend bylaws and may adopt and
1544 amend rules;

1545 (2) Shall adopt and may amend budgets pursuant to
1546 Section 3-123, may collect assessments for common expenses from
1547 unit owners and may invest funds of the association;

1548 (3) May hire and discharge managing agents and other
1549 employees, agents, and independent contractors;

1550 (4) May institute, defend, or intervene in litigation,
1551 arbitration, mediation, or administrative proceedings in its own
1552 name on behalf of itself or two (2) or more unit owners on matters
1553 affecting the common interest community, subject to Section 3-124;

1554 (5) May make contracts and incur liabilities;

1555 (6) May regulate the use, maintenance, repair,
1556 replacement, and modification of common elements;

1557 (7) May cause additional improvements to be made as a
1558 part of the common elements;

1559 (8) May acquire, hold, encumber, and convey in its own
1560 name any right, title, or interest to real estate or personal
1561 property, but:

1562 (i) Common elements in a condominium or planned
1563 community may be conveyed or subjected to a security interest only
1564 pursuant to Section 3-112; and

1565 (ii) Part of a cooperative may be conveyed, or all
1566 or part of a cooperative may be subjected to a security interest,
1567 only pursuant to Section 3-112;

1568 (9) May grant easements, leases, licenses, and
1569 concessions through or over the common elements;

1570 (10) May impose and receive any payments, fees, or
1571 charges for:

1572 (i) The use, rental or operation of the common
1573 elements, other than limited common elements described in Section
1574 2-102(2) and (4); and

1575 (ii) Services provided to unit owners;



1576 (11) May impose charges for late payment of assessments
1577 and, after notice and an opportunity to be heard, may impose
1578 reasonable fines for violations of the declaration, bylaws, and
1579 rules of the association;

1580 (12) May impose reasonable charges for the preparation
1581 and recordation of amendments to the declaration, resale
1582 certificates required by Section 4-109, or statements of unpaid
1583 assessments;

1584 (13) May provide for the indemnification of its
1585 officers and executive board and maintain directors and officers
1586 liability insurance;

1587 (14) Except to the extent limited by the declaration,
1588 may assign its right to future income, including the right to
1589 receive assessments;

1590 (15) May exercise any other powers conferred by the
1591 declaration or bylaws;

1592 (16) May exercise all other powers that may be
1593 exercised in this state by organizations of the same type as the
1594 association;

1595 (17) May exercise any other powers necessary and proper
1596 for the governance and operation of the association;

1597 (18) May require that disputes between the association
1598 and unit owners or between two (2) or more unit owners regarding
1599 the common interest community be submitted to nonbinding
1600 alternative dispute resolution as a prerequisite to commencement
1601 of a judicial proceeding; and

1602 (19) May suspend any right or privilege of a unit owner
1603 who fails to pay an assessment, but may not:

1604 (i) Deny an owner or other occupant access to the
1605 owner's unit;

1606 (ii) Suspend the unit owner's right to vote;

1607 (iii) Prevent a unit owner from seeking election
1608 as a director or officer of the association; or



1609 (iv) Withhold services provided to the unit or the
1610 unit owners by the association if the effect of withholding the
1611 service would be to endanger the health or safety or property of
1612 any person.

1613 (b) The declaration may not limit the power of the
1614 association beyond the limits authorized in subsection (a)(18) to:

1615 (1) Deal with the declarant if the limit is more
1616 restrictive than the limits imposed on the power of the
1617 association to deal with other persons; or

1618 (2) Institute litigation, arbitration, mediation, or
1619 administrative proceeding against any person, subject to the
1620 following:

1621 (i) The association shall comply with Section
1622 3-124, if applicable, before instituting any proceeding described
1623 in subsection 3-124(a) in connection with construction defects;
1624 and

1625 (ii) The executive board promptly shall provide
1626 notice to the unit owners of any legal proceeding in which the
1627 association is a party other than proceedings involving
1628 enforcement of rules or to recover unpaid assessments or other
1629 sums due the association.

1630 (c) If a tenant of a unit owner violates the declaration,
1631 bylaws, or rules of the association, in addition to exercising any
1632 of its powers against the unit owner, the association may:

1633 (1) Exercise directly against the tenant the powers
1634 described in subsection (a)(11);

1635 (2) After giving notice to the tenant and the unit
1636 owner and an opportunity to be heard, levy reasonable fines
1637 against the tenant for the violation; and

1638 (3) Enforce any other rights against the tenant for the
1639 violation which the unit owner as landlord could lawfully have
1640 exercised under the lease or which the association could lawfully
1641 have exercised directly against the unit owner, or both.



1642 (d) The rights referred to in subsection (c) (3) may be
1643 exercised only if the tenant or unit owner fails to cure the
1644 violation within ten (10) days after the association notifies the
1645 tenant and unit owner of that violation.

1646 (e) Unless a lease otherwise provides, this section does
1647 not:

1648 (1) Affect rights that the unit owner has to enforce
1649 the lease or that the association has under other law; or

1650 (2) Permit the association to enforce a lease to which
1651 it is not a party in the absence of a violation of the
1652 declaration, bylaws or rules.

1653 (f) The executive board may determine whether to exercise
1654 the association's power to impose sanctions and pursue legal
1655 action for violations of the declaration, bylaws, and rules,
1656 including whether to compromise any claim for unpaid assessments
1657 or other claim made by or against it. The executive board does
1658 not have a duty to take enforcement action if it determines that,
1659 under the facts and circumstances presented:

1660 (1) The association's legal position does not justify
1661 taking any or further enforcement action;

1662 (2) The covenant, restriction, or rule being enforced
1663 is, or is likely to be construed as, inconsistent with current
1664 law;

1665 (3) Although a violation may exist or may have
1666 occurred, it is not of such a material nature as to be
1667 objectionable to a reasonable person or to justify expending the
1668 association's resources; or

1669 (4) It is not in the association's best interests to
1670 pursue an enforcement action.

1671 (g) The executive board's decision under subsection (f) not
1672 to pursue enforcement under one (1) set of circumstances does not
1673 prevent the executive board from taking enforcement action under



1674 another set of circumstances, except the executive board may not
1675 be arbitrary or capricious in taking enforcement action.

1676 (h) The executive board shall establish a reasonable method
1677 for unit owners to communicate among themselves and with the
1678 executive board concerning the association.

1679 **Section 3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS.** (a)
1680 Except as provided in the declaration, the bylaws, subsection (b),
1681 or other provisions of this act, the executive board acts on
1682 behalf of the association. In the performance of their duties,
1683 officers and members of the executive board appointed by the
1684 declarant shall exercise the degree of care and loyalty to the
1685 association required of a trustee. Officers and members of the
1686 executive board not appointed by the declarant shall exercise the
1687 degree of care and loyalty to the association required of an
1688 officer or director of a corporation organized, and are subject to
1689 the conflict of interest rules governing officers and directors
1690 and officers under Sections 79-11-101 through 79-11-403. The
1691 standards of care and loyalty described in this section apply
1692 regardless of the form in which the association is organized.

1693 (b) The executive board may not act to:

1694 (1) Amend the declaration except as provided in Section
1695 2-117;

1696 (2) Amend the bylaws;

1697 (3) Terminate the common interest community;

1698 (4) Elect members of the executive board but may fill
1699 vacancies in its membership for the unexpired portion of any term
1700 or, if earlier, until the next regularly scheduled election of
1701 executive board members; or

1702 (5) Determine the qualifications, powers, duties or
1703 terms of office of executive board members.

1704 (c) The executive board shall adopt budgets as provided in
1705 Section 3-123.



1706 (d) Subject to subsection (e), the declaration may provide
1707 for a period of declarant control of the association, during which
1708 a declarant, or persons designated by the declarant, may appoint
1709 and remove the officers and members of the executive board. A
1710 declarant may voluntarily surrender the right to appoint and
1711 remove officers and members of the executive board before
1712 termination of that period, and in that event the declarant may
1713 require, for the duration of the period of declarant control, that
1714 specified actions of the association or executive board, as
1715 described in a recorded instrument executed by the declarant, be
1716 approved by the declarant before they become effective.
1717 Regardless of the period provided in the declaration, and except
1718 as provided in Section 2-123(g), a period of declarant control
1719 terminates no later than the earliest of:

1720 (1) Sixty (60) days after conveyance of seventy-five
1721 percent (75%) of the units that may be created to unit owners
1722 other than a declarant;

1723 (2) Two (2) years after all declarants have ceased to
1724 offer units for sale in the ordinary course of business;

1725 (3) Two (2) years after any right to add new units was
1726 last exercised; or

1727 (4) The day the declarant, after giving notice in a
1728 record to unit owners, records an instrument voluntarily
1729 surrendering all rights to control activities of the association.

1730 (e) Not later than sixty (60) days after conveyance of
1731 one-fourth (1/4) of the units that may be created to unit owners
1732 other than a declarant, at least one (1) member and not less than
1733 twenty-five percent (25%) of the members of the executive board
1734 must be elected by unit owners other than the declarant. Not
1735 later than sixty (60) days after conveyance of fifty percent (50%)
1736 of the units that may be created to unit owners other than a
1737 declarant, not less than one-third (1/3) of the members of the



1738 executive board must be elected by unit owners other than the
1739 declarant.

1740 (f) Except as otherwise provided in Section 2-120(e) not
1741 later than the termination of any period of declarant control, the
1742 unit owners shall elect an executive board of at least three (3)
1743 members, at least a majority of whom must be unit owners. Unless
1744 the declaration provides for the election of officers by the unit
1745 owners, the executive board shall elect the officers. The
1746 executive board members and officers shall take office upon
1747 election or appointment.

1748 (g) A declaration may provide for the appointment of
1749 specified positions on the executive board by persons other than
1750 the declarant during or after the period of declarant control. It
1751 also may provide a method for filling vacancies in those
1752 positions, other than by election by the unit owners. However,
1753 after the period of declarant control, appointed members:

1754 (1) May not comprise more than one-third of the entire
1755 board; and

1756 (2) Have no greater authority than any other member of
1757 the executive board.

1758 **Section 3-104. TRANSFER OF SPECIAL DECLARANT RIGHTS.** (a) A
1759 special declarant right created or reserved under this act may be
1760 transferred only by an instrument evidencing the transfer recorded
1761 in every county in which any portion of the common interest
1762 community is located. The instrument is not effective unless
1763 executed by the transferee.

1764 (b) Upon transfer of any special declarant right, the
1765 liability of a transferor declarant is as follows:

1766 (1) A transferor is not relieved of any obligation or
1767 liability arising before the transfer and remains liable for
1768 warranty obligations imposed upon him by this act. Lack of
1769 privity does not deprive any unit owner of standing to maintain an
1770 action to enforce any obligation of the transferor.



1771 (2) If a successor to any special declarant right is an
1772 affiliate of a declarant, the transferor is jointly and severally
1773 liable with the successor for any obligations or liabilities of
1774 the successor relating to the common interest community.

1775 (3) If a transferor retains any special declarant
1776 rights, but transfers other special declarant rights to a
1777 successor who is not an affiliate of the declarant, the transferor
1778 is liable for any obligations or liabilities imposed on a
1779 declarant by this act or by the declaration relating to the
1780 retained special declarant rights and arising after the transfer.

1781 (4) A transferor has no liability for any act or
1782 omission or any breach of a contractual or warranty obligation
1783 arising from the exercise of a special declarant right by a
1784 successor declarant who is not an affiliate of the transferor.

1785 (c) Unless otherwise provided in a mortgage instrument, deed
1786 of trust, or other agreement creating a security interest, in case
1787 of foreclosure of a security interest, sale by a trustee under an
1788 agreement creating a security interest, tax sale, judicial sale,
1789 or sale under Bankruptcy Code or receivership proceedings, of any
1790 units owned by a declarant or real estate in a common interest
1791 community subject to development rights, a person acquiring title
1792 to all the property being foreclosed or sold, but only upon his
1793 request, succeeds to all special declarant rights related to that
1794 property held by that declarant, or only to any rights reserved in
1795 the declaration pursuant to Section 2-115 and held by that
1796 declarant to maintain models, sales offices, and signs. The
1797 judgment or instrument conveying title must provide for transfer
1798 of only the special declarant rights requested.

1799 (d) Upon foreclosure of a security interest, sale by a
1800 trustee under an agreement creating a security interest, tax sale,
1801 judicial sale, or sale under Bankruptcy Code or receivership
1802 proceedings, of all interests in a common interest community owned
1803 by a declarant:



1804 (1) The declarant ceases to have any special declarant
1805 rights, and

1806 (2) The period of declarant control terminates unless
1807 the judgment or instrument conveying title provides for transfer
1808 of all special declarant rights held by that declarant to a
1809 successor declarant.

1810 (e) The liabilities and obligations of a person who succeeds
1811 to special declarant rights are as follows:

1812 (1) A successor to any special declarant right who is
1813 an affiliate of a declarant is subject to all obligations and
1814 liabilities imposed on the transferor by this act or by the
1815 declaration.

1816 (2) A successor to any special declarant right, other
1817 than a successor described in paragraph (3) or (4) or a successor
1818 who is an affiliate of a declarant, is subject to the obligations
1819 and liabilities imposed by this act or the declaration:

1820 (i) On a declarant which relate to the successor's
1821 exercise or nonexercise of special declarant rights; or

1822 (ii) On the successor's transferor, other than:

1823 1. Misrepresentations by any previous
1824 declarant;

1825 2. Warranty obligations on improvements made
1826 by any previous declarant, or made before the common interest
1827 community was created;

1828 3. Breach of any fiduciary obligation by any
1829 previous declarant or his appointees to the executive board; or

1830 4. Any liability or obligation imposed on the
1831 transferor as a result of the transferor's acts or omissions after
1832 the transfer.

1833 (3) A successor to only a right reserved in the
1834 declaration to maintain models, sales offices, and signs, may not
1835 exercise any other special declarant right, and is not subject to
1836 any liability or obligation as a declarant, except the obligation



1837 to provide a public offering statement, and any liability arising
1838 as a result thereof.

1839 (4) A successor to all special declarant rights held by
1840 a transferor who succeeded to those rights pursuant to a deed or
1841 other instrument of conveyance in lieu of foreclosure or a
1842 judgment or instrument conveying title under subsection (c), may
1843 declare in a recorded instrument the intention to hold those
1844 rights solely for transfer to another person. Thereafter, until
1845 transferring all special declarant rights to any person acquiring
1846 title to any unit or real estate subject to development rights
1847 owned by the successor, or until recording an instrument
1848 permitting exercise of all those rights, that successor may not
1849 exercise any of those rights other than any right held by the
1850 declarant's transferor to control the executive board in
1851 accordance with Section 3-103(d) for the duration of any period of
1852 declarant control, and any attempted exercise of those rights is
1853 void. So long as a successor declarant may not exercise special
1854 declarant rights under this subsection, the successor declarant is
1855 not subject to any liability or obligation as a declarant other
1856 than liability for the declarant's acts and omissions under
1857 Section 3-103(d).

1858 (f) Nothing in this section subjects any successor to a
1859 special declarant right to any claims against or other obligations
1860 of a transferor declarant, other than claims and obligations
1861 arising under this act or the declaration.

1862 **Section 3-105. TERMINATION OF CONTRACTS AND LEASES.** (a)
1863 Within two (2) years after the executive board elected by the unit
1864 owners pursuant to Section 3-103(f) takes office, the association
1865 may terminate without penalty, upon not less than ninety (90)
1866 days' notice to the other party, any of the following if they were
1867 entered into before that executive board was elected:



1868 (1) Any management, maintenance, operations or
1869 employment contract, or lease of recreational or parking areas or
1870 facilities;

1871 (2) Any other contract or lease between the association
1872 and a declarant or an affiliate of a declarant; or

1873 (3) Any contract or lease that is not bona fide or was
1874 unconscionable to the unit owners at the time entered into.

1875 (b) This section does not apply to:

1876 (1) Any lease the termination of which would terminate
1877 the common interest community or reduce its size, unless the real
1878 estate subject to that lease was included in the common interest
1879 community for the purpose of avoiding the right of the association
1880 to terminate a lease under this section; or

1881 (2) A proprietary lease.

1882 **Section 3-106. BYLAWS.** (a) The bylaws of the association
1883 must provide:

1884 (1) The number of members of the executive board and
1885 the titles of the officers of the association;

1886 (2) For election by the executive board or, if the
1887 declaration so requires, by the unit owners, of a president,
1888 treasurer, secretary, and any other officers of the association
1889 the bylaws specify;

1890 (3) The qualifications, powers and duties, terms of
1891 office, and manner of electing and removing executive board
1892 members and officers and filling vacancies;

1893 (4) Which powers the executive board or officers may
1894 delegate to other persons or to a managing agent;

1895 (5) Which officers may prepare, execute, certify, and
1896 record amendments to the declaration on behalf of the association;

1897 (6) A method for amending the bylaws by the unit
1898 owners;

1899 (7) Any provisions that may be necessary to satisfy
1900 requirements in this act or the declaration concerning meetings,



1901 voting, quorums, and other matters concerning the activities of
1902 the association; and

1903 (8) Any matter required by law of this state other than
1904 this act to appear in the bylaws of organizations of the same type
1905 as the association.

1906 (b) Subject to the provisions of the declaration or this
1907 act, the bylaws may provide for any other necessary or appropriate
1908 matters, including matters that could be adopted as rules.

1909 **Section 3-107. UPKEEP OF COMMON INTEREST COMMUNITY.** (a)
1910 Except to the extent provided by the declaration, subsection (b),
1911 or Section 3-113(h), the association is responsible for
1912 maintenance, repair, and replacement of the common elements, and
1913 each unit owner is responsible for maintenance, repair, and
1914 replacement of his unit. Each unit owner shall afford to the
1915 association and the other unit owners, and to their agents or
1916 employees, access through his unit reasonably necessary for those
1917 purposes. If damage is inflicted on the common elements or on any
1918 unit through which access is taken, the unit owner responsible for
1919 the damage, or the association if it is responsible, is liable for
1920 the prompt repair thereof.

1921 (b) In addition to the liability that a declarant as a unit
1922 owner has under this act, the declarant alone is liable for all
1923 expenses in connection with real estate subject to development
1924 rights. No other unit owner and no other portion of the common
1925 interest community is subject to a claim for payment of those
1926 expenses. Unless the declaration provides otherwise, any income
1927 or proceeds from real estate subject to development rights inures
1928 to the declarant.

1929 (c) In a planned community, if all development rights have
1930 expired with respect to any real estate, the declarant remains
1931 liable for all expenses of that real estate unless, upon
1932 expiration, the declaration provides that the real estate becomes
1933 common elements or units.



1934 **Section 3-108. MEETINGS.** (a) The following apply to unit
1935 owner meetings:

1936 (1) An association shall hold a meeting of unit owners
1937 annually at a time and place stated or fixed in accordance with
1938 the bylaws.

1939 (2) An association shall hold a special meeting of unit
1940 owners to address any matter affecting the common interest
1941 community or the association when its president, a majority of the
1942 executive board, or unit owners having at least twenty percent
1943 (20%), or any lower percentage specified in the bylaws, of the
1944 votes in the association request that the secretary call such a
1945 meeting. If the association does not notify unit owners of a
1946 special meeting within thirty (30) days after the requisite number
1947 or percentage of unit owners requested the secretary to do so, the
1948 requesting members may directly notify all the unit owners of that
1949 meeting. Only matters described in the meeting notice required by
1950 paragraph (3) may be considered at a special meeting.

1951 (3) An association shall notify unit owners of the time
1952 and place of each annual and special unit owners meeting not less
1953 than ten (10) days or more than sixty (60) days before the meeting
1954 date. Notice may be by hand delivery to the unit owners, by any
1955 means described in Section 3-121 or sent postage paid by United
1956 States mail to any mailing address the unit owner designates in a
1957 record. The notice of any meeting must state the time and place
1958 of the meeting and the items on the agenda, including:

1959 (i) A statement of the general nature of any
1960 proposed amendment to the declaration or bylaws;

1961 (ii) Any budget changes; and

1962 (iii) Any proposal to remove an officer or member
1963 of the executive board.

1964 (4) The minimum time to give notice required by
1965 paragraph (3) may be reduced or waived for a meeting called to
1966 deal with an emergency.



1967 (5) Unit owners must be given a reasonable opportunity
1968 at any meeting to comment regarding any matter affecting the
1969 common interest community or the association.

1970 (6) The declaration or bylaws may allow for meetings of
1971 unit owners to be conducted by telephonic, video or other
1972 conferencing process if the alternative process is consistent with
1973 subsection (b) (7).

1974 (b) The following rules apply to meetings of the executive
1975 board and committees of the association authorized to act for the
1976 association:

1977 (1) Every meeting must be open to the unit owners
1978 except during executive sessions. The executive board and those
1979 committees may hold an executive session only during a regular or
1980 special meeting of the executive board and no vote or action may
1981 be taken during an executive session. An executive session may be
1982 held only to:

1983 (i) Consult with the association's attorney
1984 concerning legal matters;

1985 (ii) Discuss existing or potential litigation,
1986 mediation, arbitration, or administrative proceedings;

1987 (iii) Discuss labor or personnel matters;

1988 (iv) Discuss matters relating to contract
1989 negotiations, including the review of bids or proposals, if
1990 premature general knowledge of those matters would place the
1991 association at a disadvantage; or

1992 (v) Prevent public knowledge of the matter to be
1993 discussed if the executive board or committee determines that
1994 public knowledge would violate the privacy of any person.

1995 (2) For purposes of this section, a gathering of board
1996 members at which the board members do not conduct association
1997 business is not a meeting of the executive board. The executive
1998 board and its members may not use incidental or social gatherings



1999 of board members or any other method to evade the open meeting
2000 requirements of this section.

2001 (3) During the period of declarant control, the
2002 executive board shall meet at least four (4) times per year. At
2003 least one (1) of those meetings must be held at the common
2004 interest community or at a place convenient to the community.
2005 After termination of the period of declarant control, all
2006 executive board meetings shall be at the common interest community
2007 or at a place convenient to the community unless the unit owners
2008 amend the bylaws to vary the location of those meetings.

2009 (4) At each executive board meeting, the executive
2010 board shall provide a reasonable opportunity for unit owners to
2011 comment regarding any matter affecting the common interest
2012 community and the association.

2013 (5) Unless the meeting has been included in a schedule
2014 given to the unit owners or the meeting has been called to deal
2015 with an emergency, the secretary or other officer specified in the
2016 bylaws shall cause notice of each executive board meeting to be
2017 given to each board member and to the unit owners. The notice
2018 must be given at least ten (10) days before the meeting and must
2019 state the time, place, and agenda of the meeting.

2020 (6) If any materials are distributed to the executive
2021 board before the meeting, the executive board at the same time
2022 shall make copies of those materials reasonably available to unit
2023 owners, except that the board need not make available copies of
2024 unapproved minutes or materials that are to be considered in
2025 executive session.

2026 (7) Unless the declaration or bylaws otherwise provide,
2027 the executive board may meet by telephonic, video, or other
2028 conferencing process if:

2029 (i) The meeting notice states the conferencing
2030 process to be used and provides information explaining how unit



2031 owners may participate in the conference directly or by meeting at
2032 a central location or conference connection; and

2033 (ii) The process provides all unit owners the
2034 opportunity to hear or perceive the discussion and to comment as
2035 provided in paragraph (4).

2036 (8) After termination of the period of declarant
2037 control, unit owners may amend the bylaws to vary the procedures
2038 for meetings described in paragraph (7).

2039 (9) Instead of meeting, the executive board may act by
2040 unanimous consent as documented in a record authenticated by all
2041 its members. The secretary promptly shall give notice to all unit
2042 owners of any action taken by unanimous consent. After termination
2043 of the period of declarant control, the executive board may act by
2044 unanimous consent only to undertake ministerial actions or to
2045 implement actions previously taken at a meeting of the executive
2046 board.

2047 (10) Notwithstanding noncompliance with this section,
2048 an action by the executive board is valid unless set aside by a
2049 court in an action brought pursuant to Section 4-117. A challenge
2050 to the validity of an action of the executive board for failure to
2051 comply with this section may not be brought more than [60] days
2052 after the minutes of the executive board of the meeting at which
2053 the action was taken are approved or after the record of that
2054 action is distributed to unit owners.

2055 **Section 3-109. QUORUM.** (a) Unless the bylaws otherwise
2056 provide, a quorum is present throughout any meeting of the unit
2057 owners if persons entitled to cast twenty percent (20%) of the
2058 votes in the association:

2059 (1) Are present in person;

2060 (2) Are present by proxy at the beginning of the
2061 meeting;



2062 (3) Have cast absentee ballots solicited in accordance
2063 with Section 3-110(c)(4) which have been delivered to the
2064 secretary in a timely manner; or

2065 (4) Are present by any combination of (1), (2) or (3).

2066 (b) Unless the bylaws specify a larger number, a quorum of
2067 the executive board is present for purposes of determining the
2068 validity of any action throughout any meeting of the executive
2069 board only if individuals entitled to cast a majority of the votes
2070 on that board are present at the time a vote regarding that action
2071 is taken. If a quorum is present when a vote is taken, the
2072 affirmative vote of a majority of the board members present is the
2073 act of the executive board unless a greater vote is required by
2074 the declaration or bylaws.

2075 (c) Except as otherwise provided in the bylaws, meetings of
2076 the association must be conducted in accordance with the most
2077 recent edition of Roberts' Rules of Order Newly Revised.

2078 **Section 3-110. VOTING; PROXIES; BALLOTS.** (a) Unless
2079 prohibited or limited by the declaration or bylaws, unit owners
2080 may vote at a meeting in person, by absentee ballot pursuant to
2081 subsection (b)(4), or by a proxy pursuant to subsection (c), or
2082 without a meeting by electronic or paper ballot pursuant to
2083 subsection (d).

2084 (b) At a meeting of unit owners:

2085 (1) Unit owners may vote by proxy, or by voice vote,
2086 show of hands, standing, or any other method for determining the
2087 votes of unit owners, as designated by the person presiding at the
2088 meeting.

2089 (2) If only one (1) of several owners of a unit is
2090 present, that owner is entitled to cast all the votes allocated to
2091 that unit. If more than one (1) of the owners are present, the
2092 votes allocated to that unit may be cast only in accordance with
2093 the agreement of a majority in interest of the owners, unless the
2094 declaration expressly provides otherwise. There is majority



2095 agreement if any one (1) of the owners casts the votes allocated
2096 to the unit without protest being made promptly to the person
2097 presiding over the meeting by any of the other owners of the unit.

2098 (3) Unless a greater number or fraction of the votes in
2099 the association is required by this act or the declaration, a
2100 majority of the votes cast determines the outcome of any action of
2101 the association.

2102 (4) A unit owner may vote by absentee ballot without
2103 being present at the meeting. The association promptly shall
2104 deliver an absentee ballot to an owner that requests it if the
2105 request is made at least three (3) days before the scheduled
2106 meeting. Votes cast by absentee ballot must be included in the
2107 tally of a vote taken at that meeting.

2108 (5) When a unit owner votes by absentee ballot, the
2109 association must be able to verify that the ballot is cast by the
2110 unit owner having the right to do so.

2111 (c) Except as otherwise provided in the declaration or
2112 bylaws the following rules apply:

2113 (1) Votes allocated to a unit may be cast pursuant to a
2114 directed or undirected proxy duly executed by a unit owner.

2115 (2) If a unit is owned by more than one (1) person,
2116 each owner of the unit may vote or register protest to the casting
2117 of votes by the other owners of the unit through a duly executed
2118 proxy.

2119 (3) A unit owner may revoke a proxy given pursuant to
2120 this section only by actual notice of revocation to the person
2121 presiding over a meeting of the association.

2122 (4) A proxy is void if it is not dated or purports to
2123 be revocable without notice.

2124 (5) A proxy is valid only for the meeting at which it
2125 is cast and any recessed session of that meeting.

2126 (6) No person may cast undirected proxies representing
2127 more than fifteen percent (15%) of the votes in the association.



2128 (d) Unless prohibited or limited by the declaration or
2129 bylaws, an association may conduct a vote without a meeting. In
2130 that event:

2131 (1) The association shall notify the unit owners that
2132 the vote will be taken by ballot.

2133 (2) The association shall deliver a paper or electronic
2134 ballot to every unit owner entitled to vote on the matter.

2135 (3) The ballot must set forth each proposed action and
2136 provide an opportunity to vote for or against the action.

2137 (4) When the association delivers the ballots, it shall
2138 also:

2139 (i) Indicate the number of responses needed to
2140 meet the quorum requirements;

2141 (ii) State the percent of votes necessary to
2142 approve each matter other than election of directors;

2143 (iii) Specify the time by which a ballot must be
2144 delivered to the association to be counted, which time may not be
2145 fewer than three (3) days after the date the association delivers
2146 the ballot; and

2147 (iv) Describe the time and manner by which unit
2148 owners wishing to deliver information to all unit owners regarding
2149 the subject of the vote may do so.

2150 (5) Except as otherwise provided in the declaration or
2151 bylaws, a ballot is not revoked after delivery to the association
2152 by death or disability or attempted revocation by the person that
2153 cast that vote.

2154 (6) Approval by ballot pursuant to this subsection is
2155 valid only if the number of votes cast by ballot equals or exceeds
2156 the quorum required to be present at a meeting authorizing the
2157 action.

2158 (e) If the declaration requires that votes on specified
2159 matters affecting the common interest community be cast by lessees
2160 rather than unit owners of leased units:



2161 (1) This section applies to lessees as if they were
2162 unit owners;

2163 (2) Unit owners that have leased their units to other
2164 persons may not cast votes on those specified matters; and

2165 (3) Lessees are entitled to notice of meetings, access
2166 to records, and other rights respecting those matters as if they
2167 were unit owners.

2168 (f) Unit owners must also be given notice, in the manner
2169 provided in Section 3-108, of all meetings at which lessees are
2170 entitled to vote.

2171 (g) Votes allocated to a unit owned by the association must
2172 be cast in any vote of the unit owners in the same proportion as
2173 the votes cast on the matter by unit owners other than the
2174 association.

2175 **Section 3-111. TORT AND CONTRACT LIABILITY; TOLLING OF**
2176 **LIMITATION PERIOD.** (a) A unit owner is not liable, solely by
2177 reason of being a unit owner, for an injury or damage arising out
2178 of the condition or use of the common elements. Neither the
2179 association nor any unit owner except the declarant is liable for
2180 that declarant's torts in connection with any part of the common
2181 interest community which that declarant has the responsibility to
2182 maintain.

2183 (b) An action alleging a wrong done by the association,
2184 including an action arising out of the condition or use of the
2185 common elements, may be maintained only against the association
2186 and not against any unit owner. If the wrong occurred during any
2187 period of declarant control and the association gives the
2188 declarant reasonable notice of and an opportunity to defend
2189 against the action, the declarant who then controlled the
2190 association is liable to the association or to any unit owner for
2191 all tort losses not covered by insurance suffered by the
2192 association or that unit owner, and all costs that the association
2193 would not have incurred but for a breach of contract or other



2194 wrongful act or omission. Whenever the declarant is liable to the
2195 association under this section, the declarant is also liable for
2196 all expenses of litigation, including reasonable attorney's fees,
2197 incurred by the association.

2198 (c) Except as provided in Section 4-116(d) with respect to
2199 warranty claims, any statute of limitation affecting the
2200 association's right of action against a declarant under this act
2201 is tolled until the period of declarant control terminates. A
2202 unit owner is not precluded from maintaining an action
2203 contemplated by this section because he is a unit owner or a
2204 member or officer of the association. Liens resulting from
2205 judgments against the association are governed by Section 3-117.

2206 **Section 3-112. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.**

2207 (a) In a condominium or planned community, portions of the
2208 common elements may be conveyed or subjected to a security
2209 interest by the association if persons entitled to cast at least
2210 eighty percent (80%) of the votes in the association, including
2211 eighty percent (80%) of the votes allocated to units not owned by
2212 a declarant, or any larger percentage the declaration specifies,
2213 agree to that action; but all owners of units to which any limited
2214 common element is allocated must agree in order to convey that
2215 limited common element or subject it to a security interest. The
2216 declaration may specify a smaller percentage only if all of the
2217 units are restricted exclusively to nonresidential uses. Proceeds
2218 of the sale are an asset of the association, but the proceeds of
2219 the sale of limited common elements must be distributed equitably
2220 among the owners of units to which the limited common elements
2221 were allocated.

2222 (b) Part of a cooperative may be conveyed and all or part of
2223 a cooperative may be subjected to a security interest by the
2224 association if persons entitled to cast at least eighty percent
2225 (80%) of the votes in the association, including eighty percent
2226 (80%) of the votes allocated to units not owned by a declarant, or



2227 any larger percentage the declaration specifies, agree to that
2228 action; but, if fewer than all of the units or limited common
2229 elements are to be conveyed or subjected to a security interest,
2230 then all unit owners of those units, or the units to which those
2231 limited common elements are allocated, must agree in order to
2232 convey those units or limited common elements or subject them to a
2233 security interest. The declaration may specify a smaller
2234 percentage only if all of the units are restricted exclusively to
2235 nonresidential uses. Proceeds of the sale are an asset of the
2236 association. Any purported conveyance or other voluntary transfer
2237 of an entire cooperative, unless made pursuant to Section 2-118,
2238 is void.

2239 (c) An agreement to convey common elements in a condominium
2240 or planned community, or to subject them to a security interest,
2241 or in a cooperative, an agreement to convey any part of a
2242 cooperative or subject it to a security interest, must be
2243 evidenced by the execution of an agreement, or ratifications
2244 thereof, in the same manner as a deed, by the requisite number of
2245 unit owners. The agreement must specify a date after which the
2246 agreement will be void unless recorded before that date. The
2247 agreement and all ratifications thereof must be recorded in every
2248 county in which a portion of the common interest community is
2249 situated, and is effective only upon recordation.

2250 (d) The association, on behalf of the unit owners, may
2251 contract to convey an interest in a common interest community
2252 pursuant to subsection (a), but the contract is not enforceable
2253 against the association until approved pursuant to subsections
2254 (a), (b), and (c). Thereafter, the association has all powers
2255 necessary and appropriate to effect the conveyance or encumbrance,
2256 including the power to execute deeds or other instruments.

2257 (e) Unless made pursuant to this section, any purported
2258 conveyance, encumbrance, judicial sale, or other voluntary



2259 transfer of common elements or of any other part of a cooperative
2260 is void.

2261 (f) A conveyance or encumbrance of common elements or of a
2262 cooperative pursuant to this section does not deprive any unit of
2263 its rights of access and support.

2264 (g) Unless the declaration otherwise provides, if the
2265 holders of first security interests on eighty percent (80%) of the
2266 units that are subject to security interests on the day the unit
2267 owners' agreement under subsection (c) is recorded consent in
2268 writing:

2269 (1) A conveyance of common elements pursuant to this
2270 section terminates both the undivided interests in those common
2271 elements allocated to the units and the security interests in
2272 those undivided interests held by all persons holding security
2273 interests in the units; and

2274 (2) An encumbrance of common elements pursuant to this
2275 section has priority over all preexisting encumbrances on the
2276 undivided interests in those common elements held by all persons
2277 holding security interests in the units.

2278 (h) The consents by holders of first security interests on
2279 units described in subsection (g), or a certificate of the
2280 secretary affirming that those consents have been received by the
2281 association, may be recorded at any time before the date on which
2282 the agreement under subsection (c) becomes void. Consents or
2283 certificates so recorded are valid from the date they are recorded
2284 for purposes of calculating the percentage of consenting first
2285 security interest holders, regardless of later sales or
2286 encumbrances on those units. Even if the required percentage of
2287 first security interest holders so consent, a conveyance or
2288 encumbrance of common elements does not affect interests having
2289 priority over the declaration or created by the association after
2290 the declaration was recorded.



2291 (i) In a cooperative, the association may acquire, hold,
2292 encumber, or convey a proprietary lease without complying with
2293 this section.

2294 **Section 3-113. INSURANCE.** (a) Commencing not later than
2295 the time of the first conveyance of a unit to a person other than
2296 a declarant, the association shall maintain, to the extent
2297 reasonably available and subject to reasonable deductibles:

2298 (1) Property insurance on the common elements and, in a
2299 planned community, also on property that must become common
2300 elements, insuring against risks of direct physical loss commonly
2301 insured against, which insurance, after application of any
2302 deductibles, must be not less than eighty percent (80%) of the
2303 actual cash value of the insured property at the time the
2304 insurance is purchased and at each renewal date, exclusive of
2305 land, excavations, foundations, and other items normally excluded
2306 from property policies;

2307 (2) Commercial general liability insurance, including
2308 medical payments insurance, in an amount determined by the
2309 executive board but not less than any amount specified in the
2310 declaration, covering all occurrences commonly insured against for
2311 bodily injury and property damage arising out of or in connection
2312 with the use, ownership, or maintenance of the common elements
2313 and, in cooperatives, also of all units; and

2314 (3) Fidelity insurance.

2315 (b) In the case of a building that contains units divided by
2316 horizontal boundaries described in the declaration, or vertical
2317 boundaries that comprise common walls between units, the insurance
2318 maintained under subsection (a)(1), to the extent reasonably
2319 available, must include the units, but need not include
2320 improvements and betterments installed by unit owners.

2321 (c) If the insurance described in subsections (a) and (b) is
2322 not reasonably available, the association promptly shall cause
2323 notice of that fact to be given to all unit owners. The



2324 declaration may require the association to carry any other
2325 insurance, and the association may carry any other insurance it
2326 considers appropriate to protect the association or the unit
2327 owners.

2328 (d) Insurance policies carried pursuant to subsections (a)
2329 and (b) must provide that:

2330 (1) Each unit owner is an insured person under the
2331 policy with respect to liability arising out of the owner's
2332 interest in the common elements or membership in the association;

2333 (2) The insurer waives its right to subrogation under
2334 the policy against any unit owner or member of the owner's
2335 household;

2336 (3) No act or omission by a unit owner, unless acting
2337 within the owner's scope of authority on behalf of the
2338 association, voids the policy or is a condition to recovery under
2339 the policy; and

2340 (4) If, at the time of a loss under the policy, there
2341 is other insurance in the name of a unit owner covering the same
2342 risk covered by the policy, the association's policy provides
2343 primary insurance.

2344 (e) Any loss covered by the property policy under
2345 subsections (a) (1) and (b) must be adjusted with the association,
2346 but the insurance proceeds for that loss are payable to any
2347 insurance trustee designated for that purpose, or otherwise to the
2348 association, and not to any holder of a security interest. The
2349 insurance trustee or the association shall hold any insurance
2350 proceeds in trust for the association, unit owners, and lien
2351 holders as their interests may appear. Subject to subsection (h),
2352 the proceeds must be disbursed first for the repair or restoration
2353 of the damaged property, and the association, unit owners, and
2354 lien holders are not entitled to receive payment of any portion of
2355 the proceeds unless there is a surplus of proceeds after the



2356 property has been completely repaired or restored, or the common
2357 interest community is terminated.

2358 (f) An insurance policy issued to the association does not
2359 prevent a unit owner from obtaining insurance for the owner's own
2360 benefit.

2361 (g) An insurer that has issued an insurance policy under
2362 this section shall issue certificates or memoranda of insurance to
2363 the association and, upon request made in a record, to any unit
2364 owner or holder of a security interest. The insurer issuing the
2365 policy may not cancel or refuse to renew it until thirty (30) days
2366 after notice of the proposed cancellation or nonrenewal has been
2367 mailed to the association, each unit owner, and each holder of a
2368 security interest to whom a certificate or memorandum of insurance
2369 has been issued at their respective last known addresses.

2370 (h) Any portion of the common interest community for which
2371 insurance is required under this section which is damaged or
2372 destroyed must be repaired or replaced promptly by the association
2373 unless:

2374 (1) The common interest community is terminated, in
2375 which case Section 2-118 applies;

2376 (2) Repair or replacement would be illegal under any
2377 state or local statute or ordinance governing health or safety; or

2378 (3) Eighty percent (80%) of the unit owners, including
2379 every owner of a unit or assigned limited common element that will
2380 not be rebuilt, vote not to rebuild.

2381 (i) The cost of repair or replacement in excess of insurance
2382 proceeds, deductibles, and reserves is a common expense. If the
2383 entire common interest community is not repaired or replaced:

2384 (1) The insurance proceeds attributable to the damaged
2385 common elements must be used to restore the damaged area to a
2386 condition compatible with the remainder of the common interest
2387 community; and



2388 (2) Except to the extent that other persons will be
2389 distributees:

2390 (i) The insurance proceeds attributable to units
2391 and limited common elements that are not rebuilt must be
2392 distributed to the owners of those units and the owners of the
2393 units to which those limited common elements were allocated, or to
2394 lien holders, as their interests may appear; and

2395 (ii) The remainder of the proceeds must be
2396 distributed to all the unit owners or lien holders, as their
2397 interests may appear, as follows:

2398 1. In a condominium, in proportion to the
2399 common element interests of all the units; and

2400 2. In a cooperative or planned community, in
2401 proportion to the common expense liabilities of all the units.

2402 (j) If the unit owners vote not to rebuild any unit, that
2403 unit's allocated interests are automatically reallocated upon the
2404 vote as if the unit had been condemned under Section 1-107(a), and
2405 the association promptly shall prepare, execute, and record an
2406 amendment to the declaration reflecting the reallocations.

2407 (k) This section may be varied or waived in the case of a
2408 common interest community all of whose units are restricted to
2409 nonresidential use.

2410 **Section 3-114. SURPLUS FUNDS.** Unless otherwise provided in
2411 the declaration, any surplus funds of the association remaining
2412 after payment of or provision for common expenses and any
2413 prepayment of reserves must be paid annually to the unit owners in
2414 proportion to their common expense liabilities or credited to them
2415 to reduce their future common expense assessments.

2416 **Section 3-115. ASSESSMENTS.** (a) Until the association
2417 makes a common expense assessment, the declarant shall pay all
2418 common expenses. After an assessment has been made by the
2419 association, assessments must be made at least annually, based on
2420 a budget adopted at least annually by the association.



2421 (b) Except for assessments under subsections (c), (d), and
2422 (e) or as otherwise provided in this act, all common expenses must
2423 be assessed against all the units in accordance with the
2424 allocations set forth in the declaration pursuant to Section
2425 2-107(a) and (b). The association may charge interest on any past
2426 due assessment or portion thereof at the rate established by the
2427 association not exceeding eighteen percent (18%) per year.

2428 (c) To the extent required by the declaration:

2429 (1) Any common expense associated with the maintenance,
2430 repair, or replacement of a limited common element must be
2431 assessed against the units to which that limited common element is
2432 assigned, equally, or in any other proportion the declaration
2433 provides;

2434 (2) A common expense benefitting fewer than all of the
2435 units or their owners may be assessed exclusively against the
2436 units or unit owners benefitted; and

2437 (3) The costs of insurance must be assessed in
2438 proportion to risk, and the costs of utilities must be assessed in
2439 proportion to usage.

2440 (d) Assessments to pay a judgment against the association
2441 may be made only against the units in the common interest
2442 community at the time the judgment was entered, in proportion to
2443 their common expense liabilities.

2444 (e) If damage to a unit or other part of the common interest
2445 community or other common expense is caused by the willful
2446 misconduct or gross negligence of any unit owner or a guest or
2447 invitee of a unit owner, the association may assess that expense
2448 exclusively against that owner's unit, even if the association
2449 maintains insurance with respect to that damage.

2450 (f) If common expense liabilities are reallocated, common
2451 expense assessments and any installment thereof not yet due must
2452 be recalculated in accordance with the reallocated common expense
2453 liabilities.



2454 **Section 3-116. LIEN FOR SUMS DUE THE ASSOCIATION;**
2455 **ENFORCEMENT.** (a) The association has a statutory lien on a unit
2456 for any assessment attributable to that unit or fines imposed
2457 against its unit owner. Unless the declaration otherwise
2458 provides, reasonable attorney's fees and costs, other fees,
2459 charges, late charges, fines, and interest charged pursuant to
2460 Section 3-102(a) (10), (11), and (12), and any other sums due to
2461 the association under the declaration, this act, or as a result of
2462 an administrative, arbitration, or judicial decision are
2463 enforceable in the same manner as unpaid assessments under this
2464 section. If an assessment is payable in installments, the lien is
2465 for the full amount of the assessment from the time the first
2466 installment thereof becomes due.

2467 (b) A lien under this section is prior to all other liens
2468 and encumbrances on a unit except:

2469 (1) Liens and encumbrances recorded before the
2470 recordation of the declaration and, in a cooperative, liens and
2471 encumbrances that the association creates, assumes or takes
2472 subject to;

2473 (2) Except as otherwise provided in subsection (c), a
2474 first security interest on the unit recorded before the date on
2475 which the assessment sought to be enforced became delinquent or,
2476 in a cooperative, the first security interest encumbering only the
2477 unit owner's interest and perfected before the date on which the
2478 assessment sought to be enforced became delinquent; and

2479 (3) Liens for real estate taxes and other governmental
2480 assessments or charges against the unit or cooperative.

2481 (c) A lien under this section is also prior to all security
2482 interests described in subsection (b) (2) to the extent of both the
2483 common expense assessments based on the periodic budget adopted by
2484 the association pursuant to Section 3-115(a) which would have
2485 become due in the absence of acceleration during the six (6)
2486 months immediately preceding institution of an action to enforce



2487 the lien and reasonable attorney's fees and costs incurred by the
2488 association in foreclosing the association's lien. Subsection (b)
2489 and this subsection do not affect the priority of mechanics' or
2490 materialmen's liens, or the priority of liens for other
2491 assessments made by the association.

2492 (d) Unless the declaration otherwise provides, if two (2) or
2493 more associations have liens for assessments created at any time
2494 on the same property, those liens have equal priority.

2495 (e) Recording of the declaration constitutes record notice
2496 and perfection of the lien. No further recordation of any claim
2497 of lien for assessment under this section is required.

2498 (f) A lien for unpaid assessments is extinguished unless
2499 proceedings to enforce the lien are instituted within three (3)
2500 years after the full amount of the assessments becomes due.

2501 (g) This section does not prohibit actions against unit
2502 owners to recover sums for which subsection (a) creates a lien or
2503 prohibits an association from taking a deed in lieu of
2504 foreclosure.

2505 (h) A judgment or decree in any action brought under this
2506 section must include costs and reasonable attorney's fees for the
2507 prevailing party.

2508 (i) The association upon request made in a record shall
2509 furnish to a unit owner a statement setting forth the amount of
2510 unpaid assessments against the unit. If the unit owner's interest
2511 is real estate, the statement must be in recordable form. The
2512 statement must be furnished within ten (10) business days after
2513 receipt of the request and is binding on the association, the
2514 executive board, and every unit owner.

2515 (j) In a cooperative, upon nonpayment of an assessment on a
2516 unit, the unit owner may be evicted in the same manner as provided
2517 by law in the case of an unlawful holdover by a commercial tenant,
2518 and the lien may be foreclosed as provided by this section.



2519 (k) The association's lien may be foreclosed as provided in
2520 this subsection and subsection (p):

2521 (1) In a condominium or planned community, the
2522 association's lien must be foreclosed in like manner as a mortgage
2523 on real estate;

2524 (2) In a cooperative whose unit owners' interests in
2525 the units are real estate, the association's lien must be
2526 foreclosed in like manner as a mortgage on real estate; and

2527 (3) In a cooperative whose unit owners' interests in
2528 the units are personal property, the association's lien must be
2529 foreclosed in like manner as a security interest under Article 9,
2530 Uniform Commercial Code; and

2531 (4) In a foreclosure under, the association shall give
2532 the notice required by statute or, if there is no such
2533 requirement, reasonable notice of its action to all lien holders
2534 of the unit whose interest would be affected.

2535 (1) In a cooperative, if the unit owner's interest in a unit
2536 is real estate, the following rules apply:

2537 (1) The association, upon nonpayment of assessments and
2538 compliance with this subsection, may sell that unit at a public
2539 sale or by private negotiation, and at any time and place. The
2540 association shall give to the unit owner and any lessees of the
2541 unit owner reasonable notice in a record of the time and place of
2542 any public sale or, if a private sale is intended, of the
2543 intention of entering into a contract to sell and of the time
2544 after which a private disposition may be made. The same notice
2545 must also be sent to any other person that has a recorded interest
2546 in the unit which would be cut off by the sale, but only if the
2547 recorded interest was on record seven (7) weeks before the date
2548 specified in the notice as the date of any public sale or seven
2549 (7) weeks before the date specified in the notice as the date
2550 after which a private sale may be made. The notices required by
2551 this subsection may be sent to any address reasonable in the



2552 circumstances. A sale may not be held until five (5) weeks after
2553 the sending of the notice. The association may buy at any public
2554 sale and, if the sale is conducted by a fiduciary or other person
2555 not related to the association, at a private sale.

2556 (2) Unless otherwise agreed, the unit owner is liable
2557 for any deficiency in a foreclosure sale.

2558 (3) The proceeds of a foreclosure sale must be applied
2559 in the following order:

2560 (i) The reasonable expenses of sale;

2561 (ii) The reasonable expenses of securing
2562 possession before sale; the reasonable expenses of holding,
2563 maintaining, and preparing the unit for sale including payment of
2564 taxes and other governmental charges and premiums on insurance;
2565 and, to the extent provided for by agreement between the
2566 association and the unit owner, reasonable attorney's fees, costs,
2567 and other legal expenses incurred by the association;

2568 (iii) Satisfaction of the association's lien;

2569 (iv) Satisfaction in the order of priority of any
2570 subordinate claim of record; and

2571 (v) Remittance of any excess to the unit owner.

2572 (4) A good faith purchaser for value acquires the unit
2573 free of the association's debt that gave rise to the lien under
2574 which the foreclosure sale occurred and any subordinate interest,
2575 even though the association or other person conducting the sale
2576 failed to comply with this section. The person conducting the
2577 sale shall execute a conveyance to the purchaser sufficient to
2578 convey the unit and stating that it is executed by the person
2579 after a foreclosure of the association's lien by power of sale and
2580 that the person was empowered to make the sale. Signature and
2581 title or authority of the person signing the conveyance as grantor
2582 and a recital of the facts of nonpayment of the assessment and of
2583 the giving of the notices required by this subsection are
2584 sufficient proof of the facts recited and of the authority to



2585 sign. Further proof of authority is not required even though the
2586 association is named as grantee in the conveyance.

2587 (5) At any time before the association has disposed of
2588 a unit in a cooperative or entered into a contract for its
2589 disposition under the power of sale, the unit owners or the holder
2590 of any subordinate security interest may cure the unit owner's
2591 default and prevent sale or other disposition by tendering the
2592 performance due under the security agreement, including any
2593 amounts due because of exercise of a right to accelerate, plus the
2594 reasonable expenses of proceeding to foreclosure incurred to the
2595 time of tender, including reasonable attorney's fees and costs of
2596 the creditor.

2597 (m) In an action by an association to collect assessments or
2598 to foreclose a lien on a unit under this section, the court may
2599 appoint a receiver to collect all sums alleged to be due and owing
2600 to a unit owner before commencement or during pendency of the
2601 action. The receivership is governed by Section 79-4-14.32. The
2602 court may order the receiver to pay any sums held by the receiver
2603 to the association during pendency of the action to the extent of
2604 the association's common expense assessments based on a periodic
2605 budget adopted by the association pursuant to Section 3-115.

2606 (n) An association may not commence an action to foreclose a
2607 lien on a unit under this section unless:

2608 (1) The unit owner, at the time the action is
2609 commenced, owes a sum equal to at least three (3) months of common
2610 expense assessments based on the periodic budget last adopted by
2611 the association pursuant to Section 3-115(a) and the unit owner
2612 has failed to accept or comply with a payment plan offered by the
2613 association; and

2614 (2) The executive board votes to commence a foreclosure
2615 action specifically against that unit.



2616 (o) Unless the parties otherwise agree, the association
2617 shall apply any sums paid by unit owners who are delinquent in
2618 paying assessments in the following order:

2619 (1) Unpaid assessments;

2620 (2) Late charges;

2621 (3) Reasonable attorney's fees and costs and other
2622 reasonable collection charges; and

2623 (4) All other unpaid fees, charges, fines, penalties,
2624 interest and late charges.

2625 (p) If the only sums due with respect to a unit are fines
2626 and related sums imposed against the unit, a foreclosure action
2627 may not be commenced against the unit unless the association has a
2628 judgment against the unit owner for the fines and related sums and
2629 has perfected a judgment lien against the unit under Section
2630 89-5-1 et seq.

2631 (q) Every aspect of a foreclosure, sale or other disposition
2632 under this section, including the method, advertising, time, place
2633 and terms, shall be commercially reasonable.

2634 **Section 3-117. OTHER LIENS.** (a) In a condominium or
2635 planned community:

2636 (1) Except as otherwise provided in paragraph (2), a
2637 judgment for money against the association, if recorded, is not a
2638 lien on the common elements, but is a lien in favor of the
2639 judgment lien holder against all of the other real property of the
2640 association and all of the units in the common interest community
2641 at the time the judgment was entered. No other property of a unit
2642 owner is subject to the claims of creditors of the association.

2643 (2) If the association has granted a security interest
2644 in the common elements to a creditor of the association pursuant
2645 to Section 3-112, the holder of that security interest shall
2646 exercise its right against the common elements before its judgment
2647 lien on any unit may be enforced.



2648 (3) Whether perfected before or after the creation of
2649 the common interest community, if a lien, other than a deed of
2650 trust or mortgage, including a judgment lien or lien attributable
2651 to work performed or materials supplied before creation of the
2652 common interest community, becomes effective against two (2) or
2653 more units, the unit owner of an affected unit may pay to the lien
2654 holder the amount of the lien attributable to the unit, and the
2655 lien holder, upon receipt of payment, promptly shall deliver a
2656 release of the lien covering that unit. The amount of the payment
2657 must be proportionate to the ratio that the unit owner's common
2658 expense liability bears to the common expense liabilities of all
2659 unit owners the units of which are subject to the lien. After
2660 payment, the association may not assess or have a lien against
2661 that unit owner's unit for any portion of the common expenses
2662 incurred in connection with that lien.

2663 (4) A judgment against the association must be indexed
2664 in the name of the common interest community and the association
2665 and, when so indexed, is notice of the lien against the units.

2666 (b) In a cooperative:

2667 (1) If the association receives notice of an impending
2668 foreclosure on all or any portion of the association's real
2669 estate, the association shall promptly transmit a copy of that
2670 notice to each unit owner of a unit located within the real estate
2671 to be foreclosed. Failure of the association to transmit the
2672 notice does not affect the validity of the foreclosure.

2673 (2) Whether a unit owner's unit is subject to the
2674 claims of the association's creditors, no other property of a unit
2675 owner is subject to those claims.

2676 **Section 3-118. ASSOCIATION RECORDS.** (a) The association
2677 must maintain the following:

2678 (1) Detailed records of receipts and expenditures
2679 affecting the operation and administration of the association and
2680 other appropriate accounting records;



2681 (2) Minutes of all meetings of its unit owners and
2682 executive board, a record of all actions taken by the unit owners
2683 or executive board without a meeting, and a record of all actions
2684 taken by a committee in place of the executive board on behalf of
2685 the association;

2686 (3) The names of unit owners in a form that permits
2687 preparation of a list of the names of all owners and the addresses
2688 at which the association communicates with them, in alphabetical
2689 order showing the number of votes each owner is entitled to cast;

2690 (4) Its original or restated organizational documents,
2691 if required by law other than this act, bylaws and all amendments
2692 to them, and all rules currently in effect;

2693 (5) All financial statements and tax returns of the
2694 association for the past three (3) years;

2695 (6) A list of the names and addresses of its current
2696 executive board members and officers;

2697 (7) Its most recent annual report delivered to the
2698 Secretary of State, if any;

2699 (8) Financial and other records sufficiently detailed
2700 to enable the association to comply with Section 4-109;

2701 (9) Current contracts to which it is a party and which
2702 are in a record;

2703 (10) Records of executive board or committee actions to
2704 approve or deny any requests for design or architectural approval
2705 from unit owners; and

2706 (11) Ballots, proxies, and other records related to
2707 voting by unit owners for one (1) year after the election, action,
2708 or vote to which they relate.

2709 (b) Subject to subsections (c) and (d), all records
2710 maintained by the association must be available for examination
2711 and copying by a unit owner or the owner's authorized agent:

2712 (1) During reasonable business hours or at a mutually
2713 convenient time and location; and



2714 (2) Upon five (5) days' notice in a record reasonably
2715 identifying the specific records of the association requested.

2716 (c) Records maintained by an association may be withheld
2717 from inspection and copying to the extent that they concern:

2718 (1) Personnel, salary, and medical records relating to
2719 specific individuals;

2720 (2) Contracts, leases, and other commercial
2721 transactions to purchase or provide goods or services, currently
2722 in or under negotiation;

2723 (3) Pending or potential litigation or arbitration;

2724 (4) Pending or potential matters involving federal,
2725 state, or local administrative or other formal proceedings before
2726 a governmental tribunal for enforcement of the declaration,
2727 bylaws, or rules;

2728 (5) Communications with legal counsel which are
2729 otherwise protected by the attorney-client privilege or the
2730 attorney work product doctrine;

2731 (6) Disclosure of information in violation of law;

2732 (7) Records of an executive session of the executive
2733 board; or

2734 (8) Individual unit files other than those of the
2735 requesting owner.

2736 (d) An association may charge a reasonable fee for providing
2737 copies of any records under this section and for supervising the
2738 unit owner's inspection.

2739 (e) A right to copy records under this section includes the
2740 right to receive copies by photocopying or other means, including
2741 copies through an electronic transmission if available upon
2742 request by the unit owner.

2743 (f) An association is not obligated to compile or synthesize
2744 information.

2745 (g) Information provided pursuant to this section may not be
2746 used for commercial purposes.



2747 **Section 3-119. ASSOCIATION AS TRUSTEE.** With respect to a
2748 third person dealing with the association in the association's
2749 capacity as a trustee, the existence of trust powers and their
2750 proper exercise by the association may be assumed without inquiry.
2751 A third person is not bound to inquire whether the association has
2752 power to act as trustee or is properly exercising trust powers. A
2753 third person, without actual knowledge that the association is
2754 exceeding or improperly exercising its powers, is fully protected
2755 in dealing with the association as if it possessed and properly
2756 exercised the powers it purports to exercise. A third person is
2757 not bound to assure the proper application of trust assets paid or
2758 delivered to the association in its capacity as trustee.

2759 **Section 3-120. RULES.** (a) Before adopting, amending, or
2760 repealing any rule, the executive board must give all unit owners
2761 notice of:

2762 (1) Its intention to adopt, amend, or repeal a rule and
2763 provide the text of the rule or the proposed change; and

2764 (2) A date on which the executive board will act on the
2765 proposed rule or amendment after considering comments on those
2766 changes from unit owners.

2767 (b) Following adoption, amendment, or repeal of a rule, the
2768 association shall notify the unit owners of its action and provide
2769 a copy of any new or revised rule.

2770 (c) An association may adopt rules to establish and enforce
2771 construction and design criteria and aesthetic standards if the
2772 declaration so provides. If the declaration does so provide, the
2773 association shall adopt procedures for enforcement of those
2774 standards and for approval of construction applications, including
2775 a reasonable time within which the association must act after an
2776 application is submitted and the consequences of its failure to
2777 act.

2778 (d) A rule regulating display of the flag of the United
2779 States must be consistent with federal law. In addition, the



2780 association may not prohibit display on a unit or on a limited
2781 common element adjoining a unit of the flag of this state, or
2782 signs regarding candidates for public or association office or
2783 ballot questions, but the association may adopt rules governing
2784 the time, place, size, number, and manner of those displays.

2785 (e) Unit owners may peacefully assemble on the common
2786 elements to consider matters related to the common interest
2787 community but the association may adopt rules governing the time,
2788 place, and manner of those assemblies.

2789 (f) An association may adopt rules that affect the use of or
2790 behavior in units that may be used for residential purposes, only
2791 to:

2792 (1) Implement a provision of the declaration;

2793 (2) Regulate any behavior in or occupancy of a unit
2794 which violates the declaration or adversely affects the use and
2795 enjoyment of other units or the common elements by other unit
2796 owners; or

2797 (3) Restrict the leasing of residential units to the
2798 extent those rules are reasonably designed to meet underwriting
2799 requirements of institutional lenders who regularly lend money
2800 secured by first mortgages on units in common interest communities
2801 or regularly purchase those mortgages.

2802 (g) An association's internal business operating procedures
2803 need not be adopted as rules.

2804 (h) Every rule must be reasonable.

2805 **Section 3-121. NOTICE TO UNIT OWNERS.** (a) An association
2806 shall deliver any notice required to be given by the association
2807 under this act to any mailing or electronic mail address a unit
2808 owner designates. Otherwise, the association may deliver notices
2809 by:

2810 (1) Hand delivery to each unit owner;



2811 (2) Hand delivery or postage paid by United States mail
2812 or by express or delivery service to the mailing address of each
2813 unit;

2814 (3) Electronic means if the unit owner has given the
2815 association an electronic address; or

2816 (4) Any other method reasonably calculated to provide
2817 notice to the unit owner.

2818 (b) The ineffectiveness of a good faith effort to deliver
2819 notice by any authorized means does not invalidate action taken at
2820 a meeting or in lieu of a meeting.

2821 **Section 3-122. REMOVAL OF OFFICERS AND DIRECTORS.** (a)

2822 Notwithstanding any provision of the declaration or bylaws to the
2823 contrary, unit owners present in person, by proxy, or by absentee
2824 ballot, at any meeting of the unit owners at which a quorum is
2825 present, may remove any member of the executive board and any
2826 officer elected by the unit owners with or without cause if the
2827 number of votes cast in favor of removal exceeds the number of
2828 votes cast in opposition to removal, except that:

2829 (1) A member appointed by the declarant may not be
2830 removed by a unit owner vote during the period of declarant
2831 control;

2832 (2) A member appointed under Section 3-103(g) may be
2833 removed only by the person that appointed that member; and

2834 (3) The unit owners may not consider whether to remove
2835 a member of the executive board or an officer elected by the unit
2836 owners at any meeting of the unit owners unless that subject was
2837 listed in the notice of the meeting.

2838 (b) At any meeting at which a vote to remove a member of the
2839 executive board or an officer is to be taken, the member or
2840 officer being considered for removal must have a reasonable
2841 opportunity to speak before the vote.

2842 **Section 3-123. ADOPTION OF BUDGETS.** (a) The executive
2843 board, at least annually, shall adopt a proposed budget for the



2844 common interest community for consideration by the unit owners.
2845 Not later than thirty (30) days after adoption of a proposed
2846 budget, the executive board shall provide to all the unit owners a
2847 summary of the budget, including any reserves, and a statement of
2848 the basis on which any reserves are calculated and funded.
2849 Simultaneously, the board shall set a date for a meeting of the
2850 unit owners to consider ratification of the budget not less than
2851 ten (10) or more than sixty (60) days after mailing of the
2852 summary. Unless at that meeting a majority of all unit owners or
2853 any larger percent specified in the declaration reject the budget,
2854 the budget is ratified, whether a quorum is present. If a
2855 proposed budget is rejected, the budget last ratified by the unit
2856 owners continues until such time as the unit owners ratify a
2857 subsequent budget.

2858 (b) The executive board may at any time propose a special
2859 assessment. Except as otherwise provided in subsection (c), the
2860 assessment is effective only if the executive board follows the
2861 procedures for ratification of a budget described in subsection
2862 (a) and the unit owners do not reject that proposed assessment.

2863 (c) If the executive board determines by a two-thirds (2/3)
2864 vote that a special assessment is necessary to respond to an
2865 emergency:

2866 (1) The special assessment becomes effective
2867 immediately in accordance with the terms of the vote;

2868 (2) Notice of the emergency assessment must be provided
2869 promptly to all unit owners; and

2870 (3) The executive board may spend the funds paid on
2871 account of the emergency assessment only for the purposes
2872 described in the vote.

2873 **Section 3-124. LITIGATION INVOLVING THE DECLARANT.** (a) An
2874 association's authority under Section 3-102(a)(4) to institute and
2875 pursue a proceeding, whether by litigation, arbitration, or
2876 administratively, against a declarant or an employee, independent



2877 contractor or other person directly or indirectly providing labor
2878 or materials to a declarant involving an alleged construction
2879 defect with respect to the common interest community, is subject
2880 to the following:

2881 (1) Subject to subsection (e), before the association
2882 institutes a proceeding described in this section, it shall
2883 provide notice in a record of its claims to the declarant and
2884 those persons that the association seeks to hold responsible for
2885 the claimed defects. The text of the notice may be in any form
2886 reasonably calculated to give notice of the general nature of the
2887 association's claims including a list of the claimed defects. The
2888 notice may be delivered by any method of service and may be
2889 addressed to any person if the method of service used:

2890 (i) Provides actual notice to the person named in
2891 the claim; or

2892 (ii) Would be sufficient to confer personal
2893 jurisdiction over the person in connection with commencement of a
2894 lawsuit by the association against that person.

2895 (2) Subject to subsection (e), the association may not
2896 institute a proceeding against a person for a period of forty-five
2897 (45) days after the association sends notice of its claim to that
2898 person.

2899 (3) During the period required by paragraph (2), the
2900 declarant and any other person to which the association gave
2901 notice may present to the association a plan to repair or
2902 otherwise remedy the construction defects described in the notice.
2903 If the association does not receive a timely remediation plan from
2904 each person to which it gave notice, or if the association does
2905 not accept the terms of any plan submitted, the association may
2906 institute a proceeding against that person as the board determines
2907 to be appropriate.

2908 (4) If the association receives one or more timely
2909 plans to repair or otherwise remedy the construction defects



2910 described in the notice, the executive board shall consider
2911 promptly those plans and notify the persons to which it directed
2912 notice whether the plan is acceptable as presented, acceptable
2913 with stated conditions, or not accepted.

2914 (5) If the association accepts a repair plan from a
2915 responsible person, or if a responsible person agrees to stated
2916 conditions to an otherwise acceptable plan, the parties shall
2917 agree on a period for implementation of the plan, and the
2918 association may not institute a proceeding against that
2919 responsible person during the time the plan is being diligently
2920 implemented.

2921 (6) Except as otherwise provided in Section 4-116(d)
2922 for warranty claims, any statute of limitation affecting the
2923 association's right of action against a declarant or other person
2924 is tolled during the period described in subsection (b) and during
2925 any extension of that time because a person to which notice was
2926 directed has commenced and is diligently pursuing the remediation
2927 plan.

2928 (b) After the time described in subsection (a)(2) expires,
2929 whether the association agrees to any repair plan, a proceeding
2930 may be instituted by:

2931 (1) The association against a person to which notice
2932 was directed which fails to submit a timely repair plan, the plan
2933 of which is not acceptable, or which fails to pursue diligent
2934 implementation of that plan; or

2935 (2) A unit owner with respect to the owner's unit and
2936 any limited common elements assigned to that unit, regardless of
2937 any action of the association.

2938 (c) This section does not preclude the association from
2939 making repairs necessary to mitigate damages or to correct any
2940 defect that poses a significant and immediate health or safety
2941 risk.



2942 (d) Subject to the other provisions of this section, the
2943 determination of whether and when the association may institute a
2944 proceeding described in this section may be made by the executive
2945 board. The declaration may not require a vote by any number or
2946 percent of unit owners as a condition to institution of a
2947 proceeding.

2948 (e) This section does not prevent an association from seeking
2949 equitable relief at any time without complying with subsection
2950 (a) (1) or (2).

2951 **ARTICLE 4**

2952 **PROTECTION OF PURCHASERS**

2953 **Section 4-101. APPLICABILITY; WAIVER.** (a) This article
2954 applies to all units subject to this act, except as provided in
2955 subsection (b) or as modified or waived by agreement of purchasers
2956 of units in a common interest community in which all units are
2957 restricted to nonresidential use.

2958 (b) Neither a public offering statement nor a resale
2959 certificate need be prepared or delivered in the case of:

2960 (1) A gratuitous disposition of a unit;

2961 (2) A disposition pursuant to court order;

2962 (3) A disposition by a government or governmental
2963 agency;

2964 (4) A disposition by foreclosure or deed in lieu of
2965 foreclosure;

2966 (5) A disposition to a dealer;

2967 (6) A disposition that may be canceled at any time and
2968 for any reason by the purchaser without penalty; or

2969 (7) A disposition of a unit restricted to
2970 nonresidential purposes.

2971 **Section 4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT**

2972 **REQUIREMENTS.** (a) Except as provided in subsection (b), a
2973 declarant, before offering any interest in a unit to the public,



2974 shall prepare a public offering statement conforming to the
2975 requirements of Sections 4-103, 4-104, 4-105, and 4-106.

2976 (b) A declarant may transfer responsibility for preparation
2977 of all or a part of the public offering statement to a successor
2978 declarant (Section 3-104) or to a dealer who intends to offer
2979 units in the common interest community. In the event of any such
2980 transfer, the transferor shall provide the transferee with any
2981 information necessary to enable the transferee to fulfill the
2982 requirements of subsection (a).

2983 (c) Any declarant or dealer who offers a unit to a purchaser
2984 shall deliver a public offering statement in the manner prescribed
2985 in Section 4-108(a). The declarant or dealer who prepared all or
2986 a part of the public offering statement is liable under Sections
2987 4-108 and 4-117 for any false or misleading statement set forth
2988 therein or for any omission of a material fact therefrom.

2989 (d) If a unit is part of a common interest community and is
2990 part of any other real estate regime in connection with the sale
2991 of which the delivery of a public offering statement is required
2992 under the laws of this state, a single public offering statement
2993 conforming to the requirements of Sections 4-103, 4-104, 4-105,
2994 and 4-106 as those requirements relate to each regime in which the
2995 unit is located, and to any other requirements imposed under the
2996 laws of this state, may be prepared and delivered in lieu of
2997 providing two (2) or more public offering statements.

2998 **Section 4-103. PUBLIC OFFERING STATEMENT; GENERAL**

2999 **PROVISIONS.** (a) Except as otherwise provided in subsection (b),
3000 a public offering statement must contain or fully and accurately
3001 disclose:

3002 (1) The name and principal address of the declarant and
3003 of the common interest community, and a statement that the common
3004 interest community is a condominium, cooperative, or planned
3005 community;



3006 (2) A general description of the common interest
3007 community, including to the extent possible, the types, number,
3008 and declarant's schedule of commencement and completion of
3009 construction of buildings, and amenities that the declarant
3010 anticipates including in the common interest community;

3011 (3) The number of units in the common interest
3012 community;

3013 (4) Copies and a brief narrative description of the
3014 significant features of the declaration, other than any plats and
3015 plans, and any other recorded covenants, conditions, restrictions,
3016 and reservations affecting the common interest community; the
3017 bylaws, and any rules or regulations of the association; copies of
3018 any contracts and leases to be signed by purchasers at closing;
3019 and a brief narrative description of any contracts or leases that
3020 will or may be subject to cancellation by the association under
3021 Section 3-105;

3022 (5) The financial information required by subsection
3023 (b);

3024 (6) Any services not reflected in the budget that the
3025 declarant provides, or expenses that the declarant pays and which
3026 the declarant expects may become at any subsequent time a common
3027 expense of the association and the projected common expense
3028 assessment attributable to each of those services or expenses for
3029 the association and for each type of unit;

3030 (7) Any initial or special fee due from the purchaser
3031 or seller at the time of sale, together with a description of the
3032 purpose and method of calculating the fee;

3033 (8) A description of any liens, defects, or
3034 encumbrances on or affecting the title to the common interest
3035 community;

3036 (9) A description of any financing offered or arranged
3037 by the declarant;



3038 (10) The terms and significant limitations of any
3039 warranties provided by the declarant, including statutory
3040 warranties and limitations on the enforcement thereof or on
3041 damages;

3042 (11) A statement that:

3043 (i) Within fifteen (15) days after receipt of a
3044 public offering statement a purchaser, before conveyance, may
3045 cancel any contract for purchase of a unit from a declarant;

3046 (ii) If a declarant fails to provide a public
3047 offering statement to a purchaser before conveying a unit, that
3048 purchaser may recover from the declarant ten percent (10%) of the
3049 sales price of the unit plus ten percent (10%) of the share,
3050 proportionate to the purchaser's common expense liability, of any
3051 indebtedness of the association secured by security interests
3052 encumbering the common interest community; and

3053 (iii) If a purchaser receives the public offering
3054 statement more than fifteen (15) days before signing a contract,
3055 the purchaser may not cancel the contract;

3056 (12) A statement of any unsatisfied judgment or pending
3057 action against the association, and the status of any pending
3058 action material to the common interest community of which a
3059 declarant has actual knowledge;

3060 (13) A statement that any deposit made in connection
3061 with the purchase of a unit will be held in an escrow account
3062 until closing and will be returned to the purchaser if the
3063 purchaser cancels the contract pursuant to Section 4-108, together
3064 with the name and address of the escrow agent;

3065 (14) Any restraints on alienation of any portion of the
3066 common interest community and any restrictions:

3067 (i) On use, occupancy, and alienation of the
3068 units; and

3069 (ii) On the amount for which a unit may be sold or
3070 on the amount that may be received by a unit owner on sale,



3071 condemnation, or casualty loss to the unit or to the common
3072 interest community, or on termination of the common interest
3073 community;

3074 (15) A description of the insurance coverage provided
3075 for the benefit of unit owners;

3076 (16) Any current or expected fees or charges to be paid
3077 by unit owners for the use of the common elements and other
3078 facilities related to the common interest community;

3079 (17) The extent to which financial arrangements have
3080 been provided for completion of all improvements that the
3081 declarant is obligated to build pursuant to Section 4-119;

3082 (18) A brief narrative description of any zoning and
3083 other land use requirements affecting the common interest
3084 community;

3085 (19) Any other material circumstances, features, and
3086 characteristics of the common interest community and the units;

3087 (20) In a cooperative, a statement whether the unit
3088 owners will be entitled, for federal, state and local income tax
3089 purposes, to a pass-through of deductions for payments made by the
3090 association for real estate taxes and interest paid the holder of
3091 a security interest encumbering the cooperative and a statement as
3092 to the effect on every unit owner if the association fails to pay
3093 real estate taxes or payments due the holder of a security
3094 interest encumbering the cooperative; and

3095 (21) A description of any arrangement described in
3096 Section 1-209 binding the association.

3097 (b) The public offering statement must contain any current
3098 balance sheet and a projected budget for the association, either
3099 within or as an exhibit to the public offering statement, for one
3100 (1) year after the date of the first conveyance to a purchaser,
3101 and thereafter the current budget of the association, a statement
3102 of who prepared the budget, and a statement of the budget's



3103 assumptions concerning occupancy and inflation factors. The
3104 budget must include, without limitation:

3105 (1) A statement of the amount or a statement that there
3106 is no amount, included in the budget as a reserve for repairs and
3107 replacement;

3108 (2) A statement of any other reserves;

3109 (3) The projected common expense assessment by category
3110 of expenditures for the association; and

3111 (4) The projected monthly common expense assessment for
3112 each type of unit;

3113 (c) If a common interest community composed of not more than
3114 twelve (12) units is not subject to any development right and no
3115 power is reserved to a declarant to make the common interest
3116 community part of a larger common interest community, group of
3117 common interest communities, or other real estate, a public
3118 offering statement may include the information otherwise required
3119 by subsection (a) (9), (10), (15), (16), (17), (18), and (19) and
3120 the narrative descriptions of documents required by subsection
3121 (a) (4).

3122 (d) A declarant promptly shall amend the public offering
3123 statement to report any material change in the information
3124 required by this section.

3125 **Section 4-104. SAME; COMMON INTEREST COMMUNITIES SUBJECT TO**
3126 **DEVELOPMENT RIGHTS.** If the declaration provides that a common
3127 interest community is subject to any development rights, the
3128 public offering statement must disclose, in addition to the
3129 information required by Section 4-103:

3130 (1) The maximum number of units, and the maximum number of
3131 units per acre that may be created;

3132 (2) A statement of how many or what percentage of the units
3133 that may be created will be restricted exclusively to residential
3134 use, or a statement that no representations are made regarding use
3135 restrictions;



3136 (3) If any of the units that may be built within real estate
3137 subject to development rights are not to be restricted exclusively
3138 to residential use, a statement, with respect to each portion of
3139 that real estate, of the maximum percentage of the real estate
3140 areas, and the maximum percentage of the floor areas of all units
3141 that may be created therein, that are not restricted exclusively
3142 to residential use;

3143 (4) A brief narrative description of any development rights
3144 reserved by a declarant and of any conditions relating to or
3145 limitations upon the exercise of development rights;

3146 (5) A statement of the maximum extent to which each unit's
3147 allocated interests may be changed by the exercise of any
3148 development right described in subsection (3);

3149 (6) A statement of the extent to which any buildings or
3150 other improvements that may be erected pursuant to any development
3151 right in any part of the common interest community will be
3152 compatible with existing buildings and improvements in the common
3153 interest community in terms of architectural style, quality of
3154 construction and size, or a statement that no assurances are made
3155 in those regards;

3156 (7) General descriptions of all other improvements that may
3157 be made and limited common elements that may be created within any
3158 part of the common interest community pursuant to any development
3159 right reserved by the declarant, or a statement that no assurances
3160 are made in that regard;

3161 (8) A statement of any limitations as to the locations of
3162 any building or other improvement that may be made within any part
3163 of the common interest community pursuant to any development right
3164 reserved by the declarant, or a statement that no assurances are
3165 made in that regard;

3166 (9) A statement that any limited common elements created
3167 pursuant to any development right reserved by the declarant will
3168 be of the same general types and sizes as the limited common



3169 elements within other parts of the common interest community, or a
3170 statement of the types and sizes planned, or a statement that no
3171 assurances are made in that regard;

3172 (10) A statement that the proportion of limited common
3173 elements to units created pursuant to any development right
3174 reserved by the declarant will be approximately equal to the
3175 proportion existing within other parts of the common interest
3176 community, or a statement of any other assurances in that regard,
3177 or a statement that no assurances are made in that regard;

3178 (11) A statement that all restrictions in the declaration
3179 affecting use, occupancy, and alienation of units will apply to
3180 any units created pursuant to any development right reserved by
3181 the declarant, or a statement of any differentiations that may be
3182 made as to those units, or a statement that no assurances are made
3183 in that regard; and

3184 (12) A statement of the extent to which any assurances made
3185 pursuant to this section apply or do not apply in the event that
3186 any development right is not exercised by the declarant.

3187 **Section 4-105. SAME; TIME SHARES.** If the declaration
3188 provides that ownership or occupancy of any units, is or may be in
3189 time shares, the public offering statement shall disclose, in
3190 addition to the information required by Section 4-103:

3191 (1) The number and identity of units in which time shares
3192 may be created;

3193 (2) The total number of time shares that may be created;

3194 (3) The minimum duration of any time shares that may be
3195 created; and

3196 (4) The extent to which the creation of time shares will or
3197 may affect the enforceability of the association's lien for
3198 assessments provided in Section 3-116.

3199 **Section 4-106. SAME; COMMON INTEREST COMMUNITIES CONTAINING**
3200 **CONVERSION BUILDINGS.** (a) The public offering statement of a



3201 common interest community containing any conversion building must
3202 contain, in addition to the information required by Section 4-103:

3203 (1) A statement by the declarant, based on a report
3204 prepared by an independent registered architect or engineer,
3205 describing the present condition of all structural components and
3206 mechanical and electrical installations material to the use and
3207 enjoyment of the building;

3208 (2) A statement by the declarant of the expected useful
3209 life of each item reported on in paragraph (1) or a statement that
3210 no representations are made in that regard; and

3211 (3) A list of any outstanding notices of uncured
3212 violations of building code or other municipal regulations,
3213 together with the estimated cost of curing those violations.

3214 (b) This section applies only to buildings containing units
3215 that may be occupied for residential use.

3216 **Section 4-107. SAME; COMMON INTEREST COMMUNITY SECURITIES.**

3217 If an interest in a common interest community is currently
3218 registered with the Securities and Exchange Commission of the
3219 United States, a declarant satisfies all requirements relating to
3220 the preparation of a public offering statement of this act if the
3221 declarant delivers to the purchaser a copy of the public offering
3222 statement filed with the Securities and Exchange Commission.

3223 **Section 4-108. PURCHASER'S RIGHT TO CANCEL.** (a) A person
3224 required to deliver a public offering statement pursuant to
3225 Section 4-102(c) shall provide a purchaser with a copy of the
3226 public offering statement and all amendments thereto before
3227 conveyance of the unit, and not later than the date of any
3228 contract of sale. Unless a purchaser is given the public offering
3229 statement more than fifteen (15) days before execution of a
3230 contract for the purchase of a unit, the purchaser, before
3231 conveyance, may cancel the contract within fifteen (15) days after
3232 first receiving the public offering statement.



3233 (b) If a purchaser elects to cancel a contract pursuant to
3234 subsection (a), he may do so by hand delivering notice thereof to
3235 the offeror or by mailing notice thereof by prepaid United States
3236 mail to the offeror or to the offeror's agent for service of
3237 process. Cancellation is without penalty, and all payments made
3238 by the purchaser before cancellation must be refunded promptly.

3239 (c) If a person required to deliver a public offering
3240 statement pursuant to Section 4-102(c) fails to provide a
3241 purchaser to whom a unit is conveyed with that public offering
3242 statement and all amendments thereto as required by subsection
3243 (a), the purchaser, in addition to any rights to damages or other
3244 relief, is entitled to receive from that person an amount equal to
3245 ten percent (10%) of the sale price of the unit, plus ten percent
3246 (10%) of the share, proportionate to the purchaser's common
3247 expense liability, of any indebtedness of the association secured
3248 by security interests encumbering the common interest community.

3249 **Section 4-109. RESALES OF UNITS.** (a) Except in the case of
3250 a sale in which delivery of a public offering statement is
3251 required, or unless exempt under Section 4-101(b), a unit owner
3252 shall furnish to a purchaser before the earlier of conveyance or
3253 transfer of the right to possession of a unit, a copy of the
3254 declaration, other than any plats and plans, the bylaws, the rules
3255 or regulations of the association, and a certificate containing:

3256 (1) A statement disclosing the effect on the proposed
3257 disposition of any right of first refusal or other restraint on
3258 the free alienability of the unit held by the association;

3259 (2) A statement setting forth the amount of the
3260 periodic common expense assessment and any unpaid common expense
3261 or special assessment currently due and payable from the selling
3262 unit owner;

3263 (3) A statement of any other fees payable by the owner
3264 of the unit being sold;



3265 (4) A statement of any capital expenditures approved by
3266 the association for the current and succeeding fiscal years;
3267 (5) A statement of the amount of any reserves for
3268 capital expenditures and of any portions of those reserves
3269 designated by the association for any specified projects;
3270 (6) The most recent regularly prepared balance sheet
3271 and income and expense statement, if any, of the association;
3272 (7) The current operating budget of the association;
3273 (8) A statement of any unsatisfied judgments against
3274 the association and the status of any pending suits in which the
3275 association is a defendant;
3276 (9) A statement describing any insurance coverage
3277 provided for the benefit of unit owners;
3278 (10) A statement as to whether the executive board has
3279 given or received notice in a record that any existing uses,
3280 occupancies, alterations, or improvements in or to the unit or to
3281 the limited common elements assigned thereto violate any provision
3282 of the declaration;
3283 (11) A statement as to whether the executive board has
3284 received notice in a record from a governmental agency of any
3285 violation of environmental, health or building codes with respect
3286 to the unit, the limited common elements assigned thereto, or any
3287 other portion of the common interest community which has not been
3288 cured;
3289 (12) A statement of the remaining term of any leasehold
3290 estate affecting the common interest community and the provisions
3291 governing any extension or renewal thereof;
3292 (13) A statement of any restrictions in the declaration
3293 affecting the amount that may be received by a unit owner upon
3294 sale, condemnation, casualty loss to the unit or the common
3295 interest community, or termination of the common interest
3296 community;



3297 (14) In a cooperative, an accountant's statement, if
3298 any was prepared, as to the deductibility for federal income tax
3299 purposes by the unit owner of real estate taxes and interest paid
3300 by the association;

3301 (15) A statement describing any pending sale or
3302 encumbrance of common elements; and

3303 (16) A statement disclosing the effect on the unit to
3304 be conveyed of any restrictions on the owner's right to use or
3305 occupy the unit or to lease the unit to another person.

3306 (b) The association, within ten (10) days after a request by
3307 a unit owner, shall furnish a certificate containing the
3308 information necessary to enable the unit owner to comply with this
3309 section. A unit owner providing a certificate pursuant to
3310 subsection (a) is not liable to the purchaser for any erroneous
3311 information provided by the association and included in the
3312 certificate.

3313 (c) A purchaser is not liable for any unpaid assessment or
3314 fee greater than the amount set forth in the certificate prepared
3315 by the association. A unit owner is not liable to a purchaser for
3316 the failure or delay of the association to provide the certificate
3317 in a timely manner, but the purchase contract is voidable by the
3318 purchaser until the certificate has been provided and for five (5)
3319 days thereafter or until conveyance, whichever first occurs.

3320 **Section 4-110. ESCROW OF DEPOSITS.** Any deposit made in
3321 connection with the purchase or reservation of a unit from a
3322 person required to deliver a public offering statement pursuant to
3323 Section 4-102(c) must be placed in escrow and held either in this
3324 state or in the state where the unit is located in an account
3325 designated solely for that purpose by an institution whose
3326 accounts are insured by a governmental agency or instrumentality
3327 until:

3328 (1) Delivered to the declarant at closing;



3329 (2) Delivered to the declarant because of the purchaser's
3330 default under a contract to purchase the unit; or

3331 (3) Refunded to the purchaser.

3332 **Section 4-111. RELEASE OF LIENS.** (a) In the case of a sale
3333 of a unit where delivery of a public offering statement is
3334 required pursuant to Section 4-102(c), a seller:

3335 (1) Before conveying a unit, shall record or furnish to
3336 the purchaser releases of all liens, except liens on real estate
3337 that a declarant has the right to withdraw from the common
3338 interest community, that the purchaser does not expressly agree to
3339 take subject to or assume and that encumber:

3340 (i) In a condominium, that unit and its common
3341 element interest; and

3342 (ii) In a cooperative or planned community, that
3343 unit and any limited common elements assigned thereto; or

3344 (2) Shall provide a surety bond or substitute
3345 collateral for or insurance against the lien as provided for liens
3346 on real estate.

3347 (b) Before conveying real estate to the association, the
3348 declarant shall have that real estate released from:

3349 (1) All liens the foreclosure of which would deprive
3350 unit owners of any right of access to or easement of support of
3351 their units; and

3352 (2) All other liens on that real estate unless the
3353 public offering statement describes certain real estate that may
3354 be conveyed subject to liens in specified amounts.

3355 **Section 4-112. CONVERSION BUILDINGS.** (a) A declarant of a
3356 common interest community containing conversion buildings, and any
3357 dealer who intends to offer units in such a common interest
3358 community, shall give each of the residential tenants and any
3359 residential subtenant in possession of a portion of a conversion
3360 building notice of the conversion and provide those persons with
3361 the public offering statement no later than one hundred (120) days



3362 before the tenants and any subtenant in possession are required to
3363 vacate. The notice must set forth generally the rights of tenants
3364 and subtenants under this section and must be hand delivered to
3365 the unit or mailed by prepaid United States mail to the tenant and
3366 subtenant at the address of the unit or any other mailing address
3367 provided by a tenant. No tenant or subtenant may be required to
3368 vacate upon less than one hundred twenty (120) days' notice,
3369 except by reason of nonpayment of rent, waste, or conduct that
3370 disturbs other tenants' peaceful enjoyment of the premises, and
3371 the terms of the tenancy may not be altered during that period.
3372 Failure to give notice as required by this section is a defense to
3373 an action for possession.

3374 (b) For sixty (60) days after delivery or mailing of the
3375 notice described in subsection (a), the person required to give
3376 the notice shall offer to convey each unit or proposed unit
3377 occupied for residential use to the tenant who leases that unit.
3378 If a tenant fails to purchase the unit during that sixty-day
3379 period, the offeror may not offer to dispose of an interest in
3380 that unit during the following one hundred eighty (180) days at a
3381 price or on terms more favorable to the offeree than the price or
3382 terms offered to the tenant. This subsection does not apply to
3383 any unit in a conversion building if that unit will be restricted
3384 exclusively to nonresidential use or the boundaries of the
3385 converted unit do not substantially conform to the dimensions of
3386 the residential unit before conversion.

3387 (c) If a seller, in violation of subsection (b), conveys a
3388 unit to a purchaser for value who has no knowledge of the
3389 violation, the recordation of the deed conveying the unit or, in a
3390 cooperative, the conveyance of the unit, extinguishes any right a
3391 tenant may have under subsection (b) to purchase that unit if the
3392 deed states that the seller has complied with subsection (b), but
3393 the conveyance does not affect the right of a tenant to recover
3394 damages from the seller for a violation of subsection (b).



3395 (d) If a notice of conversion specifies a date by which a
3396 unit or proposed unit must be vacated and otherwise complies with
3397 the provisions of Section 89-8-13, the notice also constitutes a
3398 notice to vacate specified by that statute.

3399 (e) Nothing in this section permits termination of a lease
3400 by a declarant in violation of its terms.

3401 **Section 4-113. EXPRESS WARRANTIES OF QUALITY.** (a) Express
3402 warranties made by a declarant to a purchaser of a unit, if relied
3403 upon by the purchaser, are created as follows:

3404 (1) Any affirmation of fact or promise which relates to
3405 the unit, its use, or rights appurtenant thereto, area
3406 improvements to the common interest community that would directly
3407 benefit the unit, or the right to use or have the benefit of
3408 facilities not located in the common interest community, creates
3409 an express warranty that the unit and related rights and uses will
3410 conform to the affirmation or promise;

3411 (2) Any model or description of the physical
3412 characteristics of the common interest community, including plans
3413 and specifications of or for improvements, creates an express
3414 warranty that the common interest community will conform to the
3415 model or description unless the model or description clearly
3416 discloses that it is only proposed or is subject to change;

3417 (3) Any description of the quantity or extent of the
3418 real estate comprising the common interest community, including
3419 plats or surveys, creates an express warranty that the common
3420 interest community will conform to the description, subject to
3421 customary tolerances; and

3422 (4) A provision that a purchaser may put a unit only to
3423 a specified use is an express warranty that the specified use is
3424 lawful.

3425 (b) Neither formal words, such as "warranty" or "guarantee,"
3426 nor a specific intention to make a warranty, are necessary to
3427 create an express warranty of quality, but a statement purporting



3428 to be merely an opinion or commendation of the real estate or its
3429 value does not create a warranty.

3430 (c) Any conveyance of a unit transfers to the purchaser all
3431 express warranties of quality made by the declarant.

3432 **Section 4-114. IMPLIED WARRANTIES OF QUALITY.** (a) A
3433 declarant and any dealer warrants that a unit will be in at least
3434 as good condition at the earlier of the time of the conveyance or
3435 delivery of possession as it was at the time of contracting,
3436 reasonable wear and tear excepted.

3437 (b) A declarant and any dealer impliedly warrants that a
3438 unit and the common elements in the common interest community are
3439 suitable for the ordinary uses of real estate of its type and that
3440 any improvements made or contracted for by the declarant or dealer
3441 or made by any person before the creation of the common interest
3442 community, will be:

3443 (1) Free from defective materials; and

3444 (2) Constructed in accordance with applicable law,
3445 according to sound engineering and construction standards, and in
3446 a workmanlike manner.

3447 (c) A declarant and any dealer warrants to a purchaser of a
3448 unit that may be used for residential use that an existing use,
3449 continuation of which is contemplated by the parties, does not
3450 violate applicable law at the earlier of the time of conveyance or
3451 delivery of possession.

3452 (d) Warranties imposed by this section may be excluded or
3453 modified as specified in Section 4-115.

3454 (e) For purposes of this section, improvements made or
3455 contracted for by an affiliate of a declarant are made or
3456 contracted for by the declarant.

3457 (f) Any conveyance of a unit transfers to the purchaser all
3458 of the declarant's implied warranties of quality.

3459 **Section 4-115. EXCLUSION OR MODIFICATION OF IMPLIED**
3460 **WARRANTIES OF QUALITY.** (a) Except as limited by subsection (b)



3461 with respect to a purchaser of a unit that may be used for
3462 residential use, implied warranties of quality:

3463 (1) May be excluded or modified by agreement of the
3464 parties; and

3465 (2) Are excluded by expression of disclaimer, such as
3466 "as is," "with all faults," or other language that in common
3467 understanding calls the purchaser's attention to the exclusion of
3468 warranties.

3469 (b) With respect to a purchaser of a unit that may be
3470 occupied for residential use, no general disclaimer of implied
3471 warranties of quality is effective, but a declarant and any dealer
3472 may disclaim liability in an instrument signed by the purchaser
3473 for a specified defect or specified failure to comply with
3474 applicable law, if the defect or failure entered into and became a
3475 part of the basis of the bargain.

3476 **Section 4-116. STATUTE OF LIMITATIONS FOR WARRANTIES.** (a)

3477 Unless a period of limitation is tolled under Section 3-111 or
3478 affected by subsection (d), a judicial proceeding for breach of
3479 any obligation arising under Section 4-113 or 4-114 must be
3480 commenced within six (6) years after the cause of action accrues,
3481 but the parties may agree to reduce the period of limitation to
3482 not less than two (2) years. With respect to a unit that may be
3483 occupied for residential use, an agreement to reduce the period of
3484 limitation must be evidenced by a separate instrument executed by
3485 the purchaser.

3486 (b) Subject to subsection (c), a cause of action for breach
3487 of warranty of quality, regardless of the purchaser's lack of
3488 knowledge of the breach, accrues:

3489 (1) As to a unit, at the time the purchaser to whom the
3490 warranty is first made enters into possession if a possessory
3491 interest was conveyed or at the time of acceptance of the
3492 instrument of conveyance if a nonpossessory interest was conveyed;
3493 and



3494 (2) As to each common element, at the time the common
3495 element is completed or, if later, as to:

3496 (i) A common element that is added to the common
3497 interest community by exercise of development rights, at the time
3498 the first unit which was added to the condominium by the same
3499 exercise of development rights is conveyed to a bona fide
3500 purchaser; or

3501 (ii) A common element within any other portion of
3502 the common interest community, at the time the first unit is
3503 conveyed to a bona fide purchaser.

3504 (c) If a warranty of quality explicitly extends to future
3505 performance or duration of any improvement or component of the
3506 common interest community, the cause of action accrues at the time
3507 the breach is discovered or at the end of the period for which the
3508 warranty explicitly extends, whichever is earlier.

3509 (d) During the period of declarant control, the association
3510 may authorize an independent committee of the executive board to
3511 evaluate and enforce by any lawful means warranty claims involving
3512 the common elements, and to compromise those claims. Only members
3513 of the executive board elected by unit owners other than the
3514 declarant and other persons appointed by those independent members
3515 may serve on the committee, and the committee's decision must be
3516 free of any control by the declarant or any member of the
3517 executive board or officer appointed by the declarant. All costs
3518 reasonably incurred by the committee, including attorney's fees,
3519 are common expenses, and must be added to the budget annually
3520 adopted by the association under Section 3-115. If the committee
3521 is so created, the period of limitation for a warranty claim
3522 considered by the committee begins to run from the date of the
3523 first meeting of the committee.

3524 **Section 4-117. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION;**

3525 **ATTORNEY'S FEES.** (a) A declarant, association, or any other
3526 person subject to this act may bring an action to enforce a right



3527 granted or obligation imposed by this act, the declaration, or the
3528 bylaws. Punitive damages may be awarded for a willful failure to
3529 comply with this act. The court may award reasonable attorney's
3530 fees and costs.

3531 (b) Parties to a dispute arising under this act, the
3532 declaration, or the bylaws may agree to resolve the dispute by any
3533 form of binding or nonbinding alternative dispute resolution, but:

3534 (1) A declarant may agree with the association to do so
3535 only after the period of declarant control has expired unless the
3536 agreement is made with an independent committee of the executive
3537 board elected pursuant to Section 4-116(d); and

3538 (2) An agreement to submit to any form of binding
3539 alternative dispute resolution must be in a record authenticated
3540 by the parties.

3541 **Section 4-118. LABELING OF PROMOTIONAL MATERIAL.** No
3542 promotional material may be displayed or delivered to prospective
3543 purchasers which describes or portrays an improvement that is not
3544 in existence unless the description or portrayal of the
3545 improvement in the promotional material is conspicuously labeled
3546 or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT."

3547 **Section 4-119. DECLARANT'S OBLIGATION TO COMPLETE AND**
3548 **RESTORE.** (a) Except for improvements labeled "NEED NOT BE
3549 BUILT," the declarant shall complete all improvements depicted on
3550 any site plan or other graphic representation, including any plats
3551 or plans prepared pursuant to Section 2-109, whether or not that
3552 site plan or other graphic representation is contained in the
3553 public offering statement or in any promotional material
3554 distributed by or for the declarant.

3555 (b) The declarant is subject to liability for the prompt
3556 repair and restoration, to a condition compatible with the
3557 remainder of the common interest community, of any portion of the
3558 common interest community affected by the exercise of rights



3559 reserved pursuant to or created by Section 2-110, 2-111, 2-112,
3560 2-113, 2-115 or 2-116.

3561 **Section 4-120. SUBSTANTIAL COMPLETION OF UNITS.** In the case
3562 of a sale of a unit in which delivery of a public offering
3563 statement is required, a contract of sale may be executed, but no
3564 interest in that unit may be conveyed, until the declaration is
3565 recorded and is substantially completed, as evidenced by a
3566 recorded certificate of substantial completion executed by an
3567 independent registered architect, surveyor, or engineer, or by
3568 issuance of a certificate of occupancy authorized by law.

3569 **SECTION 2.** Section 89-9-1, Mississippi Code of 1972, is
3570 brought forward as follows:

3571 89-9-1. This chapter shall be known and may be cited as the
3572 "Mississippi Condominium Law."

3573 **SECTION 3.** Section 89-9-3, Mississippi Code of 1972, is
3574 brought forward as follows:

3575 89-9-3. The purpose of this chapter is to give statutory
3576 recognition to the condominium form of ownership of real property.
3577 It shall not be construed as repealing or amending any law now in
3578 effect except those in conflict herewith, and any such conflicting
3579 laws shall be affected only insofar as they apply to condominiums.

3580 **SECTION 4.** Section 89-9-5, Mississippi Code of 1972, is
3581 brought forward as follows:

3582 89-9-5. For the purpose of this chapter, the following words
3583 and phrases as used herein, unless a different meaning is plainly
3584 required by the context, shall have the following meanings:

3585 (1) "Condominium" means that form of ownership of
3586 property under which units of improvements are subject to
3587 ownership by different owners and there is appurtenant to each
3588 unit as part thereof an undivided share in the common areas.

3589 (2) "Unit" means the elements of a condominium which
3590 are not owned in common with the owners of other condominiums in
3591 the project.



3592 (3) "Project" means the entire parcel of real property
3593 divided, or to be divided into condominiums, including all
3594 structures thereon.

3595 (4) "Common areas" means the entire project excepting
3596 all units therein granted or reserved.

3597 (5) "To divide" real property means to divide the
3598 ownership thereof by conveying one or more condominiums therein
3599 but less than the whole thereof.

3600 (6) "Real property" means and includes an estate in fee
3601 simple in the land or a leasehold therein or any other estate in
3602 land recognized by law together with the building or buildings,
3603 all improvements and structures thereon and all easements, rights,
3604 and appurtenances belonging thereto.

3605 **SECTION 5.** Section 89-9-7, Mississippi Code of 1972, is
3606 brought forward as follows:

3607 89-9-7. A condominium is an estate in real property
3608 consisting of an undivided interest in common in a portion of a
3609 parcel of real property together with a separate interest in space
3610 in a residential, industrial, or commercial building on such real
3611 property, such as an apartment, office, or store. A condominium
3612 may include in addition a separate interest in other portions of
3613 such real property.

3614 Such estate may, with respect to the duration of its
3615 enjoyment, be in fee simple, leasehold or any other estate in real
3616 property recognized by law.

3617 **SECTION 6.** Section 89-9-9, Mississippi Code of 1972, is
3618 brought forward as follows:

3619 89-9-9. The provisions of this chapter shall apply to
3620 property divided or to be divided into condominiums only if there
3621 shall be recorded in the office of the chancery clerk in the
3622 county in which such property lies a plan consisting of (a) a
3623 description or survey map of the surface of the land included
3624 within the project, (b) diagrammatic floor plans of the building



3625 or buildings built or to be built thereon in sufficient detail to
3626 identify each unit, its relative location and approximate
3627 dimensions, and (c) a certificate consenting to the recordation of
3628 such plan pursuant to this chapter signed and acknowledged by the
3629 record owner of such real property and all record holders of
3630 security interests therein. Such plan may be amended or revoked
3631 by a subsequently acknowledged recorded instrument executed by the
3632 record owner of such real property and by all record holders of
3633 security interests therein. Until such recordation of a
3634 revocation, the provisions of this chapter shall continue to apply
3635 to such real property. The term "record owner" as used in this
3636 section includes all of the record owners of such real property at
3637 the time of recordation, but does not include holders of security
3638 interests, mineral or royalty interests, easements or
3639 rights-of-way.

3640 **SECTION 7.** Section 89-9-11, Mississippi Code of 1972, is
3641 brought forward as follows:

3642 89-9-11. Unless otherwise expressly stated therein, any
3643 transfer or conveyance of a unit or an apartment, office or store
3644 which is a part of the unit, shall be presumed to transfer or
3645 convey the entire condominium.

3646 **SECTION 8.** Section 89-9-13, Mississippi Code of 1972, is
3647 brought forward as follows:

3648 89-9-13. Unless otherwise expressly provided in the deeds,
3649 declaration of restrictions or plan, incidents of a condominium
3650 grant are as follows:

3651 (1) The boundaries of the unit granted are the interior
3652 surfaces of the perimeter walls, floors, ceilings, windows and
3653 doors thereof, and the unit includes both the portions of the
3654 building so described and the airspace so encompassed. The
3655 following are not part of the unit: bearing walls, columns,
3656 floors, roofs, foundations, elevator equipment and shafts, central
3657 heating, central refrigeration and central air-conditioning



3658 equipment, reservoirs, tanks, pumps and other central services,
3659 pipes, ducts, flues, chutes, conduits, wires and other utility
3660 installations, wherever located, except the outlets thereof when
3661 located within the unit. In interpreting deeds and plans the
3662 existing physical boundaries of the unit or of a unit
3663 reconstructed in substantial accordance with the original plans
3664 thereof shall be conclusively presumed to be its boundaries rather
3665 than the metes and bounds expressed in the deed or plan,
3666 regardless of settling or lateral movement of the building and
3667 regardless of minor variance between boundaries shown on the plan
3668 or in the deed and those of the building.

3669 (2) The common areas are owned by the owners of the
3670 units as tenants in common, in equal shares, one (1) for each
3671 unit.

3672 (3) A nonexclusive easement for ingress, egress and
3673 support through the common areas is appurtenant to each unit, and
3674 the common areas are subject to such easement.

3675 (4) Each condominium owner shall have the exclusive
3676 right to paint, repaint, tile, wax, paper, or otherwise refinish
3677 and decorate the inner surfaces of the walls, ceilings, floors,
3678 windows and doors bounding his own unit.

3679 **SECTION 9.** Section 89-9-15, Mississippi Code of 1972, is
3680 brought forward as follows:

3681 89-9-15. Except as provided in Section 89-9-35, the common
3682 areas shall remain undivided, and there shall be no judicial
3683 partition thereof. Nothing herein shall be deemed to prevent
3684 partition of a tenancy in common in a condominium.

3685 **SECTION 10.** Section 89-9-17, Mississippi Code of 1972, is
3686 brought forward as follows:

3687 89-9-17. The owner of a project shall, prior to the
3688 conveyance of any condominium therein, record a declaration of
3689 restrictions relating to such project, which restrictions shall be
3690 enforceable equitable servitudes where reasonable, and shall inure



3691 to and bind all owners of condominiums in the project. Such
3692 servitudes, unless otherwise provided, may be enforced by any
3693 owner of a condominium in the project, and may provide, among
3694 other things:

3695 (1) For the management of the project by one or more of
3696 the following management bodies: the condominium owners, a board
3697 of governors elected by the owners or a management agent elected
3698 by the owners or the board or named in the declaration; for voting
3699 majorities; quorums, notices, meeting dates and other rules
3700 governing such body or bodies; and for recordation from time to
3701 time, as provided for in the declaration, of certificates of
3702 identity of the persons then composing such management body or
3703 bodies, which certificates shall be conclusive evidence thereof in
3704 favor of any person relying thereon in good faith.

3705 (2) As to any such management body:

3706 (i) For the powers thereof, including power to
3707 enforce the provisions of the restrictions;

3708 (ii) For maintenance by it of fire, casualty,
3709 liability, workmen's compensation and other insurance insuring
3710 condominium owners, and for bonding of the members of any
3711 management body;

3712 (iii) For provision by it of payment by it for
3713 maintenance, utility, gardening and other services benefiting the
3714 common areas; for employment of personnel necessary for operation
3715 of the building, and for legal and accounting services;

3716 (iv) For purchase by it of materials, supplies and
3717 the like and for maintenance and repair of the common areas;

3718 (v) For payment by it of taxes and special
3719 assessments which would be lien upon the entire project or common
3720 areas, and for discharge by it of any lien or encumbrance levied
3721 against the entire project or common areas;

3722 (vi) For payment by it for reconstruction of any
3723 portion or portions of the project damaged or destroyed;



3724 (vii) For delegation by it of its powers;

3725 (viii) For entry by it or its agents into any unit
3726 when necessary in connection with maintenance or construction for
3727 which such body is responsible;

3728 (ix) For an irrevocable power of attorney to the
3729 management body to sell the entire project for the benefit of all
3730 of the owners thereof when partition of the project may be had
3731 under section 89-9-35 which said power shall:

3732 (a) Be binding upon all the owners, whether
3733 they assume the obligations of the constructions or not;

3734 (b) If so provided in the declaration, be
3735 exercisable by less than all, but not less than a majority of the
3736 management body;

3737 (c) Be exercisable only after recording of a
3738 certificate by those who have power to exercise it, that said
3739 power is properly exercisable hereunder, which certificate shall
3740 be conclusive evidence thereof in favor of any person relying
3741 thereon in good faith.

3742 (3) For amendments of such restrictions, which
3743 amendments, if reasonable and made upon vote or consent of not
3744 less than a majority in interest of the owners of the project
3745 given after reasonable notice, shall be binding upon every owner
3746 and every condominium subject thereto whether the burdens thereon
3747 are increased or decreased thereby, and whether the owner of each
3748 and every condominium consents thereto or not.

3749 (4) For independent audit of the accounts of any
3750 management body.

3751 (5) (i) For reasonable assessments to meet authorized
3752 expenditures of any management body, and for a reasonable method
3753 for notice and levy thereof, each condominium to be assessed
3754 separately for its share of such expenses in proportion, unless
3755 otherwise provided, to its owner's fractional interest in any
3756 common area;



3757 (ii) For the subordination of the liens securing
3758 such assessments to other liens either generally or specifically
3759 described.

3760 (6) For the restrictions upon the severability of the
3761 component interests in real property which comprise a condominium.

3762 (7) For such covenants and restrictions concerning the
3763 use, occupancy and transfer of the units as are permitted by law
3764 with reference to real property.

3765 **SECTION 11.** Section 89-9-19, Mississippi Code of 1972, is
3766 brought forward as follows:

3767 89-9-19. The restrictions and covenants authorized by
3768 Section 89-9-17 may prescribe regulations concerning sales or
3769 leases of units, and any such restrictions and covenants shall be
3770 valid, but it shall not be mandatory that the management body be
3771 given the first right or refusal to purchase or lease any such
3772 unit which the owner thereof intends to sell or lease.

3773 **SECTION 12.** Section 89-9-21, Mississippi Code of 1972, is
3774 brought forward as follows:

3775 89-9-21. A reasonable assessment upon any condominium made
3776 in accordance with a recorded declaration of restrictions
3777 permitted by Section 89-9-17 shall be a debt of the owner thereof
3778 at the time the assessment is made. The amount of any such
3779 assessment plus any other charges thereon, such as interest,
3780 costs, attorneys' fees, and penalties, as such may be provided for
3781 in the declaration of restrictions, shall be and become a lien
3782 upon the condominium assessed when the management body causes to
3783 be recorded in the office of the chancery clerk of the county in
3784 which such condominium is located a notice of assessment, which
3785 shall state the amount of such assessment and such other charges
3786 thereon as may be authorized by the declaration of restrictions, a
3787 description of the condominium against which the same has been
3788 assessed, and the name of the record owner thereof. Such notice
3789 shall be signed and verified by an authorized representative of



3790 the management body or as otherwise provided in the declaration of
3791 restrictions. Such lien shall be recorded in a condominium lien
3792 book alphabetically by name of the condominium unit owner, and
3793 such books need not be obtained until a condominium plat shall
3794 have been first recorded in said county. Upon payment of said
3795 assessment and charges in connection with which such notice has
3796 been so recorded, or other satisfaction thereof, the management
3797 body shall cause to be recorded a further notice stating the
3798 satisfaction and the release of the lien thereof.

3799 Such lien shall be prior to all other liens recorded
3800 subsequent to the recordation of said notice of assessment except
3801 that the declaration of restrictions may provide for the
3802 subordination thereof to any other liens and encumbrances. Unless
3803 sooner satisfied and released, or the enforcement thereof
3804 initiated as hereafter provided, such lien shall expire and be of
3805 no further force or effect one (1) year from the date of
3806 recordation of said notice of assessment; provided, however, that
3807 said one-year period may be extended by the management body for a
3808 time not to exceed one (1) additional year by recording a written
3809 extension thereof.

3810 Such lien against any unit may be enforced by sale of same by
3811 the management body, its attorney or other person authorized to
3812 make the sale, after failure of the owner to pay such an
3813 assessment in accordance with its terms, such sale to be conducted
3814 in accordance with the provisions of Section 89-1-55, applicable
3815 to the exercise of powers of sale in mortgages and deeds of trust,
3816 or in any other manner permitted by law. Unless otherwise
3817 provided in the declaration of restrictions, the management body
3818 shall have power to bid in the condominium at foreclosure sale and
3819 to hold, lease, mortgage and convey the same. Suit to recover a
3820 money judgment for unpaid assessments may be maintained without
3821 waiving the lien securing the same.



3822 **SECTION 13.** Section 89-9-23, Mississippi Code of 1972, is
3823 brought forward as follows:

3824 89-9-23. No labor performed or services or materials
3825 furnished with the consent of or at the request of a condominium
3826 owner or his agent or his contractor or subcontractor shall be the
3827 basis for the filing of a lien against the condominium of any
3828 other condominium owner, or against any part thereof, or against
3829 any other property of any other condominium owner, unless such
3830 other owner has expressly consented to or requested the
3831 performance of such labor or furnishing of such materials or
3832 services. Such express consent shall be deemed to have been given
3833 by the owner of any condominium in the case of emergency repairs
3834 thereto. Labor performed or services or materials furnished for
3835 the common areas, if duly authorized by a management body provided
3836 for in a declaration of restrictions governing the property, shall
3837 be deemed to be performed or furnished with the express consent of
3838 each condominium owner. The owner of any condominium may remove
3839 his condominium from a lien against two (2) or more condominiums
3840 or any part thereof by payment to the holder of the lien of the
3841 fraction of the total sum secured by such lien which is
3842 attributable to his condominium.

3843 **SECTION 14.** Section 89-9-25, Mississippi Code of 1972, is
3844 brought forward as follows:

3845 89-9-25. Unless otherwise provided by a declaration of
3846 restrictions under Section 89-9-17, the management body, if any,
3847 provided for therein, may acquire and hold, for the benefit of the
3848 condominium owners, tangible and intangible personal property and
3849 may dispose of the same by sale or otherwise; and the beneficial
3850 interest in such personal property shall be owned by the
3851 condominium owners in the same proportion as their respective
3852 interests in the common areas, and shall not be transferrable
3853 except with a transfer of a condominium. A transfer of a



3854 condominium shall transfer to the transferee ownership of the
3855 transferor's beneficial interest in such personal property.

3856 **SECTION 15.** Section 89-9-27, Mississippi Code of 1972, is
3857 brought forward as follows:

3858 89-9-27. Any deed, declaration, or plan for a condominium
3859 project shall be liberally construed to facilitate the operation
3860 of the project, and its provisions shall be presumed to be
3861 independent and severable.

3862 **SECTION 16.** Section 89-9-29, Mississippi Code of 1972, is
3863 brought forward as follows:

3864 89-9-29. A. The liability of the owner of a unit for common
3865 expenses shall be limited to the amounts for which he is assessed
3866 from time to time in accordance with this chapter and the
3867 declaration.

3868 B. The owners of a unit shall have no personal liability for
3869 any damages caused by the governing body on or in connection with
3870 the use of common areas. A unit owner shall be liable for
3871 injuries or damages resulting from an accident in his own unit to
3872 the same extent and degree that the owner of a house, an office,
3873 or a store would be liable for an accident occurring therein.

3874 **SECTION 17.** Section 89-9-31, Mississippi Code of 1972, is
3875 brought forward as follows:

3876 89-9-31. (1) Property taxes and special assessments
3877 assessed by municipalities, counties, the State of Mississippi,
3878 and other taxing authorities shall be assessed against and
3879 collected on the unit and the common areas and not upon the
3880 project as a whole. Each unit and common areas shall be
3881 separately assessed for ad valorem taxes and special assessments
3882 as a single parcel. The taxes and special assessments levied
3883 against each unit and common areas shall constitute a lien only
3884 upon such unit and common areas so assessed and upon no other
3885 portion of the project.



3886 (2) All provisions of a declaration relating to a unit or
3887 common areas sold for taxes or special assessments shall survive
3888 and be enforceable after the issuance of a tax deed or other deed
3889 upon foreclosure of an assessment, certificate, or lien, a tax
3890 deed, tax certificate, or tax lien to the same extent that they
3891 would be enforceable against a voluntary grantee, immediate,
3892 mediate, or remote, of the owner of the title immediately prior to
3893 the delivery of the tax deed or other deed.

3894 (3) Any unit of a condominium project shall be eligible for
3895 exemption under the Homestead Exemption Act of 1946, Sections
3896 27-33-1 to 27-33-65, Mississippi Code of 1972, if all other
3897 criteria of said sections are met.

3898 **SECTION 18.** Section 89-9-33, Mississippi Code of 1972, is
3899 brought forward as follows:

3900 89-9-33. Unless a contrary intent is clearly expressed,
3901 local zoning ordinances shall be construed to treat like
3902 structures, lots, or parcels in like manner regardless of whether
3903 the ownership thereof is divided by sale of condominiums or into
3904 community apartments rather than by lease of apartments, offices,
3905 or stores.

3906 **SECTION 19.** Section 89-9-35, Mississippi Code of 1972, is
3907 brought forward as follows:

3908 89-9-35. Where several persons own condominiums, as defined
3909 in the Mississippi Condominium Law, in a condominium project, as
3910 defined in said law, an action may be brought by one or more of
3911 such persons for partition thereof by sale of the entire project,
3912 as though the owners of all of the condominiums in such project
3913 were tenants in common in the entire project in the same
3914 proportion as their interests in the common areas; provided,
3915 however, that a partition shall be made only upon the showing
3916 that: (1) three (3) years after damage or destruction to the
3917 project which renders a material part thereof unfit for its use
3918 prior thereto, the project has not been rebuilt or repaired



3919 substantially to its state prior to its damage or destruction, or
3920 (2) that three-fourths (3/4) or more of the project has been
3921 destroyed or substantially damaged, and that condominium owners
3922 holding in aggregate more than a fifty percent (50%) interest in
3923 the common areas are opposed to repair or restoration of the
3924 project, or (3) that the project has been in existence in excess
3925 of fifty (50) years, that it is obsolete and uneconomic, and that
3926 condominium owners holding in aggregate more than a fifty percent
3927 (50%) interest in the common areas are opposed to repair or
3928 restoration of the project, or (4) that conditions for such a
3929 partition by sale set forth in the declaration of restrictions
3930 entered into with respect to such project, pursuant to the
3931 provisions of the Mississippi Condominium Law, have been met.

3932 **SECTION 20.** Section 89-9-37, Mississippi Code of 1972, is
3933 brought forward as follows:

3934 89-9-37. Such action for partition by sale shall be brought
3935 in the chancery court of that county in which the project or some
3936 part thereof is situated, subject to the provisions for partition
3937 of lands by sale, as far as applicable, and the court shall have
3938 power to make all such orders as may be necessary to protect the
3939 rights of parties, and any sale ordered in such cases shall be
3940 made and reported as in the case of the sale of land; and decrees
3941 making partition shall vest title according to their terms. In
3942 such cases the court or chancellor may make all orders, and cause
3943 to be issued all process necessary to secure the rights of
3944 parties.

3945 **SECTION 21.** This act shall take effect and be in force from
3946 and after July 1, 2011.

