

LEGISLATIVE BILL 433

Approved by the Governor May 10, 1983

Introduced by Wiitala, 31; DeCamp, 40

AN ACT to adopt the Uniform Condominium Act; to amend sections 76-802, 76-804, 76-807, 76-809, 76-811, 76-816, 76-817, 76-819, 76-820, and 76-823, Reissue Revised Statutes of Nebraska, 1943, and section 31-735, Revised Statutes Supplement, 1982; to harmonize provisions relating to condominiums; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 70 of this act shall be known and may be cited as the Uniform Condominium Act.

Sec. 2. (a) Sections 1 to 70 of this act apply to all condominiums created within this state after the operative date of this act. Sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act, to the extent necessary in construing any of those sections, apply to all condominiums created in this state before the operative date of this act; but those sections apply only with respect to events and circumstances occurring after the operative date of this act and do not invalidate existing provisions of the master deed, bylaws, or plans of those condominiums.

(b) The provisions of sections 76-801 to 76-824 do not apply to condominiums created after the operative date of this act and do not invalidate any amendment to the master deed, bylaws, and plans of any condominium created before the operative date of this act if the amendment would be permitted by sections 1 to 70 of this act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by sections 76-801 to 76-824. If the amendment grants to any person any rights, powers, or privileges permitted by sections 1 to 70 of this act, all correlative obligations, liabilities, and restrictions in sections 1 to 70 of this act also apply to that person.

(c) This act does not apply to condominiums or units located outside this state, but the public offering statement provisions contained in sections 55 to 59 of this act apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection (b) of section 54 of this act.

Sec. 3. In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in sections 1 to 70 of this act:

(1) Affiliate of a declarant means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty per cent of the voting interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty per cent of the capital of the declarant. A person is controlled by a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty per cent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than thirty per cent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) Allocated interests means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) Association or unit owners' association means the unit owners' association organized under section 35 of this act.

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

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

(6) Common expense liability means the liability for common expenses allocated to each unit pursuant to section 20 of this act.

(7) Condominium means real estate, portions of which are designated for separate ownership and the

remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

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

(9) Declarant means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his, her, or its interest in a unit not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

(10) Declaration means any instruments, however denominated, that create a condominium, and any amendments to those instruments.

(11) Development rights means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a condominium; (ii) create units, common elements, or limited common elements within a condominium; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a condominium.

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

(13) Executive board means the body, regardless of name, designated in the declaration to act on behalf of the association.

(14) Identifying number means a symbol or address that identifies only one unit in a condominium.

(15) Leasehold condominium means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(16) Limited common element means a portion of the common elements allocated by the declaration or by operation of subsection (2) or (4) of section 15 of this act for the exclusive use of one or more but fewer than all of the units.

(17) Master association means an organization described in section 33 of this act, whether or not it is also an association described in section 35 of this act.

(18) Offering means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an

offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(19) Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a land trust, however, person means the beneficiary of the trust rather than the trust or the trustee.

(20) Purchaser means any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest including renewal options of less than twenty years, or (ii) as security for an obligation.

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

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

(23) Special declarant rights means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration as provided in section 22 of this act; (ii) exercise any development right pursuant to section 24 of this act; (iii) maintain sales offices, management offices, signs advertising the condominium, and models pursuant to section 28 of this act; (iv) use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium pursuant to section 29 of this act; (v) make the condominium part of a larger condominium or a planned community pursuant to section 34 of this act; (vi) make the condominium subject to a master association pursuant to section 34 of this act; or (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control pursuant to subsection (d) of section 37 of this act.

(24) Unit means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to subdivision (a) (5) of section 18 of this act.

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

Sec. 4. Except as expressly provided in sections 1 to 70 of this act, provisions of sections 1 to 74 of this act may not be varied by agreement, and rights conferred by sections 1 to 70 of this act may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of sections 1 to 70 of this act or the declaration.

Sec. 5. (a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

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

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

Sec. 6. A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of sections 1 to 70 of this act invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

Sec. 7. (a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his or her unit and its interest, in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common

element.

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

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

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

Sec. 8. The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of sections 1 to 70 of this act, except to the extent inconsistent with sections 1 to 70 of this act.

Sec. 9. Sections 1 to 70 of this act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Sec. 10. Sections 1 to 70 of this act shall be applied and construed so as to effectuate their general purpose to make uniform the law with respect to the subject of sections 1 to 70 of this act among states enacting such sections.

Sec. 11. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be

given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

Sec. 12. Every contract governed by sections 1 to 70 of this act imposes an obligation of good faith in its performance.

Sec. 13. (a) The remedies provided by sections 1 to 70 of this act shall be administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential or special damages may not be awarded except as specifically provided in sections 1 to 70 of this act or by other rule of law.

(b) Any right or obligation declared by sections 1 to 70 of this act is enforceable by judicial proceeding.

Sec. 14. (a) A condominium may be created pursuant to sections 1 to 70 of this act only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the condominium is located.

(b) Any units added by an amendment to a declaration adding units to a condominium that would increase the voting rights of the developer or declarant within the condominium association shall not constitute an additional voting unit within the association unless the foundation for such unit has been completed.

Sec. 15. Except as provided by the declaration:

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

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

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

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's

boundaries, are limited common elements allocated exclusively to that unit.

Sec. 16. (a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to subdivision (a)(1) of section 36 of this act.

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with sections 1 to 70 of this act.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with sections 1 to 70 of this act. Whether a substantial failure impairs marketability is not affected by sections 1 to 70 of this act.

Sec. 17. A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

Sec. 18. (a) The declaration for a condominium must contain:

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

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

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

(4) a statement of the anticipated number of units which the declarant reserves the right to create, subject to an amendment of the declaration to add more units pursuant to this act;

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

(6) a description of any limited common elements, other than those specified in subdivision (b)(10) of section 22 of this act;

(7) a general description of any development rights and other special declarant rights defined in subsection (23) of section 3 of this act reserved by the declarant;

(8) an allocation to each unit of the allocated interests in the manner described in section 20 of this act;

(9) any restrictions on use, occupancy, and

alienation of the units; and

(10) all matters required by sections 19 to 22, 28, and 29, and subsection (d) of section 27 of this act.

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

Sec. 19. (a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(1) where the lease is recorded or a statement of where the complete lease may be inspected;

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

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

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

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

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

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

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

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with subsection (a) of section 7 of this act as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Sec. 20. (a) The declaration shall allocate a fraction or percentage of undivided interests in the

common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

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

(c) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by sections 1 to 70 of this act, nor may units constitute a class because they are owned by a declarant.

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

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

Sec. 21. (a) Except for the limited common elements described in subdivisions (2) and (4) of section 15 of this act, the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

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

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration. The

allocations shall be made by amendments to the declaration.

Sec. 22. (a) Plats and plans are a part of the declaration. Separate plats and plans are not required by sections 1 to 70 of this act if all the information required by this section is contained in either a plat or plan.

(b) Each plat must show:

(1) the name and a survey or general schematic map of the entire condominium;

(2) the extent of any existing encroachments by or upon any portion of the condominium;

(3) to the extent feasible, a legally sufficient description or drawing of all easements serving or burdening any portion of the condominium;

(4) the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

(5) the location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

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

(7) the distance between noncontiguous parcels of real estate comprising the condominium; and

(8) the location and dimensions of limited common elements, including porches, balconies, and patios, other than parking spaces and the other limited common elements described in subdivisions (2) and (4) of section 15 of this act.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either Must Be Built or Need Not Be Built.

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

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

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

(3) any units in which the declarant has reserved the right to create additional units or common elements pursuant to subsection (c) of section 23 of this act, identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located

outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.

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

(g) Any plat or plan required by this act must be prepared by a registered surveyor, architect, or engineer.

Sec. 23. (a) To exercise any development right reserved under this act, the declarant shall prepare, execute, and record an amendment to the declaration pursuant to section 30 of this act and comply with section 22 of this act. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 21 of this act regarding limited common elements.

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by this act, as the case may be and the plats and plans include all matters required by section 22 of this act.

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

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain as provided in section 7 of this act.

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

(d) If the declaration provides that all or a portion of the real estate is subject to the development

right of withdrawal:

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

(2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 24. Subject to the provisions of the declaration and other provisions of law, a unit owner:

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

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

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

Sec. 25. (a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified in reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

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

Sec. 26. (a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the

declaration, including the plats and plans, subdividing that unit.

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

Sec. 27. To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his or her willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

Sec. 28. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if declarant ceases to be a unit owner, he or she ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law, and to local ordinances.

Sec. 29. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under sections 1 to 70 of this act or reserved in the declaration.

Sec. 30. (a) Except in cases of amendments that may be executed by a declarant under subsection (f) of section 22 or section 23 of this act; the association under sections 7 or 26, subsection (d) of section 19, subsection (c) of section 21, or subsection (a) of section 25 of this act; or certain unit owners under subsection (b) of section 21, subsection (a) of section 25, subsection (b) of section 26, or subsection (b) of section 31 of this act, and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven per cent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a

smaller number only if all of the units are restricted exclusively to nonresidential use.

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

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of sections 1 to 70 of this act, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the consent of two-thirds of the unit owners.

(e) Amendments to the declaration required by sections 1 to 70 of this act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 31. (a) Except in the case of a taking of all units by eminent domain as provided in section 7 of this act, a condominium may be terminated only by agreement of unit owners of units to which at least eighty per cent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

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

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium containing

any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b) of this section. If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of that occupancy, each unit owner and his or her successors in interest remain liable for all assessments and other obligations imposed on unit owners by sections 1 to 70 of this act or the declaration.

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

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before

termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

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

(1) Except as provided in paragraph (2) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five per cent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

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

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

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

Sec. 32. The declaration may require that all

or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to section 47 of this act.

Sec. 33. (a) If the declaration for a condominium provides that any of the powers described in section 36 of this act are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association, which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of sections 1 to 70 of this act applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in section 36 of this act it may exercise the powers set forth in subdivision (a)(2) of section 36 of this act only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 37, 42 to 44, and 46 of this act apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of sections 1 to 70 of this act.

(e) Notwithstanding the provisions of subsection (f) of section 37 of this act with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 37 of this act, the certificate of incorporation or other instrument creating the master association and the declaration of

each condominium the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

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

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

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

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

Sec. 34. (a) Any two or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

Sec. 35. A unit owners' association must be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 31 of this act or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

Sec. 36. (a) Except as provided in subsection (b) of this section, and subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

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

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

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

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to section 47 of this act;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 15 of this act, and for services provided to unit owners;

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

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 63 of this act, or statements of unpaid assessments;

(13) Provide for the indemnification of its officers and executive board and maintain directors' and

officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration of bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

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

Sec. 37. (a) Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of sections 1 to 70 of this act, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to amend the declaration pursuant to section 20 of this act, to terminate the condominium pursuant to section 31 of this act, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members pursuant to subsection (f) of this section, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

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

(d) Subject to subsection (e) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him or her, may appoint and remove the officers and members of the

executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of ninety per cent of the units which may be created to unit owners other than a declarant; or (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Successor boards following declarant control may not discriminate nor act arbitrarily with respect to units still owned by a declarant or a successor declarant.

(e) Not later than sixty days after conveyance of twenty-five per cent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five per cent of the members of the executive board shall be elected exclusively by unit owners other than the declarant. Not later than sixty days after conveyance of fifty per cent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third per cent of the members of the executive board shall be elected exclusively by unit owners other than the declarant.

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

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

Sec. 38. (a) No special declarant right as defined in subsection (23) of section 3 of this act created or reserved under sections 1 to 70 of this act may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

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

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by sections 1 to 70 of this act. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant defined in subsection (1) of section 3 of this act, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by sections 1 to 70 of this act or by the declaration relating to the retained special declarant rights and arising after the transfer.

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

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings, or any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration pursuant to section 28 of this act and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

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

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

(2) The period of declarant control as provided in subsection (d) of section 37 of this act terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a

person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by sections 1 to 70 of this act or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4) of this subsection who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by sections 1 to 70 of this act or the declaration:

(i) On a declarant which relates to his or her exercise or nonexercise of special declarant rights; or

(ii) On his or her transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant, or made before the condominium was created; or

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

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs pursuant to section 28 of this act, if he or she is not an affiliate of a declarant, may not exercise any other special declarant rights, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) of this section, may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, such successor may not exercise any of those rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of subsection (d) of section 37 of this act for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under subsection (d) of

section 37 of this act.

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under sections 1 to 70 of this act or the declaration.

Sec. 39. If entered into before the executive board elected by the unit owners pursuant to subsection (f) of section 37 of this act takes office, (i) any management contract, service contract, employment contract, or lease of recreational or parking areas of facilities or (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant may be terminated without penalty at any time after the executive board elected by the unit owners pursuant to subsection (f) of section 37 of this act takes office upon not less than one hundred eighty days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. This section shall not apply to any lease of a roadway or amenity for the mutual benefit of any phase or condominium regime.

Sec. 40. (a) The bylaws of the association must provide for:

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

(2) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

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

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

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

(6) The method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

Sec. 41. (a) Except to the extent provided by the declaration, subsection (b) of this section, or subsection (h) of section 47 of this act, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his or her unit. Each unit owner shall afford to the

association and the other unit owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit owner has under sections 1 to 70 of this act, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

Sec. 42. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by unit owners having twenty per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

Sec. 43. (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty per cent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

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

Sec. 44. (a) If only one of the multiple owners of a unit is present at a meeting of the association, he or she is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners

casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the units.

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

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units; (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 43 of this act, of all meetings at which lessees may be entitled to vote.

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

Sec. 45. (a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (i) For all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is

not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 51 of this act.

(b) The declarant shall not be liable for any action, loss, or cost pursuant to this section if at the time the loss occurred, insurance required by section 47 of this act was in place.

Sec. 46. (a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty per cent of the votes in the association, including eighty per cent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

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

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

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

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

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

Sec. 47. (a) Commencing not later than the

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

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

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

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

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

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

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

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

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

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

(e) Any loss covered by the property policy under subdivision (a) (1) and (b) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgage or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lien holders as their interests may appear. Subject to the provisions of subsection (h) of this section the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

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

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

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty per cent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii)

the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under subsection (a) of section 7 of this act, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 31 of this act governs the distribution of insurance proceeds if the condominium is terminated.

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

Sec. 48. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Sec. 49. (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually. After one-third of the members of the executive board are elected by unit owners other than the declarant, assessments shall be based on a budget adopted at least annually by the association.

(b) Except for assessment under subsections (c), (d), and (e) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsection (a) of section 20 of this act. Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen per cent per year.

(c) To the extent required by the declaration:

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

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

(3) The costs of insurance may at the discretion of the association be assessed in proportion to risk and, if reasonably determined, the costs of utilities not separately metered must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association pursuant to subsection (a) of section 51 of this act may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

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

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

Sec. 50. (a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages are recorded. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (a)(10), (a)(11), and (a)(12) of section 36 of this act are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

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

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

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

(f) A judgment or decree in any action brought

under this section must include costs and reasonable attorney's fees for the prevailing party.

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

Sec. 51. (a) Except as provided in subsection (b) of this section, a judgment for money against the association, if the transcript is properly filed, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 46 of this act, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

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

Sec. 52. The association shall keep financial records sufficiently detailed to enable the association to comply with section 60 of this act. All financial and other records of the association shall be made reasonably available for examination by any unit owner and his or her authorized agents.

Sec. 53. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person,

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

Sec. 54. (a) Sections 54 to 70 of this act apply to all units subject to sections 1 to 70 of this act, except as provided in subsection (b) of this section or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

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

(1) a gratuitous or testamentary disposition of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition to a person in the business of selling real estate who intends to offer those units to purchaser;

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

(7) A condominium composed of not more than twenty-five units which is not subject to any development rights to add units and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate; or

(8) Any condominium composed of units not intended for residential use.

Sec. 55. (a) Except as provided in section 54 of this act or subsection (b) of this section, a declarant, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of this act.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to section 38 of this act or to a person in the business of selling real estate who intends to offer units in the condominium. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a) of this section.

(c) Any declarant or other person in the

business of selling real estate who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection (a) of section 59 of this act. The person responsible for preparing all or a part of the public offering statement is liable for any false or any material, intentional, or misleading statement set forth therein or any failure to make disclosures required by this act with respect to that portion of the public offering statement which he or she prepared. If a declarant did not prepare any part of a public offering statement that he or she delivers, he or she is not liable for its contents unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission. Nothing in this subsection shall prohibit a condominium purchaser from waiving the preparation and delivery of a public offering statement with respect to the unit being resold.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of this act as those requirements relate to all real estate regimes in which the unit is located may be prepared and delivered in lieu of providing two or more public offering statements.

Sec. 56. (a) Except as provided in subsection (b) of this section a public offering statement must contain or fully and accurately disclose:

(1) the name and principal address of the declarant and of the condominium;

(2) a general description of the condominium and the amenities the declarant anticipates including to the extent possible, the types, number, and declarant's planned schedule of commencement and the anticipated completion date;

(3) the anticipated number of units in the condominium;

(4) a statement that copies the declaration other than the plats and plans and any other recorded covenants, conditions, restrictions and reservations affecting the condominium, the bylaws, and any rules or regulations of the association, and copies of any contracts or leases that will or may be subject to cancellation by the association under section 4 of this act that are available for inspection at the principal office of the declarant or association;

(5) the amount of the current monthly assessment and the current operating budget, if any;

(6) a statement that the declarant may be paying expenses that may later be paid by the association;

(7) any initial or special fee due from the purchaser at closing;

(8) a statement that a copy of any insurance policy provided for the benefit of the unit owners is available from the association upon request; and

(9) any current fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium.

(b) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, such purchaser may recover any actual damages sustained.

(c) If a condominium composed of not more than twenty-five units is not subject to any development rights or if such units are not intended for residential use, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, no public offering statement need be prepared.

(d) A declarant shall amend the public offering statement by an addendum not later than each January 1 it is in use, to report any material change in the information required by this section.

Sec. 57. (a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by section 55 of this act:

(1) a brief statement by an independent registered architect or engineer, describing the apparent condition of the structural components and mechanical and electrical installations material to the use and enjoyment of the building;

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

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations of which the declarant is actually aware.

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

Sec. 58. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of sections 1 to 70 of this act if he or she delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of Chapter 8, article 11.

Sec. 59. (a) A person required to deliver a

public offering statement pursuant to subsection (c) of section 55 of this act shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before conveyance of that unit. If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, such purchaser may recover from the declarant any actual damages.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, he or she may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail.

Sec. 60. (a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection (b) of section 54 of this act, any real estate broker or agent shall furnish to a purchaser before conveyance, a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association, and the following information:

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

(2) any other fees payable by unit owners;

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

(4) the current operating budget of the association, if any;

(5) a statement that a copy of any insurance policy provided for the benefit of unit owners is available from the association upon request; and

(6) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) The association, within ten days after a request by a unit owner, shall furnish in writing the information necessary to enable the unit owner to comply with this section. A unit owner providing information pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

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

Sec. 61. (a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to subsection (c) of section 55 of this act, a seller shall, before conveying a unit, record or furnish to the purchaser, releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

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

Sec. 62. (a) A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his or her own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement, if any, no later than sixty days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than sixty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

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

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

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

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated the notice shall constitute a notice to vacate.

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

(f) Any tenant may waive any provision of this section by a written instrument executed after the date of notice.

Sec. 63. Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

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

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

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

(d) a provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful at the time of contracting.

Sec. 64. (a) A declarant and any person in the business of selling real estate for his or her own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) Warranties imposed by this section may be excluded or modified as specified in section 65 of this

act.

(c) For purposes of this section, improvements made or contracted for by an affiliate of a declarant as defined in subsection (1) of section 3 of this act are made or contracted for by the declarant.

Sec. 65. Implied warranties of quality:

(a) may be excluded or modified by agreement of the parties; and

(b) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

Sec. 66. (a) A judicial proceeding for breach of any obligation arising under section 67 or 68 of this act must be commenced within four years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument executed by the purchaser.

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

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

(2) as to each common element, at the time the common element is completed or; if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

Sec. 67. If a declarant or any other person subject to sections 1 to 70 of this act fails in all material respects to comply with any provision hereof or any provision of the declaration or bylaws, any person adversely affected by the failure to comply has a claim for appropriate relief.

Sec. 68.

Promotional material may be displayed or delivered to prospective purchasers which display amenities provided they are labeled: (a) Must

Be Built or (b) Need Not Be Built.

Sec. 69. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 23 to 26, 28, and 29 of this act.

Sec. 70. In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by a registered architect, surveyor, or engineer, or by issuance of a certificate of occupancy authorized by law.

Sec. 71. That section 31-735, Revised Statutes Supplement, 1982, be amended to read as follows:

31-735. (1) For any sanitary and improvement district located in a county with a population of one hundred thousand or more, on the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district, and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for office of trustee may file for such office with the election commissioner of the county in which the greater proportion in area of the district is located, not later than thirty days before the election. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. The name of such candidate shall appear on only one ballot. The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. Such trustees shall be owners of real estate located in the district. The election shall be conducted at a location or place selected by the election commissioner, but situated within the boundaries of the district unless there is no building within the district or all of the owners in the district

shall consent to an election outside the district, except that in any district having ten or less total owners, or in any districts where there are no resident owners, the election shall be held in such place in the county as the election commissioner shall designate. The polling place shall remain open to the voters for not less than four consecutive hours between 8:00 a.m. and 8:00 p.m. of the date of election. Notice of the time and place of the election shall be mailed by the election commissioner not later than twenty days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner, which shall be not more than sixty-five days prior to the election.

(2) For any sanitary and improvement district located in a county with a population of less than one hundred thousand, on the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district, and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for office of trustee may file for such office with the county clerk, or election commissioner in counties having election commissioners, of the county in which the greater proportion in area of the district is located, not later than thirty days before the election. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. The name of such candidate shall appear on only one ballot. The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. Such trustees shall be owners of real estate located in the district. The election shall be conducted at a location or place within the boundaries of the district unless there is no building within the district or all of the owners in the district shall consent to an election outside the district, and the polling place shall remain open to the voters for not less than four consecutive hours between

8:00 a.m. and 8:00 p.m. of the date of election. Notice of the time and place of the election shall be mailed by the clerk of the district not later than twenty days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the board of trustees, which shall be not more than sixty-five days prior to the election. Notice of the time and place of the election shall also be mailed by the clerk of the district to the county clerk or election commissioner at least forty-five days prior to the election.

(3) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after such date may vote upon establishing their right to vote to the satisfaction of the election board. Such notice shall state the time, place, and purpose of the election. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land, or fraction thereof, and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that, if more than fifty per cent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be

considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any corporation, public, private, or municipal, owning any land or lot in the district, may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to the operative date of this act under the Condominium Property Act or established after the operative date of this act under the Uniform Condominium Act shall be deemed to be a platted lot and the lessee, or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on said board the remaining trustees shall fill the vacancy on said board until the next election.

Sec. 72. That section 76-802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-802. As used in sections 76-801 to 76-823, unless the context otherwise requires:

(1) Condominium property regime shall mean a project whereby four or more apartments are separately offered or proposed to be offered for sale;

(2) Apartment shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories

regardless of whether it be designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

(3) Coowner shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building;

(4) Association of coowners shall mean all the coowners as defined in subdivision (3) of this section; but a majority, as defined in subdivision (8) of this section, shall, except as otherwise provided in sections 76-801 to 76-823, constitute a quorum for the adoption of decisions;

(5) Board of administrators shall mean the governing board of the regime, consisting of not less than three members selected by and from the coowners;

(6) General common elements shall mean and include:

(a) The land or leasehold interest in land on which the building stands;

(b) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exit or communication ways;

(c) The basements, roofs, yards, and gardens, except as otherwise provided or stipulated;

(d) The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(e) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(f) The elevators, garbage incinerators and, in general, all devices or installations existing for common use; and

(g) All other elements of the building rationally of common use or necessary to its existence, upkeep and safety;

(7) Limited common elements shall mean and include those common elements which are agreed upon by all the coowners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(8) Majority of coowners shall mean more than fifty per cent of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of section 76-806;

(9) Master deed shall mean the deed establishing the condominium property regime;

(10) Person shall mean an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof;

(11) Property shall mean and include the land, leasehold interests in land, any building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto or any of them alone;

(12) To record shall mean to record in accordance with the provisions of sections 76-237 to 76-257, or other applicable recording statutes;

(13) Common expense shall mean and include:

(a) All sums lawfully assessed against the apartment owner;

(b) Expense of administration, maintenance, repair or replacement of common elements; and

(c) Expenses agreed upon as common expenses by the association of coowners; and

(14) All pronouns used in sections 76-801 to 76-823 shall include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

For condominiums created in this state before the operative date of this act, the definitions in section 3 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 73. That section 76-804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-804. Once the property is submitted to the condominium property regime, an apartment in any building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were solely and entirely independent of the other apartments in the regime of which it forms a part, and the corresponding individual titles and interests shall be recordable as provided in section 76-211; PROVIDED, that the use and enjoyment of each apartment shall be subject to the following rules:

(1) Each apartment shall be devoted solely to the use assigned to it in the deed to which section 76-803 refers;

(2) No tenant of an apartment may make any noise or cause any annoyance or do any act that may disturb the peace of the other coowners or tenants;

(3) The apartments shall not be used for purposes contrary to law, morals or normal behavior;

(4) Each coowner shall carry out at his or her

sole expense any works of modification, repair, cleaning, safety, and improvement of his or her apartment, without disturbing the legal use and enjoyment of the rights of the other coowners, or changing the exterior form of the facades, or painting the exterior walls, doors or windows in colors or hues different from those of the whole, and without jeopardizing the soundness or safety of the property, reduce its value or impair any easement or access to or use of common elements; and

(5) Every coowner or tenant shall strictly comply with the administration provisions set forth in the deed or in the bylaws referred to in section 76-815. Violations of these rules shall be grounds for an action for damages or grounds for an action for injunctive relief by the coowner or tenant aggrieved.

For condominiums created in this state before the operative date of this act, the provisions on resale of apartments or units, violations which effect a right of action, and separate titles for each apartment or unit in sections 5, 60, and 67 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 74. That section 76-807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-807. The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the coownership. Any covenant to the contrary shall be void. The rules of property known as the rule against perpetuities and the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of sections 76-801 to 76-823, or the bylaws of the association of coowners adopted pursuant to the provisions of such sections. The common elements, both general and limited, shall not, in whole or in part, be separately conveyed, mortgaged, or foreclosed nor may liens of any description be applicable to such elements, or parts of such elements, alone. A valid lien for authorized labor and materials shall lie against the apartment of any coowner affected but not against the common elements. For condominiums created in this state before the operative date of this act, the construction and validity of the master deed and bylaws provided in section 16 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11)

to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 75. That section 76-809, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-809. The master deed creating and establishing the condominium property regime shall be executed by the owner or owners of the property making up the regime and shall be recorded in the office of the register of deeds in the county where such property is located. The master deed shall express the following particulars:

(1) The description of the land or leasehold interest in land and any building, expressing their respective areas;

(2) The general description and number of each apartment, expressing its area, location and any other data necessary for its identification;

(3) The description of the general common elements of the building, and, in proper cases, of the limited common elements restricted to a given number of apartments, expressing which are those apartments;

(4) Value of the property and of each apartment, and, according to these basic values, the percentage appertaining to the coowners in the expenses, including taxes, of and rights in the elements held in common; and

(5) The covenants, conditions and restrictions relating to the regime, which shall run with the property and bind all coowners, tenants of such owners, employees and any other persons who use the property, including the persons who acquire the interest of any coowner through foreclosure, enforcement of any lien or otherwise. The master deed creating and establishing or amending the condominium property regime shall not be construed as constituting the subdivision of real estate as defined by law, resolution, or ordinance. For condominiums created in this state before the operative date of this act, the applicability of local ordinances, regulations, and building codes provided in section 6 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 76. That section 76-811, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-811. Each apartment in a building shall be designated, on the plans referred to in section 76-810, by letter or number or other appropriate designation,

and any conveyance, or other instrument affecting title to said apartment, which describes the apartment by using said letter or number followed by the words in Condominium Property Regime shall be deemed to contain a good and sufficient description for all purposes. Any conveyance of an individual apartment shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, appertaining to said apartment without specifically or particularly referring to same. For condominiums created in this state before the operative date of this act, the provisions on the description of the apartments or units in section 17 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 77. That section 76-816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-816. The board of administrators, or other form of administration specified in the bylaws, shall keep or cause to be kept a book with a detailed account, in chronological order, of the receipts and expenditures affecting the condominium property regime and its administration and specifying the maintenance and repair expenses of the common elements and all other expenses incurred. Both said book and the vouchers accrediting the entries made thereupon shall be available for examination by any coowner or any prospective purchaser at convenient hours on working days that shall be set and announced for general knowledge. Any prospective purchaser must be designated as such by a coowner in writing. For condominiums created in this state before the operative date of this act, the provision on the records of the administrative body or association in section 52 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 36 which apply to events and circumstances which occur after the operative date of this act.

Sec. 78. That section 76-817, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-817. The coowners of the apartments are bound to pay pro rata, in the percentages computed according to section 76-806, toward the expenses of administration and of maintenance and repair of the general common elements, and, in the proper case, of the limited common elements, of the building, and toward any

other expense lawfully agreed upon.

If any coowner shall fail or refuse to make any payment of such common expenses when due, the amount thereof shall constitute a lien on the interest of the coowner in the property and upon the recording thereof, shall be a lien in preference over all other liens and encumbrances except assessments, liens and charges for taxes past due and unpaid on the apartment and duly recorded mortgage and lien instruments.

No coowner may exempt himself or herself from paying toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him or her. For condominiums created in this state before the operative date of this act, the provisions on the liens for assessments in section 50 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 79. That section 76-819, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-819. The purchaser of an apartment shall be jointly and severally liable with the seller for the amounts owing by the latter under section 76-817 up to the time of the conveyance, without prejudice to the purchaser's right to recover from the other party the amounts paid by him or her as such joint debtor. Coowners shall not be individually liable for damages arising from the use of common elements. Any tort liability arising from the use of common elements shall be a common expense and shall be borne by all coowners in proportion to the basic values referred to in sections 76-806 and 76-809. For condominiums created in this state before the operative date of this act, the provisions on tort and contract liability in section 45 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 80. That section 76-820, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-820. The association of coowners shall insure the property and the association against risk, including tort liability, without prejudice to the right of each coowner to insure himself or herself or his or her apartment or the contents thereof, on his or her own account and for his or her own benefit. Any policy shall

be issued in the name of the board of administrators or as provided in the bylaws, in trust for the benefit of each coowner in accordance with the percentage interest of each as stated in the master deed. The limits of coverage shall be established by resolution of the board of administrators. Premiums for such insurance shall be included in the common expenses. Any deficiency in insurance coverage shall be borne by all coowners in proportion to the basic values referred to in sections 76-806 and 76-809, except as provided in section 76-820.01. For condominiums created in this state before the operative date of this act, the powers of the association or administrative body provided in subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 81. That section 76-823, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-823. Taxes, assessments and other charges of this state, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or buildings or property as a whole. No forfeiture or sale of the building or buildings or property as a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessments and charges on said individual apartment are currently paid. The common elements, both general and limited, shall not be separately taxed or foreclosed for tax purposes. The value of the common elements shall be determined by the assessor and apportioned for taxes against the several apartments in proportion to the basic values referred to in sections 76-806 and 76-809. Restrictions on alienation of the common elements shall be given weight by the assessor in determining valuations. For condominiums created in this state before the operative date of this act, the provisions on the separate taxation of each apartment in section 5 of this act shall apply, to the extent necessary in construing the provisions of sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act which apply to events and circumstances which occur after the operative date of this act.

Sec. 82. For condominiums created in this state before the operative date of this act, sections 3, 5 to 7, 16, 17, 45, 50, 52, 60, and 67 and subdivisions (a) (1) to (a) (6) and (a) (11) to (a) (16) of section 36 of this act shall apply to the extent necessary in construing the provisions of such sections which apply to events and circumstances which occur after the operative date of this act, notwithstanding any provisions to the contrary in sections 76-801 to 76-824.

Sec. 83. This act shall become operative on January 1, 1984.

Sec. 84. That original sections 76-802, 76-804, 76-807, 76-809, 76-811, 76-816, 76-817, 76-819, 76-820, and 76-823, Reissue Revised Statutes of Nebraska, 1943, and section 31-735, Revised Statutes Supplement, 1982, are repealed.