



Substitute House Bill No. 6672

Public Act No. 09-225

**AN ACT CONCERNING AMENDMENTS TO THE UNIFORM
COMMON INTEREST OWNERSHIP ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 47-202 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. (A) A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 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. (B) A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or

Substitute House Bill No. 6672

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 twenty per cent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit: (A) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association; (B) in a cooperative, the common expense liability and the ownership interest and votes in the association; and (C) in a planned community, the common expense liability and votes in the association.

(3) "Assessment" means the sums attributable to a unit and due to the association pursuant to section 47-257, as amended by this act.

[(3)] (4) "Association" or "unit owners' association" means the unit owners' association organized under section 47-243, as amended by this act.

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

[(4)] (6) "Common elements" means (A) in the case of (i) a condominium or cooperative, all portions of the common interest community other than the units; and (ii) a planned community, any real property within a planned community owned or leased by the association, other than a unit, and (B) in all common interest communities, any other interests in real property for the benefit of unit owners which are subject to the declaration.

Substitute House Bill No. 6672

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

[(6)] (8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 47-226, as amended by this act.

[(7)] (9) "Common interest community" means real property described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for a share of (A) real property taxes on, (B) insurance premiums on, (C) maintenance of, [or] (D) improvement of, or (E) services or other expenses related to, common elements, other units or any other real property other than that unit described in the declaration. ["Ownership] "Common interest community" does not include an arrangement described in section 8 or 9 of this act. For purposes of this subdivision, "ownership of a unit" includes holding a leasehold interest of forty years or more in a unit, including renewal options. "Ownership of a unit" does not include the interest which a resident holds in a mutual housing association, as defined in subsection (b) of section 8-214f, by virtue of either a state contract for financial assistance or an individual occupancy agreement. An association of property owners funded solely by voluntary payments from those owners is not a common interest community.

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

[(9)] (11) "Conversion building" means a building that at any time before creation of the common interest community was occupied

Substitute House Bill No. 6672

wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

[(10)] (12) "Cooperative" means a common interest community in which the real property is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit.

[(11)] (13) "Dealer" means a person who owns either six or more units, or fifty per cent or more of all the units, in a common interest community.

[(12)] (14) "Declarant" means any person or group of persons acting in concert who (A) as part of a common promotional plan, offers to dispose of his interest in a unit not previously disposed of or (B) reserves or succeeds to any special declarant right.

[(13)] (15) "Declaration" means any instruments, however denominated, that create a common interest community, including any amendments to those instruments.

[(14)] (16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to (A) add real property to a common interest community; (B) create units, common elements, or limited common elements within a common interest community; (C) subdivide units or convert units into common elements; or (D) withdraw real property from a common interest community.

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

[(16)] (18) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

Substitute House Bill No. 6672

[(17)] (19) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

[(18)] (20) "Leasehold common interest community" means a common interest community in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the common interest community or reduce its size.

[(19)] (21) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of subsection (2) or (4) of section 47-221 for the exclusive use of one or more but fewer than all of the units.

[(20)] (22) "Master association" means an organization described in section 47-239, whether or not it is also an association described in section 47-243, as amended by this act.

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

[(22)] (24) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, public corporation, government, governmental subdivision or agency, instrumentality or any other legal or commercial entity.

[(23)] (25) "Planned community" means a common interest community that is not a condominium or a cooperative. A

Substitute House Bill No. 6672

condominium or cooperative may be part of a planned community.

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

[(25)] (27) "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (A) a leasehold interest, including renewal options, of less than twenty years, or (B) as security for an obligation.

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

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

[(27)] (30) "Residential purposes" means use for dwelling or recreational purposes, or both.

(31) "Rule" means a policy, guideline, restriction, procedure or regulation of an association, however denominated, which is adopted by an association pursuant to section 35 of this act, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

[(28)] (32) "Security interest" means an interest in real property or personal property, created by contract or conveyance, which secures

Substitute House Bill No. 6672

payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

[(29)] (33) "Special declarant rights" means rights reserved for the benefit of a declarant to (A) complete improvements indicated on surveys and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement pursuant to subdivision (2) of subsection (a) of section 47-264, as amended by this act; (B) exercise any development right; (C) maintain sales offices, management offices, signs advertising the common interest community, and models; (D) use easements through the common elements for the purpose of making improvements within the common interest community or within real property which may be added to the common interest community; (E) make the common interest community subject to a master association; (F) merge or consolidate a common interest community with another common interest community of the same form of ownership; [or] (G) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control; (H) control any construction, design review or aesthetic standards committee or process; (I) attend meetings of the unit owners and, except during an executive session, the executive board; or (J) have access to the records of the association to the same extent as a unit owner.

[(30)] (34) "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a common interest community or

Substitute House Bill No. 6672

a specified portion thereof.

[(31)] (35) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to subdivision (5) of subsection (a) of section 47-224. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

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

Sec. 2. (NEW) (*Effective July 1, 2010*) Chapter 828 of the general statutes, as amended by this act, and sections 8, 9 and 34 to 38, inclusive, of this act, modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq., but do not modify, limit or supersede Section 101(c) of that act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC 7003(b).

Sec. 3. Section 47-214 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

Substitute House Bill No. 6672

Except as provided in section [47-215] 47-216, as amended by this act, the provisions of this chapter apply to all common interest communities created within this state on or after January 1, 1984. The provisions of chapter 825 do not apply to condominiums created on or after January 1, 1984. Amendments to this chapter apply to all common interest communities created after January 1, 1984, or subjected to this chapter by amendment of the declaration of the common interest community, regardless of when the amendment to this chapter is adopted, except that an amendment to this chapter applies only to events and circumstances occurring on or after the effective date of such amendment to this chapter.

Sec. 4. Section 47-215 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except as provided in subsection (b) of this section with respect to a common interest community containing a conversion building:

(1) If a common interest community contains only units restricted exclusively to nonresidential use:

(A) The common interest community is not subject to this chapter unless the declaration otherwise provides;

(B) The declaration of such a common interest community may provide that this entire chapter applies to the community, that only this part and part II of this chapter apply or that only sections 47-204, as amended by this act, 47-205 and 47-206 apply;

(C) If the declaration provides that this entire chapter applies to such a common interest community, the declaration may also require, subject to section 47-210, that: (i) Notwithstanding section 47-247, as amended by this act, any management contract, employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate

Substitute House Bill No. 6672

of a declarant remains effective after the declarant turns over control of the association; and (ii) notwithstanding section 47-203, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(2) If a common interest community contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes, that common interest community is not subject to this chapter unless the units that may be used for residential purposes would comprise a common interest community in the absence of the nonresidential units or the declaration provides that this chapter applies as provided in subparagraph (B) or (C) of subdivision (1) of this subsection.

(3) If the declaration of a planned community that is not subject to any development right provides that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed three hundred dollars, as adjusted pursuant to section 47-213, the planned community is subject only to sections 47-204, as amended by this act, 47-205 and 47-206 unless the declaration provides that this entire chapter is applicable. However, this exemption applies only if:

(A) The declarant reasonably believes in good faith that the maximum annual common expense liability assessed against the units will be sufficient to pay the expenses of the planned community; and

(B) The declaration provides that the annual common expense liability may not be increased during the period of declarant control without the consent of 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 an affiliate of a

Substitute House Bill No. 6672

declarant.

(b) In the case of a common interest community containing a conversion building, sections 47-282 to 47-292, inclusive, apply whether or not the common interest community is exempt from other provisions of this chapter pursuant to subsection (a) of this section. The provisions of sections 47-282 to 47-292, inclusive, apply to a common interest community containing a conversion building created on or after July 8, 1983. The provisions of sections 47-88b to 47-88g, inclusive, do not apply to a condominium containing a conversion building created on or after July 8, 1983.

(c) If a common interest community contains no more than twelve units and (1) is not subject to any development rights and (2) does not utilize a master association, the declarant is not required to deliver a public offering statement pursuant to section 47-263, as amended by this act, or 47-264, as amended by this act; resale certificates are not required, as provided in section 47-270, as amended by this act, and the association is not required to maintain records necessary to comply with section 47-270, as amended by this act. A declarant shall not divide real property into two or more common interest communities to avoid the public offering statement requirements of sections 47-263, as amended by this act, and 47-264, as amended by this act.

Sec. 5. Section 47-216 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except as provided in section 47-217, sections 47-202, as amended by this act, 47-204, as amended by this act, 47-205, 47-206, 47-218, as amended by this act, 47-221, 47-222, as amended by this act, 47-223, subsections (b), (i) and (j) of section 47-236, as amended by this act, sections 47-237, as amended by this act, 47-240, 47-244, as amended by this act, 47-250, as amended by this act, 47-253, 47-255, as amended by this act, 47-257, as amended by this act, 47-258, as amended by this act,

Substitute House Bill No. 6672

47-260, as amended by this act, 47-270, as amended by this act, and 47-278, as amended by this act, [and subsection (j) of section 47-236, and section 47-202] to the extent necessary in construing any of those sections, apply to all common interest communities created in this state before January 1, 1984; but those sections apply only with respect to events and circumstances occurring after January 1, 1984, and do not invalidate existing provisions of the declaration, bylaws or surveys or plans of those common interest communities.

(b) Section 47-210 and subsections (b) to (d), inclusive, of section 47-225, as amended by this act, apply to all common interest communities created in this state prior to January 1, 1984, but shall not invalidate existing provisions of the declarations, bylaws or surveys or plans of those common interest communities.

Sec. 6. Section 47-218 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) The declaration, bylaws or surveys and plans of any common interest community created before January 1, 1984, may be amended to achieve any result permitted by this chapter regardless of what applicable law provided before January 1, 1984.

(b) [An] Except as otherwise provided in subsections (i) and (j) of section 47-236, as amended by this act, an amendment to the declaration, bylaws or surveys and plans authorized by subsection (a) of this section shall be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Substitute House Bill No. 6672

Sec. 7. Section 47-219 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

This chapter does not apply to common interest communities or units located outside this state, but the public offering statement provisions of sections 47-263 to 47-269, inclusive, as amended by this act, apply to all contracts for the disposition [thereof] of a unit in that common interest community signed in this state by any party following an offer made in this state unless exempt under subsection (b) of section 47-262.

Sec. 8. (NEW) (*Effective July 1, 2010*) (a) An arrangement between the associations for two or more common interest communities to share the costs of real property taxes, insurance premiums, services, maintenance or improvements of real property or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real property that is not part of a common interest community to share the costs of real property taxes, insurance premiums, services, maintenance or improvements of real property or other activities specified in their arrangement does not create a separate common interest community, except that assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by chapter 828 of the general statutes, as amended by this act, and sections 9 and 34 to 38, inclusive, of this act.

Sec. 9. (NEW) (*Effective July 1, 2010*) A covenant that requires the owners of twelve or fewer separately owned parcels of real property to share costs or other obligations associated with a party wall, driveway,

Substitute House Bill No. 6672

well, septic system or other similar use does not create a common interest community unless a declaration otherwise provides.

Sec. 10. Section 47-222 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

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

(b) The rule against perpetuities does not apply to defeat any provision of the declaration or of the bylaws [] or rules of the association. [or regulations adopted pursuant to subdivision (1) of subsection (a) of section 47-244.]

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

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

(e) In any case in which the surveys or plans required pursuant to section 47-228, as identified in the declaration, are not recorded simultaneously with the remainder of the declaration but are recorded thereafter, the failure to record the survey or plans simultaneously with the remainder of the declaration is an insubstantial failure of the declaration to comply with this chapter.

Sec. 11. Section 47-225 of the general statutes is amended by adding subsection (e) as follows (*Effective July 1, 2010*):

(NEW) (e) A lease satisfying the description in subsection (a) of this section is not subject to sections 47a-1 to 47a-20e, inclusive.

Sec. 12. Section 47-226 of the general statutes is amended by adding

Substitute House Bill No. 6672

subsection (h) as follows (*Effective July 1, 2010*):

(NEW) (h) In a planned community created after January 1, 1984, unless the declaration provides for a different allocation permitted under this chapter, the common expenses of the association and the votes in the association are allocated equally among the units.

Sec. 13. Section 47-232 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(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 any provisions of law, on application of a unit owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including in a condominium or planned community the surveys and plans, subdividing that unit.

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

Sec. 14. Section 47-235 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

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

(b) [In a planned community, subject] Subject to the provisions of subdivision (6) of subsection (a) of section 47-244, as amended by this

Substitute House Bill No. 6672

act, and section 47-254, as amended by this act, the unit owners have an easement [(1)] in the common elements for [purposes of] access to their units. [and (2)]

(c) Subject to the declaration and rules, the unit owners have a right to use the common elements that are not limited common elements and all real property that must become common elements for all [other] appropriate purposes.

Sec. 15. Section 47-236 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to common interest communities created before, on or after January 1, 1984*):

(a) Except in cases of amendments that may be executed by a declarant under subsection (f) of section 47-228 or section 47-229, or by the association under section 47-206, subsection (d) of section 47-225, subsection (c) of section 47-227, subsection (a) of section 47-231 or section 47-232, as amended by this act, or by certain unit owners under subsection (b) of section 47-227, subsection (a) of section 47-231, subsection (b) of section 47-232, as amended by this act, subsection (b) of section 47-237, as amended by this act, or section 47-242, and except as limited by subsections (d) and (f) of this section, the declaration, including any surveys 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 shall be recorded in every

Substitute House Bill No. 6672

town in which any portion of the common interest community is located and is effective only on recordation. An amendment, except an amendment pursuant to subsection (a) of section 47-231, shall be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except in the case of the exercise of development rights pursuant to section 47-229 or to the extent otherwise expressly permitted or required by other provisions of this chapter, with respect to a common interest community, whether created before, on or after January 1, 1984, no amendment may create or increase special declarant rights, increase the number of units or change the boundaries of any unit or the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this chapter 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.

(f) By vote or 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 specified in the declaration, an amendment to the declaration may prohibit or materially restrict the permitted uses or occupancy of a unit or the number or other qualifications of persons who may occupy units. The amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to subdivision (8) of subsection (a) of section 47-224, within which reserved development rights must be exercised may be extended, the

Substitute House Bill No. 6672

number of units may be increased and new development rights or other special declarant rights may be created by amendment to the declaration 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 the declarant, agree to that action. The amendment must identify the association or other persons who hold any new rights that are created. Written notice of the proposed amendment to the declaration must be delivered to all persons holding development rights or security interests in those rights. Notwithstanding the provisions of subsection (c) of this section, the amendment to the declaration is effective thirty days after the amendment is recorded and notice is delivered unless any of the persons entitled to notice under this subsection records a written objection within the thirty-day period, in which case the amendment is void, or unless all of the persons entitled to notice under this subsection consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

(h) Provisions in the declaration creating special declarant rights may not be amended without the consent of the declarant.

(i) If any provision of this chapter or of the declaration or bylaws of any common interest community [subject to this chapter] created before, on or after January 1, 1984, requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of any amendment to the declaration, that consent shall be deemed granted if [no written] a refusal to consent in a record is not received by the association within forty-five days after the association delivers notice of the proposed amendment to the holder of the interest or mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last-recorded security interest of record in delivering or mailing notice to the holder of that interest. Notwithstanding any provision of this section, an

Substitute House Bill No. 6672

amendment to the declaration that affects the priority of a holder's security interest, other than an amendment regarding the priority of the association's lien authorized by section 47-258, as amended by this act, or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(j) If the declaration of a common interest community, whether created before or after January 1, 1984, contains a provision requiring that amendments relating to the use of units, the relocation of boundaries between units and common elements or the extension or creation of development rights may be adopted only by the vote or agreement of unit owners of units to which more than eighty per cent of the votes in the association are allocated, such a proposed amendment shall be deemed approved if:

(1) (A) Unit owners of units to which more than eighty per cent of the votes in the association are allocated vote for or agree to the proposed amendment;

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

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

(2) Unit owners of units to which more than eighty per cent of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in the Superior Court against all objecting unit owners, the court finds

Substitute House Bill No. 6672

that the objecting unit owner or owners do not have a unique minority interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.

Sec. 16. Section 47-236 of the general statutes, as amended by section 15 of this act, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except in cases of amendments that may be executed by a declarant under subsection (f) of section 47-228 or section 47-229, or by the association under section 47-206, subsection (d) of section 47-225, subsection (c) of section 47-227, subsection (a) of section 47-231 or section 47-232, as amended by this act, or by certain unit owners under subsection (b) of section 47-227, subsection (a) of section 47-231, subsection (b) of section 47-232, as amended by this act, subsection (b) of section 47-237, as amended by this act, or section 47-242, and except as limited by subsections (d) and (f) of this section, the declaration, including any surveys and plans, may be amended only as follows:

(1) [by] 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.] unless the declaration specifies either a larger percentage or a smaller percentage, but not less than a majority, for all amendments or for specific subjects of amendment;

(2) The declaration may provide that all amendments or specific subjects of amendment may be approved by the unit owners of units having any of the percentages of votes, as provided in subdivision (1) of this subsection, of a specified group of units that would be affected by the amendment, rather than all of the units in the common interest community; or

(3) The declaration may specify a smaller number only if all of the

Substitute House Bill No. 6672

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 shall be recorded in every town in which any portion of the common interest community is located and is effective only on recordation. An amendment, except an amendment pursuant to subsection (a) of section 47-231, shall be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except in the case of the exercise of development rights pursuant to section 47-229 or to the extent otherwise expressly permitted or required by other provisions of this chapter, with respect to a common interest community, whether created before, on or after January 1, 1984, no amendment may create or increase special declarant rights, increase the number of units or change the boundaries of any unit or the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this chapter 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.

(f) [By vote or 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 specified in the declaration, an] An amendment to the declaration may prohibit or materially restrict the permitted uses or occupancy of a unit or the number or other qualifications of persons

Substitute House Bill No. 6672

who may occupy units [. The] only by vote or agreement of unit owners of units to which at least eighty per cent of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by the unit owners of units having at least eighty per cent of the votes of a specified group of units that would be affected by the amendment. An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to subdivision (8) of subsection (a) of section 47-224, within which reserved development rights and special declarant rights must be exercised may be extended, the number of units may be increased and new development rights or other special declarant rights may be created by amendment to the declaration 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 the declarant, agree to that action. The amendment must identify the association or other persons who hold any new rights that are created. [Written notice] Notice of the proposed amendment to the declaration must be delivered in a record to all persons holding development rights or security interests in those rights. Notwithstanding the provisions of subsection (c) of this section, the amendment to the declaration is effective thirty days after the amendment is recorded and notice is delivered unless any of the persons entitled to notice under this subsection records [a written] an objection in a record within the thirty-day period, in which case the amendment is void, or unless all of the persons entitled to notice under this subsection consent in [writing] a record at the time the amendment is recorded, in which case the amendment is effective when recorded.

(h) Provisions in the declaration creating special declarant rights

Substitute House Bill No. 6672

that have not expired may not be amended without the consent of the declarant.

(i) If any provision of this chapter or of the declaration or bylaws of any common interest community created before, on or after January 1, 1984, requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of any amendment to the declaration, that consent shall be deemed granted if a refusal to consent in a record is not received by the association within forty-five days after the association delivers notice of the proposed amendment to the holder of the interest or mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last-recorded security interest of record in delivering or mailing notice to the holder of that interest. Notwithstanding any provision of this section, an amendment to the declaration that affects the priority of a holder's security interest, other than an amendment regarding the priority of the association's lien authorized by section 47-258, as amended by this act, or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(j) If the declaration or bylaws of a common interest community, whether created before, on or after January 1, 1984, contains a provision requiring that amendments [relating to the use of units, the relocation of boundaries between units and common elements or the extension or creation of development rights] to the declaration or bylaws, other than amendments described in subsection (d) of this section, may be adopted only by the vote or agreement of unit owners of units to which more than eighty per cent of the votes in the association are allocated, such a proposed amendment shall be deemed approved if:

(1) (A) Unit owners of units to which more than eighty per cent of

Substitute House Bill No. 6672

the votes in the association are allocated vote for or agree to the proposed amendment;

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

(C) Notice of the proposed amendment is delivered to the unit owners holding the votes in the association that have not voted or agreed to the proposed amendment and no [written] objection [of] in a record to the proposed amendment is received by the association within thirty days after the association delivers notice; or

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

Sec. 17. Section 47-237 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except in the case of a taking of all the units by eminent domain, [or in the case of] foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in subsection (m) of this section, a common interest community 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, and with any other approvals required by the declaration. The declaration may specify a smaller percentage, but in no event less than a majority of the votes in the association, only if all of the units are restricted exclusively to nonresidential uses.

Substitute House Bill No. 6672

(b) An agreement to terminate shall 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 shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every town in which a portion of the common interest community is situated and is effective only on recordation.

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

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

(e) The association, on behalf of the unit owners, may contract for the sale of real property in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b) of this section. If any real property is to be sold following termination, title to that real property, on 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 shall be

Substitute House Bill No. 6672

distributed to unit owners and lien holders, as their interests may appear, in accordance with subsections (h), (i) and (j) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

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

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

(h) Following termination of a condominium or planned community, creditors of the association holding liens on the units, which were recorded 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

Substitute House Bill No. 6672

before termination.

(i) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were recorded before termination may enforce their liens in the same manner as any lien holder, and any other creditor of the association is to be treated as if he had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

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

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

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

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

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

Substitute House Bill No. 6672

lien against that unit owner's interest.

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

(1) Except as provided in subdivision (2) of this subsection, the respective interests of unit owners are the fair market values of their units, allocated interests and any limited common elements immediately before the termination, as determined by 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 its allocated interests by the total fair market values of all the units and their allocated interests.

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

(k) In a condominium or planned community, except as provided in subsection (l) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real property, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property, or against common elements that have been subjected to a security interest by the association under section

Substitute House Bill No. 6672

47-254, as amended by this act, does not withdraw, of itself, that real property from the common interest community, but the person taking title thereto may require from the association, on request, an amendment excluding the real property from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a portion of the real property comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, on foreclosure, may record an instrument excluding the real property subject to that lien or encumbrance from the common interest community.

(m) If substantially all the units in a common interest community have been destroyed or abandoned or are uninhabitable and the available methods for giving notice under section 34 of this act of a meeting of unit owners to consider termination under this section will not likely result in receipt of the notice, the executive board or any other interested person may commence an action in the superior court seeking to terminate the common interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size pursuant to this section, notwithstanding that eighty per cent of the unit owners did not vote or agree to that action, and may issue any other order the court considers to be in the best interest of the unit owners and persons holding a property interest in the common interest community.

Sec. 18. Section 47-241a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) The declaration for a common interest community may state that

Substitute House Bill No. 6672

it is a master planned community if the declarant has reserved the development right to create at least five hundred units that may be used for residential purposes, and at the time of the reservation such declarant owns or controls more than five hundred acres on which the units may be built.

(b) If the requirements of subsection (a) of this section are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by subdivisions (3) to (14), inclusive, of subsection (a) of section 47-224 until the declaration is amended under subsection (c) of this section.

(c) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain (1) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser, and (2) all the information required by subdivisions (3) to (14), inclusive, of subsection (a) of section 47-224 with respect to that real property.

(d) The only real property in a master planned community which is subject to this chapter are units that have been declared or which are being offered for sale and any other real property described pursuant to subsection (c) of this section. Other real property that is or may become part of the master planned community is not subject to the provisions of this chapter but is subject to any other restrictions and limitations that appear of record.

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in sections 47-262 to 47-281, inclusive, as amended by this act, apply only with respect to units that have been declared or are being offered for sale in connection with the public

Substitute House Bill No. 6672

offering statement and to the real property described pursuant to subsection (c) of this section.

(f) Limitations in this chapter on the addition of unspecified real property do not apply to a master planned community.

(g) The common interest community loses its status as a master planned community if the aggregate amount of land which is either subject to the declaration or owned or contractually controlled by the declarant ceases to total at least five hundred acres.

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

Sec. 19. Section 47-243 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

A unit owners' association shall be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times shall consist exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 47-237, as amended by this act, or their heirs, successors or assigns. The association shall have an executive board. The association shall be organized as a [profit or nonprofit] business or nonstock corporation, trust, partnership or unincorporated association.

Sec. 20. Subsection (a) of section 47-244 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to common interest communities created before, on or after January 1, 1984*):

Substitute House Bill No. 6672

(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] Shall adopt and may amend bylaws, and may adopt and amend rules; [and regulations;]

(2) [Adopt] Shall adopt and may amend budgets, [for revenues, expenditures and reserves and] may adopt and amend special assessments, may collect assessments for common expenses from unit owners and may invest funds of the association;

(3) [Hire] May hire and discharge managing agents and other employees, agents and independent contractors;

(4) [Institute] May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community, subject to section 38 of this act;

(5) [Make] May make contracts and incur liabilities;

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

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

(8) [Acquire] May acquire, hold, encumber and convey in its own name any right, title or interest to real property or personal property, but (A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 47-254, as amended by this act, and (B) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 47-254, as amended by this

Substitute House Bill No. 6672

act;

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

(10) [Impose] May 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 subsections (2) and (4) of section 47-221, and for services provided to unit owners;

(11) [Impose] May impose charges or interest or both for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association;

(12) [Impose] May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 47-270, as amended by this act, or statements of unpaid assessments;

(13) [Provide] May provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) [Assign] Subject to subsection (d) of section 37 of this act, may 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] May exercise any other powers conferred by the declaration or bylaws;

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

(17) [Exercise] May exercise any other powers necessary and proper

Substitute House Bill No. 6672

for the governance and operation of the association; [and]

(18) [Require] May require, by regulation, that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding; and

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

(A) Deny a unit owner or other occupant access to the owner's unit or its limited common elements;

(B) Suspend a unit owner's right to vote or participate in meetings of the association;

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

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

Sec. 21. Section 47-244 of the general statutes, as amended by section 20 of this act, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

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

(1) Shall adopt and may amend bylaws, and may adopt and amend rules;

Substitute House Bill No. 6672

(2) Shall adopt and may amend budgets, may adopt and amend special assessments, may collect assessments for common expenses from unit owners and may invest funds of the association;

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

(4) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community, subject to section 38 of this act;

(5) May make contracts and incur liabilities;

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

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

(8) May acquire, hold, encumber and convey in its own name any right, title or interest to real property or personal property, but (A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 47-254, as amended by this act, and (B) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 47-254, as amended by this act;

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

(10) May 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 subsections (2) and (4) of section 47-221, and for services provided to unit owners;

Substitute House Bill No. 6672

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

(12) May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 47-270, as amended by this act, or statements of unpaid assessments;

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

(14) Subject to subsection (d) of section 37 of this act, may 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) May exercise any other powers conferred by the declaration or bylaws;

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

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

(18) May require, by regulation, that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding; and

Substitute House Bill No. 6672

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

(A) Deny a unit owner or other occupant access to the owner's unit or its limited common elements;

(B) Suspend a unit owner's right to vote or participate in meetings of the association;

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

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

(b) The declaration may not [impose limitations on] limit the power of the association, beyond the limit authorized in subdivision (18) of subsection (a) of this section, to: [deal]

(1) Deal with the declarant [which are] if the limit is more restrictive than the [limitations] limit imposed on the power of the association to deal with other persons; or

(2) Institute litigation or an arbitration, mediation or administrative proceeding against any person, except that the association shall comply with section 38 of this act, if applicable, before instituting any proceeding described in subsection (a) of section 38 of this act, in connection with construction defects.

(c) The executive board promptly shall provide notice to the unit owners of any legal proceeding in which the association is a party other than proceedings involving enforcement of rules, recovery of unpaid assessments or other sums due the association, or defense of the association's lien on a unit in a foreclosure action commenced by a

Substitute House Bill No. 6672

third party.

[(c) (1) Unless otherwise permitted by the declaration or this chapter, an association may adopt rules and regulations that affect the use or occupancy of units that may be used for residential purposes only to:

(A) Prevent any use of a unit which violates the declaration;

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

(C) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet first mortgage underwriting requirements of institutional lenders who regularly purchase or insure first mortgages on units in common interest communities, provided no such restrictions shall be enforceable unless notice thereof is recorded on the land records of each town in which any part of the common interest community is located. Such notice shall be indexed in the grantor index of such land records in the name of the association.

(2) Except as provided in subdivision (1) of this subsection, the association may not regulate any use or occupancy of units.]

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

(1) Exercise directly against the tenant the powers described in subdivision (11) of subsection (a) of this section;

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

Substitute House Bill No. 6672

(3) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including any such right to bring a summary process action under chapter 832.

(e) The rights [granted under] referred to in subdivision (3) of subsection (d) of this section may only be exercised if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation.

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

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

(2) Permit the association to enforce a lease to which it is not a party except to the extent that there is a violation of the declaration, bylaws or rules. [and regulations.]

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

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

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

(3) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify

Substitute House Bill No. 6672

expending the association's resources; or

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

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

Sec. 22. Section 47-245 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee and officers and members of the executive board not appointed by a declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under chapter 602, and are subject to the conflict of interest rules governing directors and officers under chapter 602. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) The executive board may not: [act on behalf of the association to amend]

(1) Amend the declaration, [to terminate] except as provided in section 47-236, as amended by this act;

(2) Terminate the common interest community; [or to elect]

Substitute House Bill No. 6672

(3) Elect members of the executive board, except that the executive board may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or [determine]

(4) Determine the qualifications, powers and duties, or terms of office of executive board members. [, but the executive board may fill vacancies in its membership for the unexpired portion of any term.]

(c) [Notwithstanding any provision of the declaration or bylaws to the contrary, within thirty days after adoption of any proposed budget for the common interest community, the executive board shall provide a summary of the proposed budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the proposed budget not less than fourteen or more than thirty days after hand-delivery or mailing of the summary. At such meeting, or on a day prior to such meeting, the executive board shall provide a reasonable opportunity for all unit owners to express their views concerning the proposed budget before its ratification. At least one copy of the proposed budget shall be available for inspection at such meeting. Unless at such meeting a majority of all unit owners, or any larger vote specified in the declaration, reject the proposed 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 as provided in this subsection] The executive board shall adopt budgets as provided in section 37 of this act.

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

Substitute House Bill No. 6672

appoint and remove officers and members of the executive board before the period ends. In that event, the declarant may require, during the remainder of the period, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (1) Sixty days after conveyance of sixty per cent of the units that may be created to unit owners other than a declarant, except that in the case of a master planned community, control terminates no later than sixty days after conveyance to unit owners other than the declarant of sixty per cent of the maximum number of units that may be built, if that number is specified, or, if no such number is specified, after conveyance to unit owners other than the declarant of three hundred units; (2) two years after all declarants have ceased to offer units for sale in the ordinary course of business; (3) two years after any right to add new units was last exercised; or (4) the date the declarant, after giving [written] notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. [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 the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.]

(e) Not later than sixty days after conveyance of one-third of the units that may be created to unit owners other than a declarant, at least one member and not less than one-third of the members of the executive board shall be elected by unit owners other than the declarant.

Substitute House Bill No. 6672

(f) Except as otherwise provided in subsection (e) of section 47-239, 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 shall be unit owners. [The] Unless the declaration or bylaws provides for the election of officers by the unit owners, the executive board shall elect the officers. The executive board members and officers shall take office upon election.

[(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.]

(g) A declaration may provide for the appointment of specified positions on the executive board by either a governmental subdivision or agency or a nonstock corporation exempt from taxation as a public charity under 26 USC 501(c)(3) and 26 USC 4940(d)(2), as from time to time amended, during or after the period of declarant control. A declaration may also provide a method for filling vacancies in those specified positions, other than by election by the unit owners, except that, after the period of declarant control, appointed members (1) may not comprise more than one-third of the board, and (2) have no greater authority than any other member of the board.

(h) Within thirty days after unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items: (1) The original or a certified copy of the recorded declaration as amended; the association articles of incorporation, if the association is incorporated; bylaws; minute books and other books and records of the association; and any rules and

Substitute House Bill No. 6672

regulations which may have been promulgated; (2) an accounting for association funds and financial statements, from the date the association received funds and ending on the date the period of declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either (A) the opinion that the financial statements present fairly the financial position of the association in conformity with generally accepted accounting principles or (B) a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles, and the reasons therefor. The expense of the audit shall not be paid for or charged to the association; (3) association funds or control thereof; (4) all of declarant's tangible personal property that has been represented by the declarant to be the property of the association or, unless the declarant has disclosed in the public offering statement that all such personal property used in the common interest community will remain the declarant's property, all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties; (5) a copy of any plans and specifications used in the construction of the improvements in the common interest community which were completed within two years before the declaration was recorded; (6) all insurance policies then in force, in which the unit owners, the association or its directors and officers are named as insured persons; (7) copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common interest community; (8) any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which unit owners other than the declarant took control of the association; (9) written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective; (10)

Substitute House Bill No. 6672

a roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records; (11) employment contracts in which the association is a contracting party; and (12) any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services.

(i) During the period of declarant control, the declarant shall, at least every six months, provide the unit owners with a current financial statement of the association. The statement shall be on a cash basis and need not be audited by an independent accountant. It shall include, without limitation, (1) all income and expenses for the calendar year to date; (2) all accounts payable and receivable, including the ages of those accounts and showing all sums due to and from the declarant and affiliates of the declarant; (3) the amount of any funded replacement reserves; and (4) the balance of any other funds of the association.

Sec. 23. Section 47-247 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except in the case of nonresidential common interest communities as provided in section 47-215, as amended by this act, if entered into before the executive board elected by the unit owners pursuant to subsection (f) of section 47-245, as amended by this act, takes office, the association may terminate without penalty upon not less than ninety days' notice to the other party, any of the following: (1) [any] Any management, [contract,] maintenance, operations or employment contract or lease of recreational or parking areas or facilities; [,] or (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable or commercially unreasonable to the unit owners at the time entered into under the circumstances then prevailing. [,] may be terminated without penalty

Substitute House Bill No. 6672

by the association at any time after the executive board elected by the unit owners pursuant to subsection (f) of section 47-245 takes office on not less than ninety days' notice to the other party.]

(b) This section does not apply to: (1) Any lease the termination of which would terminate the common interest community or reduce its size, unless the real property subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (2) a proprietary lease.

Sec. 24. Section 47-248 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) The bylaws of the association shall: [provide for: (1) The] (1) Provide the number of members of the executive board and the titles of the officers of the association; (2) provide for election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify; (3) specify the qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies; (4) [which, if any, of its] specify the powers the executive board or officers may delegate to other persons or to a managing agent; (5) [which of its] specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association; [and] (6) specify a method for amending the bylaws; (7) contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association; and (8) provide for any matter required by the law of this state other than this chapter, which is not inconsistent with this chapter, to appear in the bylaws of organizations of the same type as the association.

(b) Subject to the [provisions of the] declaration and this chapter, the

Substitute House Bill No. 6672

bylaws may provide for any other necessary or appropriate matters [the association deems necessary and appropriate] including matters that could be adopted as rules.

Sec. 25. Section 47-250 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

[A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president,]

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

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

(2) An association shall hold a special meeting of unit owners if its ~~president,~~ a majority of the executive board, or [by] unit owners having at least twenty per cent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. [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.] If the association does not notify unit owners of a special meeting within fifteen days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. Only matters described in the meeting notice required by subdivision (3) of this subsection may be considered at a special meeting;

(3) An association shall notify unit owners of the time, date and place of each annual and special unit owners meeting not less than ten days or more than sixty days before the meeting date. Notice may be by any means described in section 35 of this act. The notice of any

Substitute House Bill No. 6672

meeting shall state the time, date and place of the meeting and the items on the agenda, including (A) a statement of the general nature of any proposed amendment to the declaration or bylaws, (B) any budget changes, and (C) any proposal to remove an officer or member of the executive board;

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

(5) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video or other conferencing process if the alternative process is consistent with subdivision (7) of subsection (b) of this section.

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

(1) Meetings shall be open to the unit owners and to a representative designated by any unit owner except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to: (A) Consult with the association's attorney concerning legal matters; (B) discuss existing or potential litigation or mediation, arbitration or administrative proceedings; (C) discuss labor or personnel matters; (D) discuss contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or (E) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the

Substitute House Bill No. 6672

privacy of any person.

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

(3) Notwithstanding any actions taken by unanimous consent pursuant to subdivision (8) of subsection (b) of this section, during and after the period of declarant control, the executive board shall meet at least two times a year at the common interest community or at a place convenient to the community. Those meetings, and after termination of the period of declarant control, all executive board meetings, shall be at the common interest community or at a place convenient to the community unless the bylaws are amended to vary the location of those meetings.

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

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

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

Substitute House Bill No. 6672

materials that are to be considered in executive session.

(7) Unless prohibited by the declaration or bylaws, the executive board may meet by telephonic, video or other conferencing process if (A) the meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and (B) the process provides all unit owners the opportunity to hear or perceive the discussion and offer comments as provided in subdivision (4) of this subsection.

(8) Instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent.

(9) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than sixty days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

(c) Meetings of the association shall be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised unless (1) the declaration, bylaws or other law otherwise provides, or (2) two-thirds of the votes allocated to owners present at the meeting are cast to suspend those rules.

Sec. 26. Section 47-251 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Unless the bylaws otherwise provide, [otherwise,] a quorum is present throughout any meeting of the [association] unit owners if

Substitute House Bill No. 6672

persons entitled to cast twenty per cent of the votes [that may be cast for election of the executive board are] in the association are present in person or by proxy at the beginning of the meeting.

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

Sec. 27. Section 47-252 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by a proxy pursuant to subsection (c) of this section or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

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

(1) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to [that] the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

Substitute House Bill No. 6672

[(b)] (2) Unless a greater number or fraction of the votes in the association is required by this chapter or other law or the declaration, a majority of the votes cast is the decision of the unit owners.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

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

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

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

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

(5) A proxy terminates one year after its date, unless it specifies a shorter term; and

(6) A person may not cast votes representing more than fifteen per cent of the votes in the association pursuant to undirected proxies.

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

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

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

Substitute House Bill No. 6672

(3) The ballot must set forth each proposed action or office to be filled and provide an opportunity to vote for or against the action or the candidate for office;

(4) When the association delivers the ballots, it shall also: (A) Indicate the number of responses needed to meet the quorum requirements; (B) state the percentage of votes necessary to approve each matter other than election of directors; (C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than three days after the date the association delivers the ballot; and (D) describe the time, date and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so;

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

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

[(c)] (e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (1) [The provisions of subsections (a) and (b) of this] This section [apply] applies to lessees as if they were unit owners; (2) unit owners [who] that have leased their units to other persons may not cast votes on those specified matters; and (3) lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners.

(f) Unit owners shall also be given notice [, in the manner provided in section 47-250,] of all meetings at which lessees are entitled to vote.

Substitute House Bill No. 6672

[(d)] (g) [No votes] Votes allocated to a unit owned by the association [may] shall be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

(h) For the purposes of this chapter and sections 8, 9 and 34 to 38, inclusive, of this act, "fraction or percentage", with respect to the unit owners or the votes in the association, means the stated fraction or percentage of unit owners of units to which at least the stated percentage or fraction of all the votes in the association are allocated, unless the provisions of this chapter or said sections provides that the "fraction or percentage" refers to a different group of unit owners or votes.

Sec. 28. Section 47-254 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 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 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. In a condominium, the common elements may be conveyed or subjected to a security interest as provided in this subsection free of the lien on the undivided interests in the common elements held by all mortgagees of the units, if eighty per cent of the mortgagees consent in [writing] a record to the sale or encumbrance. Proceeds of the sale are an asset of the association, but the proceeds of the sale of, or attributed to, limited common elements must be distributed equitably among the owners of

Substitute House Bill No. 6672

units to which the limited common elements were allocated.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 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, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to section 47-237, as amended by this act, is void.

(c) An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, shall 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 shall specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof shall be recorded in every town in which a portion of the common interest community is situated, and is effective only on recordation.

(d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (a) or (b) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (a), (b) and (c) of this section. Thereafter, the association has all powers

Substitute House Bill No. 6672

necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

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

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

(g) Unless the declaration otherwise provides and unless, in a condominium, eighty per cent of the mortgagees have consented in [writing] a record to the sale as provided in subsection (a) of this section, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

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

Sec. 29. Section 47-255 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available and subject to reasonable deductibles: (1) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against [all] those 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] which 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

Substitute House Bill No. 6672

land, excavations, foundations and other items normally excluded from property policies; (2) flood insurance in the event the condominium is located in a flood hazard area, as defined and determined by the National Flood Insurance Act, as amended, USC 42 Section 4101, P.L. 93-234, and the unit owners by vote direct; [and] (3) commercial general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for [death,] bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements and, in cooperatives, also of all units; and (4) fidelity insurance.

(b) In the case of a building [that is part of a cooperative or] that contains units [having] divided by horizontal boundaries described in the declaration, or by vertical boundaries that comprise or are located within common walls between units, the insurance maintained under subdivision (1) of subsection (a) of this section, to the extent reasonably available, shall include the units, [but need not include] and all improvements and betterments installed by unit owners, unless the declaration limits the association's authority to insure all improvements and betterments or the executive board decides, after giving notice and an opportunity for unit owners to comment, not to insure such improvements and betterments. In the case of common interest communities containing more than twelve units, unless the association insures all improvements and betterments, the association shall:

(1) Prepare and maintain a schedule of the standard fixtures, improvements and betterments in the units, including any standard wall, floor and ceiling coverings covered by the association's insurance policy;

(2) Provide such schedule at least annually to the unit owners in

Substitute House Bill No. 6672

order to enable unit owners to coordinate their homeowners insurance coverage with the coverage afforded by the association's insurance policy; and

(3) Include such schedule in any resale certificate prepared pursuant to section 47-270, as amended by this act.

(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] given to all unit owners pursuant to section 35 of this act. The declaration may require the association to carry any other insurance, and the association [in any event] may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsections (a) and (b) of this section shall provide that: (1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association; (2) the insurer waives its right to subrogation under the policy against any unit owner or member of his household; (3) no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and (4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subdivision (1) of subsection (a) and subsection (b) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for

Substitute House Bill No. 6672

the association, unit owners and lien holders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or [restoration] replacement of the damaged property, and the association, unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or [restored] replaced, or the common interest community is terminated.

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

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

(h) (1) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (A) the common interest community is terminated, in which case section 47-237, as amended by this act, applies, (B) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (C) eighty per cent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves, regardless of whether such excess is the result of the application of a deductible under insurance coverage, is a common expense.

Substitute House Bill No. 6672

(2) If the entire common interest community is not repaired or replaced, (A) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (B) except to the extent that other persons will be distributees, (i) the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (ii) the remainder of the proceeds shall be distributed to all the unit owners or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the units.

(3) If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated on the vote as if the unit had been condemned under subsection (a) of section 47-206, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

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

Sec. 30. Section 47-256 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

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 shall be paid annually to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Sec. 31. Section 47-257 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

Substitute House Bill No. 6672

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

(b) Except for assessments under subsections (c), (d) and (e) of this section, or as otherwise provided in this chapter, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections (a) and (b) of section 47-226. [Any] The association may charge interest on any past due [common expense] assessment or [installment] portion 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 shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides; (2) any common expense or portion thereof benefiting fewer than all of the units [shall] or their owners may be assessed exclusively against the units benefited; and (3) the costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

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

(e) If any common expense is caused by the wilful misconduct, failure to comply with a written maintenance standard promulgated by the association or gross negligence of any unit owner or tenant or a guest or invitee of a unit owner or tenant, the association may, after

Substitute House Bill No. 6672

notice and hearing, assess the portion of that common expense in excess of any insurance proceeds received by the association under its insurance policy, whether that portion results from the application of a deductible or otherwise, exclusively against [his unit] that owner's 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.

(g) No unit owner may exempt himself from liability for payment of the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

Sec. 32. Section 47-258 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) The association has a statutory lien on a unit for any assessment [levied against] attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorneys' fees and costs, other fees, charges, late charges, fines and interest charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of section 47-244, as amended by this act, and any other sums due to the association under the declaration, this chapter, or as a result of an administrative, arbitration, mediation or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the 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 (1) liens and encumbrances recorded

Substitute House Bill No. 6672

before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of section 47-257, as amended by this act, which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the association's lien or a security interest described in subdivision (2) of this subsection and (B) the association's costs and attorney's fees in enforcing its lien. A lien for any assessment or fine specified in subsection (a) of this section shall have the priority provided for in this subsection in an amount not to exceed the amount specified in subparagraph (A) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association.

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

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

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within [two] three years

Substitute House Bill No. 6672

after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(f) This section does not prohibit actions against unit owners 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.

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

(h) The association on [written] request made in a record shall furnish to a unit owner a statement in recordable form setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

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

(j) The association's lien may be foreclosed in like manner as a mortgage on real property.

(k) In any action by the association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner pursuant to section 52-504 to collect all sums alleged to be due from that unit owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pendency of the action to

Substitute House Bill No. 6672

the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to subsection (a) of section 47-257, as amended by this act.

(l) If a holder of a first or second security interest on a unit forecloses that security interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that unit which became due before the sale, other than the assessments which are prior to that security interest under subsection (b) of this section. Any unpaid assessments not satisfied from the proceeds of sale become common expenses collectible from all the unit owners, including the purchaser.

(m) An association may not commence an action to foreclose a lien on a unit under this section unless: (1) The unit owner, at the time the action is commenced, owes a sum equal to at least two months of common expense assessments based on the periodic budget last adopted by the association pursuant to subsection (a) of section 47-257, as amended by this act; (2) the association has made a demand for payment in a record; and (3) the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.

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

Sec. 33. Section 47-260 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) [The association shall keep financial records sufficiently detailed to enable the association to comply with section 47-270. All accounting, financial and other books and records of the association, including, but not limited to, minutes of meetings and voting records of the executive

Substitute House Bill No. 6672

board, shall be made reasonably available by the executive board or a managing agent of the association for examination and copying by any unit owner, or the unit owner's authorized agent, upon the request of such unit owner or agent.] An association shall retain the following:

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

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

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

(4) The association's original or restated organizational documents, if required by law other than this chapter, bylaws and all amendments to them, and all rules currently in effect;

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

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

(7) The association's most recent annual report delivered to the Secretary of the State, if any;

(8) Financial and other records sufficiently detailed to enable the association to comply with section 47-270, as amended by this act;

Substitute House Bill No. 6672

(9) Copies of current contracts to which the association is a party;

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

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

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

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

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

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

(1) Personnel, salary and medical records relating to specific individuals, unless waived by the persons to whom such records relate; or

(2) Information the disclosure of which would violate any law other than this chapter or section 8, 9 or 34 to 38, inclusive, of this act.

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

(1) Contracts, leases and other commercial transactions to purchase or provide goods or services, currently being negotiated;

Substitute House Bill No. 6672

(2) Existing or potential litigation or mediation, arbitration or administrative proceedings;

(3) Existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws or rules;

(4) Communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;

(5) Records of an executive session of the executive board; or

(6) Individual unit files other than those of the requesting owner.

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

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

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

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

[(b) Notwithstanding any provision of the declaration or bylaws to the contrary, at least fourteen days prior to entering into any loan agreement on behalf of the association, the executive board shall (1) disclose in writing to all unit owners the amount and terms of the loan and the estimated effect of such loan on any common expense assessment, and (2) afford the unit owners a reasonable opportunity to

Substitute House Bill No. 6672

submit written comments to the executive board with respect to such loan.]

Sec. 34. (NEW) (*Effective July 1, 2010*) (a) At least ten days before adopting, amending or repealing any rule, the executive board shall give all unit owners notice of: (1) Its intention to adopt, amend or repeal a rule and shall provide the text of the rule or the proposed change; and (2) a date on which the executive board will act on the proposed rule or amendment after considering comments from unit owners.

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

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

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display, on a unit or on a limited common element adjoining a unit, of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number and manner of those displays.

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

Substitute House Bill No. 6672

those assemblies.

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

(1) Implement a provision of the declaration;

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

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

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

(h) Each rule of the association must be reasonable.

Sec. 35. (NEW) (*Effective July 1, 2010*) (a) An association shall deliver any notice required to be given by the association under chapter 828 of the general statutes, as amended by this act, or section 8, 9 or 34 to 38, inclusive, of this act, to any mailing or electronic mail address a unit owner designates, except that the association may also deliver notices by: (1) Hand delivery to each unit owner; (2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit; (3) electronic means, if the unit owner has given the association an electronic address; or (4) any other method reasonably calculated to provide notice to the unit owner.

(b) Notices required by this act are effective when sent. The ineffectiveness of a good faith effort to deliver notice by an authorized

Substitute House Bill No. 6672

means does not invalidate action taken at or without a meeting.

Sec. 36. (NEW) (*Effective July 1, 2010*) (a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person or by proxy at any meeting of the unit owners at which a quorum is present, or voting by ballot pursuant to subsection (d) of section 47-252 of the general statutes, as amended by this act, may remove any member of the executive board and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, except that: (1) A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control; (2) a member appointed under subsection (g) of section 47-245 of the general statutes, as amended by this act, may be removed only by the person that appointed that member; and (3) the unit owners may not consider whether to remove a member of the executive board or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting or in the notice of the vote by ballot.

(b) At any meeting at which a vote to remove a member of the executive board or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote. If the vote is taken by ballot pursuant to subsection (d) of section 47-252 of the general statutes, as amended by this act, the member or officer being considered for removal shall be given a reasonable opportunity to deliver information to unit owners as provided in said subsection.

Sec. 37. (NEW) (*Effective July 1, 2010*) (a) The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than thirty days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any

Substitute House Bill No. 6672

reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than ten days or more than sixty days after providing the summary for either a meeting of the unit owners or a vote by ballot without a meeting to consider approval of the budget. If, at that meeting or in the vote by ballot, a majority of all unit owners, or any larger number specified in the declaration votes to reject the budget, the budget is rejected; otherwise the budget is approved. The absence of a quorum at such meeting or participating in the vote by ballot shall not affect rejection or approval of the budget. If a proposed budget is rejected, the budget last approved by the unit owners continues until unit owners approve a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. Not later than thirty days after adoption of a proposed special assessment, the executive board shall provide to all unit owners a summary of the assessment. Unless the declaration or bylaws otherwise provide, if such special assessment, together with all other special and emergency assessments proposed by the executive board in the same calendar year, do not exceed fifteen per cent of the association's last adopted periodic budget for that calendar year, the special assessment is effective without approval of the unit owners. Otherwise, the board shall set a date not less than ten days or more than sixty days after providing the summary for either a meeting of the unit owners or a vote by ballot without a meeting to consider approval of the special assessment. If, at such meeting or in the balloting, a majority of all unit owners, or any larger number specified in the declaration, votes to reject the assessment, the assessment shall be rejected; otherwise the assessment shall be approved. The absence of a quorum at such meeting or participating in the vote by ballot shall not affect the rejection or approval of the budget.

(c) If the executive board determines by a two-thirds vote that a

Substitute House Bill No. 6672

special assessment is necessary to respond to an emergency: (1) The special assessment becomes effective immediately in accordance with the terms of the vote; (2) notice of the emergency assessment must be provided promptly to all unit owners; and (3) the executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

(d) Notwithstanding any provision of the declaration or bylaws to the contrary, at least fourteen days prior to entering into any loan agreement on behalf of the association, the executive board shall (1) disclose in a record to all unit owners the amount and terms of the loan and the estimated effect of such loan on any common expense assessment, and (2) afford the unit owners a reasonable opportunity to submit comments in a record to the executive board with respect to such loan.

(e) Unless prohibited or otherwise limited in the declaration, if the executive board proposes to enter into a loan agreement on behalf of the association and to assign its right to future income as security for such loan pursuant to subdivision (14) of subsection (a) of section 47-244 of the general statutes, as amended by this act, then, in addition to satisfying the requirements of subsection (d) of this section, unit owners of units to which at least a majority of the votes in the association are allocated, or any larger percentage or fraction stated in the declaration, must vote in favor of or agree to such assignment.

Sec. 38. (NEW) (*Effective July 1, 2010*) (a) The following requirements apply to an association's authority under subdivision (4) of subsection (a) of section 47-244 of the general statutes, as amended by this act, to institute and maintain a proceeding alleging a construction defect with respect to the common interest community, whether by litigation, mediation, arbitration or administratively, against a declarant or an employee, independent contractor or other person directly or indirectly providing labor or materials to a declarant:

Substitute House Bill No. 6672

(1) Subject to subsections (e) and (f) of this section, before the association institutes a proceeding described in this section, it shall provide notice in a record of its claims to the declarant and those persons that the association seeks to hold liable for the claimed defects. The text of the notice may be in any form reasonably calculated to give notice of the general nature of the association's claims, including a list of the claimed defects. The notice may be delivered by any method of service and may be addressed to any person if the method of service used: (A) Provides actual notice to the person named in the claim; or (B) would be sufficient to give notice to the person in connection with commencement of an action by the association against the person.

(2) Subject to subsection (e) of this section, the association may not institute a proceeding against a person until forty-five days after the association sends notice of its claim to that person.

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

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

(5) If the association accepts a remediation plan from a person the association seeks to hold liable for the claimed defect, or if a person agrees to stated conditions to an otherwise acceptable plan, the parties shall agree on a period for implementation of the plan. The association

Substitute House Bill No. 6672

may not institute a proceeding against the person during the time the plan is being diligently implemented.

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

(b) After the time described in subdivision (2) of subsection (a) of this section expires, whether or not the association agrees to any remediation plan, a proceeding may be instituted by: (1) The association against a person to which notice was directed which fails to submit a timely remediation plan, the plan of which is not acceptable, or which fails to pursue diligent implementation of that plan; or (2) a unit owner with respect to the owner's unit and any limited common elements assigned to that unit, regardless of any action of the association.

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

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

(e) This section does not prevent an association from seeking equitable relief, a remedy in aid of arbitration or a prejudgment remedy under chapter 903a of the general statutes at any time without complying with subdivision (1) or (2) of subsection (a) of this section.

(f) If the time for termination of any period of declarant control

Substitute House Bill No. 6672

occurs and the declarant has failed to comply with subsection (d), (f) or (h) of section 47-245 of the general statutes, as amended by this act, the limitations set forth in this section or the association's authority to institute litigation shall not apply.

Sec. 39. Section 47-263 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except as provided in subsection (b) of this section, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 47-264 to 47-267, inclusive, as amended by this act.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant. 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) A declarant or successor declarant or a dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection (a) of section 47-269. The declarant or successor declarant who prepared all or a part of the public offering statement is liable to all persons claiming an interest in the common interest community under section 47-269 for failure to deliver the public offering statement and under section 47-278, as amended by this act, for any false or misleading statement set forth therein or for any omission of a material fact therefrom. [with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.]

Substitute House Bill No. 6672

(d) If a unit is part of a common interest community and is part of any other real property regime in connection with the sale of which the delivery of a public offering statement is required under the general statutes, a single public offering statement conforming to the requirements of sections 47-264 to 47-267, inclusive, as amended by this act, as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the general statutes, may be prepared and delivered in lieu of providing two or more public offering statements.

Sec. 40. Section 47-264 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except as provided in subsection (b) of this section, a public offering statement shall contain or fully and accurately disclose:

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

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

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

(4) Copies of the declaration, including any surveys and plans, and any other recorded covenants, conditions, restrictions and reservations created by the declarant affecting the common interest community; the bylaws, and any rules or regulations of the association; any deeds, contracts and leases to be signed by or delivered to purchasers at closing, and copies of and a brief narrative description of any contracts

Substitute House Bill No. 6672

or leases that will or may be subject to cancellation by the association under section 47-247, as amended by this act;

(5) A projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include, without limitation: (A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement; (B) a statement of any other reserves; (C) the projected common expense assessment by category of expenditures for the association; and (D) the projected monthly common expense assessment for each type of unit;

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

(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(8) A brief narrative description of any liens, defects or encumbrances on or affecting the title to the common interest community not otherwise disclosed under subdivision (4) of this subsection;

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

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and

Substitute House Bill No. 6672

limitations on the enforcement thereof or on damages;

(11) A statement that: (A) Within fifteen days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant, and (B) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten per cent of the sales price of the unit plus ten per cent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community;

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

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 47-269, together with the name and address of the escrow agent;

(14) Any restraints on alienation of any portion of the common interest community and any restrictions (A) on use, occupancy and alienation of the units, and (B) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

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

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

Substitute House Bill No. 6672

to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 47-280;

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

(19) All unusual and material circumstances, features and characteristics of the common interest community and the units; [and]

(20) In a cooperative, (A) either a statement that the unit owners will be entitled, for federal, state and local income tax purposes, to a pass-through of deductions for payments made by the association for real property taxes and interest paid the holder of a security interest encumbering the cooperative, or a statement that no assurances are made in that regard, and (B) a statement as to the effect on every unit owner if the association fails to pay real property taxes or payments due the holder of a security interest encumbering the cooperative; and

(21) A description of any arrangement described in section 8 of this act.

(b) A declarant promptly shall amend the public offering statement to report any material change in the information required to be included in the public offering statement.

Sec. 41. Section 47-270 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Except in the case of a sale in which delivery of a public offering statement is required under either this chapter or chapter 825, or unless exempt under subsection (b) of section 47-262, a unit owner shall furnish to a purchaser or such purchaser's attorney, before the

Substitute House Bill No. 6672

earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration, other than any surveys and plans, the bylaws, the rules or regulations of the association, and a certificate containing:

- (1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association;
- (2) a statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;
- (3) a statement of any other fees payable by the owner of the unit being sold;
- (4) a statement of any capital expenditures in excess of one thousand dollars approved by the executive board for the current and next succeeding fiscal year;
- (5) a statement of the amount of any reserves for capital expenditures;
- (6) the current operating budget of the association;
- (7) a statement of any unsatisfied judgments against the association and the existence of any pending suits or administrative proceedings in which the association is a [defendant] party, including foreclosures but excluding other collection matters;
- (8) a statement of the insurance coverage provided for the benefit of unit owners, including any schedule of standard fixtures, improvements and betterments in the units covered by the association's insurance that the association prepared pursuant to subsection (b) of section 47-255, as amended by this act;
- (9) a statement of any restrictions in the declaration affecting the amount that may be received by a unit owner on sale, condemnation, casualty loss to the unit or the common interest community or termination of the common interest community;
- (10) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real property taxes and interest paid by the association;
- (11) if the association is unincorporated, the name of the statutory agent for service of process filed with the Secretary of the State pursuant to section 47-244a;
- (12) a statement describing any pending sale or encumbrance of common elements; [and]
- (13) a statement disclosing the effect on the unit to be conveyed of any

Substitute House Bill No. 6672

restrictions on the owner's right to use or occupy the unit or to lease the unit to another person; (14) a statement disclosing the number of units whose owners are at least sixty days' delinquent in paying their common charges on the date of the statement; (15) a statement disclosing the number of foreclosure actions brought by the association during the past twelve months and the number of such actions pending on a specified date within sixty days of the date of the statement; and (16) any established maintenance standards adopted by the association pursuant to subsection (e) of section 47-257, as amended by this act.

(b) (1) Not later than ten business days after receipt of a [written] request in a record from a unit owner and payment by the unit owner of a fee established by the association that [reflects the actual printing, photocopying and related costs, but in no event in excess of] does not exceed one hundred twenty-five dollars plus either five cents for each page of document copies provided by the association pursuant to this section or a flat fee of ten dollars for an electronic version of those documents, for the preparation of the certificate and other documents, the association shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section and any other documents required by this section. The association shall itemize the actual printing, photocopying and related costs and provide a list of the itemized costs to the unit owner with the certificate and documents. An additional fee of not more than ten dollars for expedited preparation may be established if the certificate and all required documents are furnished to the unit owner not later than three business days after the [written] request in a record is received by the association. No fee under this subsection may include costs for services provided by an attorney or paralegal.

(2) A unit owner providing a certificate and documents pursuant to subsection (a) of this section is not liable to the purchaser for any

Substitute House Bill No. 6672

erroneous information provided by the association and included in the certificate and documents.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate and documents in a timely manner, but the purchase contract is voidable by the purchaser until (1) the expiration of five days, excluding Saturdays, Sundays and legal holidays, after the certificate and documents have been delivered to such purchaser or such purchaser's attorney, or seven days, excluding Saturdays, Sundays and legal holidays, after the certificate and documents have been sent by registered or certified mail or mail evidenced by a certificate of mailing to such purchaser or such purchaser's attorney, or (2) conveyance, whichever first occurs.

(d) A dealer who offers a unit which he owns shall, in addition to the material provided to a purchaser or such purchaser's attorney under subsection (a) of this section, furnish to such purchaser or such purchaser's attorney a copy of any public offering statement that the dealer received at the time he purchased his unit.

(e) The association shall, during the month of January in each year, file in the office of the town clerk of the municipality or municipalities where such common interest community is located a certificate setting forth the name and mailing address of the officer of the association or the managing agent from whom a resale certificate may be requested, and shall, thereafter, file such a certificate within thirty days of any change in the name or address of such officer or agent. The town clerk shall keep such certificate on file in his office and make it available for inspection.

Sec. 42. Section 47-274 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

Substitute House Bill No. 6672

(a) Express warranties made by any seller to a purchaser of a unit, if relied on by the purchaser, are created as follows:

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

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

(3) Any description of the quantity or extent of the real property comprising the common interest community, including surveys, creates an express warranty that the common interest community will conform to the description, subject to customary tolerances; and

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

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

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers only to the extent such a conveyance would transfer warranties pursuant to chapter 827.

Substitute House Bill No. 6672

Sec. 43. Section 47-278 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) [If a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a wilful failure to comply with this chapter.] A declarant, association, unit owner or any other person subject to this chapter may bring an action to enforce a right granted or obligation imposed by this chapter, the declaration or the bylaws. The court may award [court costs together with] reasonable attorney's fees and costs.

(b) Parties to a dispute arising under this chapter, the declaration or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, provided: (1) A declarant may agree with the association to do so only after the period of declarant control [passes] has expired; and (2) an agreement to submit to any form of binding alternative dispute resolution must be in a [writing signed] record authenticated by the parties.

Sec. 44. Subdivision (6) of subsection (e) of section 47-204 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(6) A conveyance of a unit owner's interest in a cooperative created before, on or after January 1, 1984, is accomplished by delivery to the purchaser of an instrument, executed in the same manner as a deed, conveying all the seller's interest in the unit. A notice of a proprietary lease complying with section 47-19 and signed by a duly authorized officer of the association may be recorded on the land records as evidence of the named unit owner's interest in that unit.

Approved July 8, 2009