



House of Representatives

General Assembly

File No. 764

January Session, 2009

Substitute House Bill No. 6672

House of Representatives, April 21, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE 2008 AMENDMENTS TO THE UNIFORM COMMON INTEREST OWNERSHIP ACT.

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

1 Section 1. Section 47-202 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 [In the declaration and bylaws, unless specifically provided
4 otherwise or the context otherwise requires, and in] For purposes of
5 this chapter:

6 (1) "Affiliate of a declarant" means any person who controls, is
7 controlled by, or is under common control with a declarant. (A) A
8 person "controls" a declarant if the person (i) is a general partner,
9 officer, director, or employer of the declarant, (ii) directly or indirectly
10 or acting in concert with one or more other persons, or through one or
11 more subsidiaries, owns, controls, holds with power to vote, or holds
12 proxies representing, more than twenty per cent of the voting interest
13 in the declarant, (iii) controls in any manner the election of a majority

14 of the directors of the declarant, or (iv) has contributed more than
15 twenty per cent of the capital of the declarant. (B) A person "is
16 controlled by" a declarant if the declarant (i) is a general partner,
17 officer, director, or employer of the person, (ii) directly or indirectly or
18 acting in concert with one or more other persons, or through one or
19 more subsidiaries, owns, controls, holds with power to vote, or holds
20 proxies representing, more than twenty per cent of the voting interest
21 in the person, (iii) controls in any manner the election of a majority of
22 the directors of the person, or (iv) has contributed more than twenty
23 per cent of the capital of the person. Control does not exist if the
24 powers described in this subsection are held solely as security for an
25 obligation and are not exercised.

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

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

34 [(3)] (4) "Association" or "unit owners' association" means the unit
35 owners' association organized under section 47-243, as amended by
36 this act.

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

41 [(4)] (6) "Common elements" means (A) in the case of (i) a
42 condominium or cooperative, all portions of the common interest
43 community other than the units; and (ii) a planned community, any
44 real property within a planned community owned or leased by the
45 association, other than a unit, and (B) in all common interest

46 communities, any other interests in real property for the benefit of unit
47 owners which are subject to the declaration.

48 [(5)] (7) "Common expenses" means expenditures made by, or
49 financial liabilities of, the association, together with any allocations to
50 reserves.

51 [(6)] (8) "Common expense liability" means the liability for common
52 expenses allocated to each unit pursuant to section 47-226.

53 [(7)] (9) "Common interest community" means real property
54 described in a declaration with respect to which a person, by virtue of
55 his ownership of a unit, is obligated to pay for a share of (A) real
56 property taxes on, (B) insurance premiums on, (C) maintenance of, or
57 (D) improvement of, or services or other expenses related to, common
58 elements, other units or any other real property other than that unit
59 described in the declaration. ["Ownership"] "Common interest
60 community" does not include an arrangement described in section 8 or
61 9 of this act. For purposes of this subdivision, "ownership of a unit"
62 includes holding a leasehold interest of forty years or more in a unit,
63 including renewal options. "Ownership of a unit" does not include the
64 interest which a resident holds in a mutual housing association, as
65 defined in subsection (b) of section 8-214f, by virtue of either a state
66 contract for financial assistance or an individual occupancy agreement.
67 An association of property owners funded solely by voluntary
68 payments from those owners is not a common interest community.

69 [(8)] (10) "Condominium" means a common interest community in
70 which portions of the real property are designated for separate
71 ownership and the remainder of the real property is designated for
72 common ownership solely by the owners of those portions. A common
73 interest community is not a condominium unless the undivided
74 interests in the common elements are vested in the unit owners.

75 [(9)] (11) "Conversion building" means a building that at any time
76 before creation of the common interest community was occupied
77 wholly or partially by persons other than purchasers and persons who

78 occupy with the consent of purchasers.

79 [(10)] (12) "Cooperative" means a common interest community in
80 which the real property is owned by an association, each of whose
81 members is entitled by virtue of his ownership interest in the
82 association to exclusive possession of a unit.

83 [(11)] (13) "Dealer" means a person who owns either six or more
84 units, or fifty per cent or more of all the units, in a common interest
85 community.

86 [(12)] (14) "Declarant" means any person or group of persons acting
87 in concert who (A) as part of a common promotional plan, offers to
88 dispose of his interest in a unit not previously disposed of or (B)
89 reserves or succeeds to any special declarant right.

90 [(13)] (15) "Declaration" means any instruments, however
91 denominated, that create a common interest community, including any
92 amendments to those instruments.

93 [(14)] (16) "Development rights" means any right or combination of
94 rights reserved by a declarant in the declaration to (A) add real
95 property to a common interest community; (B) create units, common
96 elements, or limited common elements within a common interest
97 community; (C) subdivide units or convert units into common
98 elements; or (D) withdraw real property from a common interest
99 community.

100 [(15)] (17) "Dispose" or "disposition" means a voluntary transfer to a
101 purchaser of any legal or equitable interest in a unit, but the term does
102 not include the transfer or release of a security interest.

103 [(16)] (18) "Executive board" means the body, regardless of name,
104 designated in the declaration to act on behalf of the association.

105 [(17)] (19) "Identifying number" means a symbol or address that
106 identifies only one unit in a common interest community.

107 [(18)] (20) "Leasehold common interest community" means a
108 common interest community in which all or a portion of the real
109 property is subject to a lease the expiration or termination of which
110 will terminate the common interest community or reduce its size.

111 [(19)] (21) "Limited common element" means a portion of the
112 common elements allocated by the declaration or by operation of
113 subsection (2) or (4) of section 47-221 for the exclusive use of one or
114 more but fewer than all of the units.

115 [(20)] (22) "Master association" means an organization described in
116 section 47-239, whether or not it is also an association described in
117 section 47-243, as amended by this act.

118 [(21)] (23) "Offer" or "offering" means any advertisement,
119 inducement, solicitation or attempt to encourage any person to acquire
120 any interest in a unit, other than as security for an obligation. An
121 advertisement in a newspaper or other periodical of general
122 circulation, or in any broadcast medium to the general public, of a
123 common interest community not located in this state, is not an offering
124 if the advertisement states that an offering may be made only in
125 compliance with the law of the jurisdiction in which the common
126 interest community is located.

127 [(22)] (24) "Person" means an individual, corporation, limited
128 liability company, business trust, estate, trust, partnership, association,
129 joint venture, government, governmental subdivision or agency, or
130 other legal or commercial entity.

131 [(23)] (25) "Planned community" means a common interest
132 community that is not a condominium or a cooperative. A
133 condominium or cooperative may be part of a planned community.

134 [(24)] (26) "Proprietary lease" means an agreement with the
135 association pursuant to which a member is entitled to exclusive
136 possession of a unit in a cooperative.

137 [(25)] (27) "Purchaser" means a person, other than a declarant or a

138 dealer, who by means of a voluntary transfer acquires a legal or
139 equitable interest in a unit other than (A) a leasehold interest,
140 including renewal options, of less than twenty years, or (B) as security
141 for an obligation.

142 [(26)] (28) "Real property" means any leasehold or other estate or
143 interest in, over, or under land, including structures, fixtures, and
144 other improvements and interests that by custom, usage, or law pass
145 with a conveyance of land though not described in the contract of sale
146 or instrument of conveyance. "Real property" includes parcels with or
147 without upper or lower boundaries, and spaces that may be filled with
148 air or water.

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

152 [(27)] (30) "Residential purposes" means use for dwelling or
153 recreational purposes, or both.

154 (31) "Rule" means a policy, guideline, restriction, procedure or
155 regulation of an association, however denominated, which is not set
156 forth in the declaration or bylaws and which governs the conduct of
157 persons or the use or appearance of property.

158 [(28)] (32) "Security interest" means an interest in real property or
159 personal property, created by contract or conveyance, which secures
160 payment or performance of an obligation. The term includes a lien
161 created by a mortgage, deed of trust, trust deed, security deed, contract
162 for deed, land sales contract, lease intended as security, assignment of
163 lease or rents intended as security, pledge of an ownership interest in
164 an association, and any other consensual lien or title retention contract
165 intended as security for an obligation.

166 [(29)] (33) "Special declarant rights" means rights reserved for the
167 benefit of a declarant to (A) complete improvements indicated on
168 surveys and plans filed with the declaration or, in a cooperative, to

169 complete improvements described in the public offering statement
170 pursuant to subdivision (2) of subsection (a) of section 47-264, as
171 amended by this act; (B) exercise any development right; (C) maintain
172 sales offices, management offices, signs advertising the common
173 interest community, and models; (D) use easements through the
174 common elements for the purpose of making improvements within the
175 common interest community or within real property which may be
176 added to the common interest community; (E) make the common
177 interest community subject to a master association; (F) merge or
178 consolidate a common interest community with another common
179 interest community of the same form of ownership; [or] (G) appoint or
180 remove any officer of the association or any master association or any
181 executive board member during any period of declarant control; (H)
182 control any construction, design review or aesthetic standards
183 committee or process; (I) attend meetings of the unit owners and,
184 except during an executive session, the executive board; or (J) have
185 access to the records of the association to the same extent as a unit
186 owner.

187 [(30)] (34) "Time share" means a right to occupy a unit or any of
188 several units during five or more separated time periods over a period
189 of at least five years, including renewal options, whether or not
190 coupled with an estate or interest in a common interest community or
191 a specified portion thereof.

192 [(31)] (35) "Unit" means a physical portion of the common interest
193 community designated for separate ownership or occupancy, the
194 boundaries of which are described pursuant to subdivision (5) of
195 subsection (a) of section 47-224, as amended by this act. If a unit in a
196 cooperative is owned by a unit owner or is sold, conveyed, voluntarily
197 or involuntarily encumbered or otherwise transferred by a unit owner,
198 the interest in that unit which is owned, sold, conveyed, encumbered
199 or otherwise transferred is the right to possession of that unit under a
200 proprietary lease, coupled with the allocated interests of that unit, and
201 the association's interest in that unit is not thereby affected.

202 [(32)] (36) "Unit owner" means a declarant or other person who
203 owns a unit, or a lessee of a unit in a leasehold common interest
204 community whose lease expires simultaneously with any lease the
205 expiration or termination of which will remove the unit from the
206 common interest community, but does not include a person having an
207 interest in a unit solely as security for an obligation. In a condominium
208 or planned community, the declarant is the owner of any unit created
209 by the declaration. In a cooperative, the declarant is treated as the
210 owner of any unit to which allocated interests have been allocated
211 until that unit has been conveyed to another person.

212 Sec. 2. (NEW) (*Effective October 1, 2009*) Chapter 828 of the general
213 statutes, as amended by this act, and sections 8, 9, 13, 17 and 31 to 35,
214 inclusive, of this act, modify, limit and supersede the federal Electronic
215 Signatures in Global and National Commerce Act, 15 USC 7001, et seq.,
216 but does not modify, limit or supersede Section 101(c) of that act, 15
217 USC 7001(c), or authorize electronic delivery of any of the notices
218 described in Section 103(b) of that act, 15 USC 7003(b).

219 Sec. 3. Section 47-214 of the general statutes is repealed and the
220 following is substituted in lieu thereof (*Effective October 1, 2009*):

221 Except as provided in section 47-215, as amended by this act, the
222 provisions of this chapter apply to all common interest communities
223 created within this state on or after January 1, 1984. The provisions of
224 chapter 825 do not apply to condominiums created on or after January
225 1, 1984. Amendments to this chapter apply to all common interest
226 communities created after January 1, 1984, or subjected to this chapter
227 by amendment of the declaration of the common interest community,
228 regardless of when the amendment is adopted.

229 Sec. 4. Section 47-215 of the general statutes is repealed and the
230 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

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

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

237 (B) The declaration of such a common interest community may
238 provide that this entire chapter applies to the community, that only
239 this part and part II of this chapter apply or that only sections 47-204,
240 47-205 and 47-206 apply;

241 (C) If the declaration provides that this entire chapter applies to
242 such a common interest community, the declaration may also require,
243 subject to section 47-210, that: (i) Notwithstanding section 47-247, as
244 amended by this act, any management contract, employment contract,
245 lease of recreational or parking areas or facilities and any other
246 contract or lease between the association and a declarant or an affiliate
247 of a declarant remains effective after the declarant turns over control of
248 the association; and (ii) notwithstanding section 47-203, purchasers of
249 units must execute proxies, powers of attorney or similar devices in
250 favor of the declarant regarding particular matters enumerated in
251 those instruments.

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

260 (3) If the declaration of a planned community that is not subject to
261 any development right provides that the annual average common
262 expense liability of all units restricted to residential purposes,
263 exclusive of optional user fees and any insurance premiums paid by
264 the association, may not exceed three hundred dollars, as adjusted

265 pursuant to section 47-213, the planned community is subject only to
266 sections 47-204, 47-205 and 47-206 unless the declaration provides that
267 this entire chapter is applicable. However, this exemption applies only
268 if:

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

272 (B) The declaration provides that the annual common expense
273 liability may not be increased during the period of declarant control
274 without the consent of persons entitled to cast at least eighty per cent
275 of the votes in the association, including eighty per cent of the votes
276 allocated to units not owned by a declarant or an affiliate of a
277 declarant.

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

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

298 Sec. 5. Section 47-216 of the general statutes is repealed and the
299 following is substituted in lieu thereof (*Effective October 1, 2009*):

300 (a) Except as provided in section 47-217, sections 47-202, as
301 amended by this act, 47-204, 47-205, 47-206, 47-218, as amended by this
302 act, 47-221, 47-222, as amended by this act, 47-223, subsections (b), (i)
303 and (j) of section 47-236, as amended by this act, section 17 of this act,
304 47-240, 47-244, as amended by this act, 47-245, as amended by this act,
305 section 35 of this act, sections 47-253, 47-258, as amended by this act,
306 47-260, as amended by this act, 47-270 and 47-278, as amended by this
307 act, and subsection (j) of section 47-236, as amended by this act, [and
308 section 47-202] to the extent necessary in construing any of those
309 sections, apply to all common interest communities created in this state
310 before January 1, 1984; but those sections apply only with respect to
311 events and circumstances occurring after January 1, 1984, and do not
312 invalidate existing provisions of the declaration, bylaws or surveys or
313 plans of those common interest communities.

314 (b) Section 47-210 and subsections (b) to (d), inclusive, of section 47-
315 225 apply to all common interest communities created in this state
316 prior to January 1, 1984, but shall not invalidate existing provisions of
317 the declarations, bylaws or surveys or plans of those common interest
318 communities.

319 Sec. 6. Section 47-218 of the general statutes is repealed and the
320 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

325 (b) [An] Except as otherwise provided in subsections (i) and (j) of
326 section 47-236, as amended by this act, an amendment to the
327 declaration, bylaws or surveys and plans authorized by subsection (a)
328 of this section shall be adopted in conformity with any procedures and
329 requirements for amending the instruments specified by those

330 instruments or, if there are none, in conformity with the amendment
331 procedures of this chapter. If an amendment grants to any person any
332 rights, powers or privileges permitted by this chapter, all correlative
333 obligations, liabilities and restrictions in this chapter also apply to that
334 person.

335 Sec. 7. Section 47-219 of the general statutes is repealed and the
336 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

344 Sec. 8. (NEW) (*Effective October 1, 2009*) (a) An arrangement between
345 the associations for two or more common interest communities to
346 share the costs of real property taxes, insurance premiums, services,
347 maintenance or improvements of real property, or other activities
348 specified in their arrangement or declarations does not create a
349 separate common interest community.

350 (b) An arrangement between an association and the owner of real
351 property that is not part of a common interest community to share the
352 costs of real property taxes, insurance premiums, services,
353 maintenance or improvements of real property, or other activities
354 specified in their arrangement does not create a separate common
355 interest community, except that assessments against the units in the
356 common interest community required by the arrangement must be
357 included in the periodic budget for the common interest community,
358 and the arrangement must be disclosed in all public offering
359 statements and resale certificates required by chapter 828 of the
360 general statutes, as amended by this act, and sections 2, 9, 13, 17 and 31
361 to 35, inclusive, of this act.

362 Sec. 9. (NEW) (*Effective October 1, 2009*) A covenant that requires the
363 owners of separately owned parcels of real property to share costs or
364 other obligations associated with a party wall, driveway, well or other
365 similar use does not create a common interest community unless the
366 owners otherwise agree.

367 Sec. 10. Section 47-222 of the general statutes is repealed and the
368 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

370 (b) The rule against perpetuities does not apply to defeat any
371 provision of the declaration or of the bylaws [.] or rules. [or regulations
372 adopted pursuant to subdivision (1) of subsection (a) of section 47-
373 244.]

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

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

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

387 Sec. 11. Section 47-224 of the general statutes is repealed and the
388 following is substituted in lieu thereof (*Effective October 1, 2009*):

389 (a) The declaration shall contain:

390 (1) The names of the common interest community and the

391 association and a statement that the common interest community is
392 either a condominium, cooperative or planned community;

393 (2) The name of every town in which any part of the common
394 interest community is situated;

395 (3) A legally sufficient description of the real property included in
396 the common interest community;

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

399 (5) In a condominium or planned community, a description of the
400 boundaries of each unit created by the declaration, including the unit's
401 identifying number or, in a cooperative, a description, which may be
402 by surveys or plans, of each unit created by the declaration, including
403 the unit's identifying number, its size or number of rooms and its
404 location within a building if it is within a building containing more
405 than one unit;

406 (6) A description of any limited common elements, other than those
407 specified in subsections (2) and (4) of section 47-221, as provided in
408 subdivision (10) of subsection (b) of section 47-228 and, in a planned
409 community, any real property that is or must become common
410 elements;

411 (7) A description of any real property, except real property subject
412 to development rights, that may be allocated subsequently as limited
413 common elements, other than limited common elements specified in
414 subsections (2) and (4) of section 47-221, together with a statement that
415 they may be so allocated;

416 (8) A description of any development rights, as defined in
417 [subsection (14)] subdivision (16) of section 47-202, as amended by this
418 act, and other special declarant rights, as defined in [subsection (29)]
419 subdivision (33) of section 47-202, as amended by this act, reserved by
420 the declarant, together with a legally sufficient description of the real
421 property to which each of those rights applies and a time limit within

422 which each of those rights must be exercised;

423 (9) If any development right may be exercised with respect to
424 different parcels of real property at different times, a statement to that
425 effect together with (A) either a statement fixing the boundaries of
426 those portions and regulating the order in which those portions may
427 be subjected to the exercise of each development right or a statement
428 that no assurances are made in those regards, and (B) a statement as to
429 whether, if any development right is exercised in any portion of the
430 real property subject to that development right, that development right
431 must be exercised in all or in any other portion of the remainder of that
432 real property;

433 (10) Any other conditions or limitations under which the rights
434 described in subdivision (8) of this subsection may be exercised or will
435 lapse;

436 (11) An allocation to each unit of the allocated interests in the
437 manner described in section 47-226;

438 (12) Any restrictions (A) on alienation of the units, including any
439 restrictions on leasing which exceed the restrictions on leasing units
440 which executive boards may impose pursuant to subdivision (2) of
441 subsection (c) of section 47-244, as amended by this act, and (B) on the
442 amount for which a unit may be sold or on the amount that may be
443 received by a unit owner on sale, condemnation or casualty loss to the
444 unit or to the common interest community, or on termination of the
445 common interest community;

446 (13) The recording data for recorded easements and licenses
447 appurtenant to or included in the common interest community or to
448 which any portion of the common interest community is or may
449 become subject by virtue of a reservation in the declaration; [and]

450 (14) Any authorization pursuant to which the association may
451 establish and enforce construction and design criteria and aesthetic
452 standards as provided in section 47-248, as amended by this act, and

453 section 31 of this act; and

454 [(14)] (15) All matters required by sections 47-225 to 47-228,
455 inclusive, sections 47-234 and 47-235, as amended by this act, and
456 subsection (d) of section 47-245, as amended by this act.

457 (b) The declaration may contain any other matters not inconsistent
458 with this chapter that the declarant considers appropriate, including
459 any restrictions on the uses of a unit or the number or other
460 qualifications of persons who may occupy units.

461 Sec. 12. Section 47-232 of the general statutes is repealed and the
462 following is substituted in lieu thereof (*Effective October 1, 2009*):

463 (a) If the declaration expressly so permits, a unit may be subdivided
464 into two or more units. Subject to the provisions of the declaration and
465 any provisions of law, on application of a unit owner to subdivide a
466 unit, the association shall prepare, execute and record an amendment
467 to the declaration, including in a condominium or planned community
468 the surveys and plans, subdividing that unit.

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

475 Sec. 13. (NEW) (*Effective October 1, 2009*) To the extent that any unit
476 or common element encroaches on any other unit or common element,
477 a valid easement for the encroachment exists. The easement does not
478 relieve a unit owner of liability in case of the unit owner's wilful
479 misconduct nor relieve a declarant or any other person of liability for
480 failure to adhere to any plats and plans or, in a cooperative, to any
481 representation in the public offering statement.

482 Sec. 14. Section 47-235 of the general statutes is repealed and the
483 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

489 (b) [In a planned community, subject] Subject to the provisions of
490 subdivision (6) of subsection (a) of section 47-244, as amended by this
491 act, and section 47-254, the unit owners have an easement [(1)] in the
492 common elements for [purposes of] access to their units, [and (2)]

493 (c) Subject to the declaration and rules, the unit owners have a right
494 to use the common elements that are not limited common elements
495 and all real property that must become common elements for [all
496 other] the purposes for which they were intended.

497 Sec. 15. Section 47-236 of the general statutes is repealed and the
498 following is substituted in lieu thereof (*Effective October 1, 2009*):

499 (a) Except in cases of amendments that may be executed by a
500 declarant under subsection (f) of section 47-228 or section 47-229, or by
501 the association under section 47-206, subsection (d) of section 47-225,
502 subsection (c) of section 47-227, subsection (a) of section 47-231 or
503 section 47-232, as amended by this act, or by certain unit owners under
504 subsection (b) of section 47-227, subsection (a) of section 47-231,
505 subsection (b) of section 47-232, as amended by this act, subsection (b)
506 of section 47-237, as amended by this act, or section 47-242, and except
507 as limited by subsections (d) and (f) of this section, the declaration,
508 including any surveys and plans, may be amended only by vote or
509 agreement of unit owners of units to which at least sixty-seven per cent
510 of the votes in the association are allocated, or [any larger majority]
511 unless the declaration specifies a different percentage for all
512 amendments or for specific subjects of amendment. If the declaration
513 requires the approval of another person as a condition of its
514 effectiveness, the amendment is not valid without that approval. [The
515 declaration may specify a smaller number only if all of the units are
516 restricted exclusively to nonresidential use.]

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

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

527 (d) Except to the extent expressly permitted or required by other
528 provisions of this chapter, no amendment may create or increase
529 special declarant rights, increase the number of units or change the
530 boundaries of any unit or the allocated interests of a unit, in the
531 absence of unanimous consent of the unit owners.

532 (e) Amendments to the declaration required by this chapter to be
533 recorded by the association shall be prepared, executed, recorded and
534 certified on behalf of the association by any officer of the association
535 designated for that purpose or, in the absence of designation, by the
536 president of the association.

537 (f) [By vote or agreement of unit owners of units to which at least
538 eighty per cent of the votes in the association are allocated, or any
539 larger percentage specified in the declaration, an] An amendment to
540 the declaration may prohibit or materially restrict the permitted uses
541 or occupancy of a unit or the number or other qualifications of persons
542 who may occupy units [~~. The~~] only by vote or agreement of unit
543 owners of units to which at least eighty per cent of the votes in the
544 association are allocated, unless the declaration specifies that a larger
545 percentage of unit owners must vote or agree to that amendment or
546 that such an amendment may be approved by the unit owners of units
547 having at least eighty per cent of the votes of a specified group of units
548 that would be affected by the amendment. An amendment approved
549 under this subsection must provide reasonable protection for a use or

550 occupancy permitted at the time the amendment was adopted.

551 (g) The time limits specified in the declaration pursuant to
552 subdivision (8) of subsection (a) of section 47-224, as amended by this
553 act, within which reserved development rights must be exercised may
554 be extended, the number of units may be increased and new
555 development rights or other special declarant rights may be created by
556 amendment to the declaration if persons entitled to cast at least eighty
557 per cent of the votes in the association, including eighty per cent of the
558 votes allocated to units not owned by the declarant, agree to that
559 action. The amendment must identify the association or other persons
560 who hold any new rights that are created. Written notice of the
561 proposed amendment to the declaration must be delivered to all
562 persons holding development rights or security interests in those
563 rights. Notwithstanding the provisions of subsection (c) of this section,
564 the amendment to the declaration is effective thirty days after the
565 amendment is recorded and notice is delivered unless any of the
566 persons entitled to notice under this subsection records a written
567 objection within the thirty-day period, in which case the amendment is
568 void, or unless all of the persons entitled to notice under this
569 subsection consent in writing at the time the amendment is recorded,
570 in which case the amendment is effective when recorded.

571 (h) Provisions in the declaration creating special declarant rights
572 that have not expired may not be amended without the consent of the
573 declarant.

574 (i) If any provision of this chapter or of the declaration of any
575 common interest community subject to this chapter requires the
576 consent of a person holding a security interest in a unit as a condition
577 to the effectiveness of any amendment to the declaration, that consent
578 shall be deemed granted if no written refusal to consent is received by
579 the association within forty-five days after the association delivers
580 notice of the proposed amendment to the holder of the interest or
581 mails the notice to the holder of the interest by certified mail, return
582 receipt requested. The association may rely on the last-recorded

583 security interest of record in delivering or mailing notice to the holder
584 of that interest. Notwithstanding any provision of this section, an
585 amendment to the declaration that affects the priority of a holder's
586 security interest or the ability of that holder to foreclose its security
587 interest may not be adopted without that holder's consent in a record if
588 the declaration requires that consent as a condition to the effectiveness
589 of the amendment.

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

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

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

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

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

615 Sec. 16. Section 47-237 of the general statutes is repealed and the
616 following is substituted in lieu thereof (*Effective October 1, 2009*):

617 (a) Except in the case of a taking of all the units by eminent domain,
618 [or in the case of] foreclosure against an entire cooperative of a security
619 interest that has priority over the declaration, or in the circumstances
620 described in section 17 of this act, a common interest community may
621 be terminated only by agreement of unit owners of units to which at
622 least eighty per cent of the votes in the association are allocated, or any
623 larger percentage the declaration specifies, and with any other
624 approvals required by the declaration. The declaration may specify a
625 smaller percentage only if all of the units are restricted exclusively to
626 nonresidential uses.

627 (b) An agreement to terminate shall be evidenced by the execution
628 of a termination agreement, or ratifications thereof, in the same
629 manner as a deed, by the requisite number of unit owners. The
630 termination agreement shall specify a date after which the agreement
631 will be void unless it is recorded before that date. A termination
632 agreement and all ratifications thereof shall be recorded in every town
633 in which a portion of the common interest community is situated and
634 is effective only on recordation.

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

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

648 (e) The association, on behalf of the unit owners, may contract for
649 the sale of real property in a common interest community, but the
650 contract is not binding on the unit owners until approved pursuant to
651 subsections (a) and (b) of this section. If any real property is to be sold
652 following termination, title to that real property, on termination, vests
653 in the association as trustee for the holders of all interests in the units.
654 Thereafter, the association has all powers necessary and appropriate to
655 effect the sale. Until the sale has been concluded and the proceeds
656 thereof distributed, the association continues in existence with all
657 powers it had before termination. Proceeds of the sale shall be
658 distributed to unit owners and lien holders, as their interests may
659 appear, in accordance with subsections (h), (i) and (j) of this section.
660 Unless otherwise specified in the termination agreement, as long as the
661 association holds title to the real property, each unit owner and the
662 unit owner's successors in interest have an exclusive right to
663 occupancy of the portion of the real property that formerly constituted
664 the unit. During the period of that occupancy, each unit owner and the
665 unit owner's successors in interest remain liable for all assessments
666 and other obligations imposed on unit owners by this chapter or the
667 declaration.

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

680 (g) Following termination of the common interest community, the
681 proceeds of any sale of real property, together with the assets of the

682 association, are held by the association as trustee for unit owners and
683 holders of liens on the units as their interests may appear.

684 (h) Following termination of a condominium or planned
685 community, creditors of the association holding liens on the units,
686 which were recorded before termination, may enforce those liens in the
687 same manner as any lien holder. All other creditors of the association
688 are to be treated as if they had perfected liens on the units immediately
689 before termination.

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

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

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

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

711 (4) The lien of each creditor of each unit owner which was perfected
712 before termination continues as a lien against that unit owner's unit as

713 of the date the lien was perfected; and

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

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

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

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

738 (k) In a condominium or planned community, except as provided in
739 subsection (l) of this section, foreclosure or enforcement of a lien or
740 encumbrance against the entire common interest community does not
741 terminate, of itself, the common interest community, and foreclosure
742 or enforcement of a lien or encumbrance against a portion of the
743 common interest community, other than withdrawable real property,
744 does not withdraw that portion from the common interest community.

745 Foreclosure or enforcement of a lien or encumbrance against
746 withdrawable real property, or against common elements that have
747 been subjected to a security interest by the association under section
748 47-254, does not withdraw, of itself, that real property from the
749 common interest community, but the person taking title thereto may
750 require from the association, on request, an amendment excluding the
751 real property from the common interest community.

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

759 Sec. 17. (NEW) (*Effective October 1, 2009*) If substantially all the units
760 in a common interest community have been destroyed or are
761 uninhabitable and the available methods for giving notice under
762 section 32 of this act of a meeting of unit owners to consider
763 termination under section 47-237 of the general statutes, as amended
764 by this act, will not likely result in receipt of the notice, the executive
765 board or any other interested person may commence an action in the
766 superior court seeking to terminate the common interest community.
767 During the pendency of the action, the court may issue whatever
768 orders it considers appropriate, including appointment of a receiver.
769 After a hearing, the court may terminate the common interest
770 community or reduce its size and may issue any other order the court
771 considers to be in the best interest of the unit owners and persons
772 holding an interest in the common interest community.

773 Sec. 18. Section 47-243 of the general statutes is repealed and the
774 following is substituted in lieu thereof (*Effective October 1, 2009*):

775 A unit owners' association shall be organized no later than the date
776 the first unit in the common interest community is conveyed. The
777 membership of the association at all times shall consist exclusively of

778 all unit owners or, following termination of the common interest
779 community, of all former unit owners entitled to distributions of
780 proceeds under section 47-237, as amended by this act, or their heirs,
781 successors or assigns. The association shall have an executive board.
782 The association shall be organized as a profit or nonprofit corporation,
783 trust, limited liability company, partnership or [unincorporated
784 association] any other form of organization authorized by the law of
785 this state.

786 Sec. 19. Section 47-244 of the general statutes is repealed and the
787 following is substituted in lieu thereof (*Effective October 1, 2009*):

788 (a) Except as provided in subsection (b) of this section, and subject
789 to the provisions of the declaration, the association, even if
790 unincorporated; [, may:]

791 (1) [Adopt] Shall adopt and may amend bylaws, and may adopt and
792 amend rules; [and regulations;]

793 (2) [Adopt] Shall adopt and may amend budgets [for revenues,
794 expenditures and reserves and] under section 34 of this act, may collect
795 assessments for common expenses from unit owners and may invest
796 funds of the association;

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

799 (4) [Institute] May institute, defend or intervene in litigation or in
800 arbitration, mediation or administrative proceedings in its own name
801 on behalf of itself or two or more unit owners on matters affecting the
802 common interest community, subject to section 35 of this act;

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

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

806 (7) [Cause] May cause additional improvements to be made as a

807 part of the common elements;

808 (8) [Acquire] May acquire, hold, encumber and convey in its own
809 name any right, title or interest to real property or personal property,
810 but (A) common elements in a condominium or planned community
811 may be conveyed or subjected to a security interest only pursuant to
812 section 47-254, and (B) part of a cooperative may be conveyed, or all or
813 part of a cooperative may be subjected to a security interest, only
814 pursuant to section 47-254;

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

817 (10) [Impose] May impose and receive any payments, fees or
818 charges for the use, rental or operation of the common elements, other
819 than limited common elements described in subsections (2) and (4) of
820 section 47-221, and for services provided to unit owners;

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

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

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

831 (14) [Assign] Except to the extent limited by the declaration, may
832 assign its right to future income, including the right to receive common
833 expense assessments; [, but only to the extent the declaration expressly
834 so provides;]

835 (15) [Exercise] May exercise any other powers conferred by the
836 declaration or bylaws;

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

839 (17) [Exercise] May exercise any other powers necessary and proper
840 for the governance and operation of the association; [and]

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

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

849 (A) Deny a unit owner or other occupant access to the owner's unit;

850 (B) Suspend a unit owner's right to vote;

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

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

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

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

862 (2) Institute litigation or an arbitration, mediation or administrative
863 proceeding against any person, subject to the following:

864 (A) The association shall comply with section 35 of this act, if

865 applicable, before instituting any proceeding described in subsection
866 (a) of section 35 of this act, in connection with construction defects; and

867 (B) The executive board promptly shall provide notice to the unit
868 owners of any legal proceeding in which the association is a party
869 other than proceedings involving enforcement of rules or to recover
870 unpaid assessments or other sums due the association.

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

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

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

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

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

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

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

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

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

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

905 [(f)] (e) Unless a lease otherwise provides, this section does not:

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

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

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

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

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

922 (3) Although a violation may exist or may have occurred, it is not so

923 material as to be objectionable to a reasonable person or to justify
924 expending the association's resources; or

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

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

932 (h) The executive board shall establish a reasonable method for unit
933 owners to communicate among themselves and with the executive
934 board on matters concerning the association.

935 Sec. 20. Section 47-245 of the general statutes is repealed and the
936 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

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

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

954 (2) Amend the bylaws;

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

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

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

963 [(c) Notwithstanding any provision of the declaration or bylaws to
964 the contrary, within thirty days after adoption of any proposed budget
965 for the common interest community, the executive board shall provide
966 a summary of the proposed budget to all the unit owners and shall set
967 a date for a meeting of the unit owners to consider ratification of the
968 proposed budget not less than fourteen or more than thirty days after
969 hand-delivery or mailing of the summary. At such meeting, or on a
970 day prior to such meeting, the executive board shall provide a
971 reasonable opportunity for all unit owners to express their views
972 concerning the proposed budget before its ratification. At least one
973 copy of the proposed budget shall be available for inspection at such
974 meeting. Unless at such meeting a majority of all unit owners, or any
975 larger vote specified in the declaration, reject the proposed budget, the
976 budget is ratified, whether or not a quorum is present. In the event the
977 proposed budget is rejected, the periodic budget last ratified by the
978 unit owners shall be continued until such time as the unit owners
979 ratify a subsequent budget proposed by the executive board as
980 provided in this subsection.]

981 (c) The executive board shall adopt budgets as provided in section
982 34 of this act.

983 (d) Subject to the provisions of subsection (e) of this section, the
984 declaration may provide for a period of declarant control of the

985 association, during which a declarant, or persons designated by [him]
986 the declarant, may appoint and remove the officers and members of
987 the executive board. Regardless of the period provided in the
988 declaration, a period of declarant control terminates no later than the
989 earlier of: (1) Sixty days after conveyance of sixty per cent of the units
990 that may be created to unit owners other than a declarant, except that
991 in the case of a master planned community, control terminates no later
992 than sixty days after conveyance to unit owners other than the
993 declarant of sixty per cent of the maximum number of units that may
994 be built, if that number is specified, or, if no such number is specified,
995 after conveyance to unit owners other than the declarant of three
996 hundred units; (2) two years after all declarants have ceased to offer
997 units for sale in the ordinary course of business; (3) two years after any
998 right to add new units was last exercised; or (4) the date the declarant,
999 after giving written notice to unit owners, records an instrument
1000 voluntarily surrendering all rights to control activities of the
1001 association. A declarant may voluntarily surrender the right to appoint
1002 and remove officers and members of the executive board before
1003 termination of that period, but in that event the declarant may require,
1004 for the duration of the period of declarant control, that specified
1005 actions of the association or executive board, as described in a
1006 recorded instrument executed by the declarant, be approved by the
1007 declarant before they become effective.

1008 (e) Not later than sixty days after conveyance of one-third of the
1009 units that may be created to unit owners other than a declarant, at least
1010 one member and not less than one-third of the members of the
1011 executive board shall be elected by unit owners other than the
1012 declarant.

1013 (f) Except as otherwise provided in subsection (e) of section 47-239,
1014 not later than the termination of any period of declarant control, the
1015 unit owners shall elect an executive board of at least three members, at
1016 least a majority of whom shall be unit owners. [The] Unless the
1017 declaration provides for the election of officers by the unit owners, the
1018 executive board shall elect the officers. The executive board members

1019 and officers shall take office upon election.

1020 [(g) Notwithstanding any provision of the declaration or bylaws to
1021 the contrary, the unit owners, by a two-thirds vote of all persons
1022 present and entitled to vote at any meeting of the unit owners at which
1023 a quorum is present, may remove any member of the executive board
1024 with or without cause, other than a member appointed by the
1025 declarant.]

1026 (g) A declaration may provide for the appointment of specified
1027 positions on the executive board by persons other than the declarant
1028 during or after the period of declarant control. A declaration may also
1029 provide a method for filling vacancies in such specified positions,
1030 other than by election by the unit owners, except that, after the period
1031 of declarant control, appointed members (1) may not comprise more
1032 than one-third of the board, and (2) have no greater authority than any
1033 other member of the board.

1034 (h) Within thirty days after unit owners other than the declarant
1035 elect a majority of the members of the executive board, the declarant
1036 shall deliver to the association all property of the unit owners and of
1037 the association held by or controlled by the declarant, including
1038 without limitation the following items: (1) The original or a certified
1039 copy of the recorded declaration as amended; the association articles of
1040 incorporation, if the association is incorporated; bylaws; minute books
1041 and other books and records of the association; and any rules and
1042 regulations which may have been promulgated; (2) an accounting for
1043 association funds and financial statements, from the date the
1044 association received funds and ending on the date the period of
1045 declarant control ends. The financial statements shall be audited by an
1046 independent certified public accountant and shall be accompanied by
1047 the accountant's letter, expressing either (A) the opinion that the
1048 financial statements present fairly the financial position of the
1049 association in conformity with generally accepted accounting
1050 principles or (B) a disclaimer of the accountant's ability to attest to the
1051 fairness of the presentation of the financial information in conformity

1052 with generally accepted accounting principles, and the reasons
1053 therefor. The expense of the audit shall not be paid for or charged to
1054 the association; (3) association funds or control thereof; (4) all of
1055 declarant's tangible personal property that has been represented by the
1056 declarant to be the property of the association or, unless the declarant
1057 has disclosed in the public offering statement that all such personal
1058 property used in the common interest community will remain the
1059 declarant's property, all of the declarant's tangible personal property
1060 that is necessary for, and has been used exclusively in, the operation
1061 and enjoyment of the common elements, and inventories of these
1062 properties; (5) a copy of any plans and specifications used in the
1063 construction of the improvements in the common interest community
1064 which were completed within two years before the declaration was
1065 recorded; (6) all insurance policies then in force, in which the unit
1066 owners, the association or its directors and officers are named as
1067 insured persons; (7) copies of any certificates of occupancy that may
1068 have been issued with respect to any improvements comprising the
1069 common interest community; (8) any other permits issued by
1070 governmental bodies applicable to the common interest community
1071 and which are currently in force or which were issued within one year
1072 prior to the date on which unit owners other than the declarant took
1073 control of the association; (9) written warranties of the contractor,
1074 subcontractors, suppliers and manufacturers that are still effective; (10)
1075 a roster of unit owners and mortgagees and their addresses and
1076 telephone numbers, if known, as shown on the declarant's records; (11)
1077 employment contracts in which the association is a contracting party;
1078 and (12) any service contract in which the association is a contracting
1079 party or in which the association or the unit owners have any
1080 obligation to pay a fee to the persons performing the services.

1081 (i) During the period of declarant control, the declarant shall, at
1082 least every six months, provide the unit owners with a current
1083 financial statement of the association. The statement shall be on a cash
1084 basis and need not be audited by an independent accountant. It shall
1085 include, without limitation, (1) all income and expenses for the
1086 calendar year to date; (2) all accounts payable and receivable,

1087 including the ages of those accounts and showing all sums due to and
1088 from the declarant and affiliates of the declarant; (3) the amount of any
1089 funded replacement reserves; and (4) the balance of any other funds of
1090 the association.

1091 Sec. 21. Section 47-247 of the general statutes is repealed and the
1092 following is substituted in lieu thereof (*Effective October 1, 2009*):

1093 (a) [Except in the case of nonresidential common interest
1094 communities as provided in section 47-215, if entered into before]
1095 Within two years after the executive board elected by the unit owners
1096 pursuant to subsection (f) of section 47-245, as amended by this act,
1097 takes office, the association may terminate without penalty upon not
1098 less than ninety days' notice to the other party, any of the following if
1099 it was entered into before the executive board was elected: (1) [any]
1100 Any management, [contract,] maintenance, operations or employment
1101 contract or lease of recreational or parking areas or facilities; [,] or (2)
1102 any other contract or lease between the association and a declarant or
1103 an affiliate of a declarant. [, or (3)]

1104 (b) The association may terminate without penalty, at any time after
1105 the executive board elected by the unit owners pursuant to subsection
1106 (f) of section 47-245, as amended by this act, takes office upon not less
1107 than ninety days' notice to the other party, any contract or lease that is
1108 not bona fide or was unconscionable or commercially unreasonable to
1109 the unit owners at the time entered into. [under the circumstances then
1110 prevailing, may be terminated without penalty by the association at
1111 any time after the executive board elected by the unit owners pursuant
1112 to subsection (f) of section 47-245 takes office on not less than ninety
1113 days' notice to the other party.]

1114 [(b)] (c) This section does not apply to: (1) Any lease the termination
1115 of which would terminate the common interest community or reduce
1116 its size, unless the real property subject to that lease was included in
1117 the common interest community for the purpose of avoiding the right
1118 of the association to terminate a lease under this section, or (2) a
1119 proprietary lease.

1120 Sec. 22. Section 47-248 of the general statutes is repealed and the
1121 following is substituted in lieu thereof (*Effective October 1, 2009*):

1122 (a) The bylaws of the association shall: [provide for: (1) The] (1)
1123 Provide the number of members of the executive board and the titles of
1124 the officers of the association; (2) provide for election by the executive
1125 board of a president, treasurer, secretary and any other officers of the
1126 association the bylaws specify; (3) specify the qualifications, powers
1127 and duties, terms of office and manner of electing and removing
1128 executive board members and officers and filling vacancies; (4) [which,
1129 if any, of its] specify the powers the executive board or officers may
1130 delegate to other persons or to a managing agent; (5) [which of its]
1131 specify the officers who may prepare, execute, certify and record
1132 amendments to the declaration on behalf of the association; [and] (6)
1133 specify a method for [amending] the unit owners to amend the bylaws;
1134 (7) contain any provision necessary to satisfy requirements in this
1135 chapter or the declaration concerning meetings, voting, quorums and
1136 other activities of the association; and (8) provide for any matter
1137 required by the law of this state other than this chapter to appear in the
1138 bylaws of organizations of the same type as the association.

1139 (b) Subject to the [provisions of the] declaration and this chapter, the
1140 bylaws may provide for any other necessary or appropriate matters
1141 [the association deems necessary and appropriate] including matters
1142 that could be adopted as rules.

1143 Sec. 23. Section 47-250 of the general statutes is repealed and the
1144 following is substituted in lieu thereof (*Effective October 1, 2009*):

1145 [A meeting of the association shall be held at least once each year.
1146 Special meetings of the association may be called by the president,] (a)
1147 The following requirements apply to unit owner meetings: (1) An
1148 association shall hold a meeting of unit owners annually at a time, date
1149 and place stated in or fixed in accordance with the bylaws; (2) an
1150 association shall hold a special meeting of unit owners to address any
1151 matter affecting the common interest community or the association if
1152 its president, a majority of the executive board, or [by] unit owners

1153 having at least twenty per cent, or any lower percentage specified in
1154 the bylaws, of the votes in the association request that the secretary call
1155 the meeting. [Not less than ten nor more than sixty days in advance of
1156 any meeting, the secretary or other officer specified in the bylaws shall
1157 cause notice to be hand-delivered or sent prepaid by United States
1158 mail to the mailing address of each unit or to any other mailing
1159 address designated in writing by the unit owner.] If the association
1160 does not notify unit owners of a special meeting within thirty days
1161 after the requisite number or percentage of unit owners request the
1162 secretary to do so, the requesting unit owners may directly notify all
1163 the unit owners of the meeting. Only matters described in the meeting
1164 notice required by subdivision (3) of this subsection may be considered
1165 at a special meeting; (3) an association shall notify unit owners of the
1166 time, date and place of each annual and special unit owners meeting
1167 not less than ten days or more than sixty days before the meeting date.
1168 Notice may be by any means described in section 32 of this act. The
1169 notice of any meeting shall state the time, date and place of the
1170 meeting and the items on the agenda, including (A) a statement of the
1171 general nature of any proposed amendment to the declaration or
1172 bylaws, (B) any budget changes, and (C) any proposal to remove an
1173 officer or member of the executive board; (4) the minimum time to give
1174 notice required by subdivision (3) of this subsection may be reduced or
1175 waived for a meeting called to deal with an emergency; (5) unit owners
1176 shall be given a reasonable opportunity at any meeting to comment
1177 regarding any matter affecting the common interest community or the
1178 association; and (6) the declaration or bylaws may allow for meetings
1179 of unit owners to be conducted by telephonic, video or other
1180 conferencing process if the alternative process is consistent with
1181 subdivision (7) of subsection (b) of this section.

1182 (b) The following requirements apply to meetings of the executive
1183 board and committees of the association authorized to act for the
1184 association:

1185 (1) Meetings shall be open to the unit owners except during
1186 executive sessions. The executive board and those committees may

1187 hold an executive session only during a regular or special meeting of
1188 the board or a committee. No final vote or action may be taken during
1189 an executive session. An executive session may be held only to: (A)
1190 Consult with the association's attorney concerning legal matters; (B)
1191 discuss existing or potential litigation or mediation, arbitration or
1192 administrative proceedings; (C) discuss labor or personnel matters; (D)
1193 discuss contracts, leases and other commercial transactions to purchase
1194 or provide goods or services currently being negotiated, including the
1195 review of bids or proposals, if premature general knowledge of those
1196 matters would place the association at a disadvantage; or (E) prevent
1197 public knowledge of the matter to be discussed if the executive board
1198 or committee determines that public knowledge would violate the
1199 privacy of any person.

1200 (2) For purposes of this section, a gathering of board members at
1201 which the board members do not conduct association business is not a
1202 meeting of the executive board. The executive board and its members
1203 may not use incidental or social gatherings of board members or any
1204 other method to evade the open meeting requirements of this section.

1205 (3) During the period of declarant control, the executive board shall
1206 meet at least four times a year. At least one of those meetings shall be
1207 held at the common interest community or at a place convenient to the
1208 community. After termination of the period of declarant control, all
1209 executive board meetings shall be at the common interest community
1210 or at a place convenient to the community unless the unit owners
1211 amend the bylaws to vary the location of those meetings.

1212 (4) At each executive board meeting, the executive board shall
1213 provide a reasonable opportunity for unit owners to comment
1214 regarding any matter affecting the common interest community and
1215 the association.

1216 (5) Unless the meeting is included in a schedule given to the unit
1217 owners or the meeting is called to deal with an emergency, the
1218 secretary or other officer specified in the bylaws shall give notice of
1219 each executive board meeting to each board member and to the unit

1220 owners. The notice shall be given at least ten days before the meeting
1221 and shall state the time, date, place and agenda of the meeting.

1222 (6) If any materials are distributed to the executive board before the
1223 meeting, the executive board at the same time shall make copies of
1224 those materials reasonably available to unit owners, except that the
1225 board need not make available copies of unapproved minutes or
1226 materials that are to be considered in executive session.

1227 (7) Unless the declaration or bylaws otherwise provide, the
1228 executive board may meet by telephonic, video or other conferencing
1229 process if (A) the meeting notice states the conferencing process to be
1230 used and provides information explaining how unit owners may
1231 participate in the conference directly or by meeting at a central location
1232 or conference connection; and (B) the process provides all unit owners
1233 the opportunity to hear or perceive the discussion and offer comments
1234 as provided in subdivision (4) of this subsection.

1235 (8) After termination of the period of declarant control, unit owners
1236 may amend the bylaws to vary the procedures for meetings and
1237 conference calls described in subdivision (7) of this subsection.

1238 (9) Instead of meeting, the executive board may act by unanimous
1239 consent as documented in a record authenticated by all its members.
1240 The secretary promptly shall give notice to all unit owners of any
1241 action taken by unanimous consent. After termination of the period of
1242 declarant control, the executive board may act by unanimous consent
1243 only to undertake ministerial actions or to implement actions
1244 previously taken at a meeting of the executive board.

1245 (10) Even if an action by the executive board is not in compliance
1246 with this section, it is valid unless set aside by a court. A challenge to
1247 the validity of an action of the executive board for failure to comply
1248 with this section may not be brought more than sixty days after the
1249 minutes of the executive board of the meeting at which the action was
1250 taken are approved or the record of that action is distributed to unit
1251 owners, whichever is later.

1252 Sec. 24. Section 47-251 of the general statutes is repealed and the
1253 following is substituted in lieu thereof (*Effective October 1, 2009*):

1254 (a) Unless the bylaws otherwise provide, [otherwise,] a quorum is
1255 present throughout any meeting of the [association] unit owners if
1256 persons entitled to cast twenty per cent of the votes [that may be cast
1257 for election of the executive board are] in the association:

1258 (1) Are present in person or by proxy at the beginning of the
1259 meeting;

1260 (2) Have cast absentee ballots solicited in accordance with
1261 subdivision (4) of subsection (c) of section 47-252, as amended by this
1262 act, which have been delivered to the secretary in a timely manner; or

1263 (3) Are present by any combination of subdivision (1) or (2) of this
1264 subsection.

1265 (b) Unless the bylaws specify a larger [percentage] number, a
1266 quorum of the executive board is [deemed] present [throughout any]
1267 for purposes of determining the validity of any action taken at a
1268 meeting of the executive board only if [persons] individuals entitled to
1269 cast [fifty per cent] a majority of the votes on that board are present at
1270 the [beginning of the meeting] time a vote regarding that action is
1271 taken. If a quorum is present when a vote is taken, the affirmative vote
1272 of a majority of the board members present is the act of the executive
1273 board unless a greater vote is required by the declaration or bylaws.

1274 (c) Except as otherwise provided in the bylaws, meetings of the
1275 association must be conducted in accordance with the most recent
1276 edition of Roberts' Rules of Order Newly Revised.

1277 Sec. 25. Section 47-252 of the general statutes is repealed and the
1278 following is substituted in lieu thereof (*Effective October 1, 2009*):

1279 (a) Unless prohibited or limited by the declaration or bylaws, unit
1280 owners may vote at a meeting in person, by absentee ballot pursuant
1281 to subdivision (4) of subsection (b) of this section, by a proxy pursuant

1282 to subsection (c) of this section or, when a vote is conducted without a
1283 meeting, by electronic or paper ballot pursuant to subsection (d) of this
1284 section.

1285 (b) At a meeting of unit owners the following requirements apply:

1286 (1) Unit owners who are present in person may vote by voice vote,
1287 show of hands, standing or any other method for determining the
1288 votes of unit owners, as designated by the person presiding at the
1289 meeting.

1290 (2) If only one of several owners of a unit is present, [at a meeting of
1291 the association,] that owner is entitled to cast all the votes allocated to
1292 that unit. If more than one of the owners are present, the votes
1293 allocated to that unit may be cast only in accordance with the
1294 agreement of a majority in interest of the owners, unless the
1295 declaration expressly provides otherwise. There is majority agreement
1296 if any one of the owners casts the votes allocated to [that] the unit
1297 without protest being made promptly to the person presiding over the
1298 meeting by any of the other owners of the unit.

1299 [(b)] (3) Unless a greater number or fraction of the votes in the
1300 association is required by this chapter or the declaration, a majority of
1301 the votes cast determines the outcome of any action of the association.

1302 (4) Subject to subsection (a) of this section, a unit owner may vote by
1303 absentee ballot without being present at the meeting. The association
1304 promptly shall deliver an absentee ballot to a unit owner who requests
1305 it if the request is made at least three days before the scheduled
1306 meeting. Votes cast by absentee ballot must be included in the tally of
1307 a vote taken at that meeting.

1308 (5) When a unit owner votes by absentee ballot, the association must
1309 be able to verify that the ballot is cast by the unit owner having the
1310 right to do so.

1311 (c) Except as otherwise provided in the declaration or bylaws, the
1312 following requirements apply with respect to proxy voting: (1) Votes

1313 allocated to a unit may be cast pursuant to a directed or undirected
1314 proxy duly executed by a unit owner; [. If] (2) if a unit is owned by
1315 more than one person, each owner of the unit may vote or register
1316 protest to the casting of votes by the other owners of the unit through a
1317 duly executed proxy; [. A] (3) a unit owner may revoke a proxy given
1318 pursuant to this section only by actual notice of revocation to the
1319 person presiding over a meeting of the association; [. A] (4) a proxy is
1320 void if it is not dated or purports to be revocable without notice; [. A]
1321 (5) a proxy terminates one year after its date, unless it specifies a
1322 shorter term; and (6) a person may not cast undirected proxies
1323 representing more than fifteen per cent of the votes in the association.

1324 (d) Unless prohibited or limited by the declaration or bylaws, an
1325 association may conduct a vote without a meeting. In that event, the
1326 following requirements apply:

1327 (1) The association shall notify the unit owners that the vote will be
1328 taken by ballot;

1329 (2) The association shall deliver a paper or electronic ballot to every
1330 unit owner entitled to vote on the matter;

1331 (3) The ballot must set forth each proposed action and provide an
1332 opportunity to vote for or against the action;

1333 (4) When the association delivers the ballots, it shall also: (A)
1334 Indicate the number of responses needed to meet the quorum
1335 requirement; (B) state the percentage of votes necessary to approve
1336 each matter other than election of directors; (C) specify the time and
1337 date by which a ballot must be delivered to the association to be
1338 counted, which date may not be fewer than three days after the date
1339 the association delivers the ballot; and (D) describe the time, date and
1340 manner by which unit owners wishing to deliver information to all
1341 unit owners regarding the subject of the vote may do so;

1342 (5) Except as otherwise provided in the declaration or bylaws, a
1343 ballot is not revoked after delivery to the association by death or

1344 disability or attempted revocation by the person that cast that vote;
1345 and

1346 (6) Approval by ballot pursuant to this subsection is valid only if the
1347 number of votes cast by ballot equals or exceeds the quorum required
1348 to be present at a meeting authorizing the action.

1349 [(c)] (e) If the declaration requires that votes on specified matters
1350 affecting the common interest community be cast by lessees rather
1351 than unit owners of leased units: (1) [The provisions of subsections (a)
1352 and (b) of this] This section [apply] applies to lessees as if they were
1353 unit owners; (2) unit owners [who] that have leased their units to other
1354 persons may not cast votes on those specified matters; and (3) lessees
1355 are entitled to notice of meetings, access to records and other rights
1356 respecting those matters as if they were unit owners.

1357 (f) Unit owners shall also be given notice [, in the manner provided
1358 in section 47-250,] of all meetings at which lessees are entitled to vote.

1359 [(d)] (g) [No votes] Votes allocated to a unit owned by the
1360 association [may] shall be cast in any vote of the unit owners in the
1361 same proportion as the votes cast on the matter by unit owners other
1362 than the association.

1363 Sec. 26. Section 47-255 of the general statutes is repealed and the
1364 following is substituted in lieu thereof (*Effective October 1, 2009*):

1365 (a) Commencing not later than the time of the first conveyance of a
1366 unit to a person other than a declarant, the association shall maintain,
1367 to the extent reasonably available and subject to reasonable
1368 deductibles: (1) Property insurance on the common elements and, in a
1369 planned community, also on property that must become common
1370 elements, insuring against [all] risks of direct physical loss commonly
1371 insured against, [or, in the case of a conversion building, against fire
1372 and extended coverage perils. The total amount of] which insurance,
1373 after application of any deductibles shall be not less than eighty per
1374 cent of the actual cash value of the insured property at the time the

1375 insurance is purchased and at each renewal date, exclusive of land,
1376 excavations, foundations and other items normally excluded from
1377 property policies; (2) flood insurance in the event the condominium is
1378 located in a flood hazard area, as defined and determined by the
1379 National Flood Insurance Act, as amended, USC 42 Section 4101, P.L.
1380 93-234, and the unit owners by vote direct; [and] (3) commercial
1381 general liability insurance, including medical payments insurance, in
1382 an amount determined by the executive board but not less than any
1383 amount specified in the declaration, covering all occurrences
1384 commonly insured against for [death,] bodily injury and property
1385 damage arising out of or in connection with the use, ownership or
1386 maintenance of the common elements and, in cooperatives, also of all
1387 units; and (4) fidelity insurance.

1388 (b) In the case of a building [that is part of a cooperative or] that
1389 contains units [having] divided by horizontal boundaries described in
1390 the declaration, or vertical boundaries that comprise common walls
1391 between units, the insurance maintained under subdivision (1) of
1392 subsection (a) of this section, to the extent reasonably available, shall
1393 include the units, but need not include improvements and betterments
1394 installed by unit owners.

1395 (c) If the insurance described in subsections (a) and (b) of this
1396 section is not reasonably available, the association promptly shall
1397 cause notice of that fact to be [hand-delivered or sent prepaid by
1398 United States mail] given to all unit owners. The declaration may
1399 require the association to carry any other insurance, and the
1400 association [in any event] may carry any other insurance it considers
1401 appropriate to protect the association or the unit owners.

1402 (d) Insurance policies carried pursuant to subsections (a) and (b) of
1403 this section shall provide that: (1) Each unit owner is an insured person
1404 under the policy with respect to liability arising out of his interest in
1405 the common elements or membership in the association; (2) the insurer
1406 waives its right to subrogation under the policy against any unit owner
1407 or member of his household; (3) no act or omission by any unit owner,

1408 unless acting within the scope of his authority on behalf of the
1409 association, will void the policy or be a condition to recovery under the
1410 policy; and (4) if, at the time of a loss under the policy, there is other
1411 insurance in the name of a unit owner covering the same risk covered
1412 by the policy, the association's policy provides primary insurance.

1413 (e) Any loss covered by the property policy under subdivision (1) of
1414 subsection (a) and subsection (b) of this section shall be adjusted with
1415 the association, but the insurance proceeds for that loss are payable to
1416 any insurance trustee designated for that purpose, or otherwise to the
1417 association, and not to any holder of a security interest. The insurance
1418 trustee or the association shall hold any insurance proceeds in trust for
1419 the association, unit owners and lien holders as their interests may
1420 appear. Subject to the provisions of subsection (h) of this section, the
1421 proceeds shall be disbursed first for the repair or [restoration]
1422 replacement of the damaged property, and the association, unit
1423 owners and lien holders are not entitled to receive payment of any
1424 portion of the proceeds unless there is a surplus of proceeds after the
1425 property has been completely repaired or [restored] replaced, or the
1426 common interest community is terminated.

1427 (f) An insurance policy issued to the association does not prevent a
1428 unit owner from obtaining insurance for his own benefit.

1429 (g) An insurer that has issued an insurance policy under this section
1430 shall issue certificates or memoranda of insurance to the association
1431 and, on written request, to any unit owner or holder of a security
1432 interest. The insurer issuing the policy may not cancel or refuse to
1433 renew it until sixty days after notice of the proposed cancellation or
1434 nonrenewal has been mailed to the association, each unit owner and
1435 each holder of a security interest to whom a certificate or
1436 memorandum of insurance has been issued at their respective last
1437 known addresses.

1438 (h) (1) Any portion of the common interest community for which
1439 insurance is required under this section which is damaged or
1440 destroyed shall be repaired or replaced promptly by the association

1441 unless (A) the common interest community is terminated, in which
1442 case section 47-237, as amended by this act, applies, (B) repair or
1443 replacement would be illegal under any state or local statute or
1444 ordinance governing health or safety, or (C) eighty per cent of the unit
1445 owners, including every owner of a unit or assigned limited common
1446 element that will not be rebuilt, vote not to rebuild. The cost of repair
1447 or replacement in excess of insurance proceeds, deductibles and
1448 reserves, regardless of whether such excess is the result of the
1449 application of a deductible under insurance coverage, is a common
1450 expense. (2) If the entire common interest community is not repaired or
1451 replaced, (A) the insurance proceeds attributable to the damaged
1452 common elements shall be used to restore the damaged area to a
1453 condition compatible with the remainder of the common interest
1454 community, and (B) except to the extent that other persons will be
1455 distributees, (i) the insurance proceeds attributable to units and limited
1456 common elements that are not rebuilt shall be distributed to the
1457 owners of those units and the owners of the units to which those
1458 limited common elements were allocated, or to lien holders, as their
1459 interests may appear, and (ii) the remainder of the proceeds shall be
1460 distributed to all the unit owners or lien holders, as their interests may
1461 appear, in proportion to the common expense liabilities of all the units.
1462 (3) If the unit owners vote not to rebuild any unit, that unit's allocated
1463 interests are automatically reallocated on the vote as if the unit had
1464 been condemned under subsection (a) of section 47-206, and the
1465 association promptly shall prepare, execute and record an amendment
1466 to the declaration reflecting the reallocations.

1467 (i) The provisions of this section may be varied or waived in the case
1468 of a common interest community all of whose units are restricted to
1469 nonresidential use.

1470 Sec. 27. Section 47-256 of the general statutes is repealed and the
1471 following is substituted in lieu thereof (*Effective October 1, 2009*):

1472 Unless otherwise provided in the declaration, any surplus funds of
1473 the association remaining after payment of or provision for common

1474 expenses and any prepayment of reserves shall be paid annually to the
1475 unit owners in proportion to their common expense liabilities or
1476 credited to them to reduce their future common expense assessments.

1477 Sec. 28. Section 47-257 of the general statutes is repealed and the
1478 following is substituted in lieu thereof (*Effective October 1, 2009*):

1479 (a) Until the association makes a common expense assessment, the
1480 declarant shall pay all common expenses. After an assessment has
1481 been made by the association, assessments shall be made at least
1482 annually, based on a budget adopted at least annually by the
1483 association.

1484 (b) Except for assessments under subsections (c), (d) and (e) of this
1485 section, or as otherwise provided in this chapter, all common expenses
1486 shall be assessed against all the units in accordance with the allocations
1487 set forth in the declaration pursuant to subsections (a) and (b) of
1488 section 47-226. [Any] The association may charge interest on any past
1489 due [common expense] assessment or [installment] portion thereof
1490 [bears interest] at the rate established by the association, not exceeding
1491 eighteen per cent per year.

1492 (c) To the extent required by the declaration: (1) Any common
1493 expense associated with the maintenance, repair or replacement of a
1494 limited common element shall be assessed against the units to which
1495 that limited common element is assigned, equally, or in any other
1496 proportion the declaration provides; (2) any common expense or
1497 portion thereof benefiting fewer than all of the units [shall] or their
1498 owners may be assessed exclusively against the units benefited; and (3)
1499 the costs of insurance shall be assessed in proportion to risk and the
1500 costs of utilities shall be assessed in proportion to usage.

1501 (d) Assessments to pay a judgment against the association may be
1502 made only against the units in the common interest community at the
1503 time the judgment was rendered, in proportion to their common
1504 expense liabilities.

1505 (e) If damage to a unit or other part of the common interest
1506 community, or if any other common expense is caused by the wilful
1507 misconduct or gross negligence of any unit owner or a guest or invitee
1508 of a unit owner, the association may, after notice and hearing, assess
1509 that expense exclusively against [his unit] that owner's unit, even if the
1510 association maintains insurance with respect to that damage or
1511 common expense.

1512 (f) If common expense liabilities are reallocated, common expense
1513 assessments and any installment thereof not yet due shall be
1514 recalculated in accordance with the reallocated common expense
1515 liabilities.

1516 (g) No unit owner may exempt himself from liability for payment of
1517 the common expenses by waiver of the use or enjoyment of any of the
1518 common elements or by abandonment of the unit against which the
1519 assessments are made.

1520 Sec. 29. Section 47-258 of the general statutes is repealed and the
1521 following is substituted in lieu thereof (*Effective October 1, 2009*):

1522 (a) The association has a statutory lien on a unit for any assessment
1523 [levied against] attributable to that unit or fines imposed against its
1524 unit owner. Unless the declaration otherwise provides, reasonable
1525 attorneys' fees and costs, other fees, charges, late charges, fines and
1526 interest charged pursuant to subdivisions (10), (11) and (12) of
1527 subsection (a) of section 47-244, as amended by this act, and any other
1528 sums due to the association under the declaration, this chapter, or as a
1529 result of an administrative, arbitration, mediation or judicial decision
1530 are enforceable in the same manner as unpaid assessments under this
1531 section. If an assessment is payable in installments, the full amount of
1532 the assessment is a lien from the time the first installment thereof
1533 becomes due.

1534 (b) A lien under this section is prior to all other liens and
1535 encumbrances on a unit except (1) liens and encumbrances recorded
1536 before the recordation of the declaration and, in a cooperative, liens

1537 and encumbrances which the association creates, assumes or takes
1538 subject to, (2) a first or second security interest on the unit recorded
1539 before the date on which the assessment sought to be enforced became
1540 delinquent, or, in a cooperative, a first or second security interest
1541 encumbering only the unit owner's interest and perfected before the
1542 date on which the assessment sought to be enforced became
1543 delinquent, and (3) liens for real property taxes and other
1544 governmental assessments or charges against the unit or cooperative.
1545 The lien is also prior to all security interests described in subdivision
1546 (2) of this subsection to the extent of (A) an amount equal to the
1547 common expense assessments based on the periodic budget adopted
1548 by the association pursuant to subsection (a) of section 47-257, as
1549 amended by this act, which would have become due in the absence of
1550 acceleration during the six months immediately preceding institution
1551 of an action to enforce either the association's lien or a security interest
1552 described in subdivision (2) of this subsection and (B) the association's
1553 costs and attorney's fees in enforcing its lien. A lien for any assessment
1554 or fine specified in subsection (a) of this section shall have the priority
1555 provided for in this subsection in an amount not to exceed the amount
1556 specified in subparagraph (A) of this subsection. This subsection does
1557 not affect the priority of mechanics' or materialmen's liens or the
1558 priority of liens for other assessments made by the association.

1559 (c) Unless the declaration otherwise provides, if two or more
1560 associations have liens for assessments created at any time on the same
1561 property, those liens have equal priority.

1562 (d) Recording of the declaration constitutes record notice and
1563 perfection of the lien. No further recordation of any claim of lien for
1564 assessment under this section is required.

1565 (e) A lien for unpaid assessments is extinguished unless
1566 proceedings to enforce the lien are instituted within [two] three years
1567 after the full amount of the assessments becomes due; provided, that if
1568 an owner of a unit subject to a lien under this section files a petition for
1569 relief under the United States Bankruptcy Code, the period of time for

1570 instituting proceedings to enforce the association's lien shall be tolled
1571 until thirty days after the automatic stay of proceedings under Section
1572 362 of the Bankruptcy Code is lifted.

1573 (f) This section does not prohibit actions against unit owners to
1574 recover sums for which subsection (a) of this section creates a lien or
1575 prohibit an association from taking a deed in lieu of foreclosure.

1576 (g) A judgment or decree in any action brought under this section
1577 shall include costs and reasonable attorney's fees for the prevailing
1578 party.

1579 (h) The association on written request shall furnish to a unit owner a
1580 statement in recordable form setting forth the amount of unpaid
1581 assessments against the unit. The statement shall be furnished within
1582 ten business days after receipt of the request and is binding on the
1583 association, the executive board and every unit owner.

1584 (i) In a cooperative, on nonpayment of an assessment on a unit, the
1585 unit owner may be evicted in the same manner as provided by law in
1586 the case of an unlawful holdover by a tenant, and the lien may be
1587 foreclosed as provided by this section.

1588 (j) The association's lien may be foreclosed in like manner as a
1589 mortgage on real property.

1590 (k) In any action by the association to collect assessments or to
1591 foreclose a lien for unpaid assessments, the court may appoint a
1592 receiver of the unit owner pursuant to section 52-504 to collect all sums
1593 alleged to be due from that unit owner prior to or during the pendency
1594 of the action. The court may order the receiver to pay any sums held
1595 by the receiver to the association during the pendency of the action to
1596 the extent of the association's common expense assessments based on a
1597 periodic budget adopted by the association pursuant to subsection (a)
1598 of section 47-257, as amended by this act.

1599 (l) If a holder of a first or second security interest on a unit
1600 forecloses that security interest, the purchaser at the foreclosure sale is

1601 not liable for any unpaid assessments against that unit which became
1602 due before the sale, other than the assessments which are prior to that
1603 security interest under subsection (b) of this section. Any unpaid
1604 assessments not satisfied from the proceeds of sale become common
1605 expenses collectible from all the unit owners, including the purchaser.

1606 (m) An association may not commence an action to foreclose a lien
1607 on a unit under this section unless: (1) The unit owner, at the time the
1608 action is commenced, owes a sum equal to at least three months of
1609 common expense assessments based on the periodic budget last
1610 adopted by the association pursuant to subsection (a) of section 47-257,
1611 as amended by this act, and the unit owner has failed to accept or
1612 comply with a payment plan offered by the association; and (2) the
1613 executive board votes to commence a foreclosure action specifically
1614 against that unit.

1615 (n) Unless the parties otherwise agree, the association shall apply
1616 any sums paid by unit owners who are delinquent in paying
1617 assessments in the following order: (1) Unpaid assessments; (2) late
1618 charges; (3) reasonable attorney's fees and costs and other reasonable
1619 collection charges; and (4) all other unpaid fees, charges, fines,
1620 penalties, interest and late charges.

1621 (o) If the only sums due with respect to a unit are fines and related
1622 sums imposed against the unit, a foreclosure action may not be
1623 commenced against the unit unless the association has a judgment
1624 against the unit owner for the fines and related sums and has perfected
1625 a judgment lien against the unit.

1626 (p) Every aspect of a foreclosure, sale or other disposition under this
1627 section, including the method, advertising, time, date, place and terms,
1628 shall be commercially reasonable.

1629 Sec. 30. Section 47-260 of the general statutes is repealed and the
1630 following is substituted in lieu thereof (*Effective October 1, 2009*):

1631 [(a) The association shall keep financial records sufficiently detailed

1632 to enable the association to comply with section 47-270. All accounting,
1633 financial and other books and records of the association, including, but
1634 not limited to, minutes of meetings and voting records of the executive
1635 board, shall be made reasonably available by the executive board or a
1636 managing agent of the association for examination and copying by any
1637 unit owner, or the unit owner's authorized agent, upon the request of
1638 such unit owner or agent.]

1639 (a) An association shall retain the following:

1640 (1) Detailed records of receipts and expenditures affecting the
1641 operation and administration of the association and other appropriate
1642 accounting records;

1643 (2) Minutes of all meetings of its unit owners and executive board
1644 other than executive sessions, a record of all actions taken by the unit
1645 owners or executive board without a meeting, and a record of all
1646 actions taken by a committee in place of the executive board on behalf
1647 of the association;

1648 (3) The names of unit owners in a form that permits preparation of a
1649 list of the names of all owners and the addresses at which the
1650 association communicates with them, in alphabetical order showing
1651 the number of votes each owner is entitled to cast;

1652 (4) Its original or restated organizational documents, if required by
1653 law other than this chapter, bylaws and all amendments to them, and
1654 all rules currently in effect;

1655 (5) All financial statements and tax returns of the association for the
1656 past three years;

1657 (6) A list of the names and addresses of its current executive board
1658 members and officers;

1659 (7) Its most recent annual report delivered to the Secretary of the
1660 State, if any;

1661 (8) Financial and other records sufficiently detailed to enable the
1662 association to comply with section 47-270;

1663 (9) Copies of current contracts to which it is a party;

1664 (10) Records of executive board or committee actions to approve or
1665 deny any requests for design or architectural approval from unit
1666 owners; and

1667 (11) Ballots, proxies and other records related to voting by unit
1668 owners for one year after the election, action or vote to which they
1669 relate.

1670 (b) Subject to subsections (c) and (d) of this section, all records
1671 retained by an association shall be available for examination and
1672 copying by a unit owner or the owner's authorized agent:

1673 (1) During reasonable business hours or at a mutually convenient
1674 time and location; and

1675 (2) Upon five days' notice in a record reasonably identifying the
1676 specific records of the association requested.

1677 (c) Records retained by an association may be withheld from
1678 inspection and copying to the extent that they concern:

1679 (1) Personnel, salary and medical records relating to specific
1680 individuals;

1681 (2) Contracts, leases and other commercial transactions to purchase
1682 or provide goods or services, currently being negotiated;

1683 (3) Existing or potential litigation or mediation, arbitration or
1684 administrative proceedings;

1685 (4) Existing or potential matters involving federal, state or local
1686 administrative or other formal proceedings before a governmental
1687 tribunal for enforcement of the declaration, bylaws or rules;

1688 (5) Communications with the association's attorney which are
1689 otherwise protected by the attorney-client privilege or the attorney
1690 work-product doctrine;

1691 (6) Information the disclosure of which would violate law other
1692 than this chapter;

1693 (7) Records of an executive session of the executive board; or

1694 (8) Individual unit files other than those of the requesting owner.

1695 (d) An association may charge a reasonable fee for providing copies
1696 of any records under this section and for supervising the unit owner's
1697 inspection.

1698 (e) A right to copy records under this section includes the right to
1699 receive copies by photocopying or other means, including copies
1700 through an electronic transmission if available upon request by the
1701 unit owner.

1702 (f) An association is not obligated to compile or synthesize
1703 information.

1704 (g) Information provided pursuant to this section may not be used
1705 for commercial purposes.

1706 [(b)] (h) Notwithstanding any provision of the declaration or bylaws
1707 to the contrary, at least fourteen days prior to entering into any loan
1708 agreement on behalf of the association, the executive board shall (1)
1709 disclose in writing to all unit owners the amount and terms of the loan
1710 and the estimated effect of such loan on any common expense
1711 assessment, and (2) afford the unit owners a reasonable opportunity to
1712 submit written comments to the executive board with respect to such
1713 loan.

1714 Sec. 31. (NEW) (Effective October 1, 2009) (a) Before adopting,
1715 amending or repealing any rule, the executive board shall give all unit
1716 owners notice of: (1) Its intention to adopt, amend or repeal a rule and

1717 provide the text of the rule or the proposed change; and (2) a date on
1718 which the executive board will act on the proposed rule or amendment
1719 after considering comments from unit owners.

1720 (b) Following adoption, amendment or repeal of a rule, the
1721 association shall notify the unit owners of its action and provide a copy
1722 of any new or revised rule.

1723 (c) An association may adopt rules to establish and enforce
1724 construction and design criteria and aesthetic standards if the
1725 declaration so provides. If the declaration so provides, the association
1726 shall adopt procedures for enforcement of those standards and for
1727 approval of construction applications, including a reasonable time
1728 within which the association must act after an application is submitted
1729 and the consequences of its failure to act.

1730 (d) A rule regulating display of the flag of the United States must be
1731 consistent with federal law. In addition, the association may not
1732 prohibit display on a unit or on a limited common element adjoining a
1733 unit of the flag of this state, or signs regarding candidates for public or
1734 association office or ballot questions, but the association may adopt
1735 rules governing the time, place, size, number and manner of those
1736 displays.

1737 (e) Unit owners may peacefully assemble on the common elements
1738 to consider matters related to the common interest community, but the
1739 association may adopt rules governing the time, place and manner of
1740 those assemblies.

1741 (f) An association may adopt rules that affect the use of or behavior
1742 in units that may be used for residential purposes, only to: (1)
1743 Implement a provision of the declaration; (2) regulate any behavior in
1744 or occupancy of a unit which violates the declaration or adversely
1745 affects the use and enjoyment of other units or the common elements
1746 by other unit owners; or (3) restrict the leasing of residential units to
1747 the extent those rules are reasonably designed to meet underwriting
1748 requirements of institutional lenders that regularly make loans secured

1749 by first mortgages on units in common interest communities or
1750 regularly purchase those mortgages.

1751 (g) An association's internal business operating procedures need not
1752 be adopted as rules.

1753 (h) Every rule must be reasonable.

1754 Sec. 32. (NEW) (*Effective October 1, 2009*) (a) An association shall
1755 deliver any notice required to be given by the association under
1756 chapter 828 of the general statutes, as amended by this act, and
1757 sections 2, 8, 9, 13, 17 and 31 to 35, inclusive, of this act, to any mailing
1758 or electronic mail address a unit owner designates. Otherwise, the
1759 association may deliver notices by: (1) Hand delivery to each unit
1760 owner; (2) hand delivery, United States mail postage paid, or
1761 commercially reasonable delivery service to the mailing address of
1762 each unit; (3) electronic means, if the unit owner has given the
1763 association an electronic address; or (4) any other method reasonably
1764 calculated to provide notice to the unit owner.

1765 (b) The ineffectiveness of a good faith effort to deliver notice by an
1766 authorized means does not invalidate action taken at or without a
1767 meeting.

1768 Sec. 33. (NEW) (*Effective October 1, 2009*) (a) Notwithstanding any
1769 provision of the declaration or bylaws, unit owners present in person,
1770 by proxy or by absentee ballot at any meeting of the unit owners at
1771 which a quorum is present, may remove any member of the executive
1772 board and any officer elected by the unit owners, with or without
1773 cause, if the number of votes cast in favor of removal exceeds the
1774 number of votes cast in opposition to removal, except that: (1) A
1775 member appointed by the declarant may not be removed by a unit
1776 owner vote during the period of declarant control; (2) a member
1777 appointed under subsection (g) of section 47-245 of the general
1778 statutes, as amended by this act, may be removed only by the person
1779 that appointed that member; and (3) the unit owners may not consider
1780 whether to remove a member of the executive board or an officer

1781 elected by the unit owners at a meeting of the unit owners unless that
1782 subject was listed in the notice of the meeting.

1783 (b) At any meeting at which a vote to remove a member of the
1784 executive board or an officer is to be taken, the member or officer being
1785 considered for removal must have a reasonable opportunity to speak
1786 before the vote.

1787 Sec. 34. (NEW) (*Effective October 1, 2009*) (a) The executive board, at
1788 least annually, shall adopt a proposed budget for the common interest
1789 community for consideration by the unit owners. Not later than thirty
1790 days after adoption of a proposed budget, the executive board shall
1791 provide to all the unit owners a summary of the budget, including any
1792 reserves, and a statement of the basis on which any reserves are
1793 calculated and funded. Simultaneously, the board shall set a date not
1794 less than ten days or more than sixty days after providing the
1795 summary for a meeting of the unit owners to consider ratification of
1796 the budget. Unless at that meeting a majority of all unit owners or any
1797 larger number specified in the declaration reject the budget, the budget
1798 is ratified, whether or not a quorum is present. If a proposed budget is
1799 rejected, the budget last ratified by the unit owners continues until unit
1800 owners ratify a subsequent budget.

1801 (b) The executive board, at any time, may propose a special
1802 assessment. Except as otherwise provided in subsection (c) of this
1803 section, the assessment is effective only if the executive board follows
1804 the procedures for ratification of a budget described in subsection (a)
1805 of this section and the unit owners do not reject the proposed
1806 assessment.

1807 (c) If the executive board determines by a two-thirds vote that a
1808 special assessment is necessary to respond to an emergency: (1) The
1809 special assessment becomes effective immediately in accordance with
1810 the terms of the vote; (2) notice of the emergency assessment must be
1811 provided promptly to all unit owners; and (3) the executive board may
1812 spend the funds paid on account of the emergency assessment only for
1813 the purposes described in the vote.

1814 Sec. 35. (NEW) (*Effective October 1, 2009*) (a) The following
1815 requirements apply to an association's authority under subdivision (4)
1816 of subsection (a) of section 47-244 of the general statutes, as amended
1817 by this act, to institute and maintain a proceeding alleging a
1818 construction defect with respect to the common interest community,
1819 whether by litigation, mediation, arbitration or administratively,
1820 against a declarant or an employee, independent contractor or other
1821 person directly or indirectly providing labor or materials to a
1822 declarant:

1823 (1) Subject to subsection (e) of this section, before the association
1824 institutes a proceeding described in this section, it shall provide notice
1825 in a record of its claims to the declarant and those persons that the
1826 association seeks to hold liable for the claimed defects. The text of the
1827 notice may be in any form reasonably calculated to give notice of the
1828 general nature of the association's claims, including a list of the
1829 claimed defects. The notice may be delivered by any method of service
1830 and may be addressed to any person if the method of service used: (A)
1831 Provides actual notice to the person named in the claim; or (B) would
1832 be sufficient to give notice to the person in connection with
1833 commencement of an action by the association against the person.

1834 (2) Subject to subsection (e) of this section, the association may not
1835 institute a proceeding against a person until forty-five days after the
1836 association sends notice of its claim to that person.

1837 (3) During the period described in subdivision (2) of this subsection,
1838 the declarant and any other person to which the association gave
1839 notice may present to the association a plan to repair or otherwise
1840 remedy the construction defects described in the notice. If the
1841 association does not receive a timely remediation plan from a person
1842 to which it gave notice, or if the association does not accept the terms
1843 of any plan submitted, the association may institute a proceeding
1844 against the person.

1845 (4) If the association receives one or more timely remediation plans,
1846 the executive board shall consider promptly those plans and notify the

1847 persons to which it directed notice whether the plan is acceptable as
1848 presented, acceptable with stated conditions, or not accepted.

1849 (5) If the association accepts a remediation plan from a person the
1850 association seeks to hold liable for the claimed defect, or if a person
1851 agrees to stated conditions to an otherwise acceptable plan, the parties
1852 shall agree on a period for implementation of the plan. The association
1853 may not institute a proceeding against the person during the time the
1854 plan is being diligently implemented.

1855 (6) Any statute of limitation affecting the association's right of action
1856 against a declarant or other person is tolled during the period
1857 described in subdivision (2) of this subsection and during any
1858 extension of that time because a person to which notice was directed
1859 has commenced and is diligently pursuing the remediation plan.

1860 (b) After the time described in subdivision (2) of subsection (a) of
1861 this section expires, whether or not the association agrees to any
1862 remediation plan, a proceeding may be instituted by: (1) The
1863 association against a person to which notice was directed which fails to
1864 submit a timely remediation plan, the plan of which is not acceptable,
1865 or which fails to pursue diligent implementation of that plan; or (2) a
1866 unit owner with respect to the owner's unit and any limited common
1867 elements assigned to that unit, regardless of any action of the
1868 association.

1869 (c) This section does not preclude the association from making
1870 repairs necessary to mitigate damages or to correct any defect that
1871 poses a significant and immediate health or safety risk.

1872 (d) Subject to the other provisions of this section, the determination
1873 of whether and when the association may institute a proceeding
1874 described in this section may be made by the executive board. The
1875 declaration may not require a vote by any number or percentage of
1876 unit owners as a condition to institution of a proceeding.

1877 (e) This section does not prevent an association from seeking

1878 equitable relief at any time without complying with subdivision (1) or
1879 (2) of subsection (a) of this section.

1880 Sec. 36. Section 47-263 of the general statutes is repealed and the
1881 following is substituted in lieu thereof (*Effective October 1, 2009*):

1882 (a) Except as provided in subsection (b) of this section, a declarant,
1883 before offering any interest in a unit to the public, shall prepare a
1884 public offering statement conforming to the requirements of sections
1885 47-264 to 47-267, inclusive, as amended by this act.

1886 (b) A declarant may transfer responsibility for preparation of all or a
1887 part of the public offering statement to a successor declarant. In the
1888 event of any such transfer, the transferor shall provide the transferee
1889 with any information necessary to enable the transferee to fulfill the
1890 requirements of subsection (a) of this section.

1891 (c) A declarant or successor declarant or a dealer who offers a unit
1892 to a purchaser shall deliver a public offering statement in the manner
1893 prescribed in subsection (a) of section 47-269. The declarant or
1894 successor declarant who prepared all or a part of the public offering
1895 statement is liable to all persons claiming an interest in the common
1896 interest community under section 47-269 for failure to deliver the
1897 public offering statement and under section 47-278, as amended by this
1898 act, for any false or misleading statement set forth therein or for any
1899 omission of a material fact therefrom. [with respect to that portion of
1900 the public offering statement which he prepared. If a declarant did not
1901 prepare any part of a public offering statement that he delivers, he is
1902 not liable for any false or misleading statement set forth therein or for
1903 any omission of a material fact therefrom unless he had actual
1904 knowledge of the statement or omission or, in the exercise of
1905 reasonable care, should have known of the statement or omission.]

1906 (d) If a unit is part of a common interest community and is part of
1907 any other real property regime in connection with the sale of which the
1908 delivery of a public offering statement is required under the general
1909 statutes, a single public offering statement conforming to the

1910 requirements of sections 47-264 to 47-267, inclusive, as amended by
1911 this act, as those requirements relate to each regime in which the unit
1912 is located, and to any other requirements imposed under the general
1913 statutes, may be prepared and delivered in lieu of providing two or
1914 more public offering statements.

1915 Sec. 37. Section 47-264 of the general statutes is repealed and the
1916 following is substituted in lieu thereof (*Effective October 1, 2009*):

1917 (a) Except as provided in subsection (b) of this section, a public
1918 offering statement shall contain or fully and accurately disclose:

1919 (1) The name and principal address of the declarant and of the
1920 common interest community, and a statement that the common
1921 interest community is either a condominium, cooperative or planned
1922 community;

1923 (2) A general description of the common interest community,
1924 including to the extent known, the types, number and declarant's
1925 schedule of commencement and completion of construction of
1926 buildings and amenities that the declarant anticipates including in the
1927 common interest community;

1928 (3) The number of units in the common interest community;

1929 (4) Copies of the declaration, including any surveys and plans, and
1930 any other recorded covenants, conditions, restrictions and reservations
1931 created by the declarant affecting the common interest community; the
1932 bylaws, and any rules or regulations of the association; any deeds,
1933 contracts and leases to be signed by or delivered to purchasers at
1934 closing, and copies of and a brief narrative description of any contracts
1935 or leases that will or may be subject to cancellation by the association
1936 under section 47-247, as amended by this act;

1937 (5) A projected budget for the association, either within or as an
1938 exhibit to the public offering statement, for one year after the date of
1939 the first conveyance to a purchaser, and thereafter the current budget
1940 of the association, a statement of who prepared the budget, and a

1941 statement of the budget's assumptions concerning occupancy and
1942 inflation factors. The budget shall include, without limitation: (A) A
1943 statement of the amount, or a statement that there is no amount,
1944 included in the budget as a reserve for repairs and replacement; (B) a
1945 statement of any other reserves; (C) the projected common expense
1946 assessment by category of expenditures for the association; and (D) the
1947 projected monthly common expense assessment for each type of unit;

1948 (6) Any services not reflected in the budget that the declarant
1949 provides, or expenses that he pays and which he expects may become
1950 at any subsequent time a common expense of the association and the
1951 projected common expense assessment attributable to each of those
1952 services or expenses for the association and for each type of unit;

1953 (7) Any initial or special fee due from the purchaser at closing,
1954 together with a description of the purpose and method of calculating
1955 the fee;

1956 (8) A brief narrative description of any liens, defects or
1957 encumbrances on or affecting the title to the common interest
1958 community not otherwise disclosed under subdivision (4) of this
1959 subsection;

1960 (9) A description of any financing offered or arranged by the
1961 declarant;

1962 (10) The terms and significant limitations of any warranties
1963 provided by the declarant, including statutory warranties and
1964 limitations on the enforcement thereof or on damages;

1965 (11) A statement that: (A) Within fifteen days after receipt of a
1966 public offering statement a purchaser, before conveyance, may cancel
1967 any contract for purchase of a unit from a declarant, and (B) if a
1968 declarant fails to provide a public offering statement to a purchaser
1969 before conveying a unit, that purchaser may recover from the
1970 declarant ten per cent of the sales price of the unit plus ten per cent of
1971 the share, proportionate to his common expense liability, of any

1972 indebtedness of the association secured by security interests
1973 encumbering the common interest community;

1974 (12) A statement of any unsatisfied judgments or pending suits
1975 against the association, and the status of any pending suits material to
1976 the common interest community of which a declarant has actual
1977 knowledge;

1978 (13) A statement that any deposit made in connection with the
1979 purchase of a unit will be held in an escrow account until closing and
1980 will be returned to the purchaser if the purchaser cancels the contract
1981 pursuant to section 47-269, together with the name and address of the
1982 escrow agent;

1983 (14) Any restraints on alienation of any portion of the common
1984 interest community and any restrictions (A) on use, occupancy and
1985 alienation of the units, and (B) on the amount for which a unit may be
1986 sold or on the amount that may be received by a unit owner on sale,
1987 condemnation or casualty loss to the unit or to the common interest
1988 community, or on termination of the common interest community;

1989 (15) A description of the insurance coverage provided for the benefit
1990 of unit owners;

1991 (16) Any current or expected fees or charges to be paid by unit
1992 owners for the use of the common elements and other facilities related
1993 to the common interest community;

1994 (17) The extent to which financial arrangements have been provided
1995 for completion of all improvements that the declarant is obligated to
1996 build pursuant to section 47-280;

1997 (18) A brief narrative description of any zoning and other land use
1998 requirements affecting the common interest community;

1999 (19) All unusual and material circumstances, features and
2000 characteristics of the common interest community and the units; [and]

2001 (20) In a cooperative, (A) either a statement that the unit owners will
2002 be entitled, for federal, state and local income tax purposes, to a pass-
2003 through of deductions for payments made by the association for real
2004 property taxes and interest paid the holder of a security interest
2005 encumbering the cooperative, or a statement that no assurances are
2006 made in that regard, and (B) a statement as to the effect on every unit
2007 owner if the association fails to pay real property taxes or payments
2008 due the holder of a security interest encumbering the cooperative; and

2009 (21) A description of any arrangement described in section 8 of this
2010 act.

2011 (b) A declarant promptly shall amend the public offering statement
2012 to report any material change in the information required to be
2013 included in the public offering statement.

2014 Sec. 38. Section 47-274 of the general statutes is repealed and the
2015 following is substituted in lieu thereof (*Effective October 1, 2009*):

2016 (a) Express warranties made by any seller to a purchaser of a unit, if
2017 relied on by the purchaser, are created as follows:

2018 (1) Any affirmation of fact or promise which relates to the unit, its
2019 use, or rights appurtenant thereto, area improvements to the common
2020 interest community that would directly benefit the unit, or the right to
2021 use or have the benefit of facilities not located in the common interest
2022 community, creates an express warranty that the unit, area
2023 improvements and related rights and uses will conform to the
2024 affirmation or promise;

2025 (2) Any model or description of the physical characteristics of the
2026 common interest community, including plans and specifications of or
2027 for improvements, creates an express warranty that the common
2028 interest community will substantially conform to the model or
2029 description unless the model or description clearly discloses that it is
2030 only proposed or is subject to change;

2031 (3) Any description of the quantity or extent of the real property

2032 comprising the common interest community, including surveys,
2033 creates an express warranty that the common interest community will
2034 conform to the description, subject to customary tolerances; and

2035 (4) A provision that a purchaser may put a unit only to a specified
2036 use is an express warranty that the specified use is lawful.

2037 (b) Neither formal words, such as "warranty" or "guarantee", nor a
2038 specific intention to make a warranty, are necessary to create an
2039 express warranty of quality, but a statement purporting to be merely
2040 an opinion or commendation of the real property or its value does not
2041 create a warranty.

2042 (c) Any conveyance of a unit transfers to the purchaser all express
2043 warranties of quality made by previous sellers only to the extent such a
2044 conveyance would transfer warranties pursuant to chapter 827.

2045 Sec. 39. Section 47-278 of the general statutes is repealed and the
2046 following is substituted in lieu thereof (*Effective October 1, 2009*):

2047 [(a) If a declarant or any other person subject to this chapter fails to
2048 comply with any of its provisions or any provision of the declaration
2049 or bylaws, any person or class of persons adversely affected by the
2050 failure to comply has a claim for appropriate relief. Punitive damages
2051 may be awarded for a wilful failure to comply with this chapter.]

2052 (a) A declarant, association, unit owner or any other person subject
2053 to this chapter may bring an action to enforce a right granted or
2054 obligation imposed by this chapter, the declaration or the bylaws. The
2055 court may award [court costs together with] reasonable attorney's fees
2056 and costs.

2057 (b) Parties to a dispute arising under this chapter, the declaration or
2058 the bylaws may agree to resolve the dispute by any form of binding or
2059 nonbinding alternative dispute resolution, provided: (1) A declarant
2060 may agree with the association to do so only after the period of
2061 declarant control [passes] has expired; and (2) an agreement to submit
2062 to any form of binding alternative dispute resolution must be in a

2063 [writing signed] record authenticated by the parties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	47-202
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	47-214
Sec. 4	<i>October 1, 2009</i>	47-215
Sec. 5	<i>October 1, 2009</i>	47-216
Sec. 6	<i>October 1, 2009</i>	47-218
Sec. 7	<i>October 1, 2009</i>	47-219
Sec. 8	<i>October 1, 2009</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2009</i>	47-222
Sec. 11	<i>October 1, 2009</i>	47-224
Sec. 12	<i>October 1, 2009</i>	47-232
Sec. 13	<i>October 1, 2009</i>	New section
Sec. 14	<i>October 1, 2009</i>	47-235
Sec. 15	<i>October 1, 2009</i>	47-236
Sec. 16	<i>October 1, 2009</i>	47-237
Sec. 17	<i>October 1, 2009</i>	New section
Sec. 18	<i>October 1, 2009</i>	47-243
Sec. 19	<i>October 1, 2009</i>	47-244
Sec. 20	<i>October 1, 2009</i>	47-245
Sec. 21	<i>October 1, 2009</i>	47-247
Sec. 22	<i>October 1, 2009</i>	47-248
Sec. 23	<i>October 1, 2009</i>	47-250
Sec. 24	<i>October 1, 2009</i>	47-251
Sec. 25	<i>October 1, 2009</i>	47-252
Sec. 26	<i>October 1, 2009</i>	47-255
Sec. 27	<i>October 1, 2009</i>	47-256
Sec. 28	<i>October 1, 2009</i>	47-257
Sec. 29	<i>October 1, 2009</i>	47-258
Sec. 30	<i>October 1, 2009</i>	47-260
Sec. 31	<i>October 1, 2009</i>	New section
Sec. 32	<i>October 1, 2009</i>	New section
Sec. 33	<i>October 1, 2009</i>	New section
Sec. 34	<i>October 1, 2009</i>	New section
Sec. 35	<i>October 1, 2009</i>	New section
Sec. 36	<i>October 1, 2009</i>	47-263

Sec. 37	<i>October 1, 2009</i>	47-264
Sec. 38	<i>October 1, 2009</i>	47-274
Sec. 39	<i>October 1, 2009</i>	47-278

Statement of Legislative Commissioners:

Throughout the bill, changes were made for consistency and accuracy.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which makes changes to the Connecticut Common Interest Ownership Act (CIOA), is not anticipated to result in a fiscal impact.

OLR Bill Analysis

sHB 6672

***AN ACT CONCERNING THE 2008 AMENDMENTS TO THE
UNIFORM COMMON INTEREST OWNERSHIP ACT.***

SUMMARY:

This bill makes numerous unrelated changes and additions to the Connecticut Common Interest Ownership Act (CIOA).

The bill establishes definitions for several terms used in CIOA and amends several other definitions. It specifies that certain cost-sharing arrangements and certain shared-use arrangements do not create a common interest community. Also, it expands the definition of "special declarant rights."

It makes several portions of CIOA apply to common interest communities created before January 1, 1984, including definitions, unit boundaries, court challenges to amendments of the declaration and amendments requiring security holder consent, and the powers and duties of the executive board. It also applies two new provisions to these older common interest communities-termination after a catastrophe and legal proceedings involving construction defects.

Several provisions deal with the creation, alteration, and termination of a common interest community. For example, the bill (1) requires the declaration to authorize a process for association administration of any intended design criteria, construction approval process, or enforcement of aesthetic standards (§ 11); (2) allows a declaration to be amended by any larger or smaller percentage than 67% of the unit owners with no specified minimum number or percentage of unit owners and allows the declaration to specify that no amendments are valid without the approval of a specified person (§ 15); and (4) allows for judicial termination in the case of an actual

disaster (§§ 16 and 17).

The bill makes several changes concerning the powers and duties of unit owners' associations. For example, it:

1. specifies that associations may invest association funds;
2. establishes the presumption that associations may borrow funds by assigning their future common charges;
3. specifies the right of the association to suspend a unit owner's privileges if that owner fails to pay common charges;
4. gives discretion to the executive board to enforce, decline to enforce, or compromise any claim involving a violation of the association's bylaws or rules (§ 19);
5. allows the declaration to provide for the direct election of association's officers by the unit owners (§ 20);
6. limits the association's right to cancel contracts between the association and the declarant to a two-year period that begins when the unit owners assume control of the association and makes additional types of contracts subject to cancellation (§ 21);
7. makes clear that only unit owners may amend the bylaws and enables the bylaws to address matters that might otherwise be addressed as rules (§ 22);
8. specifies several means by which the association may deliver notice to unit owners (§ 32);
9. creates a set of rules by which unit owners may vote to remove an officer or director of the executive board (§ 33); and
10. provides detailed guidelines regarding the kinds of records that the association must retain and make available to unit owners, and which records may be exempt from disclosure (§ 30).

The bill significantly changes current law regarding meetings of unit owners and of the executive board. It creates new open meeting requirements for all executive board meetings, other than executive sessions, and meetings of any committees that have decision-making authority. It gives unit owners the right to participate in board meetings, to access the same material distributed to executive board members, and to have notice of board meetings. It allows the board to meet by telephonic or video conferencing means as long as a unit owner's right of notice and participation continues (§ 23). It allows absentee ballots to be included when calculating the presence of a quorum. It requires that a quorum be present at the time of each executive board vote rather than only at the beginning of the board meeting (§ 24). It establishes a default rule that unit owners may vote by absentee ballot and by written or electronic ballot, unless the declaration or bylaws provide otherwise. Thus, it allows votes to be taken without a physical meeting of unit owners (§ 26).

It makes several changes regarding insurance. For example, it requires the association to carry fidelity insurance. It specifies that the association may choose to proceed directly against the unit owner and not file an insurance claim in cases of willful misconduct or gross negligence by the unit owner or the owner's guest or invitee (§ 28).

It extends the association's priority lien over first and second mortgages to the extent of six months' common charges to include the amount of the association's reasonable attorney's fees and its court costs. It establish new limitations on the right of the association to proceed in foreclosure against a unit owner, including prohibiting a foreclosure action until a unit owner owes at least three months' common charges, the unit owner has rejected a payment plan, and the board has expressly authorized initiation of the foreclosure (§ 29).

It creates procedures for the executive board to adopt rules. It authorizes (1) subject to association rules as to time, place, and manner, the display of the American and state flags as well as political signs, and (2) peaceful assembly of unit owners on the common

elements. It requires that each rule be reasonable (§ 31).

It empowers the executive board to adopt special assessments and provides for a streamlined procedure to adopt emergency assessments (§ 34).

Regarding declarants, the bill (1) provides a procedure under which a declarant may offer the association a payment plan that the association must at least consider before initiating litigation against the declarant regarding construction defects (§ 35); (2) expands the liability of the declarant for false or misleading statements that appear in a public offering statement (§ 36); and (3) requires disclosures of certain financial information in public offering statements (§ 37).

EFFECTIVE DATE: October 1, 2009

§ 1 — DEFINITIONS

The bill defines the terms “assessment,” “bylaws,” “record,” and “rule.” It amends the definitions of “common interest community,” and “special declarant rights.”

Assessment

“Assessment” means the sum the association of unit owners attributes to each unit for common expenses and due to the association.

Bylaws

“Bylaws” means the instruments, however named, that contain the procedures for conducting the association’s affairs regardless of the form in which the association is organized, including any amendments to the instruments.

Record

“Record,” used as a noun, means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

Rule

“Rule” means an association policy, guideline, restriction, procedure, or regulation, however denominated, which (1) is not set forth in the declaration or bylaws and (2) governs the conduct of persons or the use or appearance of property.

Common Interest Community

The bill amends the definition of “common interest community,” to specify that an arrangement by

Under current law, this term is defined as real property described in a declaration with respect to which a person, by virtue of his or her ownership of a unit, is obligated to pay for (1) real property taxes on, (2) insurance premiums on, (3) maintenance of, or (4) improvement of any other real property other than that unit described in the declaration. The bill specifies that such an arrangement is also a common interest community if the obligation is to pay for a share of services and expenses related to the common elements or any other property other than the unit.

The bill also specifies that a common interest community does not include:

1. an arrangement between the associations for two or more common interest communities to share the costs;
2. an arrangement between an association and a real estate owner that is not part of a common interest community to share the cost; or
3. a covenant that requires the owners of separately owned real estate parcels to share costs or other obligations associated with a party wall, driveway, well, or other similar use.

Special Declarant Rights

The bill expands the definition by including the right to (1) control any construction, design review, or aesthetic standards committee or process; (2) attend meetings of the unit owners and, except during an

executive session, the executive board; or (3) have access to the records of the association to the same extent as a unit owner.

§ 2 — ELECTRONIC SIGNATURES

The bill specifies that CIOA and the provisions of the bill establishing new provisions in CIOA modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, (15 USC § 7001, et seq.). The bill specifies that neither CIOA nor these new provisions:

1. modify, limit, or supersede Section 101(c) of that act (15 USC § 7001(c)) or
2. authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 USC § 7003(b)) (see BACKGROUND).

§ 3 — SCOPE OF CIOA

Generally, the law specifies that CIOA and all amendments to it apply to common interest communities created on or after January 1, 1984 and to any other common interest community subjected to it. The bill specifies that these common interest communities created before January 1, 1984 can subject themselves to amendments to CIOA by amending their declarations.

§ 4 — COMMON INTEREST COMMUNITIES RESTRICTED TO NONRESIDENTIAL USE

By law, a common interest community restricted to nonresidential use is not subject to CIOA unless its declaration provides otherwise. Current law specifies that the declaration of such a common interest community may provide that all of CIOA applies or that only the provisions (1) dealing with separate title and taxation (CGS § 47-204); (2) prohibiting zoning and other land use laws from preventing conversion of a building to the common interest ownership form of ownership (CGS § 47-205), and (3) establishing certain rules in the case of eminent domain (CGS § 47-206).

The bill creates a third option by allowing the declaration to provide that only Part I and Part II of CIOA apply. Part I contains general provisions and applicability provisions (CGS §§ 47-200 to 47-219) and Part II contains provisions dealing with the creation, alteration, and termination of common interest communities.

§ 5 — APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES

Certain CIOA provisions automatically apply to condominiums created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983 (CGS § 47-216). The bill makes the following additional provisions in CIOA and in the bill also automatically apply to these older common interest communities:

1. certain determinations regarding unit boundaries unless the declaration provides otherwise;
2. the requirement that court challenges to the validity of an amendment the association adopts must be brought within one year after the amendment is recorded;
3. the requirement specifying that if any provision in a common interest community declaration requires the consent of a security interest holder in a unit as a condition of amending the declaration, the holder is deemed to have consented if the association does not receive a written refusal to consent within 45 days after it delivers notice of the proposed amendment or mails it by certified mail with return receipt;
4. the bill's provisions concerning legal proceedings to terminate the common interest community if substantially all of the units have been destroyed or are uninhabitable (§ 17);
5. the powers and duties of executive board members including the budget making process, the period of declarant control, and the declarant's duty to provide current financial information to unit

owners; and

6. the association's authority to institute a legal proceeding alleging a construction defect whether by litigation, mediation, arbitration, or administratively, against a declarant or an employee, independent contractor, or other person providing labor or material to a declarant.

§ 8 — ARRANGEMENTS BETWEEN ASSOCIATIONS

The bill specifies that an arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities does not create a separate common interest community.

It also specifies that such an arrangement between an association and the owner of real estate that is not part of a common interest community also does not create a separate common interest community. But it requires that (1) assessments against the units in the common interest community required by the arrangement must be included in the common interest community's periodic budget, and (2) the arrangement must be disclosed in all public offering statements and resale certificates required by the common interest ownership act and the bill.

§ 9 — COVENANT TO SHARE COSTS OR OTHER OBLIGATIONS

The bill specifies that a covenant that requires the owners of separately owned real estate parcels to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

§ 10 — RULE AGAINST PERPETUITIES

Under current law, the rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules, or regulations the association adopts. The bill eliminates regulations from this list. A subsequent provision of this bill eliminates the association's authority

to adopt regulations.

§ 11 — DECLARATION –CONSTRUCTION, DESIGN, AND AESTHETIC

The bill requires the declaration to contain any authority the association has to establish and enforce construction and design criteria and aesthetic standards.

§ 12 — SUBDIVISION OF A UNIT-METHOD OF REALLOCATING INTERESTS

By law, if the declaration explicitly allows it, a unit may be subdivided into two or more units and the association must prepare and record an amendment reflecting this change. Under current law, the amendment must 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. Under the bill, it may also be reallocated on any other basis the declaration requires.

§ 13 — EASEMENT FOR ENCROACHMENT

Under the bill, if any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability for the unit owner's willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.

§ 14 — EASEMENT FOR USE OF COMMON ELEMENTS

Under current law, in a planned community, subject to certain limitations, the unit owners have an easement (1) in the common elements to access their units and (2) to use the common elements and all real property that must become common elements for all other purposes.

The bill makes the easement to use the common elements for any other purpose than to access their unit, subject to the planned community's declaration and rules. It also restricts the right to any purpose for which the common elements were intended, and limits it

to common elements that are not limited common elements.

Also, it expands the easement to use the common elements to unit owners in condominiums and cooperatives (see BACKGROUND).

§15 — AMENDMENTS TO DECLARATION

Under current law, the declaration, including any surveys and plans, (1) may be amended, with certain exceptions, only by vote or agreement of unit owners of units to which at least 67% of the votes in the association are allocated and (2) to require any larger majority. Current law allows a declaration of a condominium that has no residential units to allow a smaller percentage of the votes to approve amendments. The bill expands the scope of this authority by also allowing condominiums containing at least one residential unit to specify a smaller percentage. The bill specifies that the authority to require a greater or lesser percentage of the votes than 67% to amend the declaration can be for all amendments or for specific subjects of amendment. The bill specifies that an amendment is not valid until it is approved by any other person the declaration requires as a condition of its effectiveness.

By law, 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 by vote or agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage specified in the declaration. The bill also allows an amendment to do so if approved by a vote of unit owners with at least 80% of the votes of a specified group of units that the amendment would affect. By law, unchanged by the bill, an amendment must provide reasonable protection for a use or occupancy permitted at the time it was adopted.

Amendments Affecting the Priority of a Security Holder's Interest

Under current law, if CIOA or the declaration of any common interest community 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 is deemed granted if no written refusal to consent is received by the association within 45 days after the association (1) delivers notice of the proposed amendment to the interest holder or (2) mails the notice to the holder by certified mail, return receipt requested. The bill creates an exception to this provision by requiring actual consent in a record for an amendment that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest if the declaration requires that consent as a condition to the amendment's effectiveness.

Procedure to Deem Approval

By law, 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 be adopted only by the vote or agreement of unit owners of units to which more than 80% of the votes in the association are allocated, such a proposed amendment shall be deemed approved under certain circumstances. The bill expands this to include any amendment not just those specified above.

As under current law, an amendment is deemed approved if:

1. unit owners of units to which more than 80% of the votes in the association 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 30 days after the association delivers notice; or
2. unit owners of units to which more than 80% of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects 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.

§§ 16 & 17 — TERMINATION OF COMMON INTEREST COMMUNITY

Under current law, other than eminent domain or foreclosure of an entire cooperative by a security instrument that has priority over the declaration, a common interest community may be terminated by the unit owners having at least 80% of the votes or any larger percentage the declaration specifies. The bill also requires any other approvals the declaration requires.

The bill creates an additional exception. Under the bill, if substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice under the bill (§ 32) of a meeting of unit owners to consider termination as provided by law will not likely result in receipt of the notice, the executive board or any other interested person may start an action in the Superior Court seeking to terminate it. The bill authorizes the court, in such an action, to 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 and may issue any other order it considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

§ 18 — ORGANIZATION OF UNIT OWNERS ASSOCIATION

The law requires that a unit owners' association be organized no later than the date the first unit in the common interest community is conveyed. The bill requires the association to have an executive board. Under current law, the association must be organized as a profit or nonprofit corporation, trust, partnership or unincorporated association. The bill adds the options of a limited liability company or

any other form of organization authorized by law.

§ 19 — POWERS AND DUTIES OF ASSOCIATION

The bill requires, instead of allows, the unit owners' association to adopt and amend bylaws, and to adopt and amend budgets. It eliminates their power to adopt regulations. It authorizes them to invest association funds and to institute, defend, or intervene in arbitration, or mediation.

Current law allows an association to assign its rights to future income, including the right to receive common expense assessments, to the extent the declaration explicitly authorizes them to do so. The bill instead gives the association this authority except to the extent the declaration limits this right. Thus under current law, if the declaration is silent, the association may not do so; under the bill, the association would be able to do so since the declaration contains no limitation.

The bill also authorizes associations to suspend any right or privilege of a unit owner that fails to pay an assessment. But the bill specifies that associations may not:

1. deny a unit owner or other occupant access to the owner's unit;
2. suspend a unit owner's right to vote;
3. prevent a unit owner from seeking election as a director or officer of the association; or
4. withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger anyone's health, safety, or property.

The bill specifies that the declaration may not limit the power of the association to institute litigation, arbitration, mediation, or administrative proceedings against any person, except:

1. the association must comply with the bill's notice requirements, if applicable, before instituting any lawsuit or other proceeding

in connection with construction defects; and

2. the executive board must promptly provide notice to the unit owners of any legal proceeding in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association.

§ 19 (F) — EXECUTIVE BOARD POWERS AND DUTIES

The bill authorizes the association's executive board to determine whether to take enforcement action by exercising the association's power to impose sanctions or beginning 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. But the bill specifies that the executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances:

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 expending the association's resources; or
4. it is not in the association's best interests to pursue an enforcement action.

The bill specifies that the executive board's decision not to pursue enforcement under one set of circumstances does not prevent it from taking enforcement action under another set of circumstances, except that the executive board may not be arbitrary or capricious in taking enforcement action.

The bill requires the executive board to establish a reasonable

method for unit owners to communicate among themselves and with the executive board on association matters.

§ 20 — DUTIES AND POWERS OF EXECUTIVE BOARD MEMBERS

The bill specifies that executive board directors are subject to the prohibitions against conflicts of interests governing directors of corporations. By law, association officers and executive board members must exercise the degree of care and loyalty required by a trustee. The bill specifies that this duty applies regardless of the form in which the association is organized, and specifies that they owe this duty to the association.

The bill specifies that the executive board may not amend the bylaws. By law, the board may fill vacancies in its membership for the unexpired portion of any term. The bill instead authorizes the board to do so until the unexpired portion of the term or, if earlier, until the next regularly scheduled election of executive board members.

Budget Adoption by Board

The bill requires the executive board to adopt budgets as specified in the bill (§ 34).

Election of Board Officers

Under current law, the executive board elects board officers. The bill instead requires this unless the declaration provides for the election of officers by unit owners.

Removal of Board Members

The bill eliminates the authority of 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, to remove any member of the executive board with or without cause, other than a member the declarant appointed.

Appointment of Specified Positions on Executive Board

The bill authorizes a declaration to:

1. provide for the appointment of specified positions on the executive board by persons other than the declarant during or after the period of declarant control and
2. provide a method for filling vacancies in such specified positions, other than by election by the unit owners.

But after the period of declarant control, the bill specifies that appointed members (1) may not comprise more than one-third of the board and (2) have no greater authority than any other board member.

§ 21 — TERMINATION OF CONTRACTS AND LEASES

Under current law, the unit owners' association, after the period of declarant control ends, may cancel a variety of contracts between the association and the declarant or other persons without penalty, and there is no time limit on this right to cancel. The bill limits the association's cancellation right to the two-year period beginning when the unit owners assume control of the association. Thus, contracts not canceled during that two-year period would become non-cancelable and presumably enforceable in accordance with their terms. The bill extends the authority to cancel to non-residential condominiums. The bill adds to the types of contracts that are subject to cancellation to include maintenance and operations contracts.

§ 22 — BYLAWS

The bill makes it clear that only unit owners can amend bylaws. It also requires that the bylaws:

1. contain any provision necessary to satisfy requirements in CIOA or the declaration concerning meetings, voting, quorums, and other activities of the association and
2. provide for any matter required by the law other than CIOA to appear in the bylaws of organizations of the same type as the association.

Under current law, subject to the provisions of the declaration, the

bylaws may provide for any other matters the association deems necessary and appropriate. The bill specifies that this can include matters that could be adopted as rules. Also it makes this authority to adopt bylaws subject to the provisions of CIOA.

§ 23 — MEETINGS

Association Meetings

By law a meeting of the association must be held at least once a year. The bill requires that an association hold an annual meeting at a time, date, and place specified in the bylaws.

Under current law, an association may hold a special meeting at the request of the president, a majority of the board, or unit owners having at least 20% of the association's vote or any lower percentage the bylaws specify. The bill instead requires an association to hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the executive board, or unit owners having at least 20%, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting.

Under the bill, if the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting.

Only matters described in the meeting notice may be considered at a special meeting.

The bill requires an association to notify unit owners of the time, date, and place of each annual and special unit owners meeting. As under current law, the notice must be given between 10 and 60 days before the meeting date.

The bill allows the notice period to be reduced or waived for a meeting to deal with an emergency.

Requirements for Board and Committee Meetings

The bill requires unit owners be given a reasonable opportunity at any meeting to comment on any matter affecting the common interest community or the association. It permits the declaration or bylaws to allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process if the alternative process satisfies the bill's requirements on such types of meetings (see below).

The bill imposes the following requirements to meetings of the executive board and association committees authorized to act for the association:

1. meetings must be open to the unit owners except during executive sessions;
2. the executive board and committees may hold an executive session only during a regular or special meeting of the board or a committee;
3. no final vote or action may be taken during an executive session;
4. an executive session may be held only to:
 - consult with the association's attorney on legal matters;
 - discuss existing or potential litigation, mediation, arbitration, or administrative proceedings;
 - discuss labor or personnel matters;
 - 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
 - prevent public knowledge of the matter to be discussed if

- the executive board or committee determines that public knowledge would violate the privacy of any person;
5. a gathering of board members at which the board members do not conduct association business is not an executive board meeting;
 6. the board and its members may not use incidental or social gatherings of board members or any other method to evade the bill's open meeting requirements;
 7. during the period of declarant control, the board must meet at least four times a year, and at least one of those meetings must be held at the common interest community or at a place convenient to the community;
 8. after termination of the period of declarant control, all executive board meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings;
 9. at each executive board meeting, the executive board must provide a reasonable opportunity for unit owners to comment on any matter affecting the common interest community and the association;
 10. 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 must give notice of each executive board meeting to each board member and to the unit owners, and the notice must be at least 10 days before the meeting and state the time, date, place, and agenda;
 11. if any material distributed to the executive board before the meeting, the board at the same time must make copies of the material reasonably available to unit owners, except it need not make available copies of unapproved minutes or material to be considered in executive session;

12. unless the declaration or bylaws otherwise provide, the executive board may meet by telephonic, video, or other conferencing process if (a) the meeting notice states the conferencing process to be used and explains 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;
13. after termination of the period of declarant control, unit owners may amend the bylaws to vary the procedures for telephonic, video, or conferencing meetings;
14. instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members, and the secretary must promptly give notice to all unit owners of any action taken by unanimous consent; and
15. after termination of the period of declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the executive board.

The bill specifies that even if an action by the executive board does not comply with these requirements, it is valid unless a court sets it aside. The bill allows a challenge to the validity of an action of the executive board for non-compliance to be brought within 60 days after the minutes of the executive board meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

§ 24 — ASSOCIATION MEETINGS

Under current law, unless the bylaws provide otherwise, a quorum is present throughout any association meeting if persons entitled to cast 20% of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. Under the bill, unless the bylaws provide otherwise, a

quorum is present throughout any meeting of unit owners if persons entitled to cast 20% of the votes in the association:

1. are present in person or by proxy at the beginning of the meeting;
2. have cast absentee ballots solicited in accordance with the bill's requirements, which have been delivered to the secretary in a timely manner; or
3. are present by any combination of the two.

Executive Board Meetings

Under current law, unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on that board are present at the beginning of the meeting. Under the bill, unless the bylaws specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if a majority of the votes on that board are present at the time a vote on 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 the declaration or bylaws require a greater vote.

The bill requires that association meetings be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised, unless the bylaws provide otherwise.

§ 25 — VOTING, PROXIES, AND BALLOTS

The bill authorizes unit owners, unless prohibited or limited by the declaration or bylaws, to vote at a meeting in person, by absentee ballot, a proxy, or, when a vote is conducted without a meeting, by electronic or paper ballot.

Voting at Unit Owner's Meetings

The bill imposes the following additional requirements at a meeting

of unit owners:

1. unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting;
2. unless a greater number or fraction of the votes in the association is required by CIOA or the declaration, a majority of the votes cast determines the outcome of any action of the association;
3. a unit owner may vote by absentee ballot without being present at the meeting;
4. when a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so;
5. the association must promptly deliver an absentee ballot to an owner that requests it if the request is made at least three days before the scheduled meeting;
6. votes cast by absentee ballot must be included in the tally of a vote taken at that meeting; and
7. a person may not cast provisions representing more than 15% of the association's vote.

Voting without a Meeting

The bill allows an association to conduct a vote without a meeting, unless prohibited or limited by the declaration or bylaws. For voting without a meeting, the bill requires:

1. the association to notify the unit owners that the vote will be taken by ballot,
2. the association to deliver a paper or electronic ballot to every

unit owner entitled to vote, and

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

The bill requires that when the association delivers the ballots, it must also:

1. indicate the number of responses needed to meet the quorum requirements;
2. state the percentage of votes necessary to approve each matter other than election of directors;
3. 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
4. describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners on the subject of the vote may do so.

The specifics that a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote, unless the declaration or bylaws provide otherwise.

Under the bill approval by ballot 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.

Under current law, no votes allocated to a unit owned by the association may be cast. The bill instead requires that votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

§ 26 — INSURANCE

The bill requires the association to carry fidelity insurance. This type of insurance protects the association from loss of money, securities, or inventories resulting from crime. Common fidelity insurance claims allege employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, counterfeiting, and other similar criminal acts.

Current law requires the association to ensure units, as well as the common elements, only in the case of so-called “stacked” units in a high-rise building. The bill requires unit insurance coverage also in the case of common interest communities with units that have party walls, to the extent reasonably available. But it need not include improvements and betterments installed by unit owners.

The bill specifies that the insurance the association must maintain may be subject to reasonable deductibles.

§ 27 — SURPLUS FUNDS

By law, unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. The bill specifies that it must be paid annually.

§ 28 — ASSESSMENTS

Under current law, if any common expense is caused by the misconduct of any unit owner the association may, after notice and hearing, assess that expense exclusively against the unit. The bill makes it clear the association may do so even if it has insurance that covers that damage or common expense. Thus, an association could seek redress against the unit owner instead of fling a claim with its insurer and risk cancellation or increased premiums. The bill also expands this right to include damage caused by the unit owner’s gross negligence and the willful misconduct and gross negligence of the unit owner’s guest or invitee. It specifies that this applies to damage to a

unit or other portions of the common interest community.

§ 29 — LIENS FOR ASSESSMENTS

By law, the association has a priority lien on a unit for any assessment on that unit or fines imposed over first and second mortgages to the extent of six months of common charges. The bill expands this to include reasonable attorneys' fees and costs and any other sum due the association under the declaration, CIOA, or as a result of an administrative, arbitration, mediation, or judicial decision.

The bill makes a lien for unpaid assessments extinguished unless proceedings to enforce it are instituted within three, instead of two, years after the full amount of the assessments becomes due.

Limitations on Foreclosure by an Association

The bill prohibits an association from starting a foreclosure action on a lien on a unit unless:

1. the unit owner, at the time the action is commenced, owes at least an amount equal to three months of common expense assessments based on the periodic budget last adopted by the association and the unit owner has failed to accept or comply with a payment plan offered by the association; and
2. the executive board votes to commence a foreclosure action specifically against that unit.

Unless the parties otherwise agree, the bill requires an association to apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

1. unpaid assessments;
2. late charges;
3. reasonable attorney's fees and costs and other reasonable collection charges; and

4. all other unpaid fees, charges, fines, penalties, interest and late charges.

If the only sums due with respect to a unit are fines and related sums imposed against the unit, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner for the fines and related sums and has perfected a judgment lien against the unit.

The bill requires that every aspect of a foreclosure, sale, or other disposition, including the method, advertising, time, date, place, and terms be commercially reasonable.

§ 30 — ASSOCIATION RECORDS

The bill establishes more detailed requirements for retaining and sharing association records with unit owners.

Required Records

The bill requires an association to keep:

1. detailed records of receipts and expenditures affecting the association's operation and administration 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 a committee takes in place of the executive board on the association's behalf;
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. its original or restated organizational documents, if required by law other than CIOA, 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. the names and addresses of its current executive board members and officers;
7. is 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 CIOA's resale disclosure requirements;
9. copies of current contracts to which it 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 they relate to.

Examination and Copying

Subject to the exceptions specified below, the bill makes all records an association retains available for examination and copying by unit owners or their authorized agents (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 requested.

Protected Records

The bill allows records to be withheld from inspection and copying to the extent that they concern:

1. personnel, salary, and medical records relating to specific individuals;

2. contracts, leases, and other commercial transactions to purchase or provide goods or services, currently being negotiated;
3. existing or potential litigation, mediation, arbitration, or administrative proceedings;
4. existing or potential matters involving federal, state, or local administrative or other formal proceedings before a government tribunal for enforcement of the declaration, bylaws, or rules;
5. communications with the association's attorney that are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
6. information, which if disclosed, would violate law other than CIOA;
7. records of an executive session of the executive board; or
8. individual unit files other than those of the requesting owner.

Unit owners also have the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request. But an association does not have to compile or synthesize information.

Information the association provides may not be used for commercial purposes.

Fees

The bill allows an association to charge a reasonable fee for providing copies of any records and supervising the unit owner's inspection.

§ 31 — RULES

Before adopting, amending, or repealing any rule, the bill requires the executive board to give all unit owners notice of:

1. its intention to adopt, amend, or repeal a rule and 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.

Following adoption, amendment, or repeal of a rule, the bill requires the association to notify the unit owners of its action and provide a copy of any new or revised rule.

The bill specifies that an association's internal business operating procedures need not be adopted as rules, but requires that every rule be reasonable.

The bill authorizes an association to adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration allows it. If the declaration provides it, the association must adopt procedures to enforce those standards and approve construction applications, including (1) a reasonable time within which the association must act after an application is submitted and (2) the consequences of its failure to act.

Flag Display

The bill requires a rule regulating display of the U.S. flag to be consistent with federal law. The rule cannot prohibit display on a unit or on a limited common element adjoining a unit of the Connecticut flag, or signs regarding candidates for public or association office or ballot questions. The bill allows the association to adopt rules governing the time, place, size, number, and manner of those displays.

Assembly

The bill gives unit owners the right to assemble peacefully on the common elements to consider matters related to the common interest community, but authorizes the association to adopt rules governing the time, place, and manner of those assemblies.

Behavior in Units

The bill authorizes an association to 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 that 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, if the restrictions are reasonably designed to meet underwriting requirements of institutional lenders that regularly make first mortgages on units or purchase such mortgages.

§ 32 — NOTICE TO UNIT OWNERS

The bill requires an association to deliver any notice CIOA or the bill requires to any mailing or electronic mail address a unit owner designates. Otherwise, the bill allows the association to deliver notices by:

1. hand delivery to each unit owner;
2. hand delivery, U.S. 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.

The bill specifies that ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

§ 33 — REMOVAL OF OFFICERS AND DIRECTORS

The bill authorizes unit owners present in person, by proxy, or by

absentee ballot at any meeting of the unit owners at which a quorum is present, to remove any executive board member and any officer elected by the unit owners, with or without cause, by majority vote. However, the bill specifies 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 by persons other than the declarant during or after the period of declarant control may be removed only by the person that appointed that member; and
3. the unit owners may not consider whether to remove a board member or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the meeting's notice.

The bill gives any member or officer considered for removal a reasonable opportunity to speak before the vote is taken.

§§ 20, 34 — EXECUTIVE BOARD AND ASSOCIATION BUDGETS

The bill requires the executive board, at least annually, to adopt a proposed budget for the common interest community for consideration by the unit owners. By law, within 30 days after adoption of a proposed budget, the executive board must provide to all the unit owners a summary of the budget. The bill requires that this summary include any reserves, and a statement of the basis on which any reserves are calculated and funded. Under current law, the board must set a date for a unit owner's meeting to consider ratification within 14 to 30 days after hand delivering or mailing the summary. The bill instead requires the board to simultaneously set a unit owner's meeting date within 10 to 60 days after providing the summary to the unit owners.

By law, unless at that meeting a majority of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is

rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

Special Assessment

The bill authorizes the executive board to propose a special assessment at any time. The assessment is effective only if the executive board follows the budget ratification procedures the bill requires and the unit owners do not reject the proposed assessment.

The bill allows a special assessment to become immediately effective if the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency if:

1. the board vote specifies that the special assessment becomes effective immediately and
2. notice of the emergency assessment is provided promptly to all unit owners.

The bill requires that the board only spend the funds paid on account of the emergency assessment for the purposes described in the vote.

§ 35 — LITIGATION INVOLVING THE DECLARANT

The bill applies the following requirements to an association's authority to institute and maintain a proceeding alleging a construction defect against a declarant or an employee, independent contractor or other person directly or indirectly providing labor or materials to a declarant. These apply whether the proceeding involves litigation, mediation, arbitration, or administrative action.

Under the first requirement, before the association institutes a proceeding, it must 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 bill

allows the notice to be delivered by any method of service and may be addressed to any person if the method of service used provides actual notice or would be sufficient to give notice.

Under the second requirement, the association may not institute a proceeding against a person for at least 45 days after it sends notice of its claim. During this 45-day period, 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. The association may institute a proceeding only if it does not receive a timely remediation plan, or does not accept the terms of any submitted plan.

If the association receives one or more timely remediation plans, the executive board must 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.

If the association accepts a remediation plan, or if a person agrees to stated conditions to an otherwise acceptable plan, the parties must agree on a period for implementing the plan. The association may not institute a proceeding during the time the plan is being diligently implemented.

Any statute of limitation affecting the association's right of action against a declarant or other person is tolled during the initial 45-day period and during any extension of that time because a person to whom notice was directed has commenced and is diligently pursuing the remediation plan.

The bill authorizes, after the 45-day period expires, whether or not the association agrees to any remediation plan, the association to institute a proceeding against a person to whom notice was directed who fails to submit a timely remediation plan, submits an unacceptable plan, or which fails to pursue diligent implementation of a plan. It also allows a unit owner to institute such a proceeding with respect to the owner's unit and any limited common elements assigned

to that unit, regardless of any association action.

The bill specifies that it 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.

The bill authorizes the executive board to make the determination of whether and when the association may institute a proceeding. The bill prohibits a declaration from requiring a vote by any number or per cent of unit owners as a condition of instituting a proceeding.

The bill specifies that it does not prevent an association from seeking equitable relief at any time without giving the notice the bill requires or waiting 45 days after a notice was given.

§ 36 — DUTY OF A DEALER TO DELIVER A PUBLIC OFFERING STATEMENT

The law generally requires a declarant, before offering any interest in a unit to the public, to prepare a public offering statement (POS) conforming to the requirements of law. A declarant may transfer responsibility for preparation of all or part of the public offering statement to a successor declarant. In the event of any such transfer, the transferor must provide the transferee with any information necessary to enable the transferee to prepare the POS.

The law requires a declarant or successor declarant who offers a unit to a purchaser to deliver a POS. The law imposes this same requirement on a dealer who delivers a POS. The bill defines a “dealer” as someone who owns either six or more units, or 50% or more of all the units, in a common interest community.

Current law makes a declarant or successor declarant who prepared all or part of a POS liable to all persons claiming an interest in the common interest community for failing to deliver the POS, for any false or misleading statement in it, or for any omission of a material fact with respect to that portion of the public offering statement which he or she prepared. But under current law, a declarant is shielded from

liability for false and misleading statements or omissions if he or she did not prepare any part of the POS that he or she delivers unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission. This bill eliminates this shield and makes the declarant liable for all false misleading statements and omissions.

§ 37 — PUBLIC OFFERING STATEMENT –GENERAL PROVISIONS AND REQUIREMENTS

The bill requires that a POS contain a description of any cost sharing arrangement described in the bill.

§ 38 —EXPRESS WARRANTIES OF QUALITY

Under current law, 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. The bill creates an exception if the model or description clearly discloses that it is only proposed or is subject to change.

§ 39 — CAUSE OF ACTION FOR VIOLATING CIOA

Under current law, if a declarant or any other person subject to CIOA fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected may sue for appropriate relief, and punitive damages may be awarded for a willful failure to comply with CIOA.

The bill eliminates the court's authority to award punitive damages and specifies that a declarant can sue to enforce a right granted by CIOA, or the declaration or bylaws.

By law, parties to a dispute arising under CIOA, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution. Current law requires that the agreement be in writing and signed. The bill instead requires that the agreement be in a record authenticated by the parties.

BACKGROUND***Condominium***

“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.

Cooperative

“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 or her ownership interest in the association to exclusive possession of a unit.

Planned Community

A “planned community” is a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

Common Elements

“Common elements” means (1) in the case of a condominium or cooperative, all portions of the common interest community other than the units and (2) in a planned community, any real property within it owned or leased by the association, other than a unit. It also means in all common interest communities, any other interests in real property for the benefit of unit owners which are subject to the declaration.

Federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq.

On June 30, 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.

The act (15 USC § 7002), allows a state statute, regulation, or other rule of law to modify, limit, or supersede the provisions of § 7001 only

if it satisfies certain requirements and makes specific reference to the federal act.

The law provides that if state law requires that information relating to a transaction in or affecting interstate or foreign commerce be provided or made available to a consumer in writing the use of an electronic record to provide or make available such information satisfies the requirement that information be in writing if:

1. the consumer has affirmatively consented to this and has not withdrawn his or her consent;
2. the consumer before consenting is provided with a clear and conspicuous statement informing him or her of rights and options, including the right to withdraw consent;
3. before consenting, the consumer's provide it with a statement of the hardware and software requirements for accessing and retaining electronic records and consents electronically or confirms his or her consent electronically in a way that reasonably demonstrates the consumer can access information in electronic form; and
4. after consenting, if changes in hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain the record, the consumer is provided with a statement of the revised hardware and software requirements and the right to withdraw consent without the imposition of any conditions or consequences (15 USC § 7001 (c)).

The following notices are described in 15 USC § 7003(b):

1. court orders or notices, or official court documents required to be executed in connection with court proceedings;
2. any document required to accompany any transportation or handling of hazardous material, pesticides, or other toxic or

dangerous material; or

3. any notice of:

- cancellation or termination of utility services,
- default, repossession, foreclosure, or eviction, or, the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence;
- cancellation or termination of health insurance or benefits or life insurance benefits; or
- recall of a product, or material failure of a product, that risks endangering health or safety.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 42 Nay 0 (04/03/2009)