HOUSE BILL NO. 36

INTRODUCED BY A. GRIFFITH

BY REQUEST OF THE LOCAL GOVERNMENT INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT ESTABLISHING THE UNIFORM COMMON INTEREST OWNERSHIP ACT; ALLOWING FOR THE CREATION OF COMMON INTEREST COMMUNITIES, COOPERATIVES, AND PLANNED COMMUNITIES; PROVIDING FOR THE ADOPTION OF GOVERNING INSTRUMENTS, INCLUDING BYLAWS AND COVENANTS; PROVIDING FOR THE CLASSIFICATION OF REAL ESTATE OR PERSONAL PROPERTY; PROVIDING FOR A PROCESS OF PROPERTY ACQUISITION BY EMINENT DOMAIN; PROVIDING FOR THE ALLOCATION OF COMMON ELEMENTS; ALLOWING FOR THE MERGER, CONSOLIDATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES; ALLOWING FOR THE EXERCISE OF DEVELOPMENT RIGHTS, THE ALTERATION OF UNITS, THE RELOCATION OF UNIT BOUNDARIES, AND THE SUBDIVISION OF UNITS; PROVIDING FOR THE ORGANIZATION OF UNIT OWNERS ASSOCIATIONS; PROVIDING POWERS AND DUTIES OF UNIT OWNERS ASSOCIATIONS; ESTABLISHING FINANCIAL AND OTHER ASSOCIATION RECORD CREATION AND RETENTION RULES; PROVIDING PROTECTIONS FOR PURCHASERS; PROVIDING PROCESSES FOR THE SALE OF UNITS, THE RELEASE OF LIENS, AND THE CONVERSION OF BUILDINGS; PROVIDING FOR APPLICABILITY AND TRANSITION PROCESSES FOR EXISTING UNIT OWNERSHIP ORGANIZATIONS AND ASSOCIATIONS; PROVIDING FOR THE AWARDING OF ATTORNEY FEES AND PUNITIVE DAMAGES IN CERTAIN CIRCUMSTANCES; PROVIDING DEFINITIONS; AMENDING SECTIONS 70-17-212, 70-17-901, 70-20-501, 70-23-103, 70-32-202, 76-3-203, 76-4-111, 76-4-127, AND 76-25-402, MCA; AND PROVIDING AN EFFECTIVE DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 95] may be cited as the "Uniform Common Interest Ownership Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 95], the following definitions apply:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant.

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

(i) is a general partner, officer, director, or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

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

(i) is a general partner, officer, director, or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(c) Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

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

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

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

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

(3) "Assessment" means the sum attributable to each unit and due to the association pursuant to [section 61].

(4) "Association" or "unit owners association" means the unit owners association organized under [section 47].

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

(6) "Common elements" means:

(a) in a condominium or cooperative, all portions of the common interest community other than the units;

(b) in a planned community, any real estate within a planned community that is owned or leased by the association, other than a unit; and

(c) in all common interest communities, any other interests in real estate for the benefit of unit owners who are subject to the declaration.

(7) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to [section 28].

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

(9) (a) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration.

(b) The term does not include an arrangement described in [section 20 or 21].

(10) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate 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.

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

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

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

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

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

(b) reserves or succeeds to any special declarant right.

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

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

(a) add real estate to a common interest community;

(b) create units, common elements, or limited common elements within a common interest community;

(c) subdivide units or convert units into common elements; or

(d) withdraw real estate from a common interest community.

(17) (a) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit.

(b) The term does not include the transfer or release of a security interest.

(18) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(19) "Executive board" means the body, regardless of name, designated in the declaration or bylaws to act on behalf of, manage, operate, or oversee the association, including but not limited to a board of directors.

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

(21) "Leasehold common interest community" means a common interest community in which all or a

portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of [section 23(2) or (4)] for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means:

(a) a unit owners association that serves more than one common interest community; or

(b) an organization that holds a power delegated under [section 41(1)(a)].

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

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

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

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

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

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

(b) as security for an obligation.

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

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

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

(31) "Residential purpose" means use for dwelling or recreational purposes, or both. It includes home-based child care as provided in 70-17-216.

(32) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association, however denominated.

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

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

(a) complete improvements the declarant is not obligated to make that are indicated on plats and plans filed with the declaration or described in the public offering statement;

(b) under [section 31], exercise any development right;

(c) under [section 36], maintain sales offices, management offices, signs advertising the common interest community, and models;

(d) under [section 37], use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community;

(e) under [section 41], make the common interest community subject to a master association;

(f) under [section 42], merge or consolidate a common interest community with another common interest community of the same form of ownership;

(g) under [section 49(4)], appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control;

(h) under [section 54], attend meetings of the unit owners and, except during an executive session,

the executive board;

(i) under [section 64], have access to the records of the association to the same extent as a unit owner; and

(j) under [section 66(3)], control any construction, design review, or aesthetic standards committee or process.

(35) "Time share" means an ownership right in, or right to use, a unit for less than a full year during any year on a recurring basis for more than 1 year, even if the years are not consecutive.

(36) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to [section 26(1)(e)]. A unit may be land.

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

NEW SECTION. **Section 3. No variation by agreement.** Except as expressly provided in [sections 1 through 95], the effect of the provisions of [sections 1 through 95] may not be varied by agreement, and rights conferred by [sections 1 through 95] may not be waived. Except as otherwise provided in [section 18], a declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of [sections 1 through 95] or the declaration.

NEW SECTION. **Section 4. Separate titles and taxation.** (1) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in the

unit that is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(2) In a condominium or planned community:

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

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

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

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

NEW SECTION. **Section 5. Applicability of local ordinances, regulations, and building codes.** (1) A building code adopted pursuant to Title 50, chapter 60, may not impose any requirement upon any structure in a common interest community that it would not impose upon a physically identical development under a different form of ownership.

(2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation authorized under Title 7, Title 10, chapter 1, part 15, or Title 76 may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative that it would not impose upon a physically identical development under a different form of ownership.

(3) Except as provided in subsections (1) and (2), the provisions of [sections 1 through 95] do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate authorized in Title 7, Title 10, chapter 1, part 15, Title 50, chapter 60, or Title 76.

NEW SECTION. **Section 6. Eminent domain.** (1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) (a) Except as provided in subsection (1), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired.

(b) Upon acquisition, unless the decree otherwise provides:

(i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

(ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

(4) The final order of condemnation must be recorded in every county in which any portion of the common interest community is located.

NEW SECTION. **Section 7. Supplemental general principles of law applicable.** The principles of

law and equity, including the law of corporations and any other form of organization authorized by the law, and unincorporated associations, the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of [sections 1 through 95], except to the extent inconsistent with [sections 1 through 95].

NEW SECTION. **Section 8. Construction against implicit repeal.** [Sections 1 through 95] are a general act intended as a unified coverage of its subject matter. No part of it may be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

NEW SECTION. **Section 9. Uniformity of application and construction.** [Sections 1 through 95] must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 95] among states enacting it.

NEW SECTION. **Section 10. Remedies to be liberally administered.** The remedies provided by [sections 1 through 95] must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.

NEW SECTION. **Section 11. Adjustment of dollar amounts for purposes of dues or assessment increases.** (1) From time to time the dollar amount specified in [section 16] must change, as provided in subsections (2) and (3), according to and to the extent of changes in the consumer price index for urban wage earners and clerical workers: U.S. city average, all items 1967 = 100, compiled by the bureau of labor statistics, United States department of labor, (the "Index"). The index for December, 1979, which was 230, is the reference base index.

(2) The dollar amount specified in [section 16] and any amount stated in the declaration pursuant to that section must change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the reference base index is 10% or more, except that:

(a) the portion of the percentage change in the Index in excess of a multiple of 10% must be disregarded and the dollar amount must change only in multiples of 10% of the amount appearing in [sections 1 through 95] on the date of enactment;

(b) the dollar amount may not change if the amount required by this section is currently in effect pursuant to [sections 1 through 95] as a result of earlier application of this section; and

(c) in no event may the dollar amount be reduced below the amount appearing in [sections 1 through 95] on the date of enactment.

(3) If the Index is revised after December, 1979, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the reference base index, a revised reference base index must be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the bureau of labor statistics. If the Index is superseded, the Index referred to in this section is the one represented by the bureau of labor statistics as reflecting the most accurate changes in the purchasing power of the dollar for consumers.

NEW SECTION. **Section 12. Relation to Electronic Signatures in Global and National Commerce Act and Montana Electronic Signature Act.** [Sections 1 through 95] incorporate the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, and modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery.

NEW SECTION. **Section 13. Mandatory and default rules.** (1) Except as provided in subsection (2), the declaration or bylaws may not vary a provision of [sections 1 through 95] that gives a right to or imposes an obligation or liability on a unit owner, declarant, association, or executive board.

(2) The declaration or bylaws may vary the following provisions as provided in the provision:

(a) [section 4(1)] concerning classification of a cooperative unit as real estate or personal property;

(b) [section 6(2) and (3)] concerning reallocation of allocated interests and allocation of proceeds after a taking by eminent domain;

(c) [sections 15 through 18] and [section 92] concerning elections regarding the applicability of [sections 1 through 95];

(d) [section 23] concerning boundaries between units and common elements;

(e) [section 29(2)] concerning reallocation of limited common elements;

(f) [section 30(5)] concerning horizontal boundaries of units;

(g) [section 32] concerning alterations of units and common elements made by unit owners;

(h) [section 33(1)] concerning relocation of boundaries between units;

(i) [section 34(1)] concerning subdivision of units;

(j) [section 36] concerning signs maintained by a declarant;

(k) [section 37(1) and (3)] concerning easements through, and rights to use, common elements;

(l) [section 38(1)] concerning the percentage of votes required to amend the declaration;

(m) [section 39(1) and (8)] concerning the percentage of votes required to terminate a common interest community and priority of creditors of a cooperative;

(n) [section 48(1)(n)] concerning an association's assignment of rights to future income;

(o) [section 49(1)] concerning the executive board acting on behalf of the association;

(p) [section 53(1)] concerning responsibility for maintenance, repair, and replacement of units and common elements;

(q) [section 54] concerning meetings;

(r) [section 55] concerning quorum requirements for meetings;

(s) [section 56] concerning voting, proxies, and ballots;

(t) [section 58(1), (2), and (6)] concerning the percentage of votes required to convey or encumber common elements and the effect of conveyance or encumbrance of common elements;

(u) [section 59] concerning insurance for a nonresidential common interest community;

(v) [section 60] concerning payment of surplus funds of the association;

(w) [section 62(1)] concerning treatment of fees, costs, charges, and other sums as assessments for lien purposes; and

(x) [section 69(1)] concerning the percentage of votes required to reject a budget.

NEW SECTION. **Section 14. General applicability to common interest communities.** Except as otherwise provided in [sections 14 through 21] and [sections 92 through 95], [sections 1 through 95] apply to all common interest communities. An amendment to [sections 1 through 95] applies to all common interest communities subject to [sections 1 through 95], regardless of when the amendment becomes effective.

NEW SECTION. **Section 15. Exception for small cooperatives.** If a cooperative contains no more than 12 units and is not subject to any development rights, it is subject only to [sections 5 and 6] of [sections 1 through 95] unless the declaration provides that [sections 1 through 95] are applicable.

NEW SECTION. **Section 16. Exception for small and limited expense liability planned communities.** (1) Unless the declaration provides that [sections 1 through 95] are applicable, a planned community that is not subject to any development right is subject only to [sections 4 through 6] if the community:

(a) contains no more than 12 units; or

(b) provides in its declaration that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $300, as adjusted pursuant to [section 11].

(2) The exemption provided in subsection (1)(b) applies only if:

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

(b) the declaration provides that the assessment may not be increased above the limitation in subsection (1)(b) during the period of declarant control without the consent of all unit owners.

NEW SECTION. **Section 17. Amendments to governing instruments.** (1) The declaration or bylaws of a cooperative under [section 15] or a planned community under [section 16] may be amended to:

(a) provide that all the sections listed in [section 95(1)] apply to the cooperative or planned community; or

(b) achieve any other result permitted by [sections 1 through 95], regardless of what applicable law

provided before [sections 1 through 95] were adopted.

(2) Except as otherwise provided in [section 38(9) and (10)] an amendment under this section to the declaration or bylaws of a common interest community created before [the effective date of this act] must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of [sections 1 through 95]. If an amendment grants to a person a right, power, or privilege permitted by [sections 1 through 95], any correlative obligation, liability, or restriction in [sections 1 through 95] also applies to the person.

NEW SECTION. **Section 18. Applicability to nonresidential and mixed-use common interest communities.** (1) Except as otherwise provided in subsection (4), this section applies only to a common interest community in which all units are restricted exclusively to nonresidential purposes.

(2) A nonresidential common interest community is not subject to [sections 1 through 95] except to the extent the declaration provides that:

(a) the entirety of [sections 1 through 95] applies to the community;

(b) [sections 1 through 21] and [sections 22 through 46] apply to the community; or

(c) in the case of a planned community or a cooperative, only [sections 4 through 6] apply to the community.

(3) If the entirety of [sections 1 through 95] applies to a nonresidential common interest community, the declaration may also require that:

(a) notwithstanding [section 51], any management, maintenance, operations, or employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) notwithstanding [section 3], purchasers of units shall execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(4) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to [sections 1 through 95] unless the units that may be used for residential purposes would comprise a common interest community that

would be subject to [sections 1 through 95] in the absence of the nonresidential units or the declaration provides that [sections 1 through 95] apply as provided in subsection (2) or (3).

NEW SECTION. **Section 19. Applicability to out-of-state common interest communities.** [Sections 1 through 95] do not apply to a common interest community located outside this state, but [sections 73 and 74] and, to the extent applicable, [sections 75 through 77] apply to a contract for the disposition of a unit in that common interest community signed in this state by any party unless exempt under [section 72(2)].

NEW SECTION. **Section 20. Other exempt real estate arrangements.** (1) 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 specified in their arrangement or declarations does not create a separate common interest community. The arrangement must be interpreted pursuant to contract law of this state.

(2) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community.

NEW SECTION. **Section 21. Other exempt covenants.** A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a common wall, party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

NEW SECTION. **Section 22. Creation of common interest communities.** (1) A common interest community may be created pursuant to [sections 1 through 95] only by recording a declaration in the office of the clerk and recorder in the county in which the common interest community is located and, in a cooperative,

by conveying the real estate subject to that declaration to the association or an individual or entity.

(2) In a condominium, a declaration or an amendment to a declaration may be recorded before construction of the buildings described in the declaration is completed. However, prior to the transfer of a unit to a purchaser, the declarant shall file a statement that the unit is substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an engineer, surveyor, or architect licensed in this state.

NEW SECTION. **Section 23. Unit boundaries.** Except as provided by the declaration:

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

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

(3) subject to subsection (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

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

NEW SECTION. **Section 24. Construction and validity of declaration and bylaws.** (1) All provisions of the declaration and bylaws are severable.

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

(3) If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with a mandatory provision of [sections 1 through 95].

(4) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with [sections 1 through 95]. Whether a substantial failure impairs marketability is not affected by [sections 1 through 95].

NEW SECTION. **Section 25. Description of units.** A description of a unit that sets forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit that were created by the declaration or bylaws.

NEW SECTION. **Section 26. Contents of declaration.** (1) A declaration recorded after [the effective date of this act] must contain:

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

(b) the name of every county in which any part of the common interest community is situated;

(c) a legally sufficient description of the real estate included in the common interest community;

(d) a statement of the maximum number of units that the declarant reserves the right to create;

(e) in a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size, and its location within a building if it is within a building containing more than one unit;

(f) a description of any limited common elements, other than those specified in [section 23(2) and (4)] as provided in [section 30(2)(j)] and, in a planned community, any real estate that is or must become common elements;

(g) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in [section 23(2) and (4)] together with a statement that they may be so allocated;

(h) a description of any development right and any other special declarant rights reserved by the declarant, a time limit within which each of those rights must be exercised, and a legally sufficient description of

the real estate to which each development right applies;

(i) any other conditions or limitations under which the rights described in subsection (1)(h) may be exercised or will lapse;

(j) an allocation to each unit of the allocated interests in the manner described in [section 28];

(k) any restrictions on alienation of the units, including any restrictions on leasing that exceed the restrictions on leasing units that executive boards may impose pursuant to [section 66(6)] and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(l) any authorization pursuant to which the association may establish and enforce construction and design criteria and aesthetic standards as provided in [sections 52 and 66]; and

(m) all matters required by [sections 27 through 30] and [sections 36, 37, and 49].

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

NEW SECTION. **Section 27. Leasehold common interest communities.** (1) Any lease the expiration or termination of which may terminate the common interest community or reduce its size, or a memorandum thereof, must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

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

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

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

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

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

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

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

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

(4) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with [section 6(1)] as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

NEW SECTION. **Section 28. Allocation of interests.** (1) The declaration must allocate to each unit:

(a) in a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association;

(b) in a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association; and

(c) in a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

(2) The declaration must state the formulas used to establish allocations of interests.

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

(4) The declaration may provide:

(a) that different allocations of votes must be made to the units on particular matters specified in the declaration;

(b) for cumulative voting only for the purpose of electing members of the executive board; and

(c) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by [sections 1 through 95], nor may units constitute a class because they are owned by a declarant.

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

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

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

NEW SECTION. **Section 29. Limited common elements.** (1) Except for the limited common elements described in [section 23(2) and (4)], the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

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

(3) A common element not previously allocated as a limited common element may be so allocated only by an amendment to the declaration. A unit owner may request the executive board to amend the declaration to allocate all or part of a common element as a limited common element for the exclusive use of the owner's unit. The board may prescribe in the amendment a condition or obligation, including an obligation to

maintain the new limited common element or pay a fee or charge to the association. If the board approves the amendment, the board shall give notice to all unit owners of its action and include a statement that unit owners may object in a record to the amendment not later than 30 days after delivery of the notice. The amendment becomes effective if the board does not receive a timely objection. If the board receives a timely objection, the amendment becomes effective only if the unit owners vote under [section 56], whether or not a quorum is present, to approve the amendment by a vote of at least 67% of the votes cast, including at least 67% of the votes cast that are allocated to units not owned by the declarant. If the amendment becomes effective, the association and the owner of the benefited unit shall execute the amendment.

(4) The association shall record the amendment as provided in [section 38]. If an amendment changes information shown in a plat or plan concerning a common element or limited common element other than a common wall between units, the association shall prepare and record a revised plat or plan.

NEW SECTION. **Section 30. Plats and plans.** (1) Plats and plans are a part of the declaration and are required for all common interest communities except cooperatives. Separate plats and plans are not required by [sections 1 through 95] if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(2) Each plat must show or project:

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

(b) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

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

(d) the extent of any encroachments by or upon any portion of the common interest community;

(e) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(f) except as otherwise provided in subsection (8), the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (4) and that unit's identifying number;

(g) except as otherwise provided in subsection (8), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (4) and that unit's identifying number;

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

(i) the distance between noncontiguous parcels of real estate comprising the common interest community;

(j) the approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements and show or contain a narrative description of any other limited common elements; and

(k) for real estate not subject to development rights, all other matters customarily shown on land surveys.

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

(4) Except as otherwise provided in subsection (8), to the extent not shown or projected on the plats, plans of the units must show or project:

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

(b) the approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

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

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be

depicted on the plats and plans.

(6) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (1), (2), and (4) or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(7) A certification of a plat or plan required by this section or [section 22(2)] must be made by an independent surveyor, architect, or engineer licensed in this state.

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

(a) the plat shows the location and dimensions of all buildings containing or comprising the units; and

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

NEW SECTION. **Section 31. Exercise of development rights.** (1) To exercise any development right reserved under [section 26(1)(h)], the declarant shall prepare, execute, and record an amendment to the declaration pursuant to [section 38] and in a condominium or planned community comply with [section 30]. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of the subdivision or conversion of units described in subsection (2), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by [section 29].

(2) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by [sections 26 or 27], as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by [section 30]. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to [section 26(1)(h)].

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

(a) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain pursuant to [section 6]; and

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

(4) If the declaration provides, pursuant to [section 26(1)(h)], that all or a portion of the real estate is subject to a right of withdrawal:

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

(b) if any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

NEW SECTION. **Section 32. Alteration of units.** Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make any improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community;

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

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

NEW SECTION. **Section 33. Relocation of unit boundaries.** (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an

amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations.

(2) The boundary of a unit may be relocated only by an amendment to the declaration. A unit owner may request the executive board to amend the declaration to include all or part of a common element within the owner's unit. The board may prescribe in the amendment a fee or charge payable by the unit owner to the association in connection with the relocation. The board may approve the amendment only if the unit owners vote under [section 56], whether or not a quorum is present, to approve the amendment by a vote of at least 67% of the votes cast, including at least 67% of the votes cast that are allocated to units not owned by the declarant.

(3) The association and the owners of the units whose boundaries are relocated shall execute an amendment under this section. The amendment must contain words of conveyance between the parties. The association shall record the amendment as provided in [section 38]. The association:

(a) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units and their dimensions and identifying numbers; and

(b) in a cooperative shall prepare and record amendments to the declaration, including any plans necessary to show or describe the altered boundaries of affected units and their dimensions and identifying numbers.

NEW SECTION. **Section 34. Subdivision of units.** (1) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the declaration and law other than [sections 1 through 95], upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including, in a condominium or planned community, the plats and plans subdividing that unit. In a planned community, declaring a condominium within the planned community or a unit is not a subdivision of the unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided,

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

NEW SECTION. **Section 35. Building encroachment.** (1) Except as provided in subsection (2), if the construction, reconstruction, or alteration of a building or the vertical or lateral movement of a building results in an encroachment due to a divergence between the existing physical boundaries of a unit and the boundaries described in the declaration under [section 26(1)(e)], the existing physical boundaries of the unit are its legal boundaries, rather than the boundaries described in the declaration.

(2) Subsection (1) does not apply if the encroachment:

(a) extends beyond 5 feet, as measured from any point on the common boundary along a line perpendicular to the boundary; or

(b) results from willful misconduct of the unit owner that claims a benefit under subsection (1).

(3) This section does not relieve a declarant or other person of liability for failure to adhere to plats or plans or a representation in the public offering statement.

NEW SECTION. **Section 36. Use for sales purposes.** A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. In a cooperative or condominium, any sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state law and to local ordinances.

NEW SECTION. **Section 37. Easement and use rights.** (1) Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of

discharging the declarant's obligations or exercising special declarant rights, whether arising under [sections 1 through 95] or reserved in the declaration.

(2) Subject to [sections 48(1)(f) and 58], the unit owners have an easement in the common elements for access to their units.

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

NEW SECTION. **Section 38. Amendment of declaration.** (1) Except in cases of amendments that may be executed by a declarant under [sections 30(6) or 31], the association under [sections 6, 27(4), 29(3), 33, or 34], or certain unit owners under [sections 29(2), 34(2), or 39(2)] and except as limited by subsections (4), (6), (7), and (8), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67% of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

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

(3) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation.

(4) Except to the extent expressly permitted or required by other provisions of [sections 1 through 95], no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit in the absence of unanimous consent of the unit owners.

(5) Amendments to the declaration required by [sections 1 through 95] to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) An amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or agreement of unit owners of units to which at least 80% of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by unit owners of units having at least 80% of the votes of a specified group of units that would be affected by the amendment. An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(7) The time limits specified in the declaration pursuant to [section 26(1)(h)] within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

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

(9) If any provision of [sections 1 through 95] or of the declaration requires the consent of a holder of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if a refusal to consent in a record is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided to the association an address for notice, the association shall provide notice to the address in the security interest of record. Notwithstanding this section, an amendment to the declaration that affects the priority of a holder' security interest or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(10) If the declaration contains a provision requiring that amendments to the declaration may 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, the amendment:

(a) is approved if:

(i) unit owners of units to which at least 80% of the votes in the association are allocated vote for or agree to the proposed amendment;

(ii) no unit owner votes against the proposed amendment; and

(iii) notice of the proposed amendment is delivered to the unit owners holding the votes in the association who have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within 60 days after the association delivers notice; or

(b) is approved if unit owners of units to which at least 80% of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in district court against all objecting unit owners, the court finds that the objecting unit owners do not have an interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.

NEW SECTION. **Section 39. Termination of common interest community.** (1) Except for a taking of all the units by eminent domain, foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in [section 45], a common interest community may be terminated only by agreement of unit owners of units to which at least 80% of the votes in the association are allocated, including at least 80% of the votes allocated to units not owned by the declarant, and with any other approvals required by the declaration. The declaration may require a larger percentage of total votes in the association for approval, but termination requires approval by at least 80% of the votes allocated to units not owned by the declarant. The declaration may specify smaller percentages only if all of the units are restricted exclusively to nonresidential uses.

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

common interest community is situated and is effective only upon recordation.

(3) A termination agreement may provide for the sale of some or all of the common elements and units of the common interest community following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2). If any real estate is to be sold following termination, title to that real estate not already owned by the association vests on termination in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (7), (8), (9), and (12). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by [sections 1 through 95] or the declaration.

(5) Termination does not change title to a unit or common element not to be sold following termination unless the termination agreement otherwise provides.

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

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

(8) In a cooperative, the declaration may provide that all creditors of the association have priority

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

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

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

(c) the amount of the lien of an association's creditor described in subsections (8)(a) and (8)(b) against each of the unit owners' interest must be proportionate to the ratio that each unit's common expense liability bears to the common expense liability of all of the units;

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

(e) the assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above; and

(f) creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(9) The respective interests of unit owners referred to in subsections (4), (5), (6), (7), (8), and (12) are as follows:

(a) except as otherwise provided in subsection (8)(d), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by appraisal made by one or more independent appraisers selected by the association. The appraisal must be distributed to the unit owners and becomes final unless:

(i) disapproved not later than 30 days after distribution by unit owners of units to which at least 25% of the votes in the association are allocated; or

(ii) a unit owner objects in a record not later than 30 days after distribution to the determination of

value of the owner's unit.

(b) A unit owner that objects under subsection (9)(a)(ii) may select an appraiser to represent the owner and make an appraisal of the owner's unit. If the association's appraisal and the unit owner's appraisal of the fair market value of the owner's interest differ, a panel consisting of an appraiser selected by the association, the unit owner's appraiser, and a third appraiser mutually selected by the first two appraisers shall determine, by majority vote, the value of the unit owner's interest. The determination of value by the panel is final.

(c) The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

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

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

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

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

(10) In a condominium or planned community, except as otherwise provided in subsection (11), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under [section 58], does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(11) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or

encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

(12) A termination agreement complying with this section may provide for termination of fewer than all of the units in a common interest community, subject to the following rules:

(a) In addition to the approval required by subsection (1), the termination agreement must be approved by at least 80% of the votes allocated to the units being terminated.

(b) The termination agreement must reallocate under [section 28] the allocated interests for the units that remain in the common interest community after termination.

(c) The aggregate values of the units and common elements being terminated must be determined under subsection (9). The termination agreement must specify the allocation of the proceeds of sale for the units and common elements being terminated and sold.

(d) Security interests and liens on remaining units and remaining common elements continue, and security interests and liens on units being terminated no longer extend to any remaining common elements.

(e) The unit owners association continues as the association for the remaining units.

(f) The association shall record with the termination agreement under subsection (2) an amendment to the declaration or an amended and restated declaration.

NEW SECTION. **Section 40. Rights of secured lenders.** (1) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(a) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board;

(b) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding; or

(c) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to [section 59].

(2) A lender who has extended credit to an association secured by an assignment of income allowed in [section 48(1)(n)] or an encumbrance on the common elements provided for in [section 58] may enforce its security agreement in accordance with its terms, subject to the requirements of [sections 1 through 95] and other law. Requirements that the association shall deposit its periodic common charges before default with the lender to which the association's income has been assigned or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms do not violate the prohibitions on lender approval contained in subsection (1).

NEW SECTION. **Section 41. Master associations.** (1) A declaration may:

(a) delegate a power under [section 48(1)] from the unit owners association to a master association;

(b) provide for exercise of the powers under [section 48(1)] by a master association that also serves as the unit owners association for the common interest community; and

(c) reserve a special declarant right to make the common interest community subject to a master association.

(2) All provisions of [sections 1 through 95] applicable to unit owners associations apply to the master association, except as modified by this section.

(3) A unit owners association may delegate a power under [section 48(1)] to a master association without amending the declaration. The executive board of the unit owners association shall give notice to the unit owners of a proposed delegation and include a statement that unit owners may object in a record to the delegation not later than 30 days after delivery of the notice. The delegation becomes effective if the board does not receive a timely objection from unit owners of units to which at least 10% of the votes in the association are allocated. If the board receives a timely objection by at least 10% of the votes, the delegation becomes effective only if the unit owners vote under [section 56] to approve the delegation by a majority vote. The delegation is not effective until the master association accepts the delegation.

(4) A delegation under subsection (1)(a) may be revoked only by an amendment to the declaration.

(5) At a meeting of the unit owners that lists in the notice of the meeting the subject of delegation

of powers from the executive board to a master association, the unit owners may revoke the delegation by a majority of the votes cast at the meeting. The effect of revocation on the rights and obligations of parties under a contract between a unit owners association and a master association is determined by law of this state other than [sections 1 through 95].

(6) Unless it is acting in the capacity of a unit owners association, a master association may exercise the powers set forth in [section 48(1)(b)] only to the extent expressly permitted in the declarations of common interest communities that are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(7) After a unit owners association delegates a power to a master association, the unit owners association, its executive board members, and its officers are not liable for an act or omission of the master association with respect to the delegated power.

(8) The rights and responsibilities of unit owners with respect to the unit owners association set forth in [sections 49, 54, 55, 56, and 58] apply in the conduct of the affairs of a master association only to persons who elect the executive board of a master association, whether or not those persons are otherwise unit owners within the meaning of [sections 1 through 95].

(9) Not later than 90 days after termination of a period of declarant control of the master association, the executive board of the master association must be elected in one of the following ways:

(a) the unit owners of all common interest communities subject to the master association elect all members of the master association's executive board; or

(b) the unit owners in, or the executive board of, each common interest community subject to the master association elect one or more members of the master association's executive board if the instruments governing the master association apportion the seats on the board to each common interest community in a manner roughly proportional to the number of units in each common interest community.

(10) A period of declarant control of the master association under subsection (9) terminates not later than the earlier of:

(a) the termination under [section 49] of all periods of declarant control of all common interest communities subject to the master association under [section 49]; or

(b) 60 days after conveyance to unit owners other than a declarant of three-fourths of the units that

may be created in all common interest communities subject to the master association.

NEW SECTION. **Section 42. Merger or consolidation of common interest communities.** (1) Any two or more common interest communities may be merged or consolidated under subsection (2) into a single common interest community by agreement of the unit owners or exercise of a special declarant right. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the pre-existing common interest communities, and the operations and activities of all associations of the pre-existing common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

(2) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (1) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the pre-existing common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. If a special declarant right is exercised in a common interest community, approval by the unit owners is not required and the declarant may execute the agreement on behalf of the common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either:

(a) by stating the reallocations or the formulas upon which they are based; or

(b) by stating the percentage of overall allocated interests of the new common interest community that are allocated to all of the units comprising each of the pre-existing common interest communities and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing common interest community.

NEW SECTION. **Section 43. Addition of unspecified real estate.** In a planned community, if the

right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration. However, the amount of real estate added to the planned community pursuant to this section may not exceed 10% of the real estate described in [section 26(1)(c)], and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to [section 26(1)(d)].

NEW SECTION. **Section 44. Master planned communities.** (1) The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least 500 units that may be used for residential purposes, and at the time of the reservation that declarant owns or controls more than 500 acres on which the units may be built.

(2) If the requirements of subsection (1) are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by [section 26(1)(c) through (1)(l)] until the declaration is amended under subsection (3).

(3) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain:

(a) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser; and

(b) all the information required by [section 26(1)(c) through (1)(l)] with respect to that real estate.

(4) The only real estate in a master planned community subject to [sections 1 through 95] are units that have been declared or which are being offered for sale and any other real estate described pursuant to subsection (3). Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

(5) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in [sections 72 through 91] apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection (3).

(6) Limitations in [sections 1 through 95] on the addition of unspecified real estate do not apply to a master planned community.

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

NEW SECTION. **Section 45. Termination following catastrophe.** If substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice under [section 67] of a meeting of unit owners to consider termination under [section 39] will not likely result in receipt of the notice, the executive board or any other interested person may commence an action in district court seeking to terminate the common interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may issue any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

NEW SECTION. **Section 46. Adverse possession, prescriptive easement.** A unit owner or person claiming through a unit owner may not acquire title by adverse possession to, or an easement by prescription in, a common element in derogation of the title of another unit owner or the association.

NEW SECTION. **Section 47. Organization of unit owners association.** A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under [section 39] or their heirs, successors, or assigns. The association must have an executive board. The association must be organized as a profit or nonprofit corporation, trust, limited liability company, partnership, unincorporated association, or any other form of organization authorized by the law of this state. If there is a conflict between

the law under which the association was organized and [sections 1 through 95], [sections 1 through 95] govern.

NEW SECTION. **Section 48. Powers and duties of unit owners association.** (1) Except as otherwise provided in subsection (2) and other provisions of [sections 1 through 95], the association:

(a) shall adopt and may amend bylaws and may adopt and amend rules;

(b) shall adopt and may amend budgets under [section 69], may collect assessments for common expenses from unit owners, and may invest funds of the association;

(c) may hire and discharge managing agents and other employees, agents, and independent contractors;

(d) may institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community, subject to [section 70];

(e) may make contracts and incur liabilities;

(f) may regulate the use, maintenance, repair, replacement, and modification of common elements;

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

(h) may acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, except that:

(i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to [section 58]; and

(ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to [section 58];

(i) may grant easements, leases, and licenses through or over the common elements, but a grant to a unit owner that benefits the owner's unit is allowed only by reallocation under [section 29(3)] of the common element to a limited common element;

(j) may impose and receive any payments, fees, or charges for:

(i) the use, rental, or operation of the common elements, other than limited common elements described in [section 23(2) and (4)]; and

(ii) services provided to unit owners;

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

(l) may impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by [section 80], or statements of unpaid assessments;

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

(n) except to the extent limited by the declaration, may assign its right to future income, including the right to receive assessments;

(o) may exercise any other powers conferred by the declaration or bylaws;

(p) may exercise all other powers that may be exercised in this state by organizations of the same type as the association;

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

(r) may require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; and

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

(i) deny a unit owner or other occupant access to the owner's unit;

(ii) suspend a unit owner's right to vote;

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

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

(2) The declaration may not limit the power of the association beyond the limit authorized in subsection (1)(r) to:

(a) deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons; or

(b) institute litigation or an arbitration, mediation, or administrative proceeding against any person,

subject to the following:

(i) the association shall comply with [section 70], if applicable, before instituting any proceeding described in [section 70(1)] in connection with construction defects; and

(ii) the executive board shall 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.

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

(a) exercise directly against the tenant the powers described in subsection (1)(k);

(b) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and

(c) enforce any other rights against the tenant for the violation that the unit owner as landlord could lawfully have exercised under the lease or that the association could lawfully have exercised directly against the unit owner, including but not limited to the power to evict, or both.

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

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

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

(b) permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules.

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

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

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent

with law;

(c) 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

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

(7) The executive board's decision under subsection (6) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

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

NEW SECTION. **Section 49. Executive board members and officers.** (1) Except as otherwise provided in the declaration, the bylaws, subsection (2), or other provisions of [sections 1 through 95], the executive board acts on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized and are subject to the conflict of interest rules governing directors and officers pursuant to 35-2-418. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(2) The executive board may not:

(a) amend the declaration except as provided in [section 38];

(b) amend the bylaws;

(c) terminate the common interest community;

(d) elect members of the executive board but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or

(e) determine the qualifications, powers, duties, or terms of office of executive board members.

(3) The executive board shall adopt budgets as provided in [section 69].

(4) Subject to subsection (5), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before the period ends. In that event, the declarant may require during the remainder of the period that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, and except as provided in [section 44(7)], a period of declarant control terminates no later than the earliest of:

(a) 60 days after conveyance of three-fourths of the units that may be created to unit owners other than a declarant;

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

(c) 2 years after any right to add new units was last exercised; or

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

(5) Not later than 60 days after conveyance of one-fourth of the units that may be created to unit owners other than a declarant, at least one member and not less than 25% of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of one-half of the units that may be created to unit owners other than a declarant, not less than one-third of the members of the executive board must be elected by unit owners other than the declarant.

(6) Except as otherwise provided in [section 41(9)], not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. Unless the declaration provides for the election of officers by the unit owners, the executive board shall elect the officers. The executive board members and officers shall take office upon election or appointment.

(7) A declaration may 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. It may also provide a method for filling vacancies in those positions, other than by election by the unit owners. However, after the period of

declarant control, appointed members:

(a) may not comprise more than one-third of the board; and

(b) have no greater authority than any other member of the board.

NEW SECTION. **Section 50. Special declarant rights.** (1) A special declarant right is an interest in real estate. The interest is appurtenant to:

(a) all units owned by the declarant; and

(b) real estate that is subject to a development right.

(2) A declarant that no longer owns a unit or a development right ceases to have any special declarant rights.

(3) A declarant may voluntarily transfer part or all of a special declarant right only by an instrument that describes the special declarant right being transferred. The transfer becomes effective when recorded in every county in which any portion of the common interest community is located.

(4) Except as otherwise provided in subsection (7), (8), (10), or (11), a successor to a special declarant right is subject to all obligations and liabilities imposed on the transferor by [sections 1 through 95] or the declaration.

(5) If a declarant transfers a special declarant right to an affiliate of the declarant, the transferor and the successor are jointly and severally liable for all obligations and liabilities imposed on either person by [sections 1 through 95] or the declaration. Lack of privity does not deprive a unit owner of standing to maintain an action to enforce any obligation or liability of the transferor or successor.

(6) A declarant that transfers a special declarant right to a nonaffiliate successor:

(a) remains liable for an obligation or liability imposed by [sections 1 through 95] or the declaration, including a warranty obligation, that arose before the transfer; and

(b) is not liable for an obligation or liability imposed on the successor by [sections 1 through 95] or the declaration that arose after the transfer.

(7) A nonaffiliate successor that succeeds to fewer than all special declarant rights held by the transferor is not subject to an obligation or liability that relates to a special declarant right not transferred to the successor.

(8) A nonaffiliate successor is not liable for an obligation or liability imposed by [sections 1 through 95] or the declaration that relates to:

(a) a misrepresentation by a previous declarant;

(b) a warranty obligation on an improvement made by a previous declarant or before the common interest community was created;

(c) a breach of a fiduciary obligation by a previous declarant or the previous declarant's appointees to the executive board; or

(d) an obligation or liability imposed on the transferor as a result of the transferor's act or omission after the transfer.

(9) If an involuntary transfer includes a special declarant right, the transferee may elect to acquire or reject the special declarant right. A transferee that elects to acquire the special declarant right is a successor declarant. The election is effective only if the judgment or instrument conveying title describes the special declarant right.

(10) A successor to a special declarant right by an involuntary transfer may declare in a recorded instrument the successor's intent to hold the right solely for transfer to another person. After recording the instrument, the successor may not exercise a special declarant right, other than a right under [section 49(4)] to control the executive board, and an attempt to exercise a special declarant right in violation of this subsection is void. A successor that complies with this subsection is not liable for an obligation or liability imposed by [sections 1 through 95] or the declaration other than liability for the successor's act or omission under [section 49(4)].

(11) This section does not subject a successor to a special declarant right to a claim against or obligation of a transferor, other than a claim or obligation imposed by [sections 1 through 95] or the declaration.

(12) As used in this section, the following definitions apply:

(a) "Involuntary transfer" means a transfer by foreclosure of a mortgage, deed in lieu of foreclosure, tax sale, judicial sale, or sale in a bankruptcy or receivership proceeding of real estate owned by a declarant.

(b) "Nonaffiliate successor" means a person that succeeds to a special declarant right and is not an affiliate of the declarant that transferred the special declarant right to the person.

NEW SECTION. **Section 51. Termination of contracts and leases.** (1) Within 2 years after the executive board elected by the unit owners pursuant to [section 49(6)] takes office, the association may terminate without penalty, upon not less than 90 days' notice to the other party, any of the following if it was entered into before the executive board was elected:

(a) any management, maintenance, operations, or employment contract, or lease of recreational or parking areas or facilities; or

(b) any other contract or lease between the association and a declarant or an affiliate of a declarant.

(2) The association may terminate without penalty, at any time after the executive board elected by the unit owners pursuant to [section 49(6)] takes office upon not less than 90 days' notice to the other party, any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into.

(3) This section does not apply to:

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

(b) a proprietary lease.

NEW SECTION. **Section 52. Bylaws.** (1) The bylaws of the association must:

(a) provide the number of members of the executive board and the titles of the officers of the association;

(b) provide for election by the executive board or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

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

(d) specify the powers the executive board or officers may delegate to other persons or to a managing agent;

(e) specify the officers who may prepare, execute, certify, and record amendments to the

declaration on behalf of the association;

(f) specify a method for the unit owners to amend the bylaws;

(g) contain any provision necessary to satisfy requirements in [sections 1 through 95] or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(h) provide for any matter required by law of this state other than [sections 1 through 95] to appear in the bylaws of organizations of the same type as the association.

(2) Subject to the declaration and [sections 1 through 95], the bylaws may provide for any other necessary or appropriate matters, including matters that could be adopted as rules.

NEW SECTION. **Section 53. Upkeep of common interest community.** (1) Except to the extent provided by the declaration, subsection (2), or [section 59(7)], the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the unit owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the unit owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under [sections 1 through 95], the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

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

NEW SECTION. **Section 54. Meetings.** (1) The following requirements apply to unit owner meetings:

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

(b) An association shall 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. 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. The unit owners may discuss at a special meeting a matter not described in the notice under subsection (1)(c) but may not take action on the matter without the consent of all unit owners.

(c) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any means described in [section 67]. The notice of any meeting must state the time, date and place of the meeting and the items on the agenda, including:

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

(ii) any budget changes; and

(iii) any proposal to remove an officer or member of the executive board.

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

(e) A meeting of unit owners is not required to be held at a physical location if:

(i) the meeting is conducted by a means of communication that enables owners in different locations to communicate in real time to the same extent as if they were physically present in the same location; and

(ii) the declaration or bylaws do not require that the owners meet at a physical location.

(f) In the notice for a meeting held at a physical location, the executive board may notify all unit owners that they may participate remotely in the meeting by a means of communication described in subsection (1)(e).

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

(a) Meetings must be open to the unit owners except during executive sessions. The executive

board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

(i) consult with the association's attorney concerning legal matters;

(ii) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(iii) discuss labor or personnel matters;

(iv) 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

(v) 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.

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

(c) During the period of declarant control, the executive board shall meet at least four times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. 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.

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

(e) Unless the meeting is included in a schedule given to the unit owners, the secretary or other officer specified in the bylaws shall give notice of each executive board meeting to each board member and to the unit owners. The notice must be given at least 10 days before the meeting and must state the time, date, place, and agenda of the meeting.

(f) If any materials are distributed to the executive board before the meeting, the executive board at the same time shall make copies of those materials reasonably available to unit owners, except that the

board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

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

(i) the meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(ii) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (2)(d).

(h) After termination of the period of declarant control, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (2)(g).

(i) During the period of declarant control, without meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary shall promptly give notice to all unit owners of any action taken by unanimous consent. 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.

(j) Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. An action seeking relief for failure of the executive board to comply with this section may not be brought more than 60 days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

NEW SECTION. **Section 55. Quorum.** (1) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if at the beginning of the meeting persons entitled to cast 20% of the votes in the association attend in person, by proxy, or by means of communication under [section 54(1)(e) or (1)(f)].

(2) Unless the bylaws specify a larger number, a quorum of the executive board is present for the purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken.

If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

NEW SECTION. **Section 56. Voting, proxies, and ballots.** (1) Unit owners may vote at a meeting under subsection (2) or (3) or, when a vote is conducted without a meeting, by ballot in the manner provided in subsection (4).

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

(a) Unless the declaration or bylaws otherwise provide, unit owners may vote by voice vote, show of hands, standing, or any other method authorized at the meeting.

(b) If unit owners attend the meeting by a means of communication under [section 54(1)(e) or (1)(f)], the association shall implement reasonable measures to verify the identity of each unit owner attending remotely.

(3) Unless the declaration or bylaws otherwise provide, unit owners may vote by proxy subject to the following requirements:

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

(b) When a unit owner votes by proxy, the association shall implement reasonable measures to verify the identity of the unit owner and the proxy holder.

(c) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding at a meeting.

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

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

(f) A person may not cast undirected proxies representing more than 15% of the votes in the association.

(4) Unless the declaration or bylaws otherwise provide, an association may conduct a vote without a meeting. The following requirements apply:

(a) The association shall notify the unit owners that the vote will be taken by ballot without a

meeting.

(b) The association shall deliver with the notice:

(i) instructions for casting a ballot;

(ii) a paper ballot to every unit owner except a unit owner that has consented in a record to electronic voting; and

(iii) if the association allows electronic voting, instructions for electronic voting.

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

(d) In the notice under subsection (4)(a), the association shall:

(i) state the percent of votes necessary to approve each matter other than election of directors;

(ii) specify the time and date by which a ballot must be delivered to the association to be counted, the time and date of which may not be fewer than 3 days after the date the association delivers the ballot; and

(iii) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(e) A unit owner may revoke a ballot before the time and date under subsection (4)(d) by which the ballot must be delivered to the association. Unless the declaration or bylaws otherwise provide, a ballot is not revoked by death or disability after delivery to the association.

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

(g) The association shall verify that each paper and electronic ballot is cast by the unit owner having a right to do so.

(h) A unit owner consents in a record to electronic voting by casting an electronic ballot.

(i) An association that allows electronic ballots shall create a record of electronic votes capable of retention, retrieval, and review.

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

(a) this section applies to lessees as if they were unit owners;

(b) unit owners that have leased their units to other persons may not cast votes on those specified

matters;

(c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(6) Unit owners are entitled to notice of all meetings at which lessees are entitled to vote.

(7) 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.

(8) Unless a different number or fraction of the votes in an association is required by [sections 1 through 95] or the declaration, a majority of the votes cast determines the outcome of a vote taken at a meeting or without a meeting.

(9) If a unit is owned by more than one person and:

(a) only one owner casts a vote, that vote must be counted as casting all votes allocated to the unit by the declaration; and

(b) more than one owner casts a vote for the unit, no vote from any owner of the unit may be counted unless the declaration provides a manner for allocating votes cast by multiple owners of a unit.

NEW SECTION. **Section 57. Tort and contract liability -- tolling of limitation period.** (1) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the common interest community that the declarant has the responsibility to maintain.

(2) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner, and all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by

the association.

(3) Except as provided in [section 87(4)] with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under [sections 1 through 95] is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by [section 63].

NEW SECTION. **Section 58. Conveyance or encumbrance of common elements.** (1) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

(2) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, shall agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to [section 39], is void.

(3) An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or

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

(4) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (1), but the contract is not enforceable against the association until approved pursuant to subsections (1), (2), and (3). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

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

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

(7) Unless the declaration otherwise provides, if the holders of first security interests on 80% of the units that are subject to security interests on the day the unit owners' agreement under subsection (3) is recorded consent in writing:

(a) a conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and

(b) an encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

(8) The consents by holders of first security interests on units described in subsection (7), or a certificate of the secretary affirming that those consents have been received by the association, may be recorded at any time before the date on which the agreement under subsection (3) becomes void. Consents or certificates so recorded are valid from the date they are recorded for the purposes of calculating the percentage of consenting first security interest holders, regardless of later sales or encumbrances on those units. Even if

the required percentage of first security interest holders so consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration or created by the association after the declaration was recorded.

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

NEW SECTION. **Section 59. Insurance.** (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available and subject to reasonable deductibles:

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

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

(c) fidelity insurance.

(2) If the insurance described in subsection (1) is not reasonably available, the association shall promptly cause notice of that fact to be given to all unit owners. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it considers appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) must provide that:

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

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

(c) no act or omission by a unit owner, unless acting within the owner's scope of authority on behalf of the association, voids the policy or is a condition to recovery under the policy; and

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

(4) Any loss covered by the property policy under subsection (1)(a) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to subsection (7), the proceeds must be disbursed first for the repair or replacement of the damaged property, and the association, unit owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced or the common interest community is terminated.

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

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

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

(a) the common interest community is terminated, in which case [section 39] applies;

(b) repair or replacement would be illegal; or

(c) 80% of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild.

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

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

(b) except to the extent that other persons will be distributees:

(i) the insurance proceeds attributable to units and limited common elements that are not repaired or replaced must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear; and

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

(A) in a condominium, in proportion to the common element interests of all the units; and

(B) in a cooperative or planned community, in proportion to the common expense liabilities of all the units.

(9) If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under [section 6(1)] and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations.

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

NEW SECTION. **Section 60. Surplus funds.** Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid annually to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

NEW SECTION. **Section 61. Assessments.** (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(2) Except for assessments under subsections (3) through (6), or as otherwise provided in [sections 1 through 95], all common expenses must be assessed against all the units in accordance with the

allocations set forth in the declaration pursuant to [section 28(1) and (2)]. The association may charge interest on any past due assessment or portion thereof at the rate established by the association, not exceeding 18% per year.

(3) The declaration may provide that:

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

(b) a common expense identified in the declaration benefitting fewer than all of the units or their owners must be assessed exclusively against the units or unit owners benefited, but if the common expense is for the maintenance, repair, or replacement of a common element other than a limited common element, the expense may be assessed exclusively against them only if the declaration reasonably identifies the common expense by specific listing or category;

(c) the costs of insurance must be assessed in proportion to risk; and

(d) the costs of utilities must be assessed in proportion to usage, whether metered or reasonably estimated.

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

(5) The association may assess exclusively against an owner's unit a common expense, including expense relating to damage to or loss of property, caused by:

(a) willful misconduct of the unit owner or a guest or invitee of the unit owner; or

(b) failure of the unit owner to comply with a maintenance standard prescribed by the declaration or a rule, if the standard contains a statement that an owner may be liable for damage or loss caused by failure to comply with the standard.

(6) Before an association makes an assessment under subsection (5), the association shall give notice to the unit owner and provide an opportunity for a hearing. The assessment is limited to the expense the association incurred under subsection (5) less any insurance proceeds received by the association, whether the difference results from the application of a deductible or otherwise.

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

(8) The association may adopt a rule that allows unit owners to prepay assessments at a reasonable discount.

NEW SECTION. **Section 62. Lien for sums due association -- enforcement.** (1) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Any priority accorded to the association's lien under this section is a priority in right and not merely a priority in payment from the proceeds of the sale of the unit by a competing lienholder or encumbrancer. Unless the declaration provides otherwise, reasonable attorney fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to [section 48(1)(j), (1)(k), and (1)(l)], and any other sums due to the association under the declaration, [sections 1 through 95], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. A lien under this section is not subject to Title 70, chapter 32, part 2.

(2) A lien under this section has priority over all other liens and encumbrances on a unit except:

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

(b) except as otherwise provided in subsection (3), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent;

(c) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and

(d) mechanics' or materialmen's liens to the extent that the law of this state other than [sections 1 through 95] gives priority to mechanics' or materialmen's liens.

(3) A lien under this section also has priority over a security interest described in subsection (2)(b),

but only to the extent of:

(a) the unpaid amount of assessments for common expenses, not to exceed 6 months for each budget year of the association, as based on the periodic budget adopted by the association under [section 61(1)] for the applicable year; and

(b) reasonable attorney fees and costs incurred by the association in enforcing the association's lien.

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

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

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

(7) This section does not prohibit an action by an association against a unit owner to recover past due sums for which subsection (1) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

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

(10) On nonpayment of an assessment on a unit, the association is entitled to obtain possession of the unit under Title 70, chapter 27.

(11) The association's lien may be foreclosed as provided in this subsection (11) and subsection (16):

(a) in a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate or by power of sale under 71-1-223;

(b) in a cooperative whose unit owners' interests in the units are real estate, the association's lien

must be foreclosed in like manner as a mortgage on real estate or by power of sale under 71-1-223 or by power of sale under subsection (11)(a); and

(c) in a cooperative whose unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under the Uniform Commercial Code--Secured Transactions, Title 30, chapter 9A; and

(d) in a foreclosure under 71-1-223, the association shall give the notice required by statute or, if there is no such requirement, reasonable notice of its action to all lien holders of the unit whose interest would be affected.

(12) If the unit owner's interest in a unit in a cooperative is real estate, the following requirements apply:

(a) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation and at any time, date, and place. The association shall give to the unit owner and any lessee of the unit owner reasonable notice in a record of the time, date, and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time and date after which a private disposition may be made. The same notice must also be sent to any other person that has a recorded interest in the unit who would be cut off by the sale, but only if the recorded interest was on record 7 weeks before the date specified in the notice as the date of any public sale or 7 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection (12)(a) may be sent to any address reasonable in the circumstances. A sale may not be held until 5 weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

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

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

(i) the reasonable expenses of sale;

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

(iii) satisfaction of the association's lien;

(iv) satisfaction in the order of priority of any subordinate claim of record; and

(v) remittance of any excess to the unit owner.

(d) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

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

(13) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The receivership is governed by Title 25, chapter 14, part 2. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to [section 61].

(14) An association may not commence an action to foreclose a lien on a unit under this section or to evict a unit owner under subsection (10) unless:

(a) the unit owner, at the time the action is commenced, owes a sum equal to at least 3 months of common expense assessments based on the periodic budget last adopted by the association pursuant to

[section 61(1)] and the unit owner has failed to accept or comply with a payment plan offered by the association; and

(b) the executive board votes to commence a foreclosure action specifically against that unit or to evict the unit owner.

(15) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

(a) unpaid assessments;

(b) late charges;

(c) reasonable attorney fees and costs and other reasonable collection charges; and

(d) all other unpaid fees, charges, fines, penalties, interest, and late charges.

(16) 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 under Title 25, chapter 9, part 3.

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

(18) Foreclosure of a lien under this section does not terminate an interest that is subordinate to the lien to any extent unless the association provides notice of the foreclosure to the record holder of the subordinate interest.

NEW SECTION. **Section 63. Other liens.** (1) In a condominium or planned community:

(a) Except as otherwise provided in subsection (1)(b), a judgment for money against the association if docketed is not a lien on the common elements but is a lien in favor of the judgment lien holder against all of the other real estate of the association and all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to [section 58], the holder of that security interest shall exercise its right against the

common elements before its judgment lien on any unit may be enforced.

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

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

(2) In a cooperative:

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

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

NEW SECTION. **Section 64. Association records.** (1) An association shall retain the following:

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

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

(c) 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;

(d) its original or restated organizational documents, if required by law other than [sections 1 through 95], bylaws and all amendments to them, and all rules currently in effect;

(e) all financial statements and tax returns of the association for the past 3 years;

(f) a list of the names and addresses of its current executive board members and officers;

(g) its most recent annual report delivered to the Secretary of State, if any;

(h) financial and other records sufficiently detailed to enable the association to comply with [section 80];

(i) copies of current contracts to which it is a party;

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

(k) ballots, proxies, and other records related to voting by unit owners for 1 year after the election, action, or vote to which they relate.

(2) Subject to subsections (3) and (4), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

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

(b) upon 5 days' notice in a record reasonably identifying the specific records of the association requested.

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

(a) personnel, salary, and medical records relating to specific individuals;

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

(c) existing or potential litigation or mediation, arbitration, or administrative proceedings;

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

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

(f) information the disclosure of which would violate law other than [sections 1 through 95];

(g) records of an executive session of the executive board; or

(h) individual unit files other than those of the requesting owner.

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

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

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

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

NEW SECTION. **Section 65. Association as trustee.** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

NEW SECTION. **Section 66. Rules.** (1) Before adopting, amending, or repealing any rule, the executive board shall give all unit owners notice of:

(a) its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(b) a date on which the executive board will act on the proposed rule or amendment after considering comments from unit owners.

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

(3) An association may adopt rules to establish and enforce construction and design criteria and

aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association shall act after an application is submitted and the consequences of its failure to act.

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

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

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

(a) implement a provision of the declaration;

(b) 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

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

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

(8) Every rule must be reasonable.

NEW SECTION. **Section 67. Notice to unit owners.** (1) An association shall deliver any notice required to be given by the association under [sections 1 through 95] to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

(a) hand delivery to each unit owner;

(b) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(c) electronic means, if the unit owner has given the association an electronic address; or

(d) any other method reasonably calculated to provide notice to the unit owner.

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

NEW SECTION. **Section 68. Removal of officers and directors.** (1) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners, at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

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

(b) a member appointed under [section 49(7)] may be removed only by the person that appointed that member; and

(c) the unit owners may not consider whether to remove a member of the executive board or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

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

NEW SECTION. **Section 69. Adoption of budgets -- special assessments.** (1) The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than 30 days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. 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.

(2) The executive board, at any time, may propose a special assessment. The assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (1) and the unit owners do not reject the proposed assessment.

NEW SECTION. **Section 70. Litigation involving declarant.** (1) The following requirements apply to an association's authority under [section 48(1)(d)] to institute and maintain a proceeding alleging a construction defect with respect to the common interest community, whether by litigation, mediation, arbitration, or administratively, against a declarant or an employee, independent contractor, or other person directly or indirectly providing labor or materials to a declarant:

(a) Subject to subsection (5), before the association institutes a proceeding described in this section, it shall provide notice in a record of its claims to the declarant and those persons that the association seeks to hold liable for the claimed defects. The text of the notice may be in any form reasonably calculated to give notice of the general nature of the association's claims, including a list of the claimed defects. The notice may be delivered by any method of service and may be addressed to any person if the method of service used:

(i) provides actual notice to the person named in the claim; or

(ii) would be sufficient to give notice to the person in connection with commencement of an action by the association against the person.

(b) Subject to subsection (5), the association may not institute a proceeding against a person until 45 days after the association sends notice of its claim to that person.

(c) During the period described in subsection (1)(b), the declarant and any other person to which the association gave notice may present to the association a plan to repair or otherwise remedy the construction defects described in the notice. If the association does not receive a timely remediation plan from a person to which it gave notice, or if the association does not accept the terms of any plan submitted, the association may institute a proceeding against the person.

(d) If the association receives one or more timely remediation plans, the executive board shall consider promptly those plans and notify the persons to which it directed notice whether the plan is acceptable

as presented, acceptable with stated conditions, or not accepted.

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

(f) Except as otherwise provided in [section 87(4)] for warranty claims, any statute of limitation affecting the association's right of action against a declarant or other person is tolled during the period described in subsection (1)(b) and during any extension of that time because a person to which notice was directed has commenced and is diligently pursuing the remediation plan.

(2) After the time described in subsection (1)(b) expires, whether or not the association agrees to any remediation plan, a proceeding may be instituted by:

(a) the association against a person to which notice was directed who fails to submit a timely remediation plan, the plan of which is not acceptable, or who fails to pursue diligent implementation of that plan; or

(b) a unit owner with respect to the owner's unit and any limited common elements assigned to that unit, regardless of any action of the association.

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

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

(5) This section does not prevent an association from seeking equitable relief at any time without complying with subsection (1)(a) or (1)(b).

NEW SECTION. **Section 71. Emergency powers.** (1) In this section, "emergency" means:

(a) a state of emergency declared by a government for an area that includes the common interest community; or

(b) an event or condition that constitutes an imminent:

(i) threat to the health or safety of the public or residents of the common interest community;

(ii) threat to the habitability of units; or

(iii) risk of substantial economic loss to the association.

(2) In an emergency, this section governs the authority of an executive board to respond to the emergency. If another provision of [sections 1 through 95] is inconsistent with this section, this section prevails.

(3) The executive board may call a unit owners meeting to respond to an emergency by giving notice to the unit owners in a manner that is practicable and appropriate under the circumstances.

(4) The executive board may call a board meeting to respond to an emergency by giving notice to the unit owners and board members in a manner that is practicable and appropriate under the circumstances. A quorum is not required for a meeting under this subsection. After giving notice under this subsection, the board may take action by vote without a meeting.

(5) In an emergency, the executive board may, without regard to limitations in the declaration, bylaws, or rules, take action it considers necessary to protect the interests of the unit owners and other persons holding interests in the common interest community, acting in a manner reasonable under the circumstances.

(6) If, under subsection (5), the board determines by a two-thirds vote that a special assessment is necessary:

(a) the assessment becomes effective immediately or in accordance with the terms of the vote; and

(b) the board may spend funds paid on the assessment only in accordance with the action taken by the board.

(7) The executive board may use funds of the association, including reserves, to pay the reasonable costs of an action under subsection (5).

(8) After taking an action under this section, the executive board shall promptly notify the unit owners of the action in a manner that is practicable and appropriate under the circumstances.

NEW SECTION. **Section 72. Applicability -- waiver.** (1) [Sections 72 through 91] apply to all units subject to [sections 1 through 95], except as provided in subsection (2) or as modified or waived by agreement

of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

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

(a) a gratuitous disposition of a unit;

(b) a disposition pursuant to court order;

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

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

(e) a disposition to a dealer;

(f) a disposition that may be canceled at any time and for any reason by the purchase without penalty; or

(g) a disposition of a unit restricted to nonresidential purposes.

NEW SECTION. **Section 73. Liability for public offering statement requirements.** (1) Except as otherwise provided in subsection (2), a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of [sections 74 through 77].

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant as provided for in [section 50] or to a dealer that intends to offer units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (1).

(3) Any declarant or dealer that offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in [section 79(1)]. The declarant or dealer that prepared all or a part of the public offering statement is liable under [sections 79 and 88] for any false or misleading statement set forth therein or for any omission of a material fact therefrom.

(4) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of [sections 74 through 77] as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

NEW SECTION. **Section 74. Public offering statement -- general provisions.** (1) Except as otherwise provided in subsection (2), a public offering statement must contain or fully and accurately disclose:

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

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

(c) the number of units in the common interest community;

(d) copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; the bylaws and any rules of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under [section 51];

(e) the financial information required by subsection (2);

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

(g) any initial or special fee due from the purchaser or seller at the time of sale, together with a description of the purpose and method of calculating the fee;

(h) a description of any liens, defects, or encumbrances on or affecting the title to the common interest community;

(i) a description of any financing offered or arranged by the declarant;

(j) the terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(k) a statement that:

(i) within 15 days after receipt of a public offering statement a purchaser, before conveyance, may

cancel any contract for purchase of a unit from a declarant;

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

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

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

(m) any restraints on alienation of any portion of the common interest community and any restrictions:

(i) on use, occupancy, and alienation of the units; and

(ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(n) a description of the insurance coverage provided for the benefit of unit owners;

(o) any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(p) the extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to [section 90];

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

(r) any other unusual and material circumstances, features, and characteristics of the common interest community and the units;

(s) in a cooperative, a statement whether the unit owners will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative and a statement as

to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative; and

(t) a description of any arrangement described in [section 20] binding the association.

(2) The public offering statement must contain any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include:

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

(b) a statement of any other reserves;

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

(d) the projected monthly common expense assessment for each type of unit.

(3) If a common interest community composed of not more than 12 units is not subject to any development right and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may include the information otherwise required by subsection (1)(i), (1)(j), (1)(n), (1)(o), (1)(p), (1)(q), and (1)(r) and the narrative descriptions of documents required by subsection (1)(d).

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

NEW SECTION. **Section 75. Common interest communities subject to development rights.** If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by [section 74]:

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

(2) a statement of how many or what percentage of the units that may be created will be restricted

exclusively to residential use, or a statement that no representations are made regarding use restrictions;

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

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

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

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

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

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

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

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

(11) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of

units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

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

NEW SECTION. **Section 76. Time shares.** If the declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement must disclose, in addition to the information required by [section 74]:

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

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

(3) the minimum duration of any time shares that may be created; and

(4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in [section 62].

NEW SECTION. **Section 77. Common interest communities containing conversion buildings.** (1) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by [section 74]:

(a) a statement by the declarant, based on a report prepared by an independent architect or engineer licensed in this state, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

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

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

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

NEW SECTION. **Section 78. Registration with government agency.** If an interest in a common

interest community is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements of [sections 1 through 95] relating to the preparation of a public offering statement if the declarant delivers to the purchaser a copy of the public offering statement filed with the securities and exchange commission.

NEW SECTION. **Section 79. Purchaser's right to cancel.** (1) A person required to deliver a public offering statement pursuant to [section 73(3)] shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1), the purchaser may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the offeror's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to [section 73(3)] fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (1), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to 10% of the sale price of the unit, plus 10% of the share, proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community.

NEW SECTION. **Section 80. Resale of units.** (1) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under [section 72(2)], a unit owner shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the bylaws, the rules of the association, and the declaration other than plats and plans. The unit owner shall also furnish a certificate containing:

(a) a statement disclosing the effect on the proposed disposition of any right of first refusal or other

restraint on the free alienability of the unit held by the association;

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

(c) a statement of any other fees payable by the owner of the unit being sold;

(d) a statement of any capital expenditures approved by the association for the current and succeeding fiscal years;

(e) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

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

(g) the current operating budget of the association;

(h) a statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(i) a statement describing any insurance coverage provided for the benefit of unit owners;

(j) a statement as to whether the executive board has given or received notice in a record that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

(k) a statement as to whether the executive board has received notice in a record from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community that has not been cured;

(l) a statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;

(m) a statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or termination of the common interest community;

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

(o) a statement describing any pending sale or encumbrance of common elements; and

(p) a statement disclosing the effect on the unit to be conveyed of any restriction on the right to use or occupy the unit, including a restriction on a lease or other rental of the unit.

(2) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (1) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

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

NEW SECTION. **Section 81. Escrow of deposits.** Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to [section 73(3)] must be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency or instrumentality until:

(1) delivered to the declarant at closing;

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

(3) refunded to the purchaser.

NEW SECTION. **Section 82. Release of liens.** (1) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to [section 73(3)], a seller:

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

(i) in a condominium, that unit and its common element interest; and

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

(b) shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate as provided by law.

(2) Before conveying real estate to the association, the declarant must have that real estate released from:

(a) all liens, the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and

(b) all other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

NEW SECTION. **Section 83. Conversion buildings.** (1) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(2) For 60 days after delivery or mailing of the notice described in subsection (1), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that 60-day period, the offeror may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the

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

(3) If a seller, in violation of subsection (2), conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection (2) to purchase that unit if the deed states that the seller has complied with subsection (2), but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2).

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of Title 70, chapter 24, the notice also constitutes a notice to vacate specified by that statute.

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

NEW SECTION. **Section 84. Express warranties of quality.** (1) Express warranties made by a declarant to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

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

(b) 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 conform to the model or description unless the model or description clearly discloses that it is only proposed or is subject to change;

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

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

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

opinion or commendation of the real estate or its value does not create a warranty.

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

NEW SECTION. **Section 85. Implied warranties of quality.** (1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

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

(a) free from defective materials; and

(b) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

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

(4) Warranties imposed by this section may be excluded or modified as specified in [section 86].

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

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

NEW SECTION. **Section 86. Exclusion or modification of implied warranties of quality.** (1) Except as limited by subsection (2) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

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

(b) are excluded by expression of disclaimer, such as "as is", "with all faults", or other language

that in common understanding calls the purchaser's attention to the exclusion of warranties.

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

NEW SECTION. **Section 87. Statute of limitation for warranties.** (1) Unless a period of limitation is tolled under [section 57] or affected by subsection (4), a judicial proceeding for breach of any obligation arising under [section 84 or 85] must be commenced within 6 years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(2) Subject to subsection (3), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

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

(b) as to each common element, at the time the common element is completed or, if later, as to:

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

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

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

(4) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce any warranty claims involving the common elements

and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney fees, are common expenses and must be added to the budget adopted annually by the association under [section 61]. If the committee is so created, the period of limitation for a warranty claim considered by the committee begins to run from the date of the first meeting of the committee.

NEW SECTION. **Section 88. Effect of violations on rights of action -- attorney fees.** (1) A declarant, association, unit owner, or any other person subject to [sections 1 through 95] may bring an action to enforce a right granted or obligation imposed by [sections 1 through 95], the declaration, or the bylaws. Punitive damages may be awarded for a willful failure to comply with [sections 1 through 95]. The court may award reasonable attorney fees and costs.

(2) Parties to a dispute arising under [sections 1 through 95], the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that:

(a) a declarant may agree with the association to do so only after the period of declarant control has expired unless the agreement is made with an independent committee of the executive board elected pursuant to [section 87(4)]; and

(b) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

NEW SECTION. **Section 89. Labeling of promotional material.** No promotional material may be displayed or delivered to prospective purchasers that describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT".

NEW SECTION. **Section 90. Declarant's obligation to complete and restore.** (1) Except for improvements labeled "NEED NOT BE BUILT", the declarant shall complete all improvements depicted on any

site plan or other graphic representation, including any plats or plans prepared pursuant to [section 30], whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(2) The declarant is subject to liability for the prompt repair and restoration to a condition compatible with the remainder of the common interest community of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by [sections 31 through 34, 36, and 37].

NEW SECTION. **Section 91. Substantial completion of units.** In the case of a sale of a unit in which delivery of a public offering statement is required, a contract of sale may be executed but no interest in that unit may be conveyed until the declaration is recorded and is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent architect, surveyor, or engineer licensed in this state, or by issuance of a certificate of occupancy authorized by law.

NEW SECTION. **Section 92. Applicability and transition.** (1) Before October 1, 2030, [sections 1 through 95] apply only to:

(a) a common interest community created on or after [the effective date of this act]; or

(b) a common interest community created before [the effective date of this act] that amends its declaration to elect to be subject to [sections 1 through 95].

(2) Except as provided in subsection (3), on and after October 1, 2030, [sections 1 through 95] apply to all common interest communities.

(3) [Sections 1 through 95] do not apply to a common interest community created before [the effective date of this act] that elects not to be subject to [sections 1 through 95] by amending its declaration by vote or agreement of unit owners of units to which more than 50% of the votes in the association are allocated and recording the amendment before October 1, 2030. This subsection (3) supersedes [section 38(1)], and inconsistent provision of other law of this state, and any inconsistent provision in the declaration or bylaws of the common interest community.

NEW SECTION. **Section 93. Prior statutes.** The provisions of the Unit Ownership Act provided for in Title 70, chapter 23:

(1) do not apply to a common interest community that is subject to [sections 1 through 95]; and

(2) apply to a common interest community created before [the effective date of this act] only until the community becomes subject to [sections 1 through 95].

NEW SECTION. **Section 94. Retroactive application.** (1) Except as provided in subsection (2), if a common interest community created before [the effective date of this act] becomes subject to [sections 1 through 95] on October 1, 2030, or earlier, a provision of its declaration or bylaws inconsistent with [sections 1 through 95] is invalid unless:

(a) the provision is expressly permitted under [section 13]; or

(b) the common interest community is a cooperative described in [section 15], a planned community described in [section 16], or a nonresidential or mixed-use common interest community described in [section 18].

(2) [Sections 1 through 95] do not require a common interest community validly created before [the effective date of this act] to:

(a) comply with the requirement of [sections 1 through 95] for creation of a common interest community; or

(b) prepare or amend surveys, plats, or plans.

(3) [Sections 1 through 95] do not invalidate an action validly taken or transaction validly entered into before a common interest community becomes subject to [sections 1 through 95].

NEW SECTION. **Section 95. Applicability to pre-existing common interest community.** (1) Except for a cooperative described in [section 15], a planned community described in [section 16], and a nonresidential or mixed-use common interest community described in [section 18], the following sections apply to a common interest community created before [the effective date of this act]:

(a) [section 4];

(b) [section 5];

(c) [section 6];

(d) [section 17];

(e) [section 23];

(f) [section 24];

(g) [section 25];

(h) [section 34];

(i) [section 38(1), (8), and (9);

(j) [section 42];

(k) [section 45];

(l) [section 48(1)(a) through (1)(f) and (1)(k) through (1)(p)];

(m) [section 49];

(n) [section 57];

(o) [section 62];

(p) [section 64];

(q) [section 70];

(r) [section 80];

(s) [section 88]; and

(t) [section 2] to the extent necessary to construe the sections listed in subsections (1)(a) through (1)(s).

(2) The sections listed in subsection (1) apply only to an event or circumstance that occurs after [the effective date of this act] and do not invalidate provisions of the declaration or bylaws of the common interest community existing on [the effective date of this act].

(3) This section does not apply to a common interest community that becomes subject to [sections 1 through 95] under [section 92] or by election under [section 15], [section 16], or [section 18].

Section 96. Section 70-17-212, MCA, is amended to read:

"**70-17-212. Transfer fee covenants -- void.** (1) A transfer fee covenant or any lien that is recorded or filed to enforce a transfer fee under a transfer fee covenant does not run with the title to real property and is

not binding upon or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as a covenant, an equitable servitude, or otherwise.

(2) For purposes of this section, the following definitions apply:

(a) "Transfer" has the meaning provided in 70-1-501.

(b) "Transfer fee" means a fee or charge payable upon the transfer of legal or equitable title to an interest in real property regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. For purposes of this section, a transfer fee does not include the following:

(i) consideration payable by the transferee to the transferor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the transferee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind the original transferee's successors in interest to the property;

(ii) a commission payable to a licensed real estate salesperson or broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission for the transfer payable by the transferor or the transferee based upon any subsequent appreciation, development, or sale of the property;

(iii) interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage, deed of trust, trust indenture, or other security interest against real property, including but not limited to a fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or other security interest, fees, or charges payable to the lender;

(iv) consideration payable by a buyer under a contract for deed as a condition of allowing a buyer to acquire equitable title to the real property described in the contract for deed;

(v) any fee, charge, assessment, dues, contribution, or other amount payable to:

(A) an association of unit owners as defined in 70-23-102, an association as defined in [section 2], or any association of homeowners, mobile home owners, townhouse owners, or other property owners created pursuant to a recorded declaration that has the power to require owners to pay the costs and expenses incurred in the performance of the association's obligations; or

(B) a nonprofit corporation as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3), 501(c)(4), or 528 of the Internal Revenue Code.

(c) "Transfer fee covenant" means a covenant or declaration recorded or filed against the title to real property that requires the payment of a transfer fee to the declarant or other person specified in the covenant or declaration or to the declarant's or other person's successors or assigns upon each subsequent transfer of a legal or equitable interest in the real property.

(3) This section does not apply to any easement granted pursuant to Title 77."

Section 97. Section 70-17-901, MCA, is amended to read:

"**70-17-901. Homeowners' association restrictions -- real property rights.** (1) (a) A homeowners' association may not enter into, amend, or enforce a covenant, condition, or restriction in such a way that imposes more onerous restrictions on the types of use of a member's real property than those restrictions that existed when the member acquired the member's interest in the real property, unless the member who owns the affected real property expressly agrees in writing at the time of the adoption or amendment of the covenant, condition, or restriction.

(b) When a member claims the benefit of this subsection (1), the member shall request that the homeowners' association record, or allow recording of, the exception applicable to the member. Upon request by the member, the homeowners' association, the member, or a designee shall record the member's exception with the office of the county clerk and recorder of the county where the real property is situated. The member shall provide the homeowners' association with the date the real property was conveyed to the member and shall pay the recording fees for the document setting forth the exception.

(2) A successor-in-interest to a member's real property may not claim the benefit of subsection (1) to the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or restriction was not enforceable against the previous owner pursuant to subsection (1), unless the successor-in-interest is owned by or shares ownership with the previous member or unless the successor-in-interest is a lender that acquired the real property through foreclosure.

(3) This section does not apply to a covenant, condition, or restriction:

(a) that is not subject to enforcement by a homeowners' association; or

(b) that is required in order to comply with applicable federal, state, and local laws, ordinances, and regulations.

(4) Nothing in this section may be construed to prevent the enforcement of a covenant, condition, or restriction limiting the types of use of a member's real property as long as the covenant, condition, or restriction applied to the real property at the time the member acquired the member's interest in the real property.

(5) Nothing in this section invalidates existing covenants of a homeowners' association or creates a private right of action for actions or omissions occurring before May 9, 2019. However, after May 9, 2019, unless the member has consented as provided by subsection (1), a homeowners' association may not enforce a covenant, condition, or restriction in such a way that limits the types of use of a member's real property that were allowed when the member acquired the affected real property.

(6) As used in this section, the following definitions apply:

(a) "Homeowners' association" means:

(i) an association of all the owners of real property within a geographic area defined by physical boundaries which:

(A) is formally governed by a declaration of covenants, bylaws, or both;

(B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(C) may enact or enforce rules concerning the operation of the community or subdivision; ~~or~~

(ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act; or

(iii) an association as defined in [section 2] subject to the Uniform Common Interest Ownership Act.

(b) "Member" means a person that belongs to a homeowners' association and whose real property is subject to the jurisdiction of the homeowners' association.

(c) "Person" means one or more individuals or a legal or commercial entity.

(d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property governed by a homeowners' association.

(e) "Types of use" means the following lawful types of use of the real property:

(i) use for residential, agricultural, or commercial purposes, unless the use was impermissible according to the written or recorded restrictions;

(ii) the ability to rent the real property, including the land and structures on the real property, for any amount of time; and

(iii) the ability to otherwise develop the real property in accordance with applicable federal, state, and local laws, ordinances, and regulations, unless the ability was impermissible according to the written or recorded restrictions."

Section 98. Section 70-20-501, MCA, is amended to read:

"**70-20-501. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Adverse material fact" means a condition, malfunction, or problem that would have a materially adverse effect on the monetary value of real property, that affects the structural integrity of any improvements located on the real property, or that presents a documented health risk to occupants of the real property or would impair the health or safety of future occupants of the real property.

(2) "Buyer" means one or more persons who are attempting to acquire an ownership interest in real property.

(3) "Contract" means a real estate purchase contract between a buyer and a seller for the sale, conveyance, or exchange of real property, the option to purchase real property, or a lease with an option to purchase real property.

(4) "Disclosure statement" means the statement described in 70-20-502(1).

(5) "Offer to purchase" means an offer to transfer real property made by a buyer pursuant to a written contract.

(6) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other legal entity or any combination of these.

(7) "Residential real property" means real property that is improved by a building or other structure designed or intended for occupancy as a residence and that has one to four dwelling units or an individually owned unit in a structure of any size and includes:

(a) real property that has a combined residential and commercial use;

(b) a manufactured home that has been declared an improvement to real property under 15-1-116; and

(c) a condominium as defined in 70-23-102(7) or [section 2].

(8) "Seller" means one or more persons who are attempting to transfer an ownership interest in real property.

(9) "Transfer" means a sale or conveyance of, exchange of, or option to purchase by written instrument an ownership interest in real property for consideration."

Section 99. Section 70-23-103, MCA, is amended to read:

"**70-23-103. Applicability -- submission by declaration required -- optional declaration for townhouses.** (1) In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees of the property shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration must be executed in accordance with 70-23-301.

(2) A declaration for a townhome or townhouse may be executed under this section. The provisions of this chapter apply to townhomes or townhouses only if a declaration is executed under this section.

(3) The provisions of this chapter:

(a) do not apply to a common interest community that is subject to [sections 1 through 95]; and

(b) apply to a common interest community created before [the effective date of this act] only until the community becomes subject to [sections 1 through 95]."

Section 100. Section 70-32-202, MCA, is amended to read:

"**70-32-202. Execution allowed under certain judgments.** The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) on debts secured by construction or vendors' liens upon the premises;

(2) on debts secured by mortgages on the premises, executed and acknowledged by the husband

and wife or by an unmarried claimant; ~~or~~

(3) on debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record; or

(4) on a lien under [section 62]."

Section 101. Section 76-3-203, MCA, is amended to read:

"**76-3-203. Exemption for certain condominiums and townhouses.** (1) Condominiums, as defined in [section 2], and townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(a) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or

(b) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations pertaining to land use, density, bulk and dimensional requirements, landscaping, and parking requirements when local zoning regulations are in effect.

(2) A determination whether the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter must be made by the governing body or the agent or agency designated by the governing body within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the determination.

(3) The governing body may not enact regulations prohibiting the townhome form of ownership or impose conditions on a determination that the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter, and may not require the condominium, townhome, townhouse, or conversion proposal to undergo a conditional use permit or other quasi-judicial governmental review process pursuant to regulations adopted pursuant to Title 76, chapter 2, as a prerequisite to determining eligibility for an exemption from the provisions of this chapter."

Section 102. Section 76-4-111, MCA, is amended to read:

"**76-4-111. Exemption for certain condominiums, townhomes, and townhouses.** (1) Condominiums, as defined in [section 2], or townhomes~~,~~ or townhouses, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land or conversion building as defined in [section 2] has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, duplexes, or commercial units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension."

Section 103. Section 76-4-127, MCA, is amended to read:

"**76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided.** (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying authority shall send notice of certification to the reviewing authority that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3 or 25, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3 or 25, a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each unit proposed to be recorded under ~~Title 70, chapter 23, part 3~~ [sections 1 through 95];

(c) the number of parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) the relative location of the subdivision to the city or the county water and/or sewer district boundaries of the certifying authority;

(g) certification that adequate municipal or county water and/or sewer district facilities for the supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to 76-3-507 or 76-25-413 must be provided within the time required by the governing body under 76-3-507 or 76-25-413, as applicable.

(h) if water supply, sewage disposal, solid waste, or storm water drainage facilities are not municipally owned, certification from the facility owners that adequate facilities will be available; and

(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage.

(3) A municipality may be authorized to act as a reviewing authority under this section and may self-approve the municipality's own exemption."

Section 104. Section 76-25-402, MCA, is amended to read:

"**76-25-402. Exemptions to subdivision review.** (1) The following divisions of land, if made in substantial compliance with zoning regulations adopted pursuant to Title 76, chapter 25, part 3, are not subject to the requirements of this chapter:

(a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or parcel:

(i) by order of a court of record in this state;

(ii) by operation of law; or

(iii) that, in the absence of agreement between the parties to a sale, could be created by court order in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;

(c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface

ownership of real property;

(d) the creation of cemetery lots;

(e) the reservation of a life estate on a portion of a tract of record;

(f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;

(g) the division of property over which the state does not have jurisdiction;

(h) the creation of rights-of-way or utility sites;

(i) the creation of condominiums, as defined in [section 2], or townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, when any applicable park dedication requirements as set forth in Title 76, chapter 25, part 3, are complied with;

(j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority;

(k) subject to subsection (4), a division of state-owned land, unless the division creates a second or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;

(l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1, 1974;

(m) the relocation of common boundary lines between or aggregations of adjoining properties that does not result in an increase in the number of lots;

(n) a single gift or sale in each county to each member of the landowner's immediate family; or

(o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in which the landowner enters into a covenant with the governing body that runs with the land that provides that the divided land must be used exclusively for agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) A transfer of divided land by the owner of the property at the time that the land was divided to any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of this chapter.

(4) Instruments of transfer of land that is acquired for state highways may refer by parcel and

project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If the parcels are not shown on highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The governing body, in its discretion, may revoke the covenant provided for in subsection (1)(o) without subdivision review if the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant."

NEW SECTION. **Section 105. Codification instruction.** [Sections 1 through 95] are intended to be codified as a new chapter in Title 70, and the provisions of Title 70 apply to [sections 1 through 95].

NEW SECTION. **Section 106. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 107. Effective date.** [This act] is effective October 1, 2027.

- END -