

1                                   \*\*\*\* BILL NO. \*\*\*\*  
2                                   INTRODUCED BY \*\*\*\*  
3                                   BY REQUEST OF THE \*\*\*\*  
4  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE UNIFORM COMMON INTEREST  
7 OWNERSHIP ACT; ALLOWING FOR THE CREATION OF COMMON INTEREST COMMUNITIES,  
8 COOPERATIVES, AND PLANNED COMMUNITIES; PROVIDING FOR THE ADOPTION OF GOVERNING  
9 INSTRUMENTS, INCLUDING BYLAWS AND COVENANTS; PROVIDING FOR THE CLASSIFICATION OF  
10 REAL ESTATE OR PERSONAL PROPERTY; PROVIDING FOR A PROCESS OF PROPERTY ACQUISITION  
11 BY EMINENT DOMAIN; PROVIDING FOR THE ALLOCATION OF COMMON ELEMENTS; ALLOWING FOR  
12 THE MERGER, CONSOLIDATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES;  
13 ALLOWING FOR THE EXERCISE OF DEVELOPMENT RIGHTS, THE ALTERATION OF UNITS, THE  
14 RELOCATION OF UNIT BOUNDARIES, AND THE SUBDIVISION OF UNITS; PROVIDING FOR THE  
15 ORGANIZATION OF UNIT OWNERS ASSOCIATIONS; PROVIDING POWERS AND DUTIES OF UNIT  
16 OWNERS ASSOCIATIONS; ESTABLISHING FINANCIAL AND OTHER ASSOCIATION RECORD CREATION  
17 AND RETENTION RULES; PROVIDING PROTECTIONS FOR PURCHASERS; PROVIDING PROCESSES  
18 FOR THE SALE OF UNITS, THE RELEASE OF LIENS, AND THE CONVERSION OF BUILDINGS;  
19 PROVIDING FOR APPLICABILITY AND TRANSITION PROCESSES FOR EXISTING UNIT OWNERSHIP  
20 ORGANIZATIONS AND ASSOCIATIONS; PROVIDING AN EFFECTIVE DATE."

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24                   NEW SECTION. **Section 1. Short title.** [Sections 1 through 95] may be cited as the "Uniform  
25 Common Interest Ownership Act".

26  
27                   NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 95] the following definitions  
28 apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           (6)     "Common elements" means:

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

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

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

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

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

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

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

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

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

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

1 to exclusive possession of a unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (21) "Leasehold common interest community" means a common interest community in which all or a  
27 portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common  
28 interest community or reduce its size.

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

4           (23) "Master association" means:

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

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

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

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

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

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

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

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

24           (b) as security for an obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 owner; and

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

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

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

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

16  
17 NEW SECTION. Section 3. No variation by agreement. Except as expressly provided in [sections 1  
18 through 95], the effect of the provisions of [sections 1 through 95] may not be varied by agreement, and rights  
19 conferred by [sections 1 through 95] may not be waived. Except as otherwise provided in [section 18], a  
20 declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions  
21 of [sections 1 through 95] or the declaration.

22  
23 NEW SECTION. Section 4. Separate titles and taxation. (1) In a cooperative, unless the  
24 declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all  
25 purposes, that interest is personal property. If a unit in a cooperative is owned by a unit owner or is sold,  
26 conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in the  
27 unit that is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit  
28 under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that

1 unit is not thereby affected.

2 (2) In a condominium or planned community:

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

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

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

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

13  
14 **NEW SECTION. Section 5. Applicability of local ordinances, regulations, and building codes.**

15 (1) A building code adopted pursuant to Title 50, chapter 60 may not impose any requirement upon any  
16 structure in a common interest community that it would not impose upon a physically identical development  
17 under a different form of ownership.

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

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

26  
27 **NEW SECTION. Section 6. Eminent domain.** (1) If a unit is acquired by eminent domain or part of a  
28 unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be

1 used for any purpose permitted by the declaration, the award must include compensation to the unit owner for  
2 that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition,  
3 unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the  
4 remaining units in proportion to the respective allocated interests of those units before the taking, and the  
5 association shall promptly prepare, execute, and record an amendment to the declaration reflecting the  
6 reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a  
7 common element.

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

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

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

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

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

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

25  
26 **NEW SECTION. Section 7. Supplemental general principles of law applicable.** The principles of  
27 law and equity, including the law of corporations and any other form of organization authorized by the law, and  
28 unincorporated associations, the law of real estate, and the law relative to capacity to contract, principal and

1 agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial  
2 performance, or other validating or invalidating cause supplement the provisions of [sections 1 through 95],  
3 except to the extent inconsistent with [sections 1 through 95].  
4

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

9 NEW SECTION. Section 9. Uniformity of application and construction. [Sections 1 through 95]  
10 must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to  
11 the subject of [sections 1 through 95] among states enacting it.  
12

13 NEW SECTION. Section 10. Remedies to be liberally administered. The remedies provided by  
14 [sections 1 through 95] must be liberally administered to the end that the aggrieved party is put in as good a  
15 position as if the other party had fully performed.  
16

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

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

27 (a) the portion of the percentage change in the Index in excess of a multiple of 10% must be  
28 disregarded and the dollar amount must change only in multiples of 10% of the amount appearing in [sections 1

1 through 95] on the date of enactment;

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

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

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

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

18  
19 **NEW SECTION. Section 13. Mandatory and default rules.** (1) Except as provided in subsection (2),  
20 the declaration or bylaws may not vary a provision of [sections 1 through 95] that gives a right to or imposes an  
21 obligation or liability on a unit owner, declarant, association, or executive board.

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

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

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

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

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

- 1 (e) [section 29(2)] concerning reallocation of limited common elements;
- 2 (f) [section 30(5)] concerning horizontal boundaries of units;
- 3 (g) [section 32] concerning alterations of units and common elements made by unit owners;
- 4 (h) [section 33(1)] concerning relocation of boundaries between units;
- 5 (i) [section 34(1)] concerning subdivision of units;
- 6 (j) [section 36] concerning signs maintained by a declarant;
- 7 (k) [section 37(1) and (3)] concerning easements through, and rights to use, common elements;
- 8 (l) [section 38(1)] concerning the percentage of votes required to amend the declaration;
- 9 (m) [section 39(1) and (8)] concerning the percentage of votes required to terminate a common  
10 interest community and priority of creditors of a cooperative;
- 11 (n) [section 48(1)(o)] concerning an association's assignment of rights to future income;
- 12 (o) [section 49(1)] concerning the executive board acting on behalf of the association;
- 13 (p) [section 53(1)] concerning responsibility for maintenance, repair, and replacement of units and  
14 common elements;
- 15 (q) [section 54] concerning meetings;
- 16 (r) [section 55] concerning quorum requirements for meetings;
- 17 (s) [section 56] concerning voting, proxies, and ballots;
- 18 (t) [section 58(1), (2), and (6)] concerning the percentage of votes required to convey or encumber  
19 common elements and the effect of conveyance or encumbrance of common elements;
- 20 (u) [section 59] concerning insurance for a nonresidential common interest community;
- 21 (v) [section 60] concerning payment of surplus funds of the association;
- 22 (w) [section 62(1)] concerning treatment of fees, costs, charges, and other sums as assessments  
23 for lien purposes; and
- 24 (x) [section 69(1)] concerning the percentage of votes required to reject a budget.

25  
26 **NEW SECTION. Section 14. General applicability to common interest communities.** Except as  
27 otherwise provided in [sections 14 through 21] and [sections 92 through 95], [sections 1 through 95] apply to all  
28 common interest communities. An amendment to [sections 1 through 95] applies to all common interest

1 communities subject to [sections 1 through 95], regardless of when the amendment becomes effective.

2

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

6

7 NEW SECTION. Section 16. Exception for small and limited expense liability planned

8 **communities.** (1) Unless the declaration provides that [sections 1 through 95] is applicable, a planned  
9 community that is not subject to any development right is subject only to [sections 4 through 6] if the  
10 community:

11 (a) contains no more than 12 units; or

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

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

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

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

20

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

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

25 (b) achieve any other result permitted by [sections 1 through 95], regardless of what applicable law  
26 provided before [sections 1 through 95] was adopted.

27 (2) Except as otherwise provided in [section 38(9) and (10)] an amendment under this section to  
28 the declaration or bylaws of a common interest community created before [the effective date of this act] must be

1 adopted in conformity with any procedures and requirements for amending the instruments specified by those  
2 instruments or, if there are none, in conformity with the amendment procedures of [sections 1 through 95]. If an  
3 amendment grants to a person a right, power, or privilege permitted by [sections 1 through 95], any correlative  
4 obligation, liability, or restriction in [sections 1 through 95] also applies to the person.

5

6 **NEW SECTION. Section 18. Applicability to nonresidential and mixed-use common interest**

7 **communities.** (1) Except as otherwise provided in subsection (4), this section applies only to a common  
8 interest community in which all units are restricted exclusively to nonresidential purposes.

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

11 (a) this entire [sections 1 through 95] apply to the community;

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

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

15 (3) If this entire [sections 1 through 95] apply to a nonresidential common interest community, the  
16 declaration may also require that:

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

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

23 (4) A common interest community that contains units restricted exclusively to nonresidential  
24 purposes and other units that may be used for residential purposes is not subject to [sections 1 through 95]  
25 unless the units that may be used for residential purposes would comprise a common interest community that  
26 would be subject to [sections 1 through 95] in the absence of the nonresidential units or the declaration  
27 provides that [sections 1 through 95] apply as provided in subsection (2) or (3).

28

1            **NEW SECTION. Section 19. Applicability to out-of-state common interest communities.**  
2 [Sections 1 through 95] do not apply to a common interest community located outside this state, but [sections  
3 73 and 74] and, to the extent applicable, [sections 75 through 77] apply to a contract for the disposition of a unit  
4 in that common interest community signed in this state by any party unless exempt under [section 72(2)].  
5

6            **NEW SECTION. Section 20. Other exempt real estate arrangements.** (1) An arrangement between  
7 the associations for two or more common interest communities to share the costs of real estate taxes,  
8 insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their  
9 arrangement or declarations does not create a separate common interest community. The arrangement must  
10 be interpreted pursuant to contract law of this state.

11            (2) An arrangement between an association and the owner of real estate that is not part of a  
12 common interest community to share the costs of real estate taxes, insurance premiums, services,  
13 maintenance or improvements of real estate, or other activities specified in their arrangement does not create a  
14 separate common interest community. However, assessments against the units in the common interest  
15 community required by the arrangement must be included in the periodic budget for the common interest  
16 community.  
17

18            **NEW SECTION. Section 21. Other exempt covenants.** A covenant that requires the owners of  
19 separately owned parcels of real estate to share costs or other obligations associated with a common wall,  
20 party wall, driveway, well, or other similar use does not create a common interest community unless the owners  
21 otherwise agree.  
22

23            **NEW SECTION. Section 22. Creation of common interest communities.** (1) A common interest  
24 community may be created pursuant to [sections 1 through 95] only by recording a declaration in the office of  
25 the clerk and recorder in the county in which the common interest community is located and, in a cooperative,  
26 by conveying the real estate subject to that declaration to the association or an individual or entity.

27            (2) In a condominium, a declaration or an amendment to a declaration may be recorded before  
28 construction of the buildings described in the declaration is completed. However, prior to the transfer of a unit to

1 a purchaser the declarant shall file a statement that the unit is substantially completed in accordance with the  
2 plans, as evidenced by a recorded certificate of completion executed by an engineer, surveyor, or architect  
3 licensed in this state.

4

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

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

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

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

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

19

20 NEW SECTION. **Section 24. Construction and validity of declaration and bylaws.** (1) All

21 provisions of the declaration and bylaws are severable.

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

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

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

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**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

1 exercised or will lapse;

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

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

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

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

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

13

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

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

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

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

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

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

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

27 (2) After the declaration for a leasehold condominium or leasehold planned community is  
28 recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit

1 owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants,  
2 which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a  
3 condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other  
4 covenant.

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

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

12  
13 **NEW SECTION. Section 28. Allocation of interests.** (1) The declaration must allocate to each unit:

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

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

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

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

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

24 (4) The declaration may provide:

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

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

28 (c) for class voting on specified issues affecting the class if necessary to protect valid interests of

1 the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation  
2 imposed on declarants by [sections 1 through 95], nor may units constitute a class because they are owned by  
3 a declarant.

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

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

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

15

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

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

23 (3) A common element not previously allocated as a limited common element may be so allocated  
24 only by an amendment to the declaration. A unit owner may request the executive board to amend the  
25 declaration to allocate all or part of a common element as a limited common element for the exclusive use of  
26 the owner's unit. The board may prescribe in the amendment a condition or obligation, including an obligation to  
27 maintain the new limited common element or pay a fee or charge to the association. If the board approves the  
28 amendment, the board shall give notice to all unit owners of its action and include a statement that unit owners

1 may object in a record to the amendment not later than 30 days after delivery of the notice. The amendment  
2 becomes effective if the board does not receive a timely objection. If the board receives a timely objection, the  
3 amendment becomes effective only if the unit owners vote under [section 56], whether or not a quorum is  
4 present, to approve the amendment by a vote of at least 67% of the votes cast, including at least 67% of the  
5 votes cast that are allocated to units not owned by the declarant. If the amendment becomes effective, the  
6 association and the owner of the benefitted unit shall execute the amendment.

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

10  
11 **NEW SECTION. Section 30. Plats and plans.** (1) Plats and plans are a part of the declaration and  
12 are required for all common interest communities except cooperatives. Separate plats and plans are not  
13 required by [sections 1 through 95] if all the information required by this section is contained in either a plat or  
14 plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all  
15 information required by this section.

16 (2) Each plat must show or project:

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

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

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

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

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

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

1 identifying number;

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

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

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

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

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

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

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

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

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

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

25 (5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located  
26 outside a building have the same elevation as the horizontal boundaries of the inside part and need not be  
27 depicted on the plats and plans.

28 (6) Upon exercising any development right, the declarant shall record either new plats and plans

1 necessary to conform to the requirements of subsections (1), (2), and (4) or new certifications of plats and plans  
2 previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

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

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

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

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

11  
12 **NEW SECTION. Section 31. Exercise of development rights.** (1) To exercise any development  
13 right reserved under [section 26(1)(h)], the declarant shall prepare, execute, and record an amendment to the  
14 declaration pursuant to [section 38] and in a condominium or planned community comply with [section 30]. The  
15 declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an  
16 identifying number to each new unit created and, except in the case of the subdivision or conversion of units  
17 described in subsection (2), reallocate the allocated interests among all units. The amendment must describe  
18 any common elements and any limited common elements thereby created and, in the case of limited common  
19 elements, designate the unit to which each is allocated to the extent required by [section 29].

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

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

27 (a) if the declarant converts the unit entirely to common elements, the amendment to the  
28 declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been

1 taken by eminent domain pursuant to [section 6]; and

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

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

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

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

12

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

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

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

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

24

25 **NEW SECTION. Section 33. Relocation of unit boundaries.** (1) Subject to the provisions of the  
26 declaration and other provisions of law, the boundaries between adjoining units may be relocated by an  
27 amendment to the declaration upon application to the association by the owners of those units. If the owners of  
28 the adjoining units have specified a reallocation between their units of their allocated interests, the application

1 must state the proposed reallocations. Unless the executive board determines, within 30 days, that the  
2 reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved  
3 and states the reallocations.

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

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

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

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

19

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

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

1 on any other basis the declaration requires.

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

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

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

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

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

14  
15 **NEW SECTION. Section 36. Use for sales purposes.** A declarant may maintain sales offices,  
16 management offices, and models in units or on common elements in the common interest community only if the  
17 declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and  
18 relocation thereof. In a cooperative or condominium, any sales office, management office, or model not  
19 designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, he ceases  
20 to have any rights with regard thereto unless it is removed promptly from the common interest community in  
21 accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a  
22 declarant may maintain signs on the common elements advertising the common interest community. This  
23 section is subject to the provisions of other state law and to local ordinances.

24  
25 **NEW SECTION. Section 37. Easement and use rights.** (1) Subject to the declaration, a declarant  
26 has an easement through the common elements as may be reasonably necessary for the purpose of  
27 discharging the declarant's obligations or exercising special declarant rights, whether arising under [sections 1  
28 through 95] or reserved in the declaration.

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

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

6  
7           NEW SECTION. Section 38. Amendment of declaration. (1) Except in cases of amendments that  
8 may be executed by a declarant under [sections 30(6) or 31], the association under [sections 6, 27(4), 29(3),  
9 33, or 34], or certain unit owners under [sections 29(2), 34(2), or 39(2)] and except as limited by subsections  
10 (4), (6), (7), and (8), the declaration, including any plats and plans, may be amended only by vote or agreement  
11 of unit owners of units to which at least 67% of the votes in the association are allocated, unless the declaration  
12 specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration  
13 requires the approval of another person as a condition of its effectiveness, the amendment is not valid without  
14 that approval.

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

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

19           (4)     Except to the extent expressly permitted or required by other provisions of [sections 1 through  
20 95], no amendment may create or increase special declarant rights, increase the number of units, change the  
21 boundaries of any unit, or change the allocated interests of a unit in the absence of unanimous consent of the  
22 unit owners.

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

27           (6)     An amendment to the declaration may prohibit or materially restrict the permitted uses of or  
28 behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or

1 agreement of unit owners of units to which at least 80% of the votes in the association are allocated, unless the  
2 declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such  
3 an amendment may be approved by unit owners of units having at least 80% of the votes of a specified group  
4 of units that would be affected by the amendment. An amendment approved under this subsection must provide  
5 reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

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

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

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

26 (10) If the declaration contains a provision requiring that amendments to the declaration may be  
27 adopted only by the vote or agreement of unit owners of units to which more than 80% of the votes in the  
28 association are allocated, the amendment:

- 1 (a) is approved if:
- 2 (i) unit owners of units to which at least 80% of the votes in the association are allocated vote for
- 3 or agree to the proposed amendment;
- 4 (ii) no unit owner votes against the proposed amendment; and
- 5 (iii) notice of the proposed amendment is delivered to the unit owners holding the votes in the
- 6 association who have not voted or agreed to the proposed amendment and no written objection to the proposed
- 7 amendment is received by the association within 60 days after the association delivers notice; or
- 8 (b) is approved if unit owners of units to which at least 80% of the votes in the association are
- 9 allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed
- 10 amendment and, pursuant to an action brought by the association in district court against all objecting unit
- 11 owners, the court finds that the objecting unit owners do not have an interest, different in kind from the interests
- 12 of the other unit owners, that the voting requirement of the declaration was intended to protect.

13

14 **NEW SECTION. Section 39. Termination of common interest community.** (1) Except for a taking

15 of all the units by eminent domain, foreclosure against an entire cooperative of a security interest that has

16 priority over the declaration, or in the circumstances described in [section 45], a common interest community

17 may be terminated only by agreement of unit owners of units to which at least 80% of the votes in the

18 association are allocated, including at least 80% of the votes allocated to units not owned by the declarant, and

19 with any other approvals required by the declaration. The declaration may require a larger percentage of total

20 votes in the association for approval, but termination requires approval by at least 80% of the votes allocated to

21 units not owned by the declarant. The declaration may specify smaller percentages only if all of the units are

22 restricted exclusively to nonresidential uses.

23 (2) An agreement to terminate must be evidenced by the execution of a termination agreement, or

24 ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination

25 agreement must specify a date after which the agreement is void unless it is recorded before that date. A

26 termination agreement and all ratifications thereof must be recorded in every county in which a portion of the

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

28 (3) A termination agreement may provide for the sale of some or all of the common elements and

1 units of the common interest community following termination. If, pursuant to the agreement, any real estate in  
2 the common interest community is to be sold following termination, the termination agreement must set forth  
3 the minimum terms of the sale.

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

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

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

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

26 (8) In a cooperative, the declaration may provide that all creditors of the association have priority  
27 over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of  
28 the association holding liens on the cooperative that were docketed before termination may enforce their liens

1 in the same manner as any lien holder, and any other creditor of the association is to be treated as if the  
2 creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration  
3 provides that all creditors of the association have that priority:

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

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

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

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

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

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

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

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

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

26 (ii) a unit owner objects in a record not later than 30 days after distribution to the determination of  
27 value of the owner's unit.

28 (b) A unit owner that objects under subsection (9)(a)(ii) may select an appraiser to represent the

1 owner and make an appraisal of the owner's unit. If the association's appraisal and the unit owner's appraisal of  
2 the fair market value of the owner's interest differ, a panel consisting of an appraiser selected by the  
3 association, the unit owner's appraiser, and a third appraiser mutually selected by the first two appraisers shall  
4 determine, by majority vote, the value of the unit owner's interest. The determination of value by the panel is  
5 final.

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

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

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

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

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

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

25 (11) In a condominium or planned community, if a lien or encumbrance against a portion of the real  
26 estate comprising the common interest community has priority over the declaration and the lien or  
27 encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon  
28 foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the

1 common interest community.

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

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

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

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

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

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

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

16  
17 **NEW SECTION. Section 40. Rights of secured lenders.** (1) The declaration may require that all or  
18 a specified number or percentage of the lenders who hold security interests encumbering the units or who have  
19 extended credit to the association approve specified actions of the unit owners or the association as a condition  
20 to the effectiveness of those actions, but no requirement for approval may operate to:

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

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

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

27 (2) A lender who has extended credit to an association secured by an assignment of income  
28 allowed in [section 48(1)(o)] or an encumbrance on the common elements provided for in [section 58] may

1 enforce its security agreement in accordance with its terms, subject to the requirements of [sections 1 through  
2 95] and other law. Requirements that the association shall deposit its periodic common charges before default  
3 with the lender to which the association's income has been assigned or increase its common charges at the  
4 lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms do not  
5 violate the prohibitions on lender approval contained in subsection (1).

6

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

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

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

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

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

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

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

26 (5) At a meeting of the unit owners that lists in the notice of the meeting the subject of delegation  
27 of powers from the executive board to a master association, the unit owners may revoke the delegation by a  
28 majority of the votes cast at the meeting. The effect of revocation on the rights and obligations of parties under

1 a contract between a unit owners association and a master association is determined by law of this state other  
2 than [sections 1 through 95].

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

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

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

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

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

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

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

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

26 (b) 60 days after conveyance to unit owners other than a declarant of three-fourths of the units that  
27 may be created in all common interest communities subject to the master association.

28

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

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

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

- 19            (a) by stating the reallocations or the formulas upon which they are based; or  
20            (b) by stating the percentage of overall allocated interests of the new common interest community  
21 that are allocated to all of the units comprising each of the pre-existing common interest communities and  
22 providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing  
23 common interest community must be equal to the percentages of allocated interests allocated to that unit by the  
24 declaration of the pre-existing common interest community.

25  
26            **NEW SECTION. Section 43. Addition of unspecified real estate.** In a planned community, if the  
27 right is originally reserved in the declaration, the declarant, in addition to any other development right, may  
28 amend the declaration at any time during as many years as are specified in the declaration for adding additional

1 real estate to the planned community without describing the location of that real estate in the original  
2 declaration. However, the amount of real estate added to the planned community pursuant to this section may  
3 not exceed 10% of the real estate described in [section 26(1)(c)], and the declarant may not in any event  
4 increase the number of units in the planned community beyond the number stated in the original declaration  
5 pursuant to [section 26(1)(d)].  
6

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

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

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

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

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

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

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

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

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

5  
6           NEW SECTION. Section 45. Termination following catastrophe. If substantially all the units in a  
7 common interest community have been destroyed or are uninhabitable and the available methods for giving  
8 notice under [section 67] of a meeting of unit owners to consider termination under [section 39] will not likely  
9 result in receipt of the notice, the executive board or any other interested person may commence an action in  
10 district court seeking to terminate the common interest community. During the pendency of the action, the court  
11 may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the  
12 court may terminate the common interest community or reduce its size and may issue any other order the court  
13 considers to be in the best interest of the unit owners and persons holding an interest in the common interest  
14 community.

15  
16           NEW SECTION. Section 46. Adverse possession, prescriptive easement. A unit owner or person  
17 claiming through a unit owner may not acquire title by adverse possession to, or an easement by prescription  
18 in, a common element in derogation of the title of another unit owner or the association.

19  
20           NEW SECTION. Section 47. Organization of unit owners association. A unit owners association  
21 must be organized no later than the date the first unit in the common interest community is conveyed. The  
22 membership of the association at all times consists exclusively of all unit owners or, following termination of the  
23 common interest community, of all former unit owners entitled to distributions of proceeds under [section 39] or  
24 their heirs, successors, or assigns. The association must have an executive board. The association must be  
25 organized as a profit or nonprofit corporation, trust, limited liability company, partnership, unincorporated  
26 association, or any other form of organization authorized by the law of this state. If there is a conflict between  
27 the law under which the association was organized and [sections 1 through 95], [sections 1 through 95]  
28 governs.

1

2           NEW SECTION. Section 48. Powers and duties of unit owners association. (1) Except as

3 otherwise provided in subsection (2) and other provisions of [sections 1 through 95], the association:

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

5           (b) shall adopt and may amend budgets under [section 69], may collect assessments for common

6 expenses from unit owners, and may invest funds of the association;

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

8 contractors;

9           (d) may institute, defend, or intervene in litigation or in arbitration, mediation, or administrative

10 proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common

11 interest community, subject to [section 70];

12           (e) may make contracts and incur liabilities;

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

14 elements;

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

16           (h) may acquire, hold, encumber, and convey in its own name any right, title, or interest to real

17 estate or personal property, except that:

18           (i) common elements in a condominium or planned community may be conveyed or subjected to a

19 security interest only pursuant to [section 58]; and

20           (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a

21 security interest, only pursuant to [section 58];

22           (i) may grant easements, leases, and licenses through or over the common elements, but a grant

23 to a unit owner that benefits the owner's unit is allowed only by reallocation under [section 29(3)] of the common

24 element to a limited common element;

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

26           (i) the use, rental, or operation of the common elements, other than limited common elements

27 described in [section 23(2) and (4)]; and

28           (ii) services provided to unit owners;

- 1 (k) may impose charges for late payment of assessments and, after notice and an opportunity to  
2 be heard, may impose reasonable fines for violations of the declaration, bylaws, and rules of the association;
- 3 (l) may impose reasonable charges for the preparation and recordation of amendments to the  
4 declaration, resale certificates required by [section 80], or statements of unpaid assessments;
- 5 (m) may provide for the indemnification of its officers and executive board and maintain directors'  
6 and officers' liability insurance;
- 7 (n) except to the extent limited by the declaration, may assign its right to future income, including  
8 the right to receive assessments;
- 9 (o) may exercise any other powers conferred by the declaration or bylaws;
- 10 (p) may exercise all other powers that may be exercised in this state by organizations of the same  
11 type as the association;
- 12 (q) may exercise any other powers necessary and proper for the governance and operation of the  
13 association;
- 14 (r) may require that disputes between the association and unit owners or between two or more  
15 unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution  
16 as a prerequisite to commencement of a judicial proceeding; and
- 17 (s) may suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:
- 18 (i) deny a unit owner or other occupant access to the owner's unit;
- 19 (ii) suspend a unit owner's right to vote;
- 20 (iii) prevent a unit owner from seeking election as a director or officer of the association; or
- 21 (iv) withhold services provided to a unit or a unit owner by the association if the effect of  
22 withholding the service would be to endanger the health, safety, or property of any person.
- 23 (2) The declaration may not limit the power of the association beyond the limit authorized in  
24 subsection (1)(r) to:
- 25 (a) deal with the declarant if the limit is more restrictive than the limit imposed on the power of the  
26 association to deal with other persons; or
- 27 (b) institute litigation or an arbitration, mediation, or administrative proceeding against any person,  
28 subject to the following:

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent  
28 with law;

1 (c) although a violation may exist or may have occurred, it is not so material as to be objectionable  
2 to a reasonable person or to justify expending the association's resources; or

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

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

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

9

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

19 (2) The executive board may not:

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

21 (b) amend the bylaws;

22 (c) terminate the common interest community;

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

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

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

28 (4) Subject to subsection (5), the declaration may provide for a period of declarant control of the

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

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

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

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

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

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

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

25 (7) A declaration may provide for the appointment of specified positions on the executive board by  
26 persons other than the declarant during or after the period of declarant control. It may also provide a method for  
27 filling vacancies in those positions, other than by election by the unit owners. However, after the period of  
28 declarant control, appointed members:

- 1 (a) may not comprise more than one-third of the board; and
- 2 (b) have no greater authority than any other member of the board.

3

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

- 6 (a) all units owned by the declarant; and
- 7 (b) real estate that is subject to a development right.

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

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

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

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

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

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

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

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

28 (8) A nonaffiliate successor is not liable for an obligation or liability imposed by [sections 1 through

1 95] or the declaration that relates to:

2 (a) a misrepresentation by a previous declarant;

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

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

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

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

13 (10) A successor to a special declarant right by an involuntary transfer may declare in a recorded  
14 instrument the successor's intent to hold the right solely for transfer to another person. After recording the  
15 instrument, the successor may not exercise a special declarant right, other than a right under [section 49(4)] to  
16 control the executive board, and an attempt to exercise a special declarant right in violation of this subsection is  
17 void. A successor that complies with this subsection is not liable for an obligation or liability imposed by  
18 [sections 1 through 95] or the declaration other than liability for the successor's act or omission under [section  
19 49(4)].

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

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

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

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

28

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

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

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

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

12            (3) This section does not apply to:

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

16            (b) a proprietary lease.

17

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

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

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

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

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

27            (e) specify the officers who may prepare, execute, certify, and record amendments to the  
28 declaration on behalf of the association;

- 1 (f) specify a method for the unit owners to amend the bylaws;
- 2 (g) contain any provision necessary to satisfy requirements in [sections 1 through 95] or the  
3 declaration concerning meetings, voting, quorums, and other activities of the association; and
- 4 (h) provide for any matter required by law of this state other than [sections 1 through 95] to appear  
5 in the bylaws of organizations of the same type as the association.
- 6 (2) Subject to the declaration and [sections 1 through 95], the bylaws may provide for any other  
7 necessary or appropriate matters, including matters that could be adopted as rules.

8

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

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

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

24

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

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

28 (b) An association shall hold a special meeting of unit owners to address any matter affecting the

1 common interest community or the association if its president, a majority of the executive board, or unit owners  
2 having at least 20%, or any lower percentage specified in the bylaws, of the votes in the association request  
3 that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30  
4 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting  
5 members may directly notify all the unit owners of the meeting. The unit owners may discuss at a special  
6 meeting a matter not described in the notice under subsection (1)(c) but may not take action on the matter  
7 without the consent of all unit owners.

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

- 12 (i) a statement of the general nature of any proposed amendment to the declaration or bylaws;
- 13 (ii) any budget changes; and
- 14 (iii) any proposal to remove an officer or member of the executive board.

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

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

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

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

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

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

27 (a) Meetings must be open to the unit owners except during executive sessions. The executive  
28 board and those committees may hold an executive session only during a regular or special meeting of the

1 board or a committee. No final vote or action may be taken during an executive session. An executive session  
2 may be held only to:

- 3 (i) consult with the association's attorney concerning legal matters;
- 4 (ii) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;
- 5 (iii) discuss labor or personnel matters;
- 6 (iv) discuss contracts, leases, and other commercial transactions to purchase or provide goods or  
7 services currently being negotiated, including the review of bids or proposals, if premature general knowledge  
8 of those matters would place the association at a disadvantage; or

9 (v) prevent public knowledge of the matter to be discussed if the executive board or committee  
10 determines that public knowledge would violate the privacy of any person.

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

15 (c) During the period of declarant control, the executive board shall meet at least four times a year.  
16 At least one of those meetings must be held at the common interest community or at a place convenient to the  
17 community. After termination of the period of declarant control, all executive board meetings must be at the  
18 common interest community or at a place convenient to the community unless the unit owners amend the  
19 bylaws to vary the location of those meetings.

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

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

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

1 executive session.

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

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

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

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

11 (i) During the period of declarant control, without meeting, the executive board may act by  
12 unanimous consent as documented in a record authenticated by all its members. The secretary shall promptly  
13 give notice to all unit owners of any action taken by unanimous consent. After termination of the period of  
14 declarant control, the executive board may act by unanimous consent only to undertake ministerial actions or to  
15 implement actions previously taken at a meeting of the executive board.

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

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

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

1 the act of the executive board unless a greater vote is required by the declaration or bylaws.

2

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (b) The association shall deliver with the notice:
- 2 (i) instructions for casting a ballot;
- 3 (ii) a paper ballot to every unit owner except a unit owner that has consented in a record to
- 4 electronic voting; and
- 5 (iii) if the association allows electronic voting, instructions for electronic voting.
- 6 (c) The ballot must set forth each proposed action and provide an opportunity to vote for or against
- 7 the action.
- 8 (d) In the notice under subsection (4)(a), the association shall:
- 9 (i) state the percent of votes necessary to approve each matter other than election of directors;
- 10 (ii) specify the time and date by which a ballot must be delivered to the association to be counted,
- 11 the time and date of which may not be fewer than 3 days after the date the association delivers the ballot; and
- 12 (iii) describe the time, date, and manner by which unit owners wishing to deliver information to all
- 13 unit owners regarding the subject of the vote may do so.
- 14 (e) A unit owner may revoke a ballot before the time and date under subsection (4)(d) by which the
- 15 ballot must be delivered to the association. Unless the declaration or bylaws otherwise provide, a ballot is not
- 16 revoked by death or disability after delivery to the association.
- 17 (f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot
- 18 equals or exceeds the quorum required to be present at a meeting authorizing the action.
- 19 (g) The association shall verify that each paper and electronic ballot is cast by the unit owner
- 20 having a right to do so.
- 21 (h) A unit owner consents in a record to electronic voting by casting an electronic ballot.
- 22 (i) An association that allows electronic ballots shall create a record of electronic votes capable of
- 23 retention, retrieval, and review.
- 24 (5) If the declaration requires that votes on specified matters affecting the common interest
- 25 community be cast by lessees rather than unit owners of leased units:
- 26 (a) this section applies to lessees as if they were unit owners;
- 27 (b) unit owners that have leased their units to other persons may not cast votes on those specified
- 28 matters;

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

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

4 (7) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners  
5 in the same proportion as the votes cast on the matter by unit owners other than the association.

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

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

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

12 (b) more than one owner casts a vote for the unit, no vote from any owner of the unit may be  
13 counted unless the declaration provides a manner for allocating votes cast by multiple owners of a unit.  
14

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

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

1           (3)     Except as provided in [section 87(4)] with respect to warranty claims, any statute of limitation  
2 affecting the association's right of action against a declarant under [sections 1 through 95] is tolled until the  
3 period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated  
4 by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting  
5 from judgments against the association are governed by [section 63].  
6

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

16           (2)     Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a  
17 security interest by the association if persons entitled to cast at least 80% of the votes in the association,  
18 including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration  
19 specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed  
20 or subjected to a security interest, then all unit owners of those units, or the units to which those limited  
21 common elements are allocated, shall agree in order to convey those units or limited common elements or  
22 subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are  
23 restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any  
24 purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to [section  
25 39], is void.

26           (3)     An agreement to convey common elements in a condominium or planned community, or to  
27 subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or  
28 subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof, in

1 the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after  
2 which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof  
3 must be recorded in every county in which a portion of the common interest community is situated and is  
4 effective only upon recordation.

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

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

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

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

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

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

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

1 elements does not affect interests having priority over the declaration or created by the association after the  
2 declaration was recorded.

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

5  
6 **NEW SECTION. Section 59. Insurance.** (1) Commencing not later than the time of the first  
7 conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably  
8 available and subject to reasonable deductibles:

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

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

18 (c) fidelity insurance.

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

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

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

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

28 (c) no act or omission by a unit owner, unless acting within the owner's scope of authority on

1 behalf of the association, voids the policy or is a condition to recovery under the policy; and

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

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

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

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

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

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

23 (b) repair or replacement would be illegal; or

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

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

28 (a) the insurance proceeds attributable to the damaged common elements must be used to restore

1 the damaged area to a condition compatible with the remainder of the common interest community; and

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

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

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

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

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

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

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

16

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

21

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

26 (2) Except for assessments under subsections (3) through (6), or as otherwise provided in  
27 [sections 1 through 95], all common expenses must be assessed against all the units in accordance with the  
28 allocations set forth in the declaration pursuant to [section 28(1) and (2)]. The association may charge interest

1 on any past due assessment or portion thereof at the rate established by the association, not exceeding 18%  
2 per year.

3 (3) The declaration may provide that:

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

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

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

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

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

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

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

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

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

28 (7) If common expense liabilities are reallocated, common expense assessments and any

1 installment thereof not yet due must be recalculated in accordance with the reallocated common expense  
2 liabilities.

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

5  
6 **NEW SECTION. Section 62. Lien for sums due association -- enforcement.** (1) The association  
7 has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner.  
8 Any priority accorded to the association's lien under this section is a priority in right and not merely a priority in  
9 payment from the proceeds of the sale of the unit by a competing lienholder or encumbrancer. Unless the  
10 declaration provides otherwise, reasonable attorney fees and costs, other fees, charges, late charges, fines,  
11 and interest charged pursuant to [section 48(1)(j), (1)(k), and (1)(l)], and any other sums due to the association  
12 under the declaration, [sections 1 through 95], or as a result of an administrative, arbitration, mediation, or  
13 judicial decision are enforceable in the same manner as unpaid assessments under this section. If an  
14 assessment is payable in installments, the lien is for the full amount of the assessment from the time the first  
15 installment thereof becomes due. A lien under this section is not subject to Title 70, chapter 32, part 2.

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

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

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

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

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

27 (3) A lien under this section also has priority over a security interest described in subsection (2)(b),  
28 but only to the extent of:

1 (a) the unpaid amount of assessments for common expenses, not to exceed 6 months for each  
2 budget year of the association, as based on the periodic budget adopted by the association under [section  
3 61(1)] for the applicable year; and

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

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

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

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

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

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

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

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

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

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

26 (b) in a cooperative whose unit owners' interests in the units are real estate, the association's lien  
27 must be foreclosed in like manner as a mortgage on real estate or by power of sale under 71-1-223 or by power  
28 of sale under subsection (11)(a); and

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

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

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

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

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

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

22 (i) the reasonable expenses of sale;

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

27 (iii) satisfaction of the association's lien;

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

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

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

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

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

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

25 (a) the unit owner, at the time the action is commenced, owes a sum equal to at least 3 months of  
26 common expense assessments based on the periodic budget last adopted by the association pursuant to  
27 [section 61(1)] and the unit owner has failed to accept or comply with a payment plan offered by the  
28 association; and

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

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

5 (a) unpaid assessments;

6 (b) late charges;

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

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

9 (16) If the only sums due with respect to a unit are fines and related sums imposed against the unit,  
10 a foreclosure action may not be commenced against the unit unless the association has a judgment against the  
11 unit owner for the fines and related sums and has perfected a judgment lien against the unit under Title 25, Ch.  
12 9, part 3.

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

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

18

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

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

25 (b) If the association has granted a security interest in the common elements to a creditor of the  
26 association pursuant to [section 58], the holder of that security interest shall exercise its right against the  
27 common elements before its judgment lien on any unit may be enforced.

28 (c) Whether perfected before or after the creation of the common interest community, if a lien,

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

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

11 (2) In a cooperative:

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

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

18

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

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

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

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

28 (d) its original or restated organizational documents, if required by law other than [sections 1

- 1 through 95], bylaws and all amendments to them, and all rules currently in effect;
- 2 (e) all financial statements and tax returns of the association for the past 3 years;
- 3 (f) a list of the names and addresses of its current executive board members and officers;
- 4 (g) its most recent annual report delivered to the Secretary of State, if any;
- 5 (h) financial and other records sufficiently detailed to enable the association to comply with
- 6 [section 80];
- 7 (i) copies of current contracts to which it is a party;
- 8 (j) records of executive board or committee actions to approve or deny any requests for design or
- 9 architectural approval from unit owners; and
- 10 (k) ballots, proxies, and other records related to voting by unit owners for 1 year after the election,
- 11 action, or vote to which they relate.
- 12 (2) Subject to subsections (3) and (4), all records retained by an association must be available for
- 13 examination and copying by a unit owner or the owner's authorized agent:
- 14 (a) during reasonable business hours or at a mutually convenient time and location; and
- 15 (b) upon 5 days' notice in a record reasonably identifying the specific records of the association
- 16 requested.
- 17 (3) Records retained by an association may be withheld from inspection and copying to the extent
- 18 that they concern:
- 19 (a) personnel, salary, and medical records relating to specific individuals;
- 20 (b) contracts, leases, and other commercial transactions to purchase or provide goods or services,
- 21 currently being negotiated;
- 22 (c) existing or potential litigation or mediation, arbitration, or administrative proceedings;
- 23 (d) existing or potential matters involving federal, state, or local administrative or other formal
- 24 proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;
- 25 (e) communications with the association's attorney, which are otherwise protected by the attorney-
- 26 client privilege or the attorney work-product doctrine;
- 27 (f) information the disclosure of which would violate law other than [sections 1 through 95];
- 28 (g) records of an executive session of the executive board; or

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

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

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

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

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

8

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

17

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

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

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

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

26 (3) An association may adopt rules to establish and enforce construction and design criteria and  
27 aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt  
28 procedures for enforcement of those standards and for approval of construction applications, including a

1 reasonable time within which the association shall act after an application is submitted and the consequences  
2 of its failure to act.

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

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

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

12 (a) implement a provision of the declaration;

13 (b) regulate any behavior in or occupancy of a unit that violates the declaration or adversely affects  
14 the use and enjoyment of other units or the common elements by other unit owners; or

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

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

19 (8) Every rule must be reasonable.

20

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

24 (a) hand delivery to each unit owner;

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

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

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

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

3  
4           NEW SECTION. Section 68. Removal of officers and directors. (1) Notwithstanding any provision  
5     of the declaration or bylaws to the contrary, unit owners, at any meeting of the unit owners at which a quorum is  
6     present, may remove any member of the executive board and any officer elected by the unit owners, with or  
7     without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to  
8     removal, but:

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

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

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

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

19  
20          NEW SECTION. Section 69. Adoption of budgets -- special assessments. (1) The executive  
21    board, at least annually, shall adopt a proposed budget for the common interest community for consideration by  
22    the unit owners. Not later than 30 days after adoption of a proposed budget, the executive board shall provide  
23    to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which  
24    any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or  
25    more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the  
26    budget. Unless at that meeting a majority of all unit owners or any larger number specified in the declaration  
27    reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected,  
28    the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

1           (2)     The executive board, at any time, may propose a special assessment. The assessment is  
2 effective only if the executive board follows the procedures for ratification of a budget described in subsection  
3 (1) and the unit owners do not reject the proposed assessment.  
4

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

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

15           (i)     provides actual notice to the person named in the claim; or  
16           (ii)    would be sufficient to give notice to the person in connection with commencement of an action  
17 by the association against the person.

18           (b)     Subject to subsection (5), the association may not institute a proceeding against a person until  
19 45 days after the association sends notice of its claim to that person.

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

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

28           (e)     If the association accepts a remediation plan from a person the association seeks to hold liable

1 for the claimed defect, or if a person agrees to stated conditions to an otherwise acceptable plan, the parties  
2 shall agree on a period for implementation of the plan. The association may not institute a proceeding against  
3 the person during the time the plan is being diligently implemented.

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

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

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

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

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

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

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

23

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

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

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

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

1 (ii) threat to the habitability of units; or

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

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

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

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

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

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

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

17 and

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

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

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

24  
25 **NEW SECTION. Section 72. Applicability -- waiver.** (1) [Sections 72 through 91] apply to all units  
26 subject to [sections 1 through 95], except as provided in subsection (2) or as modified or waived by agreement  
27 of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

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

1 case of:

2 (a) a gratuitous disposition of a unit;

3 (b) a disposition pursuant to court order;

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

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

6 (e) a disposition to a dealer;

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

8 penalty; or

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

10

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

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

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

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

27

28 **NEW SECTION. Section 74. Public offering statement -- general provisions.** (1) Except as

- 1 otherwise provided in subsection (2), a public offering statement must contain or fully and accurately disclose:
- 2 (a) the name and principal address of the declarant and of the common interest community and a  
3 statement that the common interest community is a condominium, cooperative, or planned community;
- 4 (b) a general description of the common interest community, including to the extent possible, the  
5 types, number, and declarant's schedule of commencement and completion of construction of buildings, and  
6 amenities that the declarant anticipates including in the common interest community;
- 7 (c) the number of units in the common interest community;
- 8 (d) copies and a brief narrative description of the significant features of the declaration, other than  
9 any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the  
10 common interest community; the bylaws and any rules of the association; copies of any contracts and leases to  
11 be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may  
12 be subject to cancellation by the association under [section 51];
- 13 (e) the financial information required by subsection (2);
- 14 (f) any services not reflected in the budget that the declarant provides, or expenses that the  
15 declarant pays and that the declarant expects may become at any subsequent time a common expense of the  
16 association and the projected common expense assessment attributable to each of those services or expenses  
17 for the association and for each type of unit;
- 18 (g) any initial or special fee due from the purchaser or seller at the time of sale, together with a  
19 description of the purpose and method of calculating the fee;
- 20 (h) a description of any liens, defects, or encumbrances on or affecting the title to the common  
21 interest community;
- 22 (i) a description of any financing offered or arranged by the declarant;
- 23 (j) the terms and significant limitations of any warranties provided by the declarant, including  
24 statutory warranties and limitations on the enforcement thereof or on damages;
- 25 (k) a statement that:
- 26 (i) within 15 days after receipt of a public offering statement a purchaser, before conveyance, may  
27 cancel any contract for purchase of a unit from a declarant;
- 28 (ii) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit,

1 that purchaser may recover from the declarant 10% of the sales price of the unit plus 10% of the share,  
2 proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by  
3 security interests encumbering the common interest community; and

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

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

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

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

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

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

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

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

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

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

24 (s) in a cooperative, a statement whether the unit owners will be entitled, for federal, state, and  
25 local income tax purposes, to a pass-through of deductions for payments made by the association for real  
26 estate taxes and interest paid the holder of a security interest encumbering the cooperative and a statement as  
27 to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a  
28 security interest encumbering the cooperative; and

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

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

6 The budget must include:

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

9 (b) a statement of any other reserves;

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

11 and

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

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

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

20

21 **NEW SECTION. Section 75. Common interest communities subject to development rights.** If

22 the declaration provides that a common interest community is subject to any development rights, the public  
23 offering statement must disclose, in addition to the information required by [section 74]:

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

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

28 (3) if any of the units that may be built within real estate subject to development rights are not to be

1 restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the  
2 maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that  
3 may be created therein, that are not restricted exclusively to residential use;

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

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

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

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

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

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

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

26 (11) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of  
27 units will apply to any units created pursuant to any development right reserved by the declarant, or a statement  
28 of any differentiations that may be made as to those units, or a statement that no assurances are made in that

1 regard; and

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

4  
5 **NEW SECTION. Section 76. Time shares.** If the declaration provides that ownership or occupancy  
6 of any units is or may be in time shares, the public offering statement must disclose, in addition to the  
7 information required by [section 74]:

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

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

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

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

13  
14 **NEW SECTION. Section 77. Common interest communities containing conversion buildings.**

15 (1) The public offering statement of a common interest community containing any conversion building must  
16 contain, in addition to the information required by [section 74]:

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

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

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

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

25  
26 **NEW SECTION. Section 78. Registration with government agency.** If an interest in a common  
27 interest community is currently registered with the securities and exchange commission of the United States, a  
28 declarant satisfies all requirements of [sections 1 through 95] relating to the preparation of a public offering

1 statement if the declarant delivers to the purchaser a copy of the public offering statement filed with the  
2 securities and exchange commission.

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

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

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

20  
21 **NEW SECTION. Section 80. Resale of units.** (1) Except in the case of a sale in which delivery of a  
22 public offering statement is required, or unless exempt under [section 72(2)], a unit owner shall furnish to a  
23 purchaser before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the bylaws,  
24 the rules of the association, and the declaration other than plats and plans. The unit owner shall also furnish a  
25 certificate containing:

26 (a) a statement disclosing the effect on the proposed disposition of any right of first refusal or other  
27 restraint on the free alienability of the unit held by the association;

28 (b) a statement setting forth the amount of the periodic common expense assessment and any

- 1 unpaid common expense or special assessment currently due and payable from the selling unit owner;
- 2 (c) a statement of any other fees payable by the owner of the unit being sold;
- 3 (d) a statement of any capital expenditures approved by the association for the current and
- 4 succeeding fiscal years;
- 5 (e) a statement of the amount of any reserves for capital expenditures and of any portions of those
- 6 reserves designated by the association for any specified projects;
- 7 (f) the most recent regularly prepared balance sheet and income and expense statement, if any,
- 8 of the association;
- 9 (g) the current operating budget of the association;
- 10 (h) a statement of any unsatisfied judgments against the association and the status of any pending
- 11 suits in which the association is a defendant;
- 12 (i) a statement describing any insurance coverage provided for the benefit of unit owners;
- 13 (j) a statement as to whether the executive board has given or received notice in a record that any
- 14 existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements
- 15 assigned thereto violate any provision of the declaration;
- 16 (k) a statement as to whether the executive board has received notice in a record from a
- 17 governmental agency of any violation of environmental, health, or building codes with respect to the unit, the
- 18 limited common elements assigned thereto, or any other portion of the common interest community that has not
- 19 been cured;
- 20 (l) a statement of the remaining term of any leasehold estate affecting the common interest
- 21 community and the provisions governing any extension or renewal thereof;
- 22 (m) a statement of any restrictions in the declaration affecting the amount that may be received by
- 23 a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or
- 24 termination of the common interest community;
- 25 (n) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for
- 26 federal income tax purposes by the unit owner of real estate taxes and interest paid by the association;
- 27 (o) a statement describing any pending sale or encumbrance of common elements; and
- 28 (p) a statement disclosing the effect on the unit to be conveyed of any restriction on the right to

1 use or occupy the unit, including a restriction on a lease or other rental of the unit.

2 (2) The association, within 10 days after a request by a unit owner, shall furnish a certificate  
3 containing the information necessary to enable the unit owner to comply with this section. A unit owner  
4 providing a certificate pursuant to subsection (1) is not liable to the purchaser for any erroneous information  
5 provided by the association and included in the certificate.

6 (3) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in  
7 the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the  
8 association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser  
9 until the certificate has been provided and for 5 days thereafter or until conveyance, whichever first occurs.

10

11 NEW SECTION. Section 81. Escrow of deposits. Any deposit made in connection with the  
12 purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to  
13 [section 73(3)] must be placed in escrow and held either in this state or in the state where the unit is located in  
14 an account designated solely for that purpose by an institution whose accounts are insured by a governmental  
15 agency or instrumentality until:

- 16 (1) delivered to the declarant at closing;
- 17 (2) delivered to the declarant because of the purchaser's default under a contract to purchase the  
18 unit; or
- 19 (3) refunded to the purchaser.

20

21 NEW SECTION. Section 82. Release of liens. (1) In the case of a sale of a unit where delivery of a  
22 public offering statement is required pursuant to [section 73(3)], a seller:

23 (a) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except  
24 liens on real estate that a declarant has the right to withdraw from the common interest community, that the  
25 purchaser does not expressly agree to take subject to or assume and that encumber:

- 26 (i) in a condominium, that unit and its common element interest; and
- 27 (ii) in a cooperative or planned community, that unit and any limited common elements assigned  
28 thereto; or

1 (b) shall provide a surety bond or substitute collateral for or insurance against the lien as provided  
2 for liens on real estate as provided by law.

3 (2) Before conveying real estate to the association, the declarant must have that real estate  
4 released from:

5 (a) all liens, the foreclosure of which would deprive unit owners of any right of access to or  
6 easement of support of their units; and

7 (b) all other liens on that real estate unless the public offering statement describes certain real  
8 estate that may be conveyed subject to liens in specified amounts.

9

10 NEW SECTION. Section 83. Conversion buildings. (1) A declarant of a common interest  
11 community containing conversion buildings, and any dealer who intends to offer units in such a common  
12 interest community, shall give each of the residential tenants and any residential subtenant in possession of a  
13 portion of a conversion building notice of the conversion and provide those persons with the public offering  
14 statement no later than 120 days before the tenants and any subtenant in possession are required to vacate.  
15 The notice must set forth generally the rights of tenants and subtenants under this section and must be hand  
16 delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the  
17 unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon  
18 less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other  
19 tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that  
20 period. Failure to give notice as required by this section is a defense to an action for possession.

21 (2) For 60 days after delivery or mailing of the notice described in subsection (1), the person  
22 required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the  
23 tenant who leases that unit. If a tenant fails to purchase the unit during that 60-day period, the offeror may not  
24 offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to  
25 the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a  
26 conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the  
27 converted unit do not substantially conform to the dimensions of the residential unit before conversion.

28 (3) If a seller, in violation of subsection (2), conveys a unit to a purchaser for value who has no

1 knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance  
2 of the unit, extinguishes any right a tenant may have under subsection (2) to purchase that unit if the deed  
3 states that the seller has complied with subsection (2), but the conveyance does not affect the right of a tenant  
4 to recover damages from the seller for a violation of subsection (2).

5 (4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and  
6 otherwise complies with the provisions of Title 70, chapter 24, the notice also constitutes a notice to vacate  
7 specified by that statute.

8 (5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.  
9

10 NEW SECTION. Section 84. Express warranties of quality. (1) Express warranties made by a  
11 declarant to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

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

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

20 (c) any description of the quantity or extent of the real estate comprising the common interest  
21 community, including plats or surveys, creates an express warranty that the common interest community will  
22 conform to the description, subject to customary tolerances; and

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

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

28 (3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by

1 the declarant.

2

3 NEW SECTION. Section 85. Implied warranties of quality. (1) A declarant and any dealer warrants  
4 that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of  
5 possession as it was at the time of contracting, reasonable wear and tear excepted.

6 (2) A declarant and any dealer impliedly warrants that a unit and the common elements in the  
7 common interest community are suitable for the ordinary uses of real estate of its type and that any  
8 improvements made or contracted for by the declarant or dealer or made by any person before the creation of  
9 the common interest community will be:

10 (a) free from defective materials; and

11 (b) constructed in accordance with applicable law, according to sound engineering and  
12 construction standards, and in a workmanlike manner.

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

16 (4) Warranties imposed by this section may be excluded or modified as specified in [section 86].

17 (5) For the purposes of this section, improvements made or contracted for by an affiliate of a  
18 declarant are made or contracted for by the declarant.

19 (6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of  
20 quality.

21

22 NEW SECTION. Section 86. Exclusion or modification of implied warranties of quality. (1)

23 Except as limited by subsection (2) with respect to a purchaser of a unit that may be used for residential use,  
24 implied warranties of quality:

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

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

28 (2) With respect to a purchaser of a unit that may be occupied for residential use, no general

1 disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an  
2 instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law if the  
3 defect or failure entered into and became a part of the basis of the bargain.

4  
5 NEW SECTION. Section 87. Statute of limitation for warranties. (1) Unless a period of limitation is  
6 tolled under [section 57] or affected by subsection (4), a judicial proceeding for breach of any obligation arising  
7 under [sections 84 or 85] must be commenced within 6 years after the cause of action accrues, but the parties  
8 may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be  
9 occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate  
10 instrument executed by the purchaser.

11 (2) Subject to subsection (3), a cause of action for breach of warranty of quality, regardless of the  
12 purchaser's lack of knowledge of the breach, accrues:

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

16 (b) as to each common element, at the time the common element is completed or, if later, as to:

17 (i) a common element that is added to the common interest community by exercise of  
18 development rights, at the time the first unit that was added to the condominium by the same exercise of  
19 development rights is conveyed to a bona fide purchaser; or

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

22 (3) If a warranty of quality explicitly extends to future performance or duration of any improvement  
23 or component of the common interest community, the cause of action accrues at the time the breach is  
24 discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

25 (4) During the period of declarant control, the association may authorize an independent  
26 committee of the executive board to evaluate and enforce any warranty claims involving the common elements  
27 and to compromise those claims. Only members of the executive board elected by unit owners other than the  
28 declarant and other persons appointed by those independent members may serve on the committee, and the

1 committee's decision must be free of any control by the declarant or any member of the executive board or  
2 officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney fees, are  
3 common expenses and must be added to the budget adopted annually by the association under [section 61]. If  
4 the committee is so created, the period of limitation for a warranty claim considered by the committee begins to  
5 run from the date of the first meeting of the committee.

6  
7 **NEW SECTION. Section 88. Effect of violations on rights of action -- attorney fees.** (1) A  
8 declarant, association, unit owner, or any other person subject to [sections 1 through 95] may bring an action to  
9 enforce a right granted or obligation imposed by [sections 1 through 95], the declaration, or the bylaws. Punitive  
10 damages may be awarded for a willful failure to comply with [sections 1 through 95]. The court may award  
11 reasonable attorney fees and costs.

12 (2) Parties to a dispute arising under [sections 1 through 95], the declaration, or the bylaws may  
13 agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that:

14 (a) a declarant may agree with the association to do so only after the period of declarant control  
15 has expired unless the agreement is made with an independent committee of the executive board elected  
16 pursuant to [section 87(4)]; and

17 (b) an agreement to submit to any form of binding alternative dispute resolution must be in a  
18 record authenticated by the parties.

19  
20 **NEW SECTION. Section 89. Labeling of promotional material.** No promotional material may be  
21 displayed or delivered to prospective purchasers that describes or portrays an improvement that is not in  
22 existence unless the description or portrayal of the improvement in the promotional material is conspicuously  
23 labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT".

24  
25 **NEW SECTION. Section 90. Declarant's obligation to complete and restore.** (1) Except for  
26 improvements labeled "NEED NOT BE BUILT", the declarant shall complete all improvements depicted on any  
27 site plan or other graphic representation, including any plats or plans prepared pursuant to [section 30], whether  
28 or not that site plan or other graphic representation is contained in the public offering statement or in any

1 promotional material distributed by or for the declarant.

2 (2) The declarant is subject to liability for the prompt repair and restoration to a condition  
3 compatible with the remainder of the common interest community of any portion of the common interest  
4 community affected by the exercise of rights reserved pursuant to or created by [sections 31 through 34, 36,  
5 and 37].

6  
7 **NEW SECTION. Section 91. Substantial completion of units.** In the case of a sale of a unit in  
8 which delivery of a public offering statement is required, a contract of sale may be executed but no interest in  
9 that unit may be conveyed until the declaration is recorded and is substantially completed, as evidenced by a  
10 recorded certificate of substantial completion executed by an independent architect, surveyor, or engineer  
11 licensed in this state, or by issuance of a certificate of occupancy authorized by law.

12  
13 **NEW SECTION. Section 92. Applicability and transition.** (1) Before October 1, 2028, [sections 1  
14 through 95] apply only to:

15 (a) a common interest community created on or after [the effective date of this act]; or

16 (b) a common interest community created before [the effective date of this act] that amends its  
17 declaration to elect to be subject to [sections 1 through 95].

18 (2) Except as provided in subsection (3), on and after October 1, 2028, [sections 1 through 95]  
19 apply to all common interest communities.

20 (3) [Sections 1 through 95] do not apply to a common interest community created before [the  
21 effective date of this act] that elects not to be subject to [sections 1 through 95] by amending its declaration by  
22 vote or agreement of unit owners of units to which more than 50% of the votes in the association are allocated  
23 and recording the amendment before October 1, 2028. This subsection (3) supersedes [section 38(1)], and  
24 inconsistent provision of other law of this state, and any inconsistent provision in the declaration or bylaws of  
25 the common interest community.

26  
27 **NEW SECTION. Section 93. Prior statutes.** The provisions of the Unit Ownership Act provided for in  
28 Title 70, chapter 23:

- 1           (1)     do not apply to a common interest community that is subject to [sections 1 through 95]; and  
2           (2)     apply to a common interest community created before [the effective date of this act] only until  
3 the community becomes subject to [sections 1 through 95].

4  
5           NEW SECTION. Section 94. Retroactive application. (1) Except as provided in subsection (2), if a  
6 common interest community created before [the effective date of this act] becomes subject to [sections 1  
7 through 95] on October 1, 2028, or earlier, a provision of its declaration or bylaws inconsistent with [sections 1  
8 through 95] is invalid unless:

- 9           (a)     the provision is expressly permitted under [section 13]; or  
10          (b)     the common interest community is a cooperative described in [section 15], a planned  
11 community described in [section 16], or a nonresidential or mixed-use common interest community described in  
12 [section 18].

13          (2)     [Sections 1 through 95] do not require a common interest community validly created before [the  
14 effective date of this act] to:

- 15          (a)     comply with the requirement of [sections 1 through 95] for creation of a common interest  
16 community; or  
17          (b)     prepare or amend surveys, plats, or plans.

18          (3)     [Sections 1 through 95] do not invalidate an action validly taken or transaction validly entered  
19 into before a common interest community becomes subject to [sections 1 through 95].

20  
21           NEW SECTION. Section 95. Applicability to pre-existing common interest community. (1)  
22 Except for a cooperative described in [section 15], a planned community described in [section 16], and a  
23 nonresidential or mixed-use common interest community described in [section 18], the following sections apply  
24 to a common interest community created before [the effective date of this act]:

- 25          (a)     [section 4];  
26          (b)     [section 5];  
27          (c)     [section 6];  
28          (d)     [section 17];

- 1 (e) [section 23];
- 2 (f) [section 24];
- 3 (g) [section 25];
- 4 (h) [section 34];
- 5 (i) [section 38(1), (8), and (9)];
- 6 (j) [section 42];
- 7 (k) [section 45];
- 8 (l) [section 48(1)(a) through (1)(f) and (1)(l) through (1)(q)];
- 9 (m) [section 49];
- 10 (n) [section 57];
- 11 (o) [section 62];
- 12 (p) [section 64];
- 13 (q) [section 70];
- 14 (r) [section 80];
- 15 (s) [section 88]; and
- 16 (t) [section 2] to the extent necessary to construe the sections listed in subsections (1)(a) through
- 17 (1)(s).

18 (2) The sections listed in subsection (1) apply only to an event or circumstance that occurs after  
19 [the effective date of this act] and do not invalidate provisions of the declaration or bylaws of the common  
20 interest community existing on [the effective date of this act].

21 (3) This section does not apply to a common interest community that becomes subject to [sections  
22 1 through 95] under [section 92] or by election under [section 15], [section 16], or [section 18].

23  
24 **NEW SECTION. Section 96. Codification instruction.** [Sections 1 through 95] are intended to be  
25 codified as a new chapter in Title 70, and the provisions of Title 70 apply to [sections 1 through 95].

26  
27 **NEW SECTION. Section 97. Severability.** If a part of [this act] is invalid, all valid parts that are  
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

2

3 NEW SECTION. Section 98. Effective date. [This act] is effective October 1, 2026.

4

- END -