

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 877
HOUSE BILL 377

AN ACT TO BE KNOWN AS THE NORTH CAROLINA CONDOMINIUM ACT AS
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are amended by adding a new Chapter 47C as follows:

"ARTICLE 1.

"GENERAL PROVISIONS.

"§ 47C-1-101. **Short title.**—This act shall be known and may be cited as the North Carolina Condominium Act.

"§ 47C-1-102. **Applicability.**—(a) This act applies to all condominiums created within this State after the effective date of this act. Sections 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (effect of Violation on Rights of Action; Attorney's Fees), and Section 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State before the effective date of this act; but those sections apply only with respect to events and circumstances occurring after the effective date of this act and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after the effective dates of this act and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created before the effective date of this act if the amendment would be permitted by this act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to any person any rights, powers, or privileges permitted by this act, all correlative obligations, liabilities, and restrictions in this act also apply to that person.

(c) This act does not apply to condominiums or units located outside this State, but the public offering statement provisions (Sections 47C-4-102 through 47C-4-108)

apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under Section 47C-4-101(b).

"§ 47C-1-103. Definitions.—In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this act:

- (1) 'Affiliate of a declarant' means any person who controls, is controlled by, or is under common control with a declarant. A person 'controls' a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent (20%) of the capital of the declarant. A person 'is controlled by' a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.
- (2) 'Allocated interests' means the undivided interests in the common elements, the common expense liability, and votes in the association allocated to each unit.
- (3) 'Association' or 'unit owners' associations' means the unit owners' associations organized under Section 47C-3-101.
- (4) 'Common elements' means all portions of a condominium other than the units.
- (5) 'Common expenses' means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- (6) 'Common expense liability' means the liability for common expenses allocated to each unit pursuant to Section 47C-2-107.
- (7) 'Condominium' means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.
- (8) 'Conversion building' means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers or by persons who occupy with the consent of purchasers.

- (9) 'Declarant' means any person or group of persons acting in concert who (i) as part of a common promotional plan offers to dispose of his or its interest in a unit not previously disposed of or (ii) reserves or succeeds to any special declarant right.
- (10) 'Declaration' means any instruments, however denominated, which create a condominium, and any amendments to those instruments.
- (11) 'Development rights' means any right or combination of rights reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium.
- (12) 'Dispose' or 'disposition' means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.
- (13) 'Executive board' means the body, regardless of name, designated in the declaration to act on behalf of the association.
- (14) 'Identifying number' means a symbol or address that identifies only one unit in a condominium.
- (15) 'Leasehold condominium' means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.
- (16) 'Limited common element' means a portion of the common elements allocated by the declaration or by operation of Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.
- (17) 'Master association' means an organization described in Section 47C-2-120, whether or not it is also an association described in Section 47C-3-101.
- (18) 'Offering' means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.
- (19) 'Person' means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- (20) 'Purchaser' means any person, other than a declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other

than (i) a leasehold interest (including renewal options) of less than five years, or (ii) as security for an obligation.

- (21) 'Real estate' means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. 'Real estate' includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.
- (22) 'Residential purposes' means use for dwelling or recreational purposes, or both.
- (23) 'Special declarant rights' means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration (Section 47C-2-109); to exercise any development right (Section 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (Section 47C-2-115); to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116); to make the condominium part of a larger condominium (Section 47C-2-121); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (Section 47C-3-103(d)).
- (24) 'Time share' means a 'time share' as defined in G.S. 93A- 41(9).
- (25) 'Unit' means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 47C-2-105(a)(5).
- (26) 'Unit owner' means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.
- (27) 'Lessee' means the party entitled to present possession of a leased unit whether lessee, sublessee or assignee.

"§ 47C-1-104. Variation; power of attorney or proxy to declarant.—(a) Except as specifically provided in specific sections of this act, the provisions of this act may not be varied by the declaration or bylaws.

(b) The provisions of this act may not be varied by agreement; however, after breach of a provision of this act, rights created hereunder may be knowingly waived in writing.

(c) If a declarant, in good faith, has attempted to comply with the requirements of this act and has substantially complied with the act, nonmaterial errors or omissions shall not be actionable.

(d) Notwithstanding any other provision of this act, a declarant may not act under a power of attorney or proxy or use any other device to evade the limitations or prohibitions of this act, the declaration, or the bylaws.

"§ 47C-1-105. Separate titles and taxation.—(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

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

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

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

"§ 47C-1-106. Applicability of local ordinances, regulations, and building codes.—A zoning, subdivision, or building code or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a substantially similar development under a different form of ownership. Otherwise, no provision of this act invalidates or modifies any provision of any zoning, subdivision, or building code or other real estate use law, ordinance, or regulation. No local ordinance or regulation may require the recordation of a declaration prior to the date required by this act.

"§ 47C-1-107. Eminent domain.—(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Unless the condemnor acquires the right to use the unit's interest in common elements, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking exclusive of the unit taken, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

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

(c) If part of the common elements is acquired by eminent domain, the portion of the award not payable to unit owners under subsection (a) must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be apportioned among the owners of the units to which that limited common element was allocated at the time of acquisition.

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

"§ 47C-1-108. Supplemental general principles of law applicable.—The principles of law and equity supplement the provisions of this act, except to the extent inconsistent with this act.

"§ 47C-1-109. Inconsistent time share provisions.—The provisions of this Chapter shall apply, so far as appropriate, to every time share program or project created within this State after the effective date of this act, except to the extent that specific statutory provisions in Chapter 93A are inconsistent with this Chapter, in which case the provisions of Chapter 93A shall prevail.

"ARTICLE 2.

"CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS.

"§ 47C-2-101. Execution and recordation of declaration.—(a) A declaration creating a condominium shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the Grantee index in the name of the condominium and in the Grantor index in the name of each person executing the declaration.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an architect licensed under the provisions of Chapter 83 of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes.

"§ 47C-2-102. Unit boundaries.—Except as provided by the declaration:

- (1) If walls, floors or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors, or ceilings are a part of the common elements.
- (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

- (3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit.

"§ 47C-2-103. Construction and validity of declaration and bylaws.—(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules and regulations adopted pursuant to Section 47C-3-102(a)(1).

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

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

"§ 47C-2-104. Description of units.—A description of a condominium unit which sets forth the name of the condominium, the recording data for the declaration, and the identifying number of the unit or which otherwise complies with the general requirements of the laws of this State concerning description of real property is sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

"§ 47C-2-105. Contents of declaration.—(a) The declaration for a condominium must contain:

- (1) the name of the condominium, which must include the word 'condominium' or be followed by the words 'a condominium', and the name of the association;
- (2) the name of every county in which any part of the condominium is situated;
- (3) a legally sufficient description of the real estate included in the condominium;
- (4) a statement of the maximum number of units which the declarant reserves the right to create;
- (5) a description (by reference to the plats or plans described in G.S. 47C-2-109) of the boundaries of each unit created by the declaration, including the unit's identifying number;
- (6) a description of any limited common elements, other than those specified in subsections 47C-2-102(2) and (4), as provided in Section 47C-2-109(b)(7);

- (7) a description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 47C-2-102(2) and (4), together with a statement that they may be so allocated;
- (8) a description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;
- (9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect, together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
- (10) any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;
- (11) an allocation to each unit of the allocated interests in the manner described in Section 47C-2- 107;
- (12) any restrictions on use, occupancy, or alienation of the units;
- (13) the recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and
- (14) all matters required by Sections 47C-2-106, 47C-2- 107, 47C-2-108, 47C-2-109, 47C-2-115, 47C-2-116, and 47C-3-103(d).

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

"§ 47C-2-106. Leasehold condominiums.—(a) Any lease, or a memorandum thereof, the expiration or termination of which may terminate the condominium or reduce its size shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

- (1) where the complete lease may be inspected;
- (2) the date on which the lease is scheduled to expire;
- (3) a legally sufficient description of the real estate subject to the lease;
- (4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights;

- (5) any right of the unit owners to remove any improvements after the expiration or termination of the lease or a statement that they do not have those rights; and
- (6) any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that they do not have those rights.

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

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

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with Section 47C-1-107(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

"§ 47C-2-107. Allocation of common element, interests, votes, and common expense liabilities.—(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

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

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

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or 100 percent (100%) if stated as percentages. If the declaration allocates to each of the units a fraction or percentage of ownership of the common elements that results in an actual total of such fractions or percentages that is greater or less than the actual whole of such ownership, each unit's ownership of the common elements shall be automatically reallocated so that each unit is allocated the same fraction or percentage of ownership of the actual whole as that unit

had of the actual total that was greater or less than the actual whole. The declarant or the association shall file an amendment to the declaration reflecting such reallocation which amendment need not be executed by any other party.

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

"§ 47C-2-108. Limited common elements.—(a) Except for the limited common elements described in subsections 47C-2-102(2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the unanimous consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by all the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment shall be recorded in the same manner as a deed in the names of the parties and the condominium.

(c) A common element not previously allocated as a limited common element may not be so allocated except by unanimous consent or pursuant to provisions in the declaration made in accordance with Section 47C-2-105(a)(7). All such allocations shall be made by amendments to the declaration and shall become effective in accordance with Section 47C-2-117(c).

"§ 47C-2-109. Plats and plans.—(a) The declarant shall file with the register of deeds in each county where the condominium is located the condominium's plat or plan prepared in accordance with this section. The plat or plan shall be considered a part of the declaration but shall be recorded separately, and the declaration shall refer by number to the file where such plat or plan is recorded. Each plat or plan shall be kept by the register of deeds in a separate file, indexed in the same manner as a conveyance entitled to be recorded, numbered serially in the order of receipt, and designated 'Condominium' with the name of the building, if any, and shall contain a reference to the book and page numbers and date of the recording of the declaration. Each plat or plan must contain a certification by an architect licensed under the provisions of Chapter 83 of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes that it contains all of the information required by this section.

(b) Each plat or plan or combination thereof must show:

- (1) the name and a survey or general schematic map of the entire condominium;
- (2) the location and dimensions of all real estate not subject to development rights or subject only to the development right to withdraw and the location and dimensions of all existing improvements within that real estate;
- (3) the location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

- (4) the extent of any encroachments by or upon any portion of the condominium;
- (5) the location and dimensions of all easements having specific location and dimensions and serving or burdening any portion of the condominium;
- (6) the verified statement of the architect licensed under the provisions of Chapter 83 of the General Statutes or a engineer registered under the provisions of Chapter 89C of the General Statutes certifying that such plats or plans fully and accurately depict the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, as built;
- (7) the locations and dimensions of limited common elements; however, parking spaces and the limited common elements described in subsections 47C-2- 102(2) and (4) need not be shown, except for decks, stoops, porches, balconies, and patios;
- (8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as 'leasehold real estate';
- (9) the distance between noncontiguous parcels of real estate comprising the condominium;
- (10) any unit in which the declarant has reserved the right to create additional units or common elements.

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

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

(e) In order to be recorded, plats or plans filed shall:

- (1) be reproducible plats or plans on cloth, linen, film, or other permanent material and be submitted in that form; and
- (2) have an outside marginal size of not more than 21 inches by 30 inches nor less than eight and one- half inches by 11 inches, including one and one- half inches for binding on the left margin and a one-half inch border on each of the other sides. Where size of the buildings or suitable scale to assure legibility require, plats or plans may be placed on two or more sheets with appropriate match lines.

(f) The fee for recording each plat or plan sheet submitted shall be as prescribed by G.S. 161-10(a)(3).

"§ 47C-2-110. Exercise of development rights.-(a) To exercise any development right reserved under Section 47C-2- 105(a)(8), the declarant shall record an amendment to the declaration (Section 47C-2-117) and comply with Section 47C-2- 109. The

declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (c), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 47C-2-108 (Limited Common Elements).

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by, and is in compliance with, Section 47C-2-105 and, if a leasehold condominium, Section 47C-2-106 and also if the plats and plans include all matters required by Section 47C-2-109. This provision does not extend the limit on the exercise of developmental rights imposed by the declaration pursuant to Section 47C-2-105(a)(8).

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

- (1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; or
- (2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides pursuant to Section 47C-2-105(a)(8) that all or a portion of the real estate is subject to the development right of withdrawal:

- (1) if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, no part of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and
- (2) if a portion or portions are subject to withdrawal, no part of a portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

"§ 47C-2-111. Alterations of units.—Subject to the provisions of the declaration and other provisions of law, a unit owner:

- (1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;
- (2) may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without permission of the association; and
- (3) may, after acquiring an adjoining unit, remove or alter any intervening partition or create apertures therein, even if the partition is a common element, if those acts do not impair the structural integrity or

mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

"§ 47C-2-112. Relocation of boundaries between adjoining units.—(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated upon application to the association by the owners of those units. Any such application to the association must be in such form and contain such data as may be reasonably required by the association and be accompanied by a plat prepared by an architect licensed under the provisions of Chapter 83 of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes detailing the relocation of the boundaries between the affected units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable, the association, at the expense of the owners filing the application, shall prepare and record an amendment to the declaration that identifies the units involved, states the reallocations, is executed by those unit owners and the association, contains words of conveyance, and is indexed in the name of the grantor and the grantee by the register of deeds.

(b) The association, at the expense of the unit owners filing the application, shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

"§ 47C-2-113. Subdivision of units.—(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association, at the expense of the unit owner, shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.

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

"§ 47C-2-114. Easement for encroachments.—(a) To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

(b) With respect to all condominiums created prior to the effective date of this act, the provisions of subsection (a) of this section shall be deemed to apply to such condominiums, unless an action asserting otherwise shall have been brought within six months from the effective date of this act.

"§ 47C-2-115. Use for sales purposes.—A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office,

or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other State law and to local ordinances.

"§ 47C-2-116. Easement to facilitate exercise of special declarant rights.—Subject to the provisions of the declaration, a declarant has such easements through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights whether arising under this act or reserved in the declaration.

"§ 47C-2-117. Amendment of declaration.—(a) Except in cases of amendments that may be executed by a declarant under Sections 47C-2-109(d) or 47C-2-110, the association under Sections 47C-1-107, 47C-1-106(d), 47C-2-112(a), or 47C-2-113, or certain unit owners under Sections 47C-2-108(b), 47C-2-112(a), 47C-2-113(b), or 47C-2-118(b), and except as limited by subsection (d), the declaration may be amended only by affirmative vote of or a written agreement signed by, unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

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

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation. An amendment shall be indexed in the Grantee's index in the name of the condominium and the association and in the Grantor's index in the name of the parties executing the amendment.

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

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

"§ 47C-2-118. Termination of condominium.—(a) Except in the case of a taking of all the units by eminent domain (Section 47C-1-107), a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

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

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

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

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

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

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

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

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

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market value of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

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

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

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

"§ 47C-2-120. Master associations.—(a) If the declaration for a condominium provides that any of the powers described in Section 47C-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated association) which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this act applicable to unit owners' associations apply to any such corporation (or unincorporated association), except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in Section 47C-3-101, it may exercise the powers set forth in Section 47C-3-

102(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

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

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 47C-3-103, 47C-3-108, 47C-3-109, and 47C-3-110 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this act.

(e) Notwithstanding the provisions of Section 47C-3-103(f) with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in Section 47C-3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

- (1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.
- (2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.
- (3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.
- (4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

"§ 47C-2-121. Merger or consolidation of condominiums.—(a) Any two or more condominiums may, by agreement of the unit owners as provided in subsection (b), be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be, for all purposes, the legal successor of all of the pre-existing condominiums, and the operations and activities of all associations of the pre-existing condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all pre-existing associations.

(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be executed in the same manner as a deed and recorded in every

county in which a portion of the condominium is located and is not effective until recorded.

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

"ARTICLE 3.

"MANAGEMENT OF THE CONDOMINIUM.

"§ 47C-3-101. Organization of unit owners' association.—A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under Section 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

"§ 47C-3-102. Powers of unit owners' association.—(a) Subject to the provisions of the declaration, the association, even if unincorporated, may:

- (1) adopt and amend bylaws and rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
- (5) make contracts and incur liabilities;
- (6) regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) cause additional improvements to be made as a part of the common elements;
- (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to Section 47C-3-112;
- (9) grant easements, leases, licenses, and concessions through or over the common elements;
- (10) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;

- (11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars (\$150.00) (Section 47C-3-107A) for violations of the declaration, bylaws, and rules and regulations of the association;
- (12) impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by Section 47C-4-109, or statements of unpaid assessments;
- (13) provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
- (14) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
- (15) exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
- (16) exercise any other powers necessary and proper for the governance and operation of the association.

(b) Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

"§ 47C-3-103. Executive board members and officers.—(a) Except as provided in the declaration, the bylaws, or subsection (b) or other provisions of this act, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the unit owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

(b) The executive board may not act on behalf of the association to amend the declaration (Section 47C-2-117), to terminate the condominium (Section 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (Section 47C-3-103(f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last

ratified shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five percent (75%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 60 days after conveyance of twenty-five percent (25%) of the units (including units which may be created pursuant to special rights) to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by unit owners other than the declarant.

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

"§ 47C-3-104. Transfer of special declarant rights.—(a) No special declarant right (Section 47C-1-103(23)) created or reserved under this act may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

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

- (1) A transferor is not relieved of any obligation or liability arising before the transfer, including, but not limited to, liability or obligations relating to warranties. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.
- (2) If the successor to any special declarant right is an affiliate of a declarant (Section 47C-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

- (3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this act or by the declaration relating to the retained special declarant rights and arising after the transfer.
- (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

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

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant the declarant ceases to have any special declarant rights.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

- (1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor related to the condominium.
- (2) A successor to any special declarant right, other than a successor described in paragraphs (3) and (4) who is not an affiliate of a declarant, is subject to all obligations and liabilities:
 - a. on a declarant which relate to his exercise or nonexercise of special declarant rights; or
 - b. on his transferor, other than:
 - (i) misrepresentations by any prior declarant;
 - (ii) warranty obligations on improvements made by any previous declarant, or made before the condominium was created;
 - (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or
 - (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.
- (3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (Section 47C-2-115), if he is not an

affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.

- (4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by his transferor to control the executive board in accordance with the provisions of Section 47C-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under Section 47C-3-103(d).

"§ 47C-3-105. Termination of contracts and leases of declarant.—If entered into by or on behalf of the association before the executive board elected by the unit owners pursuant to Section 47C-3-103(f) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to Section 47C-3-103(f) takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the association before the executive board elected by the unit owners pursuant to Section 47C-3-103(f) takes office. Failure of the contract to contain such a provision shall not effect the rights of the association under this section. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

"§ 47C-3-106. Bylaws.—(a) The bylaws of the association shall provide for:

- (1) the number of members of the executive board and the titles of the officers of the association;
- (2) election by the executive board of the officers of the association;
- (3) the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

- (4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
- (5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
- (6) the method of amending the bylaws.

(b) any other matters the association deems necessary or appropriate.

"§ 47C-3-107. Upkeep; damages; assessments for damages, fines_.—(a) Except as provided in Section 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in Section 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to Section 47C-3-113 is inflicted on any common element, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

(c) If damage is inflicted on any unit by an agent of the association in the scope of his activities as such agent, the association is liable to repair such damage or to reimburse the unit owner for the cost of repairing such damages. The association shall also be liable for any losses to the unit owner.

(d) The bylaws of the association may in cases when the claim under subsection (b) or (c) is five hundred dollars (\$500.00) or less provide for hearings before an adjudicatory panel to determine if a unit owner is responsible for damages to any common element or whether the association is responsible for damages to any unit. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each unit owner charged or against the association. Liabilities of unit owners so assessed shall be assessments secured by lien under Section 47C-3-116. Liabilities of the association may be offset by the unit owner against sums owing the association and if so offset shall reduce the amount of any lien of the association against the unit at issue.

(e) The declarant alone is liable for maintenance, repair and all other expenses in connection with real estate subject to development rights.

"§ 47C-3-107A. Charges for late payments, fines.—The bylaws of the association may provide for a hearing before an adjudicatory panel to determine if a unit owner should be fined not to exceed one hundred fifty dollars (\$150.00) for a violation of the declaration, bylaws or rules and regulations of the association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and

to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under Section 47C-3-116.

"§ 47C-3-108. Meetings.—A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

"§ 47C-3-109. Quorums.—(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

"§ 47C-3-110. Voting; proxies.—(a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration or bylaws expressly provides otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over a meeting of the association. A proxy is void if it is not dated. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) the provisions of subsection (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in Section 47C-3-108, of all meetings at which lessees may be entitled to vote.

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

(e) The declaration may provide that on specified issues only a defined subgroup of unit owners may vote provided:

- (1) the issue being voted on is of special interest solely to members of the subgroup; and
- (2) all except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

(f) For purposes of subdivision (e)(1) above an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the condominium or substantially affects living conditions of unit owners not included in the voting subgroup.

"§ 47C-3-111. Tort and contract liability.—(a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association must be brought against the association and not against a unit owner.

(c) If an action is brought against the association for a wrong which occurred during any period of declarant control, and if the association gives the declarant who then controlled the association reasonable notice of and an opportunity to defend against the action, such declarant is liable to the association:

- (1) for all tort losses not covered by insurance carried by the association suffered by the association or that unit owner, and (2) for all losses which the association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

(d) In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by Section 47C-3-117 (Other Liens Affecting the Condominium).

"§ 47C-3-112. Conveyance or encumbrance of common elements.— (a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; provided, that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Distribution of the proceeds of the sale of a limited common element shall be as provided by agreement between the unit owners to

which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.

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

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

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

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

"§ 47C-3-113. Insurance.—(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent available:

- (1) property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
- (2) liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) The insurance maintained under subdivision (a)(1) need not include improvements and betterments installed by unit owners.

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

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

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

- (2) the insurer waives its right to subrogation under the policy against any unit owner or members of his household;
- (3) no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will preclude recovery under the policy; and
- (4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

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

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

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the unit owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of units not to be rebuilt or owners assigned to limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interest may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the

vote as if the unit had been condemned under Section 47C-1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, Section 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.

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

"§ 47C-3-114. Surplus funds.—Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provisions for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

"§ 47C-3-115. Assessments for common expense.—(a) Until the association makes a common expense assessment, the declarant shall pay all the common expenses. After any assessment has been made by the association, assessments thereafter must be made at least annually by the association.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to Section 47C-2-107(a). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year.

(c) To the extent required by the declaration:

- (1) any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;
- (2) any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and
- (3) the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association (Section 47C-3-117(a)) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

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

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

"§ 47C-3-116. Lien for assessments.—(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes. The association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General

Statutes. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 47C-3-102(10), (11), and (12), Section 47C-3-107(d), and 47C-3-107A, are enforceable as assessments under this section.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

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

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

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

"§ 47C-3-117. Other liens affecting the condominium.—(a) A judgment for money against the association is not a lien on the common elements, but if docketed is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Notwithstanding the provisions of subsection (a), if the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 47C-3-112, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

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

(d) A judgment against the association shall be indexed in the name of the condominium and the association and, if so indexed, is notice of the lien against the units.

"§ 47C-3-118. Association records.—The association shall keep financial records sufficiently detailed to enable the association to comply with this act. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

"§ 47C-3-119. Association as trustee.—With respect to a third person dealing with the association in the association's capacity as a trustee under Section 47C-2-118 following termination or Section 47C-3-113 for insurance proceeds, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as such trustee.

"ARTICLE 4.

"PROTECTION OF PURCHASERS.

"§ 47C-4-101. Applicability; waiver.—(a) This Article applies to all units subject to this act, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

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

- (1) gratuitous;
- (2) pursuant to court order;
- (3) by a government or governmental agency;
- (4) by foreclosure or deed in lieu of foreclosure;
- (5) to a person in the business of selling real estate who intends to offer those units to purchasers; or
- (6) subject to cancellation at any time for any reason by the purchasers without penalty.

"§ 47C-4-102. Liability for public offering statement requirements.—(a) Except as provided in subsection (b), a declarant must, prior to the offering of any interest in a unit to the public, prepare a public offering statement conforming to the requirements of Sections 47C-4-103, 47C-4-104, 47C-4-105, and 47C-4-106.

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

(c) Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in Section 47C-4-108(a). The person who prepared all or a part of or delivered the public offering statement is subject to 47C-4-117 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of or deliver a public offering statement, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission. A declarant, who has transferred responsibility for preparation of all or a part of the public offering statement under subsection (b), shall be liable when a false or misleading statement in the public offering statement prepared by another results from the declarant's failure to provide the information required in subsection (b).

(d) If a unit is a part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of Sections 47C-4-103, 47C-4-104, 47C-4-105, and 47C-4-106 as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements.

"§ 47C-4-103. Public offering statement; general provisions.— (a) A public offering statement must contain or fully and accurately disclose:

- (1) the name and principal address of the declarant and of the condominium;
- (2) a general description of the condominium, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings and amenities which declarant anticipates including as part of the condominium;
- (3) the number of units in the condominium;
- (4) copies of the recorded or proposed declaration

(other than the plats and plans) and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and copies of or a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under Section 47C-3-105;

- (5) any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

- (i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;
 - (ii) a statement of any other reserves;
 - (iii) the projected common expense assessment by category of expenditures for the association; and
 - (iv) the projected monthly common expense assessment for each type of unit;
- (6) any services that the declarant provides or expenses that he pays which are not reflected in the budget and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
- (7) any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
- (8) a description of any known or recorded liens, encumbrances or defects affecting the title to the condominium;
- (9) the terms and limitations of any warranties provided by the declarant;
- (10) a statement that the purchaser must receive a public offering statement before signing a contract for purchase and that no conveyance can occur until seven calendar days following the signing of a contract for purchase; and that the purchaser has the absolute right to cancel the contract during the seven calendar days period;
- (11) a statement of any known or recorded unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;
- (12) a statement that any deposit made in connection with the purchase of a unit will be held in an escrow account pursuant to Section 47C-4-108, together with the name and address of the escrow agent;
- (13) any restraints on alienation of any portion of the condominium;
- (14) a description of the insurance coverage provided for the benefit of unit owners;
- (15) any current or known future fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;
- (16) the extent to which financial arrangements have been provided for completion of all improvements labeled 'MUST BE BUILT' pursuant to Section 47C-4- 119;
- (17) a brief narrative description of any existing zoning and other land use requirements governing the condominium; and
- (18) a statement that any common element may be alienated or conveyed in accordance with Section 47C-3-112.

(b) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section and provide a copy of any such material changes to any purchaser who has executed a contract. If any material change is made in a proposed declaration after a contract for purchase of a unit has been signed but before conveyance, the purchaser may rescind the contract within seven days after receipt of the notice of the change.

"§ 47C-4-104. Same; condominiums subject to developmental rights.—If the declaration provides that a condominium is subject to any development rights reserved by the declarant, the public offering statement shall disclose, in addition to the information required by Section 47C-4-103:

- (1) the maximum number of units, and the maximum number of units per acre, that may be created;
- (2) how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) if any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use;
- (4) a brief narrative description of any development rights and of any conditions relating to or limitations upon the exercise of development rights;
- (5) the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right;
- (6) the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
- (7) general descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right, or a statement that no assurances are made in that regard;
- (8) any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right, or a statement that no assurances are made in that regard;
- (9) a statement that any limited common elements created pursuant to any development right will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a

- statement of the types and sizes planned, or a statement that no assurances are made in that regard;
- (10) a statement that the proportion of limited common elements to units created pursuant to any development right will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;
 - (11) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and
 - (12) a statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

"§ 47C-4-105. Same; time share.—(a) If the declaration provides that ownership or occupancy of any units are or may be owned in time shares, the public offering statement shall disclose, in addition to the information required by Section 47C- 4-103:

- (1) the number and identity of units in which time shares may be created;
- (2) the total number of time shares that may be created;
- (3) the minimum duration of any time shares which may be created; and
- (4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in Section 47C-3-116.

(b) The provisions of subsection (a) apply to all purchasers of units in the condominium. In addition, the purchaser of time shares shall receive the information required by G.S. 93A-44.

"§ 47C-4-106. Conversion buildings.—Condominiums containing conversion buildings shall be subject to the provisions of Article 2 of Chapter 47A.

"§ 47C-4-107. Same; condominium securities.—(a) If an interest in a condominium is registered with the Securities and Exchange Commission of the United States, a declarant satisfies the requirements relating to the preparation of a public offering statement of this act if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission to the extent such statement provides the information required by Sections 47C-4-103, 47C-4-104, 47C-4-105 and 47C-4-106.

(b) The North Carolina Securities Act, Chapter 78A, shall apply to condominiums deemed to be investment contracts or to other securities offered with or incident to a condominium. In the event of such applicability of the North Carolina Securities Act, any real estate broker or salesman registered under Article 1 of Chapter 93A shall not be subject to the provisions of G.S. 78A-36. The exemption provided by the preceding sentence shall not apply to any person who is required to register with the Securities Exchange Commission as a broker or dealer under the Securities and Exchange Act of 1934.

"§ 47C-4-108. Purchaser's right to cancel.—(a) A person required to deliver a public offering statement pursuant to Section 47C-4-102(c) shall provide a purchaser of a unit or the spouse of such purchaser with a copy of the public offering statement and all amendments thereto before a contract to purchase the unit is executed. No conveyance pursuant to the contract to purchase may occur until seven calendar days following execution of the contract and a purchaser has the absolute right to cancel the contract at any time during this seven calendar day period. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

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

"§ 47C-4-109. Resales of units.—Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under Section 47C-4-101(b), a unit owner shall furnish to a prospective purchaser before conveyance a statement setting forth the monthly common expense assessment and any other fees payable by unit owners.

"§ 47C-4-110. Escrow of deposits.—(a) Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to Section 47C-4-102(c) shall be immediately deposited in a trust or escrow account in an insured bank or savings and loan association in North Carolina and shall remain in such account for such period of time as a purchaser is entitled to cancel pursuant to Section 47C-4-108 or cancellation by the purchaser thereunder whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the seller.

(b) Except as provided in Section 47C-4-108, nothing in subsection (a) is intended to preclude the parties to a contract from providing for the use of progress payments by the declarant during construction.

"§ 47C-4-111. Release of liens or encumbrances.—(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to Section 47C-4-102(c), a seller shall, at or before conveying a unit, record or furnish to the purchaser, releases of all liens or encumbrances affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien or encumbrance as provided for liens or encumbrances on real estate in G.S. 44A-16(5) and (6) or insurance against the lien or encumbrance acceptable to the purchaser. This subsection does not apply to any real estate which a declarant has the right to withdraw.

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

"§ 47C-4-113. Express warranties of quality.—The law relating to express warranties is applicable to the sale of a condominium unit and supplements the provisions of this

act; provided, however, that the existence of express warranties shall not constitute a disclaimer of implied warranties.

"§ 47C-4-114. Implied warranties of quality.—The law relating to implied warranties, including but not limited to, implied warranties that the premises are free from defective materials, constructed in a workmanlike manner, constructed according to sound engineering and construction standards and that the premises may be used for a particular purpose, is applicable to the sale of a condominium unit and supplements the provisions of this act.

"§ 47C-4-115. Exclusion of modification of implied warranties of quality.—(a)

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

- (1) may be excluded or modified by agreement of the parties; and
- (2) are excluded by expression of disclaimer, such as 'as is,' 'with all faults,' or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any person in the business of selling real estate for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

"§ 47C-4-116. Statute of limitations for warranties.—(a) A judicial proceeding for breach of any obligation arising under Section 47C-4-113 or 47C-4-114 must be commenced within the applicable period of limitations set out in Chapter 1 of the North Carolina General Statutes.

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

"§ 47C-4-117. Effect of violations on rights of action; attorney's fees.—If a declarant or any other person subject to this act fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. The court may award reasonable attorney's fees to the prevailing party.

"§ 47C-4-118. Labeling of promotional material.—If any improvement contemplated in a condominium is labeled 'NEED NOT BE BUILT' on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as 'NEED NOT BE BUILT'.

"§ 47C-4-119. Declarant's obligation to complete.—(a) The declarant shall complete all improvements labeled 'MUST BE BUILT' on plats or plans prepared pursuant to Section 47C-2-109.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by Sections 47C-2-110, 47C-2-111, 47C-2-112, 47C-2-113, 47C-2-115, and 47C-2-116.

"§ 47C-4-120. Substantial completion of units.—In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an architect licensed under the provisions of Chapter 83 of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes, or by issuance of a certificate of occupancy authorized by law."

Sec. 2. The Revisor of Statutes is directed to include, as annotations to the published General Statutes all relevant portions of the Official Commentary to the Uniform Condominium Act as the Revisor may deem appropriate to explain or illustrate portions of this act.

Sec. 3. This act shall become effective October 1, 1986.

In the General Assembly read three times and ratified, this the 3rd day of July, 1986.