

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

**Legislative Document**

**No. 266**

S. P. 112

In Senate, January 15, 1981

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Devoe of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Establish the Maine Condominium Act.**

Be it enacted by the People of the State of Maine, as follows:

33 MRSA c. 31 is enacted to read:

**CHAPTER 31**

**MAINE CONDOMINIUM ACT**

**ARTICLE 1**

**GENERAL PROVISIONS**

**§ 1601-101. Short title**

This Act shall be known and may be cited as the Maine Condominium Act.

**§ 1601-102. Applicability**

(a) This Act applies to all condominiums created, in accordance with the provisions of this Act, within this State after the effective date of this Act and to all condominiums created within this State before the effective date of this Act which, on or after the effective date of this Act, amend the instruments creating the same so as to subject the condominium to the provisions of this Act and so as to conform those instruments to the provisions of this Act in all necessary respects. The amendment must be adopted in conformity with the procedures and

requirements specified by those instruments and sections 560 through 587. Sections 1601-105 Separate titles and taxation, 1601-106 Applicability of local laws and regulations, 1601-107 Eminent domain, 1602-103 Construction and validity of declaration and bylaws, 1602-104 Description of units, 1603-102, subsection (a) paragraphs (1) through (6) and (11) through (16) Powers of Unit Owners' Association, 1603-111 Tort and contract liability, 1603-115 Lien for assessments, 1603-116 Association records, 1604-106 Resales of units, and 1604-114 Effect of violations on rights of actions; attorney's fees, and section 1601-103 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 provisions of declaration, bylaws, floor plans, surveys or duly adopted administrative rules and regulations existing on the effective date of this Act.

(b) The provisions of sections 560 through 587 do not apply to condominiums created after the effective date of this Act or amended pursuant to section 1601-102, subsection (a) so as to be subject to the provisions of this Act and do not invalidate any amendment to bylaws, floor plans, surveys or duly adopted administrative rules and regulations relating to 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 sections 560 through 587. 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 contained in section 1604-102 through and including 1604-106 apply to all offers or dispositions in this State of condominiums or units unless exempt under section 1604-101, subsection (b).

#### § 1601-103. Definitions

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

(1) "Additional real estate" means real estate that may be added to a flexible condominium;

(2) "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 employee of the declarant; (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interests of the declarant; (iii) Controls in any manner the election of a majority of the directors of the declarant; or (iv) Has contributed more than 20% of the capital of the declarant. A person is controlled by a declarant if the declarant: (i) Is a general partner,

officer, director or employee of the person; (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20% of the voting interests of the person; (iii) Controls in any manner the election of a majority of the directors of the person; or (iv) Has contributed more than 20% of the capital of the person;

(3) "Association" or "unit owners' association" means the unit owners' association organized under section 1603-101;

(4) "Common elements" means all portions of a condominium other than the units;

(5) "Common expenses" means expenditures made or liabilities incurred by or on behalf 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 1602-108;

(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 under a declaration, or an amendment to a declaration, duly recorded pursuant to this Act. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;

(8) "Conversion condominium" means a condominium containing any building that at any time before recording of the declaration was occupied wholly or partially by one or more persons other than purchasers and persons who occupy with the consent of purchasers;

(9) "Convertible real estate" means a portion of a flexible condominium not within a building containing a unit within which additional units or limited common elements, or both, may be created;

(10) "Declarant" means:

(i) If the condominium has been created: (A) Any person who has executed a declaration, or an amendment to a declaration to add additional real estate, other than persons holding interests in the real estate solely as security for an obligation, persons whose interests in the real estate will not be conveyed to unit owners, or, in the case of a leasehold condominium, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights; or (B) Any person who succeeds under section 1603-104 to any special declarant rights;

(ii) If the condominium has not yet been created, any person who offers to dispose of or disposes of his interest in a unit not previously disposed of; and

(iii) If a declaration is executed by a trustee or trustees of a real estate

**trust, declarant means the beneficiary or beneficiaries of the trust;**

**(11) “Dispose” or “disposition” means a voluntary transfer of any legal or equitable interest in a unit, other than as security for an obligation.**

**(12) “Executive board” means the body, regardless of name, designated in the declaration to act on behalf of the association;**

**(13) “Flexible condominium” means a condominium containing withdrawable or convertible real estate, a condominium to which additional real estate may be added, or a combination thereof;**

**(14) “Identifying number” means a symbol 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 1602-102, paragraphs (2) or (4) for the exclusive use of one or more but fewer than all of the units;**

**(17) “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;**

**(18) “Person” means a natural person, corporation, partnership, association, trust, other entity or any combination thereof;**

**(19) “Purchaser” means any person, other than a declarant, 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 5 years; or (ii) As security for an obligation;**

**(20) “Real estate” means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interest 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;**

**(21) “Real estate trust” means an arrangement evidenced by a writing, the purposes of which include the ownership of real estate and the creation and management of a condominium, under which arrangement one or more trustees are empowered to hold legal title to real estate for the benefit of beneficiaries. Trustees may also be beneficiaries under a real estate trust;**

(22) "Recorded" means that the instrument shall be duly recorded in every registry of deeds in each county or registry district in which the condominium or any portion thereof is located. Each such instrument shall be indexed by the register of deeds, in the name of the condominium and the parties thereto. Upon recording, plats and plans shall be kept in a separate file for each condominium, numbered serially in the order of receipt and designated "unit ownership; condominium;"

(23) "Residential" means all uses other than industrial or commercial. "Nonresidential" means commercial or industrial uses. Professional and institutional use shall be considered nonresidential unless the unit is used as a residence in addition to or in connection with the professional or institutional use, in which case the use shall be considered residential;

(24) "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 1602-110; to convert convertible real estate in a flexible condominium, section 1602-111; to add additional real estate to a flexible condominium, section 1602-111; to withdraw withdrawable real estate from a flexible condominium, section 1602-112; to convert a unit into 2 or more units, common elements or into 2 or more units and common elements, section 1602-115; to maintain sales offices, management offices, signs advertising the condominium and models, section 1602-117; to use easements through the common elements for the purpose of making improvements within the condominium or within any convertible or additional real estate, section 1602-118; or to appoint or remove any officer of the association or any executive board member during any period of declarant control, section 1603-103, subsection (c);

(25) "Unit" means a portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to section 1602-105, paragraph (4);

(26) "Unit owner" means a declarant who owns a unit, a person to whom ownership of a unit has been conveyed, 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; and

(27) "Withdrawable real estate" means real estate that may be withdrawn from a flexible condominium.

#### § 1601-104. Variation by agreement

Except as expressly provided in this Act, provision for this Act may not be varied by agreement, and rights conferred by this Act may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this Act or the declaration.

#### § 1601-105. Separate titles and taxation

(a) Except as provided in subsection (b), each unit together with its common element interest constitutes for all purposes a separate parcel of real estate.

(b) If there is a unit owner other than a declarant, each unit together with its common element interest, but excluding its common element interest in convertible or withdrawable real estate, shall be separately taxed and assessed, and each portion of any convertible or withdrawable real estate shall be separately taxed and assessed; otherwise, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

**§ 1601-106. Applicability of local laws and regulations**

(a) A zoning, subdivision, 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 physically identical development under a different form of ownership. Otherwise, no provision of this Act invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance or regulation.

(b) No county, municipality, village corporation or other political subdivision, whether or not acting under the municipal home rule powers provided for under the Constitution of Maine, Article VIII, Part Second or Title 30, sections 1911 through 1920, or any other authority from time to time, shall adopt or enforce any law, ordinance, rule, regulation or policy which conflicts with the provisions of this Act.

**§ 1601-107. 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 common element interest, whether or not any common element interest is acquired. Upon acquisition, unless the decree otherwise provides, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated to the remaining units in proportion to the respective interests, votes and liabilities of those units before the taking, and the association 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 its common element interest. Upon acquisition: (1) That unit's common element interest, votes in the association, the common expense liability 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 common element interest, votes and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in

proportion to the respective interest, votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced interest, votes and liabilities.

(c) If part of the common elements is acquired by eminent domain, the award must be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) The court decree shall be recorded.

**§ 1601-108. Supplemental general principles of law applicable**

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance or other validating or invalidating cause supplement the provisions of this Act, except to the extent inconsistent with this Act.

No consent or joinder of the spouse of a unit owner shall be required for any action of the unit owner required or permitted under this Act, except that in a case of a conveyance or transfer of a unit, the law of Maine relating to the rights of a spouse in real estate shall apply to such conveyance or transfer.

**§ 1601-109. Construction against implicit repeal**

This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

**§ 1601-110. Uniformity of application and construction**

This Act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

**§ 1601-111. Severability**

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

**§ 1601-112. Unconscionable agreement or term of contract**

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to



enforce the contract, enforce the remainder of the contract without the unconscionable clause or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) The commercial setting of the negotiations;

(2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors;

(3) The effect and purpose of the contract or clause; and

(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

#### **§ 1610-113. Obligation of good faith**

Every contract or duty governed by this Act imposes an obligation of good faith in its performance or enforcement.

#### **§ 1601-114. Remedies to be liberally administered**

(a) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special or punitive damages may not be awarded except as specifically provided in this Act or by other rule of law.

(b) Any right or obligation declared by this Act is enforceable by judicial proceeding.

#### **§ 1601-115. Legal investments**

Financial institutions may make loans under this chapter to individuals or corporations to be secured by a first mortgage of a unit together with its common element interest, owned under this chapter, to the extent that each of them may make loans secured by real estate mortgages, and subject to the applicable conditions and limitations imposed by law.

#### **§ 1601-116. Effective date**

This Act shall be effective on January 1, 1982.

**ARTICLE 2**  
**CREATION, ALTERATION AND**  
**TERMINATION OF**  
**CONDOMINIUMS**

**§ 1602-101. Creation of condominium**

(a) A condominium may be created pursuant to this Act only by recording a declaration executed, in the same manner as a deed, by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. The declaration shall be recorded.

(b) No interest in any unit may be conveyed except as security for an obligation until the unit is substantially completed as evidenced by a certificate of substantial completion executed by a registered engineer, or architect, or until a certificate of occupancy is issued by the municipal inspector of buildings.

**§ 1602-102. Unit boundaries**

Except as provided by the declaration:

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

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

(3) Subject to 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; and

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

**§ 1602-103. Construction and validity of declaration and bylaws**

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

(b) Neither the rule against perpetuities nor the provisions of section 103, as it or its equivalent may be amended from time to time, may be applied to defeat any provisions of the declaration or this Act, or any instrument executed pursuant to the declaration or this Act.

(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 its common element interest is not rendered unmarketable or otherwise affected by any provisions of unrecorded bylaws, or by reason of an unsubstantial failure of the declaration to comply with this Act.

**§ 1602-104. Description of units**

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or registry district in which the condominium is located and the identifying number of the unit, is a sufficient legal description of that unit and its common element interest even if the common element interest is not described or referred to therein.

**§ 1602-105. Contents of declaration; all condominiums**

The declaration for a condominium contains:

- (1) The name of the condominium, which includes the word "condominium" or be followed by the words "a condominium;"
- (2) The name of every municipality and every county or registry district in which any part of the condominium is situated;
- (3) A legally sufficient description of the real estate included in the condominium;
- (4) A description or delineation of the boundaries of each unit, including the unit's identifying number;
- (5) A statement of the maximum number of units that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 1602-115, paragraph (c);
- (6) A description of any limited common elements as provided in section 1602-109;
- (7) A description of any common elements not within the boundaries of any convertible real estate which may be allocated subsequently as limited common elements, together with a statement that they may be so allocated and a description of the method by which the allocations are to be made;
- (8) An allocation to each unit of an undivided interest in the common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association, section 1602-108;
- (9) Any restrictions on use, occupancy and alienation of the units;
- (10) 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;

(11) Reasonable provisions regarding the manner in which notice of matters affecting the condominium may be given to unit owners by the association or by other unit owners; and

(12) Any other matters the declarant deems appropriate.

The requirements of this section may be satisfied, where appropriate, by plats or plans forming a part of the declaration under section 1602-110.

**§ 1602-106. Contents of declaration; flexible condominiums**

The declaration for a flexible condominium shall include, in addition to the matters specified in section 1602-105:

(1) An explicit reservation of any options to create units, limited common elements, or both, within convertible real estate, or to add additional real estate to or withdraw withdrawable real estate from the condominium;

(2) A statement of the time limit, not exceeding 7 years after the recording of the declaration, upon which any option reserved under paragraph (1) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit;

(3) A statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed pursuant to law, or else a statement that there are no such limitations;

(4) A statement of the extent to which the common element interest, relative voting strength in the association and share of common expense liability of each unit in the condominium at the time the declaration is recorded may be increased or decreased by actions pursuant to any option reserved under paragraph (1), including the formulas to be used for those reallocations;

(5) Legally sufficient descriptions of each portion of convertible, additional and withdrawable real estate;

(6) If portions of any convertible, additional or withdrawable real estate may be converted, added or withdrawn 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 they may be converted, added or withdrawn or a statement that no assurances are made in those regards; and (ii) A statement as to whether, if any portion of convertible, additional or withdrawable real estate is converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn;

(7) A statement of: (i) The maximum number of units that may be created within any additional or convertible real estate, or within any portion of either, the boundaries of which are fixed pursuant to paragraph (6); (ii) How many of those units will be restricted exclusively to residential use; and (iii) The maximum number of units per acre that may be created within any portion the boundaries of which are not fixed pursuant to paragraph (6);

(8) If any of the units that may be built within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement, with respect to each portion of the additional and convertible 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;

(9) A statement of the extent to which any buildings and units that may be erected upon each portion of the additional or convertible real estate will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction and size;

(10) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any convertible or additional real estate or a statement of any differentiations that may be made as to those units;

(11) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the additional or convertible real estate, or a statement that no assurances are made in that regard;

(12) A statement of any limitations as to the locations of any buildings or other improvements that may be made within convertible or additional real estate, or a statement that no assurances are made in that regard;

(13) A statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those 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.

(14) A statement that the proportion of limited common elements to units created within convertible or additional real estate 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; and

(15) A statement of the extent to which any assurances made in the declaration regarding additional or withdrawable real estate pursuant to paragraphs (6) through (14) apply in the event any additional real estate is not added to or any withdrawable land is withdrawn from the condominium, or a statement that those assurances do not apply if the real estate is not added to or is withdrawn from the condominium.

#### § 1602-107. Leasehold condominiums

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded and the declaration shall state:

- (1) The recording data for the lease or memorandum;
- (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 within a reasonable time after the expiration of 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 makes timely payment of his share of the rent and otherwise complies with the 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.

(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 revision or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the common element interests, votes in the association, and common expense liabilities shall be reallocated in accordance with section 1601-107, subsection (a) as though those units had been taken by eminent domain. Reallocations shall be conformed by an amendment to the declaration prepared, executed and recorded by the association.

**§ 1602-108. 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.

(b) In a flexible condominium, the common element interest and common expense liability allocated to each unit must be equal, or proportionate to the relative size of each unit, unless the declaration as originally recorded:

- (1) Requires that any units created in additional or convertible real estate be substantially identical to the other units in the condominium and provides that common element interests and common expense liabilities will be

allocated to those units in accordance with the formulas used for the initial allocations; or

(2) Identifies all other types of units that may be created in additional or convertible real estate in terms of architectural style, quality of construction, principal materials to be used, and ranges of sizes, and states the formulas upon which any reallocations of common element interests and common expense liabilities will be made, or states the common element interest and common expense liability to be allocated to each unit that may be created.

(c) The number of votes allocated to each unit must be equal, proportionate to that unit's common expense liability, or proportionate to that unit's common element interest. If the declaration allocates an equal number of votes in the association to each unit, each unit that may be subdivided or converted by the declarant into 2 or more units, common elements, or both, section 1602-115, must be allocated a number of votes in the association proportionate to the relative size of that unit compared to the aggregate size of all units, and the remaining votes in the association must be allocated equally to the other units. The declaration may provide that different allocations of votes shall be made to the units on particular matters specified in the declaration.

(d) Except in the case of eminent domain, section 1601-107, expansion or conversion of a flexible condominium, section 1602-111, withdrawal of withdrawable real estate, section 1602-112, relocation of boundaries between adjoining units, section 1602-114, or subdivision of units, section 1602-115, the common element interest, votes and common expense liability allocated to any unit may not be altered without unanimous consent of all unit owners. 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 it is allocated is void.

(e) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100% if stated as percentages. In the event of discrepancy between the common element interest, votes or common expense liability allocated to a unit and the result derived from application of the formulas, the allocated common element interest, vote or common expense liability prevails.

#### **§ 1602-109. Limited common elements**

(a) Except for the limited common elements described in section 1602-102, paragraphs (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 consent of the unit owners whose units are affected.

(b) Subject to any provisions of the declaration, a limited common element may be reallocated by an amendment to the declaration upon application to the

association by the unit owners between or among whose units the reallocation is made. If the owners of the adjoining units have specified a reallocation between their units of their common element interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and, upon recordation, is indexed in the name of the grantor and the grantee.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 1602-105, paragraph (7). The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association, or by amendments to the declaration.

(d) The association shall prepare the record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

#### **§ 1602-110. Plats and plans**

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and bear the seal and signature of the land surveyor, engineer or architect under whose direction plan was prepared.

(b) Each plat shows:

- (1) The name, location and dimensions of the condominium;
- (2) The location and dimensions of all existing improvements;
- (3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium labeled either "MUST BE BUILT" or "NEED NOT BE BUILT," but need not show contemplated improvements within boundaries of convertible real estate;
- (4) The location and dimensions of any convertible real estate, labeled as such;
- (5) The location and dimensions of any withdrawable real estate, labeled as such;
- (6) The extent of any encroachments by or upon any portion of the condominium;
- (7) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium;
- (8) The location and dimensions of any vertical unit boundaries not shown or



projected on plans recorded pursuant to subsection (c) and that unit's identifying number;

(9) The location with reference to established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit's identifying number;

(10) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate;"

(11) The distance between noncontiguous parcels of real estate comprising the condominium;

(12) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in section 1602-102, paragraphs (2) and (4); and

(13) Other matters customarily shown on land surveys.

(c) Plans of every building that contains or comprises all or parts of any unit and is located or must be built within any portion of the condominium, other than within the boundaries of any convertible real estate, shows:

(1) The location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number;

(2) Any horizontal unit boundaries, with reference to established datum, not shown on plats recorded pursuant to subsection (b), and that unit's identifying number; and

(3) Any units that may be converted by the declarant to create additional units or common elements, section 1602-115, subsection (c), identified appropriately.

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

(e) Upon converting convertible real estate or adding additional real estate, section 1602-111, the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of the remaining portion.

(f) If a declarant converts any unit into 2 or more units, limited common elements, or both, section 1602-115, he shall record new plans showing the location and dimensions of any new units and limited common elements thus created as well as the location and dimensions of any portion of that space not being converted.

(g) Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record based on actual knowledge affidavits that plats and plans previously recorded show all improvements required by subsections (e) and (f).

**§ 1602-111. Conversion and expansion of flexible condominiums**

(a) To convert convertible real estate or add additional real estate pursuant to an option reserved under section 1602-106, paragraph (1), the declarant shall prepare, execute and record an amendment to the declaration, section 1602-119 and comply with section 1602-110. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate, and reallocate common element interests, votes in the association and common expense liabilities. The amendment describes or delineates any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 1602-109, limited common elements.

(b) Convertible or withdrawable real estate may be created within any additional real estate added to the condominium if the amendment adding that real estate includes all matters required by section 1602-105 or 1602-106, as the case may be, and the plat includes all matters required by section 1602-110, subsection (b). This provision does not extend the time limit on conversion or contraction of a flexible condominium imposed by the declaration pursuant to section 1602-106, paragraph (2).

(c) Until written notice of conversion is given to the appropriate real estate tax assessor or the period during which conversion may occur expires, whichever occurs first, that declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inures to the declarant.

**§ 1602-112. Withdrawal of withdrawable real estate**

(a) To withdraw withdrawable real estate from a flexible condominium pursuant to an option reserved under section 1602-106, paragraph (1), the declarant shall prepare, execute and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment reallocates common element interests, votes in the association and common expense liabilities to the remaining units in the condominium in proportion to the respective interests, votes and liabilities of those units before the withdrawal, and the reallocation is effective when the amendment is recorded.

(b) If a portion of the withdrawable real estate was described pursuant to

section 1602-106, paragraph (6), that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

(c) Until withdrawal occurs or the period during which withdrawal may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against withdrawable real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from withdrawable real estate inures to the declarant.

#### **§ 1602-113. 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;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical system 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.

#### **§ 1602-114. 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 by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their common element interests, votes in the association and common liabilities, the application states the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and, upon recordation, is indexed in the name of the grantor and the grantee.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

**§ 1602-115. Subdivision or conversion of units**

(a) If the declaration expressly so permits, a unit may be subdivided into 2 or more units or, in the case of a unit owned by a declarant, may be subdivided or converted into 2 or more units, common elements or a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, or upon application of a declarant to convert a unit, the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing or converting 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 common element interest, votes in the association, and common element liability formerly allocated to the subdivided unit to the new unit in any reasonable manner prescribed by the owner of the subdivided unit.

(c) In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration reallocates among the other units the common element interest, votes in the association, and common expense liability formerly allocated to the converted unit on the same basis used for the initial allocation thereof.

**§ 1602-116. Easement for encroachments**

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 contractor, subcontractor or materialman of liability for failure to adhere to the plats and plans.

**§ 1602-117. Use for sales purposes**

A declarant may maintain sales offices, management office and models 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.

**§ 1602-118. Easement to facilitate completion, conversion and expansion**

Except to the extent otherwise provided in the declaration, a declarant has an easement 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 the Act or reserved in the declaration.

**§ 1602-119. Amendment of declaration**

(a) Except in cases of amendments that may be executed by a declarant under sections 1602-110, subsections (e) and (f), 1602-111, subsection (a) or 1602-112, subsection (a); the association under sections 1601-107, 1602-107, subsection (d), 1602-109, subsection (c) or 1602-115, subsection (a); or certain unit owners under sections 1602-109, subsection (b), 1602-114, subsection (a), 1602-115, subsection (b) or 1602-102, subsection (b), and except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67% of the votes in the association are allocated, 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 and is effective only upon recordation.

(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 common element interest, common expense liability, or voting strength in the association allocated to 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 by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) Prior to recording amendments to the declaration, or within 30 days thereafter, every amendment to the declaration shall be filed with the executive board of the association. The executive board shall include notice of such amendment in its records and distribute notice of such amendments in writing to all unit owners and all mortgagees known to it by ordinary mail. Failure by the executive board to so notify unit owners or mortgagees shall not effect the validity of any amendment recorded under subsection (c).

#### **§1602-120. Termination of condominium**

(a) Except in the case of a taking of all the units by eminent domain, section 1601-107, a condominium may be terminated only by agreement of unit owners of units to which at least 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) Such agreement of 80% of unit owners to terminate a condominium must be evidenced by their execution of a termination agreement or ratifications

thereof. If, pursuant to a termination agreement, the real estate constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratifications thereof must be recorded and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract for the sale of the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If the real estate constituting 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 interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (f). 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 remain liable for all assessments and other obligations imposed on unit owners by this Act or the declaration.

(d) If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f), 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.

(e) Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners in proportion to their respective interests as provided in subsection (f). The proceeds of sale described in subsection (c) and held by the association as trustee are not assets of the association.

(f) The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows.

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values 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 to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all 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.

(g) 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.

#### **§ 1602-121. Rights of secured lenders**

The declaration may require that all or a specified number of percentage of the mortgagees encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to: (1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or (2) Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to section 1603-112.

### **ARTICLE 3**

#### **MANAGEMENT OF THE CONDOMINIUM**

#### **§ 1603-101. Organization of unit owners' association**

A unit owners' association shall be organized prior to any conveyance, except a conveyance as security for an obligation, of a unit by the declarant. The membership of the association at all times shall consist exclusively of all the unit owners, or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 1602-120, or their heirs, successors or assigns. The association shall be organized as a nonprofit corporation under Title 13-B, as it or its equivalent may be amended from time to time.

#### **§ 1603-102. Powers of unit owners' association**

(a) Subject to the provisions of the declaration, the association 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 litigation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners 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;

(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 sections 1602-102, paragraphs (2) and (4);

(11) Impose charges for late payment of assessments and, after notice and opportunity to be heard, levy reasonable fines 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 1604-106, or statements of unpaid assessments;

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

(14) Exercise any other powers conferred by the declaration or bylaws;

(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 except as permitted by this Act. A provision requiring arbitration of disputes between the declarant and the association or between the declarant and unit owners does not violate this section.

**§ 1603-103. Executive board members and officers; declarant control**

(a) Except as provided in the declaration, the bylaws, in subsection (b), or other provisions of this Act, the executive board may act in all instances on behalf of the association. The declarant is a fiduciary for the unit owners with respect to



actions taken or omitted at his direction by officers and members of the executive board appointed by the declarant, or elected by the members at a time when more than 50% of the voting rights are held by the declarant.

(b) The executive board may not act on behalf of the association to amend the declaration, section 1602-119, to terminate the condominium, section 1602-120, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, section 1603-103, paragraph (d), but the executive board may fill vacancies in its membership for the unexpired portion of any term. In addition to other rights conferred by the declaration, bylaws or this Act, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board, within 30 days after notice of such approval was mailed or delivered to the unit owners in accordance with the notice provisions of the declaration.

(c) 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. Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period not exceeding 7 years in the case of a flexible condominium containing convertible real estate or to which additional real estate may be added, or 5 years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates no later than 60 days after conveyance of 75% of the units to unit owners other than a declarant. 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. Within the limits in this subsection, the period of declarant control shall end on the later of: (1) Sale by the declarant of units having 50% of the voting rights; (2) termination of any right of declarant to appoint officers or members of the executive board; or (3) termination of any right of declarant to approve or veto any actions of the association or the executive board.

(d) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least 3 persons, at least a majority of whom must be unit owners or spouses of unit owners or, in the case of a unit owner which is a corporation, partnership, trust or estate, a designated agent thereof. The declaration may provide for staggered terms for the executive board. The executive board shall elect the officers. The persons elected shall take office upon election.

(e) In determining whether the period of declarant control has terminated under subsection (c), the percentage of the units conveyed is presumed to be that percentage which would have been conveyed if all the units the declarant has built

or reserved the right to build in the declaration were included in the condominium.

**§ 1603-104. Transfer of special declarant rights**

(a) No special declarant rights, section 1601-103, paragraph (24), created or reserved under this Act may be transferred except by a recorded instrument. 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 and remains liable for warranty obligations imposed upon him by this Act. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(2) If a transferor retains any special declarant right, or if a successor to any special declarant right is an affiliate of a declarant, section 1601-103, paragraph (2), the transferor is subject to liability for all obligations and liabilities imposed on a declarant by this Act or by the declaration arising after the transfer and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the condominium.

(3) A transferor who retains no special declarant right 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 in case of foreclosure of a mortgage, or sale under bankruptcy act or receivership proceedings, of any units owned by a declarant in the condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights, or only to any rights reserved in the declaration, pursuant to section 1602-117, 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, or sale under bankruptcy act or receivership proceedings, of all units in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights; and

(2) The period of declarant control, section 1603-103, subsection (c), terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

(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 any declarant by this Act or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed upon a declarant by this Act or the declaration, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous declarant or made before the condominium was created, or for a breach of fiduciary obligation by any previous declarant.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs, section 1602-117, 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 who is not an affiliate of a 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 to control the executive board in accordance with the provisions of section 1692-103, subsection (c), 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 the successor's acts and omissions under section 1603-103, subsection (c).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this Act or the declaration.

#### **§ 1603-105. Termination of contracts and leases of declarant**

If entered into before the executive board elected by the unit owners, pursuant to section 1603-103, subsection (d), takes office: (1) Any management contract, employment contract or lease or recreational or parking areas or facilities; (2) Any other contract or lease to which a declarant or an affiliate of a declarant is a party; 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 1603-103, subsection (d), takes office upon not less than 90 days' notice to the other party. This subsection 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 submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

**§ 1603-106. Bylaws**

(a) The bylaws of the association must 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 a president, treasurer, secretary and any other officers of the association the bylaws specify;

(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; and

(5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

**§ 1603-107. Upkeep of the condominium**

(a) Except to the extent provided by the declaration or section 1603-112, subsection (d), the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) If any unit in a condominium all of whose units are restricted to nonresidential use is damaged, and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or rebuilt to the extent necessary to restore its exterior appearance. The declaration may provide that if that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

**§ 1603-108. Meetings**

The bylaws must require that meetings of the association be held at least once each year and provide for special meetings. The bylaws must specify which of the association's officers, not less than 10 nor more than 60 days in advance of any

meeting, 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.

**§ 1603-109. Quorums**

(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast 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. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

(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 50% of the votes on that board are present at the beginning of the meeting.

**§ 1603-110. 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 their unanimous agreement unless the declaration expressly provides otherwise. There is unanimous agreement 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 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 actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date, unless it specifies a shorter term.

(c) The declaration may provide for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize class voting for the purpose of evading any limitation imposed on declarants by this Act.

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

**§ 1603-111. Tort and contract liability**

(a) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the condominium which the declarant has the responsibility to maintain may not be brought against the association or a unit

owner other than a declarant. Otherwise, an action in tort alleging a wrong done by the association or by an agent or employee of the association, or an action arising from a contract may by or on behalf of the association, shall be brought against the association. If the tort or breach of contract occurred during any period of declarant control, section 1603-103, subsection (c), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney's fees, provided that during any period in which the control of the declarant is limited to the power to approve actions of the association or executive board, as provided in section 1603-103, subsection (c), the declarant shall be so liable only for losses caused by the exercise of declarant's right of disapproval. 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 subsection because he is a unit owner or a member or officer of the association.

(b) A judgment for money against the association, if a lien order is filed with the register of deeds of the county where the condominium lies as provided in Title 14, section 3132, as it or its equivalent may be amended or modified from time to time, is a lien against all of the units, but no other property of a unit owner is subject to the claims of creditors of the association. A unit owner may remove his unit and his interest in the common elements from such lien by payment of the fractional amount proportionate to his unit's common expense liability, and the lien holder shall, upon receipt of such payment, release such unit and the interest of the unit owner in the common elements.

(c) A judgment against the association shall be indexed in the name of the condominium.

(d) No labor performed or materials furnished with the consent or at the request of a unit owner or his agent shall be the basis for filing of a mechanics' lien against the unit or other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the unit owner in the case of emergency repairs to such unit. Labor performed or materials furnished for the common elements, if authorized by the association or the executive board or the declarant, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a mechanics' lien against each of the units. A unit owner may remove his unit and his interest in the common elements from such lien by payment of the fractional amount proportionate to his unit's common expense liability, and the lien holder shall, upon receipt of such payment, release such unit and the interest of the unit owner in the common elements.

#### § 1603-112. 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 reasonably available:

(1) Property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion condominium, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(2) Comprehensive general liability insurance, including medical payment insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

(b) If the insurance described in subsection (a) is not maintained, 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.

(c) 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 ownership of an undivided 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 of the condominium 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 void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

(d) Any loss covered by the property policy under subsection (a), paragraph (1), 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. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lien holders as their interest may appear. Subject to the provisions of subsection (g), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored, or the condominium is terminated.

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

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or mortgagee. The insurance may not be cancelled until 30 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee to whom certificates of insurance have been issued.

(g) Any portion of the condominium 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) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If 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 assigned; and (3) The remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the association and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 1601-107, subsection (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 1602-120 governs the distribution of insurance proceeds if the condominium is terminated.

(h) 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.

#### **§ 1603-113. Surplus funds**

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be credited to the unit owners to reduce their future common expense assessments.

#### **§ 1603-114. Assessments for common expenses**

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

(b) Except for assessments under subsection (c), common expenses shall be



assessed against all the units in accordance with the common expense liability allocated to each unit, section 1602-108. Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding 18% per year.

(c) The declaration may provide as follows:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred;

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(3) Any payments, fees or charges for the use, rental or operation of any common element shall be applied first to reduce the common expense relating to such common element. Any excess thereof shall be applied to common expenses generally.

(d) 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.

#### **§ 1603-115. Lien for assessments**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 1603-102, subsection (a), paragraphs (10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except: (1) Liens and encumbrances recorded before the recordation of the declaration; (2) A first mortgage recorded before the date on which the assessment sought to be enforced became delinquent; and (3) Liens for real estate taxes and other governmental assessments or charges against the unit. To the extent of the common expense assessments made under section 1603-114, subsection (b) which would have become due, in the absence of acceleration, during the 6 months immediately preceding institution of an action to enforce the lien, the lien is also prior to the mortgages described in clause paragraph (2). This subsection does not affect the priority of mechanics' or materialmen's liens. The lien is not subject to the provisions of Title 14, section 4551 and Title 18-A, section 2-201, et seq., as they or their equivalents may be amended or modified from time to time.

(c) Recording of the declaration constitutes record notice and perfection of

the lien. No further recordation of any claim of lien for assessment under this section is required.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the assessments become payable.

(e) Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien, or to prohibit an association from taking a deed in lieu of foreclosure.

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

(g) The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit owner.

#### **§ 1603-116. Association records**

The association shall keep financial records sufficiently detailed to enable the association to comply with section 1604-108. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

#### **§ 1603-117. Association as trustee**

With respect to a 3rd person dealing with the association in the association's capacity as a trustee under sections 1602-120 and 1603-112, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A 3rd person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a 3rd 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 3rd person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

### **ARTICLE 4**

#### **PROTECTION OF PURCHASERS**

#### **§ 1604-101. Applicability; waiver**

(a) This Article applies to all units subject to this Act, except as provided in subsection (b) and section 1604-112 or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) A public offering statement need not be prepared or delivered in the case of:

- (1) A gratuitous transfer of a unit;
- (2) A disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure; or
- (5) A transfer to which section 1604-106, resales of units, applies.

**§ 1604-102. Public offering statement; general provisions**

(a) Except as provided in subsection (b), 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) The number of units and declarant's estimated schedule of commencement and completion of construction of all buildings, units and amenities;
- (3) The total number of additional units that may be included in the condominium and the proportion of units the declarant intends to rent or market in blocks of units;
- (4) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 1602-106, paragraph (1);
- (5) Copies of the declaration, other than the plats and plans, the bylaws, and rules and regulations, copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 1603-105;
- (6) 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 the budget's assumptions concerning occupancy and inflation factors. The budget includes, 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 the amount and purpose 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;

(7) Any services not reflected in the budget that the declarant provides, or expenses that he pays, 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;

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

(9) A description of any liens, defects, or encumbrances on or affecting the title to the condominium, which are noted in the property description included in the declaration;

(10) A description of any financing offered by the declarant;

(11) The terms and significant limitations of any express warranties provided by the declarant, and a copy of section 1604-111 through 1604-114, inclusive;

(12) A statement that:

(i) Within 15 days after receipt of a public offering statement a purchaser, before conveyance, may cancel and contract for purchase of a unit from a declarant;

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchase may recover from the declarant 10% of the sales price of the unit; and

(iii) If a purchaser receives the public offering statement more than 15 days before signing a contract, he cannot cancel the contract;

(13) A statement of any judgments against the association; the status of any judgments against the association; the status of any pending suits to which the association is a party, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;

(14) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 1604-105;

(15) Any restraints on alienation of any portion of the condominium;

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

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

(18) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to section 1604-116, declarant's obligation to complete and restore; and

(19) All unusual and material circumstances, features and characteristics of the condominium and the units.

(b) If a condominium composed of not more than 12 units is not a flexible condominium and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (3), (4), (18) and (19) of subsection (a), and the narrative descriptions of documents required by subsection (a), paragraph (5).

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

**§ 1604-103. Same; conversion condominiums**

(a) The public offering statement of a conversion condominium contains, in addition to the information required by section 1604-102:

(1) A statement by the declarant, based on a report prepared by an independent architect or engineer who is not affiliated with the declarant, describing the present condition of all structural components waste disposal system, water system and mechanical and electrical installation material to the use and enjoyment of the condominium;

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

(3) A list of any outstanding notices of uncured violations of building code or other municipal, state or federal laws or regulations, together with the estimated cost of curing those violations.

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

**§ 1604-104. Same; condominium securities**

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, or the Securities Division of the Bureau of Banking of this State a declarant satisfies all requirements relating to the preparation of a public offering statement in this Act if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission or the Securities Division. When a condominium is located in a state other than Maine, under the laws of which a public offering statement is required in detail similar to the requirements of this Act, a declarant satisfies all requirements relating to the preparation of a public offering statement if he delivers to the purchaser a copy of such public offering statement.

**§ 1604-105. Purchaser's right to cancel**

(a) Unless delivery of a public offering statement is not required under section 1604-101, subsection (b), a declarant shall provide a purchaser of a unit with a copy

of the public offering statement and all amendments thereto before conveyance of that unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand-delivering notice thereof to the declarant or by mailing notice thereof by prepaid United States mail to the declarant or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be funded promptly.

**§ 1604-106. Resales of units**

(a) In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration, other than the plats and plans, the bylaws, the rules or regulations of the association and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;

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

(3) A statement of any other fees payable by unit owners;

(4) A statement of any capital expenditures proposed by the association for the current and 2 next succeeding fiscal years;

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

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

(7) The current operating budget of the association;

(8) A statement of any judgments against the association and the status of any pending suits to which the association is a party;

(9) A statement describing any insurance coverage provided for the benefit of unit owners;

(10) A statement as to whether the executive board has knowledge that any alterations of improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

(11) A statement as to whether the executive board has knowledge of any

violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any the portion of the condominium; and

(12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

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

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

#### § 1604-107. Escrow of deposits

Any deposit made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow by the declarant and held in this State in an account designated solely for that purpose in an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) Delivered to the declarant because of purchaser's default under a contract to purchase the unit; or (3) Refunded to the purchaser.

#### § 1604-108. Release of liens

(a) Before or simultaneously with conveying a unit, other than by deed in lieu of foreclosure, to a purchaser other than a declarant, a declarant shall record or furnish to the purchaser, releases of all liens 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. This subsection does not apply to any withdrawable real estate in which no unit has been conveyed.

(b) Whether perfected before or after creation of the condominium, if a lien other than a mortgage, including a lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against 2 or more units, the unit owner of an affected unit may pay to 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 and its common element interest. 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.

**§ 1604-109. Conversion condominiums**

(a) A declarant of a conversion condominium shall give each of the tenants and any subtenant in possession of buildings subject to this Act notice of the conversion no later than 120 days before the declarant will require the tenants and any subtenant in possession to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required by the declarant to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure of a declarant to give notice as required by this section is a defense to an action for possession.

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

(c) If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, the notice also constitutes a notice to vacate specified by Title 14, section 6001 as it or its equivalent may be amended from time to time.

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

**§ 1604-110. Express warranties of quality**

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

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



(2) Any model or description of the physical characteristics of the condominium, including plans and specifications or for improvements, creates an express warranty that the condominium will substantially conform to the model or description;

(3) Any written description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

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

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

#### **§ 1604-111. Implied warranties of quality**

(a) A declarant warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the condominium, will be:

(1) Free from defective materials; and

(2) Constructed in accordance with applicable law, according to sound engineering and construction standards and in a workmanlike manner.

(c) In addition, a declarant warrants to a purchaser from him of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in section 1604-112.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant section 1601-103, paragraph (2) are made or contracted for by the declarant.

#### **1604-112. Exclusion or 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, except for those defects which the buyer has actual knowledge of, but a declarant may disclaim liability in an instrument signed by the purchaser for defects relating to specified improvements or components thereof 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.

**§ 1604-113. Statute of limitations for warranties**

(a) A judicial proceeding for breach of any obligation arising under section 1604-110 or 1604-111 must be commenced within 6 years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of litigation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

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

(2) As to each common element, at the time the common element is completed or, if later: (i) As to a common element within any additional or convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or (ii) As to a common element at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) 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.

**§ 1604-114. Effect of violations on rights of action; attorney's fees**

If a declarant or any other person subject to this Act violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of willful violation of the Act. The court, in an appropriate case, may award reasonable attorney's fees to any party.

**§ 1604-115. Labeling of promotional material**

If any improvement contemplated in a condominium is required by section 1602-

110, subsection (b), paragraph (3), to be labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

§ 1604-116. Declarant's obligation to complete and restore

(a) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to section 1602-110.

(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 1602-111, 1602-112, 1602-117 and 1602-118.

#### STATEMENT OF FACT

The purpose of this bill is to establish the Maine Condominium Act.