

MAINE STATE LEGISLATURE

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1 (Governor's Bill)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 2019
7

8 S. P. 870 In Senate, February 23, 1982
Referred to the Committee on Judiciary and ordered printed.
Sent down for concurrence.

9 Presented by Senator Devoe of Penobscot.

MAY M. ROSS, Secretary of the Senate
Cosponsor: Senator Conley of Cumberland.

10
11 **STATE OF MAINE**
12

13 IN THE YEAR OF OUR LORD
14 NINETEEN HUNDRED AND EIGHTY-TWO
15

16 **AN ACT to Create the Maine Condominium**
17 **Act.**
18

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

20 3 MRSA c. 31 is enacted to read:

21 CHAPTER 31

22 MAINE CONDOMINIUM ACT

23 ARTICLE I

24 GENERAL PROVISIONS

25 §1601-101. Short title

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

28 §1601-102. Applicability

1 (a) This Act applies to all condominiums created, in
2 accordance with the provisions of this Act, within this
3 State after the effective date of this Act and to all condo-
4 miniums created within this State before the effective date
5 of this Act which, on or after the effective date of this
6 Act, amend the instruments creating the same so as to sub-
7 ject the condominium to the provisions of this Act and so as
8 to conform these instruments to the provisions of this Act
9 in all necessary respects. The amendment must be adopted in
10 conformity with the procedures and requirements specified by
11 those instruments and by sections 560 through 587. Sections
12 1601-105 Separate titles and taxation, 1601-106 Applicabil-
13 ity of local laws and regulations, 1601-107 Eminent domain,
14 1602-103 Construction and validity of declaration and
15 bylaws, 1602-104 Description of units, 1603-102, subsection
16 (a) paragraphs (1) through (6) and (11) through (16) Powers
17 of unit owners' association, 1603-111 Tort and contract lia-
18 bility, 1603-116 Lien for assessments, 1603-118 Association
19 records, 1604-108 Resales of units, and 1604-116 Effect of
20 violation on rights of action; attorney's fees, and section
21 1601-103 Definitions, to the extent necessary in construing
22 any of those sections, apply to all condominiums created in
23 this State before the effective date of this Act; but those
24 sections apply only with respect to events and circumstances
25 occurring after the effective date of this Act and do not
26 invalidate provisions of declarations, bylaws, floor plans,
27 surveys or duly adopted administrative rules and regulations
28 existing on the effective date of this Act.

29 (b) The provisions of sections 560 through 587 do not
30 apply to condominiums created after the effective date of
31 this Act or amended pursuant to subsection (a) so as to be
32 subject to the provisions of this Act and do not invalidate
33 any amendment to bylaws, floor plans, surveys or duly
34 adopted administrative rules and regulations relating to any
35 condominium created before the effective date of this Act if
36 the amendment would be permitted by this Act. The amendment
37 must be adopted in conformity with the procedures and re-
38 quirements specified by those instruments and by sections
39 560 through 587. If the amendment grants to any person any
40 rights, powers or privileges permitted by this Act, all cor-
41 relative obligations, liabilities and restrictions in this
42 Act also apply to that person.

43 (c) This Act does not apply to condominiums or units
44 located outside this State, but the public offering state-
45 ment provisions contained in sections 1604-102 through and
46 including 1604-106 apply to all offers, contracts for dispo-
47 sition signed by any party in this State or dispositions in
48 this State of condominiums or units unless exempt under
49 section 1604-101, subsection (b).

1 §1601-103. Definitions

2 In the declaration and bylaws, unless specifically pro-
3 vided otherwise or the context otherwise requires, and in
4 this Act:

5 (1) "Affiliate of a declarant" means any person who
6 controls, is controlled by or is under common control with a
7 declarant. A person "controls" a declarant if the person:
8 (i) Is a general partner, officer, director or employer of
9 the declarant; (ii) directly or indirectly or acting in
10 concert with one or more other persons, or through one or
11 more subsidiaries, owns, controls, holds with power to vote
12 or holds proxies representing more than 20% of the voting
13 interests of the declarant; (iii) controls in any manner
14 the election of a majority of the directors of the declar-
15 ant; or (iv) has contributed more than 20% of the capital
16 in the declarant. A person "is controlled by" a declarant
17 if the declarant: (i) Is a general partner, officer,
18 director or employer of the person; (ii) directly or indi-
19 rectly or acting in concert with one or more other persons,
20 or through one or more subsidiaries, owns, controls, holds
21 with power to vote or holds proxies representing, more than
22 20% of the voting interests in the person; (iii) controls
23 in any manner the election of a majority of the directors of
24 the person; or (iv) has contributed more than 20% of the
25 capital of the person;

26 Control does not exist if the powers described in this
27 paragraph are held solely as security for an obligation and
28 are not exercised.

29 (2) "Allocated interests" means the undivided inter-
30 ests in the common elements, the common expense liability
31 and votes in the association allocated to each unit;

32 (3) "Association" or "unit owners' association" means
33 the unit owners' association organized under section
34 1603-101;

35 (4) "Common elements" means all portions of a condo-
36 minium other than the units;

37 (5) "Common expenses" means expenditures made by or
38 financial liabilities of the association, together with any
39 allocations to reserves;

40 (6) "Common expense liability" means the liability for
41 common expenses allocated to each unit pursuant to section
42 1602-107;

1 (7) "Condominium" means real estate, portions of which
2 are designated for separate ownership and the remainder of
3 which is designated for common ownership solely by the
4 owners of those portions under a declaration, or an amend-
5 ment to a declaration, duly recorded pursuant to this Act.
6 Real estate is not a condominium unless the undivided inter-
7 ests in the common elements are vested in the unit owners;

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

12 (9) "Declarant" means any person or group of persons
13 acting in concert who: (i) As part of a common promotional
14 plan, offers to dispose of his or its interest in a unit not
15 previously disposed of; or (ii) reserves or succeeds to
16 any special declarant right;

17 (10) "Declaration" means any instruments, however
18 denominated, which create a condominium and any amendments
19 to those instruments;

20 (11) "Development rights" means any right or combina-
21 tion of rights reserved by a declarant in the declaration to
22 add real estate to a condominium; to create units, common
23 elements or limited common elements within a condominium; to
24 subdivide units or convert units into common elements; or to
25 withdraw real estate from a condominium;

26 (12) "Dispose" or "disposition" means a voluntary
27 transfer to a purchaser of any legal or equitable interest
28 in a unit, but does not include the transfer or release of a
29 security interest;

30 (13) "Executive board" means the body, regardless of
31 name, designated in the declaration to act on behalf of the
32 association;

33 (14) "Identifying number" means a symbol or address
34 that identifies only one unit in a condominium;

35 (15) "Leasehold condominium" means a condominium in
36 which all or a portion of the real estate is subject to a
37 lease the expiration or termination of which will terminate
38 the condominium or reduce its size;

39 (16) "Limited common element" means a portion of the
40 common elements allocated by the declaration or by operation
41 of section, 1602-102, paragraphs (2) or (4) for the exclu-
42 sive use of one or more but fewer than all of the units;

1 (17) "Master association" means an organization de-
2 scribed in section 1602-120, whether or not it is also an
3 association described in section 1603-101;

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

13 (19) "Person" means a natural person, corporation,
14 government, governmental subdivision or agency, business
15 trust, estate, trust, partnership, association, joint ven-
16 ture or other legal or commercial entity;

17 (20) "Purchaser" means any person, other than a
18 declarant, or a person in the business of selling real
19 estate for his own account, who by means of a voluntary
20 transfer acquires a legal or equitable interest in a unit,
21 other than: (i) A leasehold interest, including renewal
22 options, of less than 20 years; or (ii) as security for an
23 obligation;

24 (21) "Real estate" means any leasehold or other estate
25 or interest in, over or under land, including structures,
26 fixtures and other improvements and interest which by cus-
27 tom, usage or law pass with a conveyance of land though not
28 described in the contract of sale or instrument of convey-
29 ance. Real estate includes parcels with or without upper or
30 lower boundaries and spaces that may be filed with air or
31 water;

32 (22) "Real estate trust" means an arrangement evi-
33 denced by a writing, the purposes of which include the own-
34 ership of real estate and the creation and management of a
35 condominium, under which arrangement one or more trustees
36 are empowered to hold legal title to real estate for the
37 benefit of beneficiaries. Trustees may also be beneficiar-
38 ies under a real estate trust;

39 (23) "Recorded" means that the instrument, plan or
40 plat shall be duly recorded in every registry of deeds in
41 each county or registry district in which the condominium or
42 any portion thereof is located. Each such instrument, plan
43 or plat shall be indexed by the Register of Deeds, in the
44 name of the condominium and the parties thereto;

1 (24) "Residential" means use for dwelling or recrea-
2 tional purposes, or both;

3 (25) "Special declarant rights" means rights reserved
4 for the benefit of a declarant to complete improvements
5 indicated on plats and plans filed with the declaration,
6 section 1602-109; to exercise any development right, section
7 1602-110; to maintain sales offices, management offices,
8 signs advertising the condominium and models, section
9 1602-115; to use easements through the common elements for
10 the purpose of making improvements within the condominium or
11 within real estate which may be added to the condominium,
12 section 1602-116; to make the condominium part of a larger
13 condominium or a planned community, section 1602-121; to
14 make the condominium subject to a master association,
15 section 1602-120; or to appoint or remove any officer of the
16 association or any master association or any executive board
17 member or to approve any acts of the association or the
18 executive board, during any period of declarant control,
19 section 1603-103, subsection (d);

20 (26) "Unit" means a physical portion of the condomi-
21 nium designated for separate ownership or occupancy, the
22 boundaries of which are described pursuant to section
23 1602-105, paragraph (5); and

24 (27) "Unit owner" means a declarant or other person
25 who owns a unit, or a lessee of a unit in a leasehold condo-
26 minium whose lease expires simultaneously with any lease the
27 expiration or termination of which will remove the unit from
28 the condominium, but does not include a person having an
29 interest in a unit solely as security for an obligation.

30 §1601-104. Variation by agreement

31 Except as expressly provided in this Act, provisions of
32 this Act may not be varied by agreement, and rights con-
33 ferred by this Act may not be waived. A declarant may not
34 act under a power of attorney, or use any other device, to
35 evade the limitations or prohibitions of this Act or the
36 declaration.

37 §1601-105. Separate titles and taxation

38 (a) If there is any unit owner other than a declarant,
39 each unit which has been created, together with its appurte-
40 nant interests, constitutes for all purposes a separate
41 parcel of real estate.

1 **(b) If there is any unit owner other than a declarant,**
2 **each unit shall be separately taxed and assessed and no sep-**
3 **arate tax or assessment may be rendered against any common**
4 **elements for which a declarant has reserved no development**
5 **rights.**

6 **(c) Any portion of the common elements for which the**
7 **declarant has reserved any development right to add real**
8 **estate to a condominium or to withdraw real estate from a**
9 **condominium, shall be separately taxed and assessed against**
10 **the declarant, and the declarant alone is liable for payment**
11 **of those taxes.**

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

15 **§1601-106. Applicability of local laws and regulations**

16 **A zoning, subdivision, building code or other real**
17 **estate use law, ordinance or regulation may not prohibit the**
18 **condominium form of ownership or impose any requirement upon**
19 **a condominium which it would not impose upon a physically**
20 **identical development under a different form of ownership.**
21 **Otherwise, no provision of this Act invalidates or modifies**
22 **any provision of any zoning, subdivision, building code or**
23 **other real estate use law, ordinance or regulation. No**
24 **county, municipality, village corporation or other political**
25 **subdivision, whether or not acting under the municipal home**
26 **rule powers provided for under the Constitution of Maine,**
27 **Article VIII, Part Second or Title 30, sections 1911 through**
28 **1920, or any other authority from time to time, shall adopt**
29 **or enforce any law, ordinance, rule, regulation or policy**
30 **which conflicts with the provisions of this Act.**

31 **§1601-107. Eminent Domain**

32 **(a) If a unit is acquired by eminent domain, or if**
33 **part of a unit is acquired by eminent domain leaving the**
34 **unit owner with a remnant which may not practically or law-**
35 **fully be used for any purpose permitted by the declaration,**
36 **the award must compensate the unit owner for his unit and**
37 **its interest in the common elements, whether or not any com-**
38 **mon elements are acquired. Upon acquisition, unless the**
39 **decree otherwise provides, that unit's allocated interests**
40 **are automatically reallocated to the remaining units in pro-**
41 **portion to the respective allocated interests of those units**
42 **before the taking, and the association shall promptly pre-**
43 **pare, execute and record an amendment to the declaration**
44 **reflecting the reallocations. Any remnant of a unit remain-**

1 ing after part of a unit is taken under this subsection is
2 thereafter a common element.

3 (b) Except as provided in subsection (a), if part of a
4 unit is acquired by eminent domain, the award must compen-
5 sate the unit owner for the reduction in value of the unit
6 and its interest in the common elements whether or not any
7 common elements are acquired. Upon acquisition: (1) That
8 unit's allocated interests are reduced in proportion to the
9 reduction in the size of the unit, or on any other basis
10 specified in the declaration; and (2) the portion of the
11 allocated interest, votes and common expense liability
12 divested from the partially acquired unit are automatically
13 reallocated to that unit and the remaining units in propor-
14 tion to the respective allocated interests of those units
15 before the taking, with the partially acquired unit parti-
16 cipating in the reallocation on the basis of its reduced
17 allocated interests.

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

26 (d) The court decree shall be recorded.

27 §1601-108. Supplemental general principles of law
28 applicable

29 The principles of law and equity, including the law of
30 corporations and unincorporated associations, the law of
31 real property and the law relative to capacity to contract,
32 principal and agent, eminent domain, estoppel, fraud, mis-
33 representation, duress, coercion, mistake, receivership,
34 substantial performance or other validated or invalidating
35 cause supplement the provisions of this Act, except to the
36 extent inconsistent with this Act.

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

43 §1601-109. Construction against implicit repeal

1 This Act being a general act intended as a unified cov-
2 erage of its subject matter, no part of it shall be con-
3 strued to be impliedly repealed by subsequent legislation if
4 that construction can reasonably be avoided.

5 §1601-110. Uniformity of application and construction

6 This Act shall be applied and construed so as to effec-
7 tuate its general purpose to make uniform the law with
8 respect to the subject of this Act among states enacting it.

9 §1601-111. Severability

10 If any provision of this Act or the application thereof
11 to any person or circumstances is held invalid, the inva-
12 lidity does not affect other provisions or applications of
13 this Act which can be given effect without the invalid
14 provisions or applications, and to this end the provisions
15 of this Act are severable.

16 §1601-112. Unconscionable agreement or term of contract

17 (a) The court, upon finding as a matter of law that a
18 contract or contract clause was unconscionable at the time
19 the contract was made, may refuse to enforce the contract,
20 enforce the remainder of the contract without the uncon-
21 scionable clause, or limit the application of any uncon-
22 scionable clause in order to avoid an unconscionable result.

23 (b) Whenever it is claimed, or appears to the court,
24 that a contract or any contract clause is or may be uncon-
25 scionable, the parties, in order to aid the court in making
26 the determination, shall be afforded a reasonable oppor-
27 tunity to present evidence as to:

28 (1) The commercial setting of the negotiations;

29 (2) Whether a party has knowingly taken advantage of
30 the inability of the other party reasonably to protect his
31 interests by reason of physical or mental infirmity, illit-
32 eracy or inability to understand the language of the agree-
33 ment or similar factors;

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

36 (4) If a sale, any gross disparity, at the time of
37 contracting, between the amount charged for the real estate
38 and the value of the real estate measured by the price at
39 which similar real estate was readily obtainable in similar

1 transactions, but a disparity between the contract price and
2 the value of the real estate measured by the price at which
3 similar real estate was readily obtainable in similar trans-
4 actions does not, of itself, render the contract unconscion-
5 able.

6 §1601-113. Obligation of good faith

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

9 §1601-114. Remedies to be liberally administered

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

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

18 §1601-115. Legal investments

19 Financial institutions may make loans under this chap-
20 ter to individuals or corporations to be secured by a first
21 mortgage of a unit together with its common element inter-
22 est, owned under this chapter, to the extent that each of
23 them may make loans secured by real estate mortgages, and
24 subject to the applicable conditions and limitations imposed
25 by law.

26 §1601-116. Effective date

27 This Act shall be effective on January 1, 1982.

28 ARTICLE 2

29 CREATIONS, ALTERATION AND

30 TERMINATION OF

31 CONDOMINIUMS

32 §1602-101. Creation of condominium

33 (a) A condominium may be created pursuant to this Act
34 only by recording a declaration executed, in the same manner

1 as a deed, by all persons whose interests in the real estate
2 will be conveyed to unit owners and by every lessor of a
3 lease the expiration or termination of which will terminate
4 the condominium or reduce its size. In the creation of a
5 condominium, the declaration shall be recorded in the same
6 manner as a deed and plats and plans shall be recorded in
7 the same manner as plats and plans generally. All such
8 documents, shall be indexed in the name of the condominium
9 and the parties thereto and may be included in such other
10 indices as shall be determined by the Register of Deeds.

11 (b) No interest in any unit may be conveyed except as
12 security for an obligation until the unit is substantially
13 completed as evidenced by a certificate of substantial com-
14 pletion executed by an engineer or architect, or until a
15 certificate of occupancy is issued by the municipal inspec-
16 tor of buildings.

17 §1602-102. Unit boundaries

18 Except as provided by the declaration:

19 (1) If walls, floors or ceilings are designated as
20 boundaries of a unit, all lath, furring, wallboard,
21 plasterboard, plaster, paneling, tiles, wallpaper, paint,
22 finished flooring and any other materials constituting any
23 part of the finished surfaces thereon are a part of the
24 unit, and all other portions of the walls, floors or ceil-
25 ings are a part of the common elements.

26 (2) If any chute, flue, duct, wire, conduit, bearing
27 wall, bearing column or any other fixture lies partially
28 within and partially outside the designated boundaries of a
29 unit, any portion thereof serving only that unit is a
30 limited common element allocated solely to that unit, and
31 any portion thereof serving more than one unit or any por-
32 tion of the common elements is a part of the common ele-
33 ments.

34 (3) Subject to the provisions of paragraph (2), all
35 spaces, interior partitions and other fixtures and improve-
36 ments within the boundaries of a unit are a part of the
37 unit.

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

1 §1602-103. Construction and validity of declaration and
2 bylaws

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

5 (b) Neither the rule against perpetuities nor the
6 provisions of section 103, as it or its equivalent may be
7 amended from time to time, may be applied to defeat any
8 provision of the declaration, bylaws or rules and regula-
9 tions adopted pursuant to section 1603-102, subsection (a),
10 paragraph (1).

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

15 (d) Title to a unit and common elements is not
16 rendered unmarketable or otherwise affected by reason of an
17 insubstantial failure of the declaration to comply with this
18 Act. Whether a substantial failure impairs marketability is
19 not affected by this Act.

20 §1602-104. Description of units

21 A description of a unit which sets forth the name of
22 the condominium, the recording data for the declaration, the
23 county or registry district in which the condominium is
24 located and the identifying number of the unit, is a suffi-
25 cient legal description of that unit and all rights, obli-
26 gations and interests appurtenant to that unit which were
27 created by the declaration or bylaws.

28 §1602-105. Contents of declaration

29 (a) The declaration for a condominium contains:

30 (1) The name of the condominium, which includes the
31 word "condominium" or be followed by the words "a condomi-
32 nium," and of the association;

33 (2) The name of every municipality and every county or
34 registry district in which any part of the condominium is
35 situated;

36 (3) A legally sufficient description of the real
37 estate included in the condominium;

38 (4) A statement of the maximum number of units which
39 the declarant reserves the right to create;

1 (5) A description of the boundaries of each unit cre-
2 ated by the declaration, including the unit's identifying
3 number;

4 (6) A description of any limited common elements,
5 other than those specified in section 1602-102, paragraphs
6 (2) and (4), as provided in section 1602-109, subsection
7 (b), paragraph (10);

8 (7) A description of any real estate, except real
9 estate subject to development rights, which may be allocated
10 subsequently as limited common elements, other than limited
11 common elements specified in section 1602-102, paragraphs
12 (2) and (4), together with a statement that they may be so
13 allocated;

14 (8) A description of any development rights and other
15 special declarant rights, section 1601-103, paragraph (25),
16 reserved by the declarant, together with a legally suffi-
17 cient description of the real estate to which each of those
18 rights applies, and a time limit within which each of those
19 rights must be exercised;

20 (9) If any development right may be exercised with
21 respect to different parcels of real estate at different
22 times, a statement to that effect together with:

23 (i) Either a statement fixing the boundaries of those
24 portions and regulating the order in which those por-
25 tions may be subjected to the exercise of each develop-
26 ment right, or a statement that no assurances are made
27 in those regards; and

28 (ii) A statement as to whether, if any development
29 right is exercised in any portion of the real estate
30 subject to that development right, that development
31 right must be exercised in all or in any other portion
32 of the remainder of that real estate;

33 (10) Any other conditions or limitations under which
34 the rights described in paragraph (8) may be exercised or
35 will lapse;

36 (11) An allocation to each unit of the allocated
37 interests in the manner described in section 1602-107;

38 (12) Any restrictions on use, occupancy and alienation
39 of the units;

1 (13) The recording data for recorded easements and
2 licenses appurtenant to or included in the condominium or to
3 which any portion of the condominium is or may become sub-
4 ject by virtue of a reservation in the declaration;

5 (14) All matters required by sections 1602-106,
6 1602-107, 1602-108, 1602-109, 1602-115, 1602-116 and
7 1603-103, subsection (d); and

8 (15) Reasonable provisions regarding the manner in
9 which notice of matters affecting the condominium may be
10 given to unit owners by the association.

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

13 §1602-106. Leasehold condominiums

14 (a) Any lease the expiration or termination of which
15 may terminate the condominium or reduce its size, or a memo-
16 randum thereof, shall be recorded. Every lessor of those
17 leases must sign the declaration and the declaration shall
18 state:

19 (1) The recording data for the lease or memorandum
20 thereof;

21 (2) The date on which the lease is scheduled to
22 expire;

23 (3) A legally sufficient description of the real
24 estate subject to the lease;

25 (4) Any right of the unit owners to redeem the rever-
26 sion and the manner whereby those rights may be exercised or
27 a statement that they do not have those rights;

28 (5) Any right of the unit owners to remove any
29 improvements within a reasonable time after the expiration
30 or termination of the lease or a statement that they do not
31 have those rights; and

32 (6) Any rights of the unit owners to renew the lease
33 and the conditions of any renewal or a statement that they
34 do not have those rights.

35 (b) After the declaration for a leasehold condominium
36 is recorded, neither the lessor nor his successor in inter-
37 est may terminate the leasehold interest of a unit owner who
38 makes timely payment of his share of the rent and otherwise

1 complies with all covenants which, if violated, would
2 entitle the lessor to terminate the lease. A unit owner's
3 leasehold interest is not affected by failure of any other
4 person to pay rent or fulfill any other covenant.

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

10 (d) If the expiration or termination of a lease
11 decreases the number of units in a condominium, the allo-
12 cated interests shall be reallocated in accordance with
13 section 1602-107, subsection (a) as though those units had
14 been taken by eminent domain. Reallocations shall be con-
15 firmed by an amendment to the declaration prepared, executed
16 and recorded by the association.

17 §1602-107. Allocations of common element interests, votes
18 and common expense liabilities

19 (a) The declaration shall allocate a fraction or per-
20 centage of undivided interests in the common elements and in
21 the common expenses of the association and a portion of the
22 votes in the association to each unit and state the formulas
23 used to establish those allocations. Those allocations may
24 not discriminate in favor of units owned by the declarant.

25 (b) If units may be added to or withdrawn from the
26 condominium, the declaration must state the formulas to be
27 used to reallocate the allocated interests among all units
28 included in the condominium after the addition or with-
29 drawal.

30 (c) The declaration may provide:

31 (1) That different allocations of votes shall be made
32 to the units on particular matters specified in the declara-
33 tion; and

34 (2) For class voting on specified issues affecting the
35 class if necessary to protect valid interests of the class.

36 A declarant may not utilize class voting for the pur-
37 pose of evading any limitation imposed on declarants by this
38 Act, nor may units constitute a class because they are owned
39 by a declarant.

1 (d) Except for minor variations due to rounding, the
2 sum of the undivided interests in the common elements and
3 common expense liabilities allocated at any time to all the
4 units shall each equal one if stated as fractions or 100% if
5 stated as percentages. In the event of discrepancy between
6 an allocated interest and the result derived from applica-
7 tion of the pertinent formulas, the allocated interest pre-
8 vails.

9 (e) The common elements are not subject to partition,
10 and any purported conveyance, encumbrance, judicial sale or
11 other voluntary or involuntary transfer of an undivided
12 interest in the common elements made without the unit to
13 which that interest is allocated is void, except as permit-
14 ted in section 1603-112.

15 §1602-108. Limited common elements

16 (a) Except for the limited common elements described
17 in section 1602-102, paragraphs (2) and (4), the declaration
18 shall specify to which unit or units each limited common
19 element is allocated. That allocation may not be altered
20 without the consent of the unit owners whose units are
21 affected.

22 (b) Except as the declaration otherwise provides, a
23 limited common element may be reallocated by an amendment to
24 the declaration upon application to the association by the
25 unit owners between or among whose units the reallocation is
26 made. Unless the executive board determines within 30 days
27 that the reallocation is unreasonable, the association shall
28 prepare an amendment and any plats or plans needed to depict
29 the amendment. Upon execution by the unit owners, the
30 amendment together with such plats or plans shall be
31 recorded in the names of the parties and the condominium.

32 (c) A common element not previously allocated as a
33 limited common element may not be so allocated, except pur-
34 suant to provisions in the declaration made in accordance
35 with section 1602-105, subsection (a), paragraph (7). The
36 allocations shall be made by amendments to the declarations.

37 §1602-109. Plats and plans

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

1 (b) Each plat must show:

2 (1) The name and a survey or general schematic map of
3 the entire condominium;

4 (2) The location and dimensions of all real estate not
5 subject to development rights, or subject only to the devel-
6 opment right to withdraw, and the location and dimensions of
7 all existing improvements within that real estate;

8 (3) A legally sufficient description of any real
9 estate subject to development rights, labeled to identify
10 the rights applicable to each parcel;

11 (4) The extent of any encroachments by or upon any
12 portion of the condominium;

13 (5) A legally sufficient description of all easements
14 serving or burdening any portion of the condominium;

15 (6) The location and dimensions of any vertical unit
16 boundaries not shown or projected on plans recorded pursuant
17 to subsection (d) and that unit's identifying number;

18 (7) The location with reference to National Geodetic
19 Verticle Datum of any horizontal unit boundaries not shown
20 or projected on plans recorded pursuant to subsection (d)
21 and that unit's identifying number.

22 (8) A legally sufficient description of any real
23 estate in which the unit owners will own only an estate for
24 years, labeled as "leasehold real estate;"

25 (9) The distance between noncontiguous parcels of real
26 estate comprising the condominium;

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

31 (11) In the case of real estate not subject to devel-
32 opment rights, other matters customarily shown on land
33 surveys.

34 (c) A plat may also show the intended location and
35 dimensions of any contemplated improvement to be constructed
36 anywhere within the condominium. Any contemplated improve-
37 ment shown must be labeled "MUST BE BUILT" or "NEED
38 NOT BE BUILT."

1 (d) To the extent not shown or projected on the plats,
2 plans must show:

3 (1) The location and dimensions of the vertical bound-
4 aries of each unit, and that unit's identifying number;

5 (2) Any horizontal unit boundaries, with reference to
6 established datum and the unit's identifying number; and

7 (3) Any units in which the declarant has reserved the
8 right to create additional units or common elements, section
9 1602-110, subsection (c), identified appropriately.

10 (e) Unless the declaration provides otherwise, the
11 horizontal boundaries of part of a unit located outside of a
12 building have the same elevation as the horizontal bounda-
13 ries of the inside part, and need not be depicted on the
14 plats and plans.

15 (f) Upon exercising any development right, the declar-
16 ant shall record either new plats and plans necessary to
17 conform to the requirements of subsections (a), (b) and (c),
18 or the declarant may record an affidavit that plats and
19 plans previously recorded conform to the requirements of
20 those subsections.

21 §1602-110. Exercise of development rights

22 (a) To exercise any development right reserved under
23 section 1602-105, subsection (a), paragraph (8), the declar-
24 ant shall prepare, execute and record an amendment to the
25 declaration, section 1602-117, and comply with section
26 1602-109. The declarant is the unit owner of any units
27 thereby created. The amendment to the declaration must
28 assign an identifying number of each new unit created, and
29 except in the case of subdivision or conversion of units de-
30 scribed in subsection (c), reallocated the allocated inter-
31 ests among all units. The amendment describes any limited
32 common elements, thereby created and designate the unit to
33 which each is allocated to the extent required by section
34 1602-108, limited common elements.

35 (b) Development rights may be reserved within any real
36 estate added to the condominium if the amendment adding that
37 real estate includes all matters required by section
38 1602-105 or section 1602-106, as the case may be, and the
39 plats and plans includes all matters required by section
40 1602-109. This provision does not extend the time limit on
41 the exercise of development rights imposed by the declara-
42 tion pursuant to section 1602-105, subsection (a), paragraph
43 (8).

1 (c) When a declarant exercises a development right to
2 subdivide or convert a unit previously created into addi-
3 tional units, common elements, or both:

4 (1) If the declarant converts the unit entirely to
5 common elements, the amendment to the declaration must
6 reallocate all the allocated interests of that unit among
7 the other units as if that unit had been taken by eminent
8 domain, section 1601-107.

9 (2) If the declarant subdivides the unit into 2 or
10 more units, whether or not any part of the unit is converted
11 into common elements, the amendment to the declaration must
12 reallocate all the allocated interests of the unit among the
13 units created by the subdivision in any reasonable manner
14 prescribed by the declarant.

15 (3) Until written notice of conversion is given to the
16 appropriate real estate tax assessor or the period during
17 which conversion may occur expires, whichever occurs first,
18 the declarant alone is liable for real estate taxes assessed
19 against convertible real estate and all other expenses in
20 connection with that real estate. No other unit owner and
21 no other portion of the condominium is subject to a claim
22 for payment of those taxes or expenses. Unless the declara-
23 tion provides otherwise, any income or proceeds from con-
24 vertible real estate inures to the declarant.

25 §1602-111. Alterations of units

26 Subject to the provisions of the declaration and other
27 provisions of law, a unit owner:

28 (1) May make any improvements or alterations to his
29 unit that do not impair the structural integrity or mechani-
30 cal systems or lessen the support of any portion of the con-
31 dominium;

32 (2) May not change the appearance of the common ele-
33 ments, or the exterior appearance of a unit or any other
34 portion of the condominium, without permission of the asso-
35 ciation;

36 (3) After acquiring an adjoining unit or adjoining
37 part of an adjoining unit, may remove or alter any inter-
38 vening partition or create apertures therein, even if the
39 partition in whole or in part is a common element, if those
40 acts do not impair the structural integrity or mechanical
41 systems or lessen the support of any portion of the condo-
42 minium. Removal of partitions or creation of apertures
43 under this paragraph is not alteration of boundaries.

1 §1602-112. Relocation of boundaries between adjoining
2 units

3 (a) Subject to the provisions of the declaration and
4 other provisions of law, the boundaries between adjoining
5 units may be relocated by an amendment to the declaration
6 upon application to the association by the owners of those
7 units. If the owners of the adjoining units have specified
8 a reallocation between their units of their allocated inter-
9 ests, the application must state the proposed reallocations.
10 Unless the executive board determines, within 30 days, that
11 the reallocations are unreasonable, the association shall
12 prepare an amendment that identifies the units involved,
13 states the reallocations, is executed by those unit owners,
14 contains words of conveyance between them, and upon recorda-
15 tion, is indexed in the name of the grantor and the grantee.

16 (b) The association shall prepare and record plats or
17 plans necessary to show the altered boundaries between ad-
18 joining units, and their dimensions and identifying numbers.

19 §1602-113. Subdivision of units

20 (a) If the declaration expressly so permits, a unit
21 may be subdivided into 2 or more units. Subject to the
22 provisions of the declaration and other provisions of law,
23 upon application of a unit owner to subdivide a unit, the
24 association shall prepare, execute and record an amendment
25 to the declaration, including the plats and plans, subdivid-
26 ing that unit.

27 (b) The amendment to the declaration must be executed
28 by the owner of the unit to be subdivided, assign an iden-
29 tifying number to each unit created, and reallocate the
30 allocated interests formerly allocated to the subdivided
31 unit to the new units in any reasonable manner prescribed by
32 the owner of the subdivided unit.

33 §1602-114. Easement for encroachments

34 To the extent that any unit or common element
35 encroaches on any other unit or common element, a valid
36 easement for the encroachment exists. The easement does not
37 relieve a unit owner of liability in case of his willful
38 misconduct nor relieve a declarant or any other person of
39 liability for failure to adhere to the plats and plans.

40 §1602-115. Use for sales purposes

1 A declarant may maintain sales offices, management
2 offices and models in units or on common elements in the
3 condominium only if the declaration so provides and speci-
4 fies the rights of a declarant with regard to the number,
5 size, location and relocation thereof. Any sales office,
6 management office or model not designated a unit by the dec-
7 laration is a common element, and if a declarant ceases to
8 be a unit owner, he ceases to have any rights with regard
9 thereto unless it is removed promptly from the condominium
10 in accordance with a right to remove reserved in the decla-
11 ration. Subject to any limitations in the declaration, a
12 declarant may maintain signs on the common elements adver-
13 tising the condominium. The provisions of this section are
14 subject to the provisions of other state law and to local
15 ordinances.

16 §1602-116. Easement to facilitate exercise of special
17 declarant rights

18 Subject to the provisions of the declaration, a declar-
19 ant has an easement through the common elements as may be
20 reasonably necessary for the purpose of discharging a
21 declarant's obligations or exercising special declarant
22 rights, whether arising under this Act or reserved in the
23 declaration.

24 §1602-117. Amendment of declaration

25 (a) Except in cases of amendments that may be executed
26 by a declarant under section 1602-109, subsection (f) or
27 1602-110; the association under section 1601-107, 1602-106,
28 subsection (d), 1602-108, subsection (c), 1602-112, subsec-
29 tion (a) or 1602-113; or certain unit owners under section
30 1602-108, subsection (b), 1602-112, subsection (a),
31 1602-113, subsection (b) or 1602-118, subsection (b), and
32 except as limited by subsection (d), the declaration,
33 including the plats and plans, may be amended only by vote
34 or agreement of the unit owners of units to which at least
35 67% of the votes in the association are allocated, or any
36 larger majority the declaration specifies. The declaration
37 may specify a smaller number only if all of the units are
38 restricted exclusively to nonresidential use.

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

43 (c) Every amendment to the declaration must be
44 recorded and is effective only upon recordation. Notice of

1 the amendment shall be sent to all unit owners and mort-
2 gagees known to the executive board, but failure to send
3 such notices shall not affect the validity of the amendment.

4 (d) Except to the extent expressly permitted or re-
5 quired by other provisions of this Act, no amendment may
6 create or increase special declarant rights, increase the
7 number of units, change the boundaries of any unit, the
8 allocated interests of a unit, or the consent of the unit
9 owners.

10 (e) Amendments to the declaration required by this Act
11 to be recorded by the association shall be prepared, exe-
12 cuted, recorded and certified on behalf of the association
13 by any officer of the association designated for that pur-
14 pose or, in the absence of designation, by the president of
15 the association.

16 §1602-118. Termination of condominium

17 (a) Except in the case of taking of all the units by
18 eminent domain, section 1601-107, a condominium may be
19 terminated only by agreement of unit owners of units to
20 which at least 80% of the votes in the association are allo-
21 cated, or any larger percentage the declaration specifies.
22 The declaration may specify a smaller percentage only if all
23 of the units in the condominium are restricted exclusively
24 to nonresidential uses.

25 (b) Such an agreement to terminate must be evidenced
26 by the execution of a termination agreement, or
27 ratifications thereof, in the same manner as a deed, by the
28 requisite number of unit owners. The termination agreement
29 must specify a date after which the agreement will be void
30 unless recorded before that date. A termination agreement
31 and all ratifications thereof must be recorded and is effec-
32 tive only upon recordation.

33 (c) In the case of a condominium containing only units
34 having horizontal boundaries between units, a termination
35 agreement may provide that all the common elements and units
36 of the condominium shall be sold following termination. If,
37 pursuant to the agreement, any real estate in the condomin-
38 ium is to be sold following termination, the termination
39 agreement must set forth the minimum terms of the sale.

40 (d) In the case of a condominium containing any units
41 not having horizontal boundaries between units, a termina-
42 tion agreement may provide for sale of the common elements,
43 but may not require that the units be sold following termi-

1 nation, unless the declaration as originally recorded pro-
2 vided otherwise or unless all the unit owners consent to the
3 sale.

4 (e) The association, on behalf of the unit owners, may
5 contract for the sale of real estate in the condominium fol-
6 lowing termination, but the contract is not binding on the
7 unit owners until approved pursuant to subsections (a) and
8 (b). If any real estate in the condominium is to be sold
9 following termination, title to that real estate, upon
10 termination, vests in the association as trustee for the
11 holders of all interests in the units. Thereafter, the
12 association has all powers necessary and appropriate to
13 effect the sale. Until the sale has been concluded and the
14 proceeds thereof distributed, the association continues in
15 existence with all powers it had before termination. Pro-
16 ceeds of the sale must be distributed to unit owners and
17 lien holders as their interests may appear, in proportion to
18 the respective interests of unit owners as provided in sub-
19 section (h). Unless otherwise specified in the termination
20 agreement, as long as the association holds title to the
21 real estate, each unit owner and his successors in interest
22 have an exclusive right to occupancy of the portion of the
23 real estate that formerly constituted his unit. During the
24 period of that occupancy, each unit owner and his successors
25 in interest remain liable for all assessments and other
26 obligations imposed on unit owners by this Act or the decla-
27 ration.

28 (f) If the real estate constituting the condominium is
29 not to be sold following termination, title to the common
30 elements and, in a condominium containing only units having
31 horizontal boundaries between units, title to all the real
32 estate in the condominium, vests in the unit owners upon
33 termination as tenants in common in proportion to their
34 respective interests as provided in subsection (h), and
35 liens on the units shift accordingly. While the tenancy in
36 common exists, each unit owner and his successors in inter-
37 est have an exclusive right to occupancy of the portion of
38 the real estate that formerly constituted his unit.

39 (g) Following termination of the condominium, the pro-
40 ceeds of any sale of real estate, together with the assets
41 of the association, are held by the association as trustee
42 for unit owners and holders of liens on the units as their
43 interests may appear. Following termination, creditors of
44 the association holding liens on the units, which were
45 recorded prior to termination, may enforce those liens in
46 the same manner as any lien holder. All other creditors of
47 the association shall be treated as if they had perfected
48 liens on the unit immediately prior to the termination.

1 (h) The respective interests of unit owners referred
2 to in subsections (c), (d) and (e) are as follows:

3 (1) Except as provided in paragraph (2), the respec-
4 tive interests of unit owners are the fair market values of
5 their units, limited common elements and common element
6 interests immediately before the termination, as determined
7 by one or more independent appraisers selected by the asso-
8 ciation. The decision of the independent appraisers shall
9 be distributed to the unit owners and becomes final unless
10 disapproved within 30 days after distribution by unit owners
11 of units to which 25% of the votes in the association are
12 allocated. The proportion of any unit owner's interest to
13 that of all unit owners is determined by dividing the fair
14 market value of that unit owner's unit and common element
15 interest by the total fair market values of all the units
16 and common elements.

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

22 (i) Except as provided in subsection (j), foreclosure
23 or enforcement of a lien or encumbrance against the entire
24 condominium does not of itself terminate the condominium,
25 and foreclosure or enforcement of a lien or encumbrance
26 against a portion of the condominium, other than withdraw-
27 able real estate, does not withdraw that portion from the
28 condominium. Foreclosure or enforcement of a lien or encum-
29 brance against withdrawable real estate does not of itself
30 withdraw that real estate from the condominium, but the
31 person taking title thereto has the right to require from
32 the association, upon request, an amendment excluding the
33 real estate from the condominium.

34 (j) If a lien or encumbrance against a portion of the
35 real estate comprising the condominium has priority over the
36 declaration, and the lien or encumbrance has not been par-
37 tially released, the parties foreclosing the lien or encum-
38 brance may upon foreclosure, record an instrument excluding
39 the real estate subject to that lien or encumbrance from the
40 condominium.

41 §1602-119. Rights of secured lenders

42 The declaration may require that all or a specified
43 number or percentage of the mortgagees or beneficiaries of
44 deeds of trust encumbering the units approve specified ac-

1 tions of the unit owners or the association as a condition
2 to the effectiveness of those actions, but no requirement
3 for approval may operate to:

4 (1) Deny or delegate control over the general adminis-
5 trative affairs of the association by the unit owners or the
6 executive board; or

7 (2) Prevent the association or the executive board
8 from commencing, intervening in, or settling any litigation
9 or proceeding, or receiving and distributing any insurance
10 proceeds pursuant to section 1603-113.

11 §1602-120. Master associations

12 (a) If the declaration for a condominium provides that
13 any of the powers described in section 1603-102 are to be
14 exercised by or may be delegated to a profit or nonprofit
15 corporation, or unincorporated association, which exercises
16 those or other powers on behalf of one or more condominiums
17 or for the benefit of the unit owners of one or more condo-
18 miniums, all provisions of this Act applicable to unit
19 owners' associations apply to any such corporation, or unin-
20 corporated association, except as modified by this section.

21 (b) Unless a master association is acting in the
22 capacity of an association described in section 1603-101, it
23 may exercise the powers set forth in section 1603-102, sub-
24 section (a), paragraph (2), only to the extent expressly
25 permitted in the declarations of condominiums which are part
26 of the master association or expressly described in the del-
27 egations of power from such condominiums to the master asso-
28 ciation.

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

34 (d) The rights and responsibilities of unit owners
35 with respect to the unit owners' association set forth in
36 sections 1603-103, 1603-106, 1603-108, 1603-110 and
37 1603-113, apply in the conduct of the affairs of a master
38 association only to those persons who elect the board of a
39 master association, whether or not such persons are other-
40 wise unit owners within the meaning of this Act.

41 (e) Notwithstanding the provisions of section 1603-103
42 with respect to the election of the executive board of an

1 association, by all unit owners after the period of declar-
2 ant control ends and even if a master association is also an
3 association described in section 1603-101, the articles of
4 incorporation or other instrument creating the master asso-
5 ciation and the declaration of each condominium the powers
6 of which are assigned by the declaration or delegated to the
7 master association, may provide that the executive board of
8 the master association shall be elected after the period of
9 declarant control in any of the following ways:

10 (1) All unit owners of all condominiums subject to the
11 master association may elect all members to that executive
12 board;

13 (2) All members of the executive boards of all condo-
14 miniums subject to the master association may elect all mem-
15 bers of that executive board;

16 (3) All unit owners of each condominium subject to the
17 master association may elect specified members of that
18 executive board; or

19 (4) All members of the executive board of each condo-
20 minium subject to the master association may elect specified
21 members of that executive board.

22 §1602-121. Merger or consolidation of condominiums

23 (a) Any 2 or more condominiums may, by agreement of
24 the unit owners as provided in subsection (b), be merged or
25 consolidated into a single condominium. In the event of a
26 merger or consolidation, unless the agreement otherwise pro-
27 vides, the resultant condominium shall be, for all purposes,
28 the legal successor of all of the preexisting condominiums
29 and the operations and activities of all associations of the
30 preexisting condominiums shall be merged or consolidated
31 into a single association which shall hold all powers,
32 rights, obligations, assets and liabilities of all preexist-
33 ing associations.

34 (b) An agreement of 2 or more condominiums to merge or
35 consolidate pursuant to subsection (a) must be evidenced by
36 an agreement prepared, executed, recorded and certified by
37 the president of the association of each of the preexisting
38 condominiums following approval by owners of units to which
39 are allocated the percentage of votes in each condominium
40 required to terminate that condominium. Any such agreement
41 must be recorded in every county in which a portion of the
42 condominium is located and is not effective until recorded.

1 (3) Hire and terminate managing agents and other
2 employees, agents and independent contractors;

3 (4) Institute, defend or intervene in litigation or
4 administrative proceedings in its own name on behalf of
5 itself or 2 or more unit owners on matters affecting the
6 condominium;

7 (5) Make contracts and incur liabilities;

8 (6) Regulate the use, maintenance, repair, replacement
9 and modification of common elements;

10 (7) Cause additional improvements to be made as a part
11 of the common elements;

12 (8) Acquire, hold, encumber and convey in its own name
13 any right, title or interest to real or personal property,
14 provided that common elements may be conveyed or subjected
15 to a security interest only pursuant to section 1603-112;

16 (9) Grant easements, leases, licenses and concessions
17 through or over the common elements;

18 (10) Impose and receive any payments, fees or charges
19 for the use, rental or operation of the common elements
20 other than limited common elements described in section
21 1602-102, paragraphs (2) and (4) and services provided to
22 unit owners;

23 (11) Impose charges for late payment of assessments
24 and, after notice and an opportunity to be heard, levy
25 reasonable fines for violations of the declaration, bylaws
26 and rules and regulations of the association;

27 (12) Impose reasonable charges for the preparation and
28 recording of amendments to the declaration, resale certifi-
29 icates required by section 1604-108 or statements of unpaid
30 assessments;

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

34 (14) Assign its right to future income, including the
35 right to receive common expense assessments, but only to the
36 extent the declaration expressly so provides;

37 (15) Exercise any other powers conferred by the decla-
38 ration or bylaws;

1 (16) Exercise all other powers that may be exercised
2 in this State by legal entities of the same type as the
3 association; and

4 (17) Exercise any other powers necessary and proper
5 for the governance and operation of the association.

6 (b) Notwithstanding subsection (a), the declaration
7 may not impose limitations on the power of the association
8 to deal with the declarant that are more restrictive than
9 the limitations imposed on the power of the association to
10 deal with other persons except as permitted by this Act. A
11 provision requiring arbitration of disputes between the
12 declarant and the association or between the declarant and
13 unit owners does not violate this section.

14 §1603-103. Executive board members and officers; declarant
15 control

16 (a) Except as provided in the declaration, the bylaws,
17 in subsection (b), or other provisions of this Act, the
18 executive board may act in all instances on behalf of the
19 association. The declarant is a fiduciary for the unit
20 owners with respect to actions taken or omitted at his
21 direction by officers and members of the executive board
22 appointed by the declarant, and acting in those capacities,
23 or elected by the members at a time when more than 50% of
24 the voting rights are held by the declarant.

25 (b) The executive board may not act on behalf of the
26 association to amend the declaration, section 1602-117, to
27 terminate the condominium, section 1602-118, or to elect
28 members of the executive board or determine the qualifica-
29 tions, powers and duties, or terms of office of executive
30 board members, subsection (e), but the executive board may
31 fill vacancies in its membership for the unexpired portion
32 of any term.

33 (c) Within 30 days after adoption of any proposed bud-
34 get for the condominium, the executive board shall provide a
35 summary of the budget to all the unit owners, and shall set
36 a date for a meeting of the unit owners to consider ratifi-
37 cation of the budget not less than 14 nor more than 30 days
38 after mailing of the summary. Unless at that meeting a
39 majority of all the unit owners or any larger vote specified
40 in the declaration reject the budget, the budget is rati-
41 fied, whether or not a quorum is present. In the event the
42 proposed budget is rejected, the periodic budget last rati-
43 fied by the unit owners shall be continued until such time
44 as the unit owners ratify a subsequent budget proposed by
45 the executive board.

1 (d) The declaration may provide for a period of
2 declarant control of the association, during which period a
3 declarant, or persons designated by him may appoint and
4 remove the officers and members of the executive board. Any
5 period of declarant control extends from the date of the
6 first conveyance of a unit to a person other than a declar-
7 ant for a period not exceeding 7 years in the case of a con-
8 dominium in which the declarant has reserved development
9 rights, or 5 years in the case of any other condominium.
10 Regardless of the period provided in the declaration, a
11 period of declarant control terminates no later than 60 days
12 after conveyance of units having 75% of the voting rights to
13 unit owners other than a declarant. A declarant may volun-
14 tarily surrender the right to appoint and remove officers
15 and members of the executive board before termination of
16 that period, but in that event he may require, for the dura-
17 tion of the period of declarant control, that specified ac-
18 tions of the association or executive board, as described in
19 a recorded instrument executed by the declarant, be approved
20 by the declarant before they become effective. Within the
21 above limits, the period of declarant control shall end no
22 earlier than the later of: (1) Conveyance by the declarant
23 of units having 50% of the voting rights; (2) Termination
24 of any right of declarant to appoint officers or members of
25 the executive board; or (3) Termination of any right of
26 declarant to approve or veto any actions of the association
27 or the executive board.

28 (e) Not later than the termination of any period of
29 declarant control, the unit owners shall elect an executive
30 board of at least 3 persons, at least a majority of whom
31 must be unit owners or spouses of unit owners or, in the
32 case of a unit owner which is a corporation, partnership,
33 trust or estate, a designated agent thereof. The declara-
34 tion may provide for staggered terms for the executive
35 board. The executive board shall elect the officers. The
36 executive board members and officers shall take office upon
37 election.

38 (f) In determining whether the period of declarant
39 control has terminated under subsection (c), the percentage
40 of the units conveyed is presumed to be that percentage
41 which would have been conveyed if all the units the declar-
42 ant has built or reserved the right to build in the declara-
43 tion were included in the condominium.

44 §1603-104. Transfer of special declarant rights

45 (a) No special declarant rights, section 1601-103,
46 paragraph (25), created or reserved under this Act may be

1 transferred except by a recorded instrument. The instrument
2 is not effective unless executed by the transferee.

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

5 (1) A transferor is not relieved of any obligation or
6 liability arising before the transfer and remains liable for
7 warranty obligations imposed upon him by this Act. Lack of
8 privity does not deprive any unit owner of standing to bring
9 an action to enforce any obligation of the transferor.

10 (2) If the successor to any special declarant right is
11 an affiliate of a declarant, section 1601-103, paragraph
12 (1), the transferor is jointly and severally liable with the
13 successor for any obligation or liability of the successor
14 which relates to the condominium.

15 (3) If a transferor retains any special declarant
16 right, but transfers other special declarant rights to a
17 successor who is not an affiliate of the declarant, the
18 transferor is also liable for any obligations and liabilities
19 relating to the retained special declarant rights
20 imposed on a declarant by this Act or by the declaration
21 arising after the transfer.

22 (4) A transferor has no liability for any act or omis-
23 sion or any breach of a contractual or warranty obligation
24 arising from the exercise of a special declarant right by a
25 successor declarant who is not an affiliate of the transfer-
26 or.

27 (c) Unless otherwise provided in a mortgage instrument
28 in case of foreclosure of a mortgage, tax sale, judicial
29 sale, or sale under bankruptcy code or receivership proceed-
30 ings, of any units owned by a declarant or real estate in a
31 condominium subject to development rights, a person acquir-
32 ing title to all the real estate being foreclosed or sold,
33 but only upon his request, succeeds to all special declarant
34 rights related to that real estate held by that declarant,
35 or only to any rights reserved in the declaration pursuant
36 to section 1602-115 and held by that declarant to maintain
37 models, sales offices and signs. The judgment or instrument
38 conveying title shall provide for transfer of only the spe-
39 cial declarant rights requested.

40 (d) Upon foreclosure, tax sale, judicial sale, or sale
41 under bankruptcy code or receivership proceedings, of all
42 units and other real estate in a condominium owned by a
43 declarant:

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

3 (2) The period of declarant control, section 1603-103,
4 subsection (d), terminates unless the judgment or instrument
5 conveying title provides for transfer of all special declar-
6 ant rights held by that declarant to a successor declarant.

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

9 (1) A successor to any special declarant right who is
10 an affiliate of a declarant is subject to all obligations
11 and liabilities imposed on the transferor by this Act or by
12 the declaration.

13 (2) A successor to any special declarant rights other
14 than a successor described in paragraphs (3) or (4), who is
15 not an affiliate of a declarant, is subject to all obli-
16 gations and liabilities imposed by this Act or the declara-
17 tion:

18 (A) On a declarant which relate to his exercise or
19 nonexercise of special rights; or

20 (B) On his transferor, other than:

21 (i) Misrepresentations by any prior declarant;

22 (ii) Warranty obligations on improvements made by
23 any previous declarant, or made before the condo-
24 minium was created;

25 (iii) Breach of any fiduciary obligation by any
26 previous declarant or his appointees to the execu-
27 tive board; or

28 (iv) Any liability or obligation imposed on the
29 transferor as a result of the transferor's acts or
30 omissions after the transfer.

31 (3) A successor to only a right reserved in the decla-
32 ration to maintain models, sales offices and signs, section
33 1602-115, if he is not an affiliate of a declarant, may not
34 exercise any other special declarant right, and is not sub-
35 ject to any liability or obligation as a declarant, except
36 the obligation to provide a public offering statement and
37 any liability arising as a result thereof.

1 (4) A successor to all special declarant rights held
2 by his transferor, who is not an affiliate of that declarant
3 and who succeeded to those rights pursuant to a deed in lieu
4 of foreclosure or a judgment or instrument conveying title
5 to units under subsection (c), may declare his intention in
6 a recorded instrument to hold those rights solely for trans-
7 fer to another person. Thereafter, until transferring all
8 special declarant rights to any person acquiring title to
9 any unit owned by the successor, or until recording an
10 instrument permitting exercise of all those rights, that
11 successor may not exercise any of those rights other than
12 any right held by his transferor to control the executive
13 board in accordance with the provisions of section 1603-103,
14 subsection (d), for the duration of any period of declarant
15 control, and any attempted exercise of those rights is void.
16 So long as a successor declarant may not exercise special
17 declarant rights under this subsection, he is not subject to
18 any liability or obligation as a declarant other than lia-
19 bility for his acts and omissions under section 1603-103,
20 subsection (e).

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

25 §1603-105. Termination of contracts and leases of declarant

26 If entered into before the executive board elected by
27 the unit owners pursuant to section 1603-103, subsection
28 (e), takes office: (1) Any management contract, employment
29 contract or lease of recreational or parking areas or facil-
30 ities; (2) any other contract or lease between the associ-
31 ation and a declarant or an affiliate of a declarant; or
32 (3) any contract or lease that is not bona fide or was
33 unconscionable to the unit owners at the time entered into
34 under the circumstances then prevailing, may be terminated
35 without penalty by the association at any time after the
36 executive board elected by the unit owners pursuant to
37 section 1603-103, subsection (e), takes office upon not less
38 than 90 days' notice to the other party. This section does
39 not apply to any lease, the termination of which would
40 terminate the condominium or reduce its size, unless the
41 real estate subject to that lease was included in the condo-
42 minium for the purpose of avoiding the right of the associa-
43 tion to terminate a lease under this section.

44 §1603-106. Bylaws

45 (a) The bylaws of the association must provide for:

1 (1) The number of members of the executive board and
2 the titles of the officers of the association;

3 (2) Election by the executive board of a president,
4 treasurer, secretary and any other officers of the associa-
5 tion the bylaws specify;

6 (3) The qualifications, powers and duties, terms of
7 office and manner of electing and removing executive board
8 members and officers and filling vacancies;

9 (4) Which, if any, of its powers the executive board
10 or officers may delegate to other persons or to a managing
11 agent;

12 (5) Which of its officers may prepare, execute, cer-
13 tify and record amendments to the declaration on behalf of
14 the association; and

15 (6) The method of amending the bylaws.

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

19 §1603-107. Upkeep of the condominium

20 (a) Except to the extent provided by the declaration,
21 subsection (b), or section 1603-113, subsection (h), the
22 association is responsible for maintenance, repair and re-
23 placement of the common elements, and each unit owner is
24 responsible for maintenance, repair and replacement of his
25 unit. Each unit owner shall afford to the association and
26 the other unit owners, and to their agents or employees, ac-
27 cess through his unit reasonably necessary for those pur-
28 poses. If damage is inflicted on the common elements or any
29 unit through which access is taken, the unit owner responsi-
30 ble for the damage, or the association if it is responsible,
31 is liable for the prompt repair thereof.

32 (b) In addition to the liability which a declarant has
33 under this Act as a unit owner, the declarant alone is lia-
34 ble for all expenses in connection with real estate subject
35 to development rights. No other unit owner and no other
36 portion of the condominium is subject to a claim for payment
37 of those expenses. Unless the declaration provides other-
38 wise, any income or proceeds from real estate subject to
39 development rights inures to the declarant.

40 §1603-108. Meetings

1 A meeting of the association shall be held at least
2 once each year. Special meetings of the association may be
3 called as provided in the Maine Nonprofit Corporation Act.
4 The bylaws must specify which of the association's officers,
5 not less than 10 nor more than 60 days in advance of any
6 meeting, shall cause notice to be hand delivered or sent
7 prepaid by United States' mail to the mailing address of
8 each unit or to any other mailing address designated in
9 writing by the unit owner. The notice of any meeting must
10 state the time and place of the meeting and the items on the
11 agenda, including the general nature of any proposed amend-
12 ment to the declaration or bylaws, any budget changes and
13 any proposal to remove a director or officer.

14 §1603-109. Quorums

15 (a) Unless the bylaws provide otherwise, a quorum is
16 deemed present throughout any meeting of the association if
17 persons entitled to cast 20% of the votes which may be cast
18 for election of the executive board are present in person or
19 by proxy at the beginning of the meeting. The bylaws may
20 require a larger percentage or a smaller percentage not
21 less than 10%.

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

26 §1603-110. Voting; proxies

27 (a) If only one of the multiple owners of a unit is
28 present at a meeting of the association, he is entitled to
29 cast all the votes allocated to that unit. If more than one
30 of the multiple owners are present, the votes allocated to
31 that unit may be cast only in accordance with the agreement
32 of a majority in interest of the multiple owners unless the
33 declaration expressly provides otherwise. There is majority
34 agreement if any one of the multiple owners casts the votes
35 allocated to that unit without protest being made promptly
36 to the person presiding over the meeting by any of the other
37 owners of the unit.

38 (b) Votes allocated to a unit may be cast pursuant to
39 a proxy duly executed by a unit owner. If a unit is owned
40 by more than one person, each owner of the unit may vote or
41 register protest to the casting of votes by the other owners
42 of the unit through a duly executed proxy. A unit owner may
43 not revoke a proxy given pursuant to this section except by
44 actual notice of revocation to the person presiding over a

1 meeting of the association. A proxy is void if it is not
2 dated or purports to be revocable without notice. A proxy
3 terminates 11 months after its date, unless it specifies a
4 shorter term.

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

10 (d) If the declaration requires that votes on speci-
11 fied matters affecting the condominium be cast by lessees
12 rather than unit owners of leased units: (i) The provisions
13 of subsections (a) and (b) apply to lessees as if they were
14 unit owners; (ii) unit owners who have leased their units
15 to other persons may not cast votes on those specified mat-
16 ters; and (iii) lessees are entitled to notice of meet-
17 ings, access to records, and other rights respecting those
18 matters as if they were unit owners. Unit owners shall also
19 be given notice of all meetings at which lessees may be
20 entitled to vote.

21 (e) No votes allocated to a unit owned by the associa-
22 tion may be cast.

23 §1603-111. Tort and contract liability

24 Neither the association nor any unit owner except the
25 declarant is liable for that declarant's torts in connection
26 with any part of the condominium which that declarant has
27 the responsibility to maintain. Otherwise, an action alleg-
28 ing a wrong done by the association shall be brought against
29 the association and not against any unit owner.

30 If the wrong accrued during any period of declarant
31 control, and if the association gives the declarant reason-
32 able notice of and an opportunity to defend against the ac-
33 tion, the declarant who then controlled the association is
34 liable to the association or to any unit owner: (1) For
35 all tort losses not covered by insurance suffered by the
36 association or that unit owner; and (2) for all costs
37 which the association would not have incurred but for the
38 breach of contract or other wrongful act or omission. In
39 any case where the declarant is liable to the association
40 under this section, the declarant is also liable for all
41 litigation expenses, including reasonable attorneys' fees,
42 incurred by the association. During any period in which the
43 control of the declarant is limited to the power to approve
44 actions of the association or executive board, as provided

1 in section 1603-103, subsection (d), the declarant shall be
2 liable under this section only for losses caused by the
3 exercise of declarant's right of disapproval. Any statute
4 of limitation affecting the association's right of action
5 under this section is tolled until the period of declarant
6 control terminates. A unit owner is not precluded from
7 bringing an action contemplated by this section because he
8 is a unit owner or a member or officer of the association.
9 Liens resulting from judgments against the association are
10 governed by section 1603-117, other liens affecting the con-
11 dominium.

12 §1603-112. Alienation of common elements

13 (a) Portions of the common elements may be conveyed or
14 subjected to a security interest by the association if per-
15 sons entitled to cast at least 80% of the votes in the asso-
16 ciation, including 80% of the votes allocated to units not
17 owned by a declarant, or any larger percentage the declara-
18 tion specifies, agree to that action; provided that all the
19 owners of units to which any limited common element is allo-
20 cated must agree in order to convey that limited common ele-
21 ment or subject it to a security interest. The declaration
22 may specify a smaller percentage only if all of the units in
23 the condominium are restricted exclusively to nonresidential
24 uses. Proceeds of the sale are an asset of the association.

25 (b) An agreement to convey common elements or subject
26 them to a security interest must be evidenced by the execu-
27 tion of an agreement, or ratifications thereof, in the same
28 manner as a deed, by the requisite number of unit owners.
29 The agreement must specify a date after which the agreement
30 will be void unless recorded before that date. The agree-
31 ment and all ratifications thereof must be recorded in every
32 county in which a portion of the condominium is situated and
33 is effective only upon recordation.

34 (c) The association, on behalf of the unit owners, may
35 contract to sell real estate in the condominium or subject
36 real estate to a security interest, but the contract is not
37 enforceable against the association until approved pursuant
38 to subsections (a) and (b). Thereafter, the association has
39 all powers necessary and appropriate to effect the convey-
40 ance or encumbrance, including the power to execute deeds or
41 other instrument.

42 (d) Any purported conveyance, encumbrance, judicial
43 sale or other voluntary or involuntary transfer of common
44 elements, unless made in accordance with this section or in
45 accordance with section 1603-117, subsection (b), is void.

1 (e) Any vote to sell, transfer or encumber common ele-
2 ments under this section may include a release of that real
3 estate from any or all restrictions imposed on that real
4 estate by the declaration or this Act, but may not deprive
5 any unit of its rights of access and support.

6 §1603-113. Insurance

7 (a) Commencing not later than the time of the first
8 conveyance of a unit to a person other than a declarant, the
9 association shall maintain, to the extent reasonably avail-
10 able:

11 (1) Property insurance on the common elements, insur-
12 ing against all risks of direct physical loss commonly
13 insured against or, in the case of a conversion condominium,
14 against fire and extended coverage perils. The total amount
15 of insurance after application of any deductibles shall be
16 not less than 80% of the actual cash value of the insured
17 property at the time the insurance is purchased and at each
18 renewal date, exclusive of land, excavations, foundations
19 and other items normally excluded from property policies;
20 and

21 (2) Liability insurance, including medical payments'
22 insurance, in an amount determined by the executive board
23 but not less than any amount specified in the declaration,
24 covering all occurrences commonly insured against for death,
25 bodily injury and property damage arising out of or in con-
26 nection with the use, ownership or maintenance of the common
27 elements.

28 (b) The insurance maintained under subsection (a),
29 paragraph (1), to the extent reasonably available, may, and
30 in the case of buildings containing units having horizontal
31 boundaries between them, shall include the units, but need
32 not include improvements and betterments installed by unit
33 owners.

34 (c) If the insurance described in subsection (a) is
35 not reasonably available, the association promptly shall
36 cause notice of that fact to be hand delivered or sent pre-
37 paid by United States' mail to all unit owners. The decla-
38 ration may require the association to carry any other insur-
39 ance, and the association in any event may carry any other
40 insurance it deems appropriate to protect the association or
41 the unit owners.

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

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

5 (2) The insurer waives its right to subrogation under
6 the policy against any unit owner of the condominium or mem-
7 bers of his household;

8 (3) No act or omission by any unit owner, unless act-
9 ing within the scope of his authority on behalf of the asso-
10 ciation, will void the policy or be a condition to recovery
11 under the policy; and

12 (4) If, at the time of a loss under the policy, there
13 is other insurance in the name of a unit owner covering the
14 same risk covered by the policy, the association's policy
15 provides primary insurance.

16 (e) Any loss covered by the property policy under sub-
17 section (a), paragraph (1), and subsection (b) shall be ad-
18 justed with the association, but the insurance proceeds for
19 that loss shall be payable to any insurance trustee desig-
20 nated for that purpose, or otherwise to the association, and
21 not to any mortgagee. The insurance trustee or the associa-
22 tion shall hold any insurance proceeds in trust for unit
23 owners and lien holders as their interest may appear. Sub-
24 ject to the provisions of subsection (h), the proceeds shall
25 be disbursed first for the repair or restoration of the dam-
26 aged property, and unit owners and lien holders are not
27 entitled to receive payment of any portion of the proceeds
28 unless there is a surplus of proceeds after the common ele-
29 ments and units have been completely repaired or restored,
30 or the condominium is terminated.

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

34 (g) An insurer that has issued an insurance policy
35 under this section shall issue certificates or memoranda of
36 insurance to the association and, upon request, to any unit
37 owner or mortgagee. The insurer issuing the policy may not
38 cancel or refuse to renew it until 30 days after notice of
39 the proposed cancellation or nonrenewal has been mailed to
40 the association, each unit owner and each mortgagee to whom
41 a certificate or memorandum of insurance has been issued at
42 their respective last known addresses.

1 (h) Any portion of the condominium for which insurance
2 is required under this section which is damaged or destroyed
3 shall be repaired or replaced promptly by the association
4 unless: (1) The condominium is terminated; (2) repair or
5 replacement would be illegal under any state or local health
6 or safety statute or ordinance; or (3) 80% of the unit
7 owners, including every owner of a unit or assigned limited
8 common element which will not be rebuilt, vote not to
9 rebuild. The cost of repair or replacement in excess of
10 insurance proceeds and reserves is a common expense. If the
11 entire condominium is not repaired or replaced: (1) The
12 insurance proceeds attributable to the damaged common ele-
13 ments shall be used to restore the damaged area to a condi-
14 tion compatible with the remainder of the condominium; (2)
15 the insurance proceeds attributable to units and limited
16 common elements which are not rebuilt shall be distributed
17 to the owners of those units and the owners of the units to
18 which those limited common elements were allocated; and (3)
19 the remainder of the proceeds shall be distributed to all
20 the unit owners or lien holders as their interests may
21 appear in proportion to the common element interests of all
22 the unit owners. If the unit owners vote not to rebuild any
23 unit, that unit's allocated interests are automatically
24 reallocated upon the vote as if the unit had been condemned
25 under section 1601-107, subsection (a), and the association
26 promptly shall prepare, execute and record an amendment to
27 the declaration reflecting the reallocations. Notwithstand-
28 ing the provisions of this subsection, section 1602-118 gov-
29 erns the distribution of insurance proceeds if the condomi-
30 num is terminated.

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

34 §1603-114. Surplus funds

35 Unless otherwise provided in the declaration, any sur-
36 plus funds of the association remaining after payment of or
37 provision for common expenses and any prepayment of reserves
38 must be paid to the unit owners in proportion to their com-
39 mon expense liability or credited to them to reduce their
40 future common expense assessments.

41 §1603-115. Assessments for common expenses

42 (a) Until the association makes a common expense
43 assessment, the declarant shall pay all the common expenses.
44 After any assessment has been made by the association,
45 assessments thereafter must be made at least annually, based
46 on a budget adopted at least annually by the association.

1 (b) Except for assessments under subsections (c) and
2 (d), common expenses shall be assessed against all the units
3 in accordance with the allocations set forth in the declara-
4 tion pursuant to section 1602-107. Any past due common
5 expense assessment or installment thereof shall bear inter-
6 est at the rate established by the association not exceeding
7 18% per year.

8 (c) To the extent required by the declaration:

9 (1) Any common expense associated with the mainte-
10 nance, repair or replacement of a limited common element
11 shall be assessed against the units to which that limited
12 common element is assigned equally, or in any other propor-
13 tion that the declaration provides;

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

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

22 (d) Assessments to pay a judgment against the associa-
23 tion, section 1603-117, subsection (a), shall be made only
24 against the units in the condominium at the time the judg-
25 ment was entered, in proportion to their common expense lia-
26 bility.

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

30 (f) If common expense liabilities are reallocated,
31 common expense assessments and any installment thereof not
32 yet due shall be recalculated in accordance with the reallo-
33 cated common expense liabilities.

34 §1603-116. Lien for assessments

35 (a) The association has a lien on a unit for any
36 assessment levied against that unit or fines imposed against
37 its unit owner from the time the assessment or fine becomes
38 due. The association's lien may be foreclosed in like man-
39 ner as a mortgage on real estate. Unless the declaration
40 otherwise provides, fees, charges, late charges, fines and
41 interest charged pursuant to section 1603-102, subsection

1 (a), paragraphs (10), (11) and (12) are enforceable as
2 assessments under this section. If an assessment is payable
3 in installments, the full amount of the assessment is a lien
4 from the time the first installment thereof becomes due.

5 (b) A lien under this section is prior to all other
6 liens and encumbrances on a unit except: (1) Liens and
7 encumbrances recorded before the recordation of the declara-
8 tion; (2) A first mortgage recorded before or after the
9 date on which the assessment sought to be enforced becomes
10 delinquent; and (3) Liens for real estate taxes and other
11 governmental assessments or charges against the unit. This
12 subsection does not affect the priority of mechanics' or
13 materialmen's liens, or the priority of liens for other
14 assessments made by the association. The lien under this
15 section is not subject to the provisions of Title 14,
16 section 4561 and Title 18-A, section 2-201 et seq., as they
17 or their equivalents may be amended or modified from time to
18 time.

19 (c) Unless the declaration otherwise provides, if 2 or
20 more associations have liens for assessments created at any
21 time on the same real estate, those liens have equal prior-
22 ity.

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

27 (e) A lien for unpaid assessments is extinguished
28 unless proceedings to enforce the lien are instituted within
29 3 years after the full amount of the assessments become due.

30 (f) This section does not prohibit actions to recover
31 sums for which subsection (a) creates a lien, or to prohibit
32 an association from taking a deed in lieu of foreclosure.

33 (g) A judgment or decree in any action or suit brought
34 under this section shall include costs and reasonable attor-
35 ney's fees for the prevailing party.

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

42 §1603-117. Other liens affecting the condominium

1 (a) A judgment for money against the association, if a
2 lien order is filed with the Register of Deeds of the county
3 where the condominium is located, as provided in Title 14,
4 section 3132, as it or its equivalent may be amended or
5 modified from time to time, is not a lien on the common ele-
6 ments, but is a lien in favor of the judgment lienholder
7 against all of the units in the condominium at the time the
8 judgment was entered. No other property of a unit owner is
9 subject to the claims of creditors of the association.

10 (b) Notwithstanding the provisions of subsection (a),
11 if the association has granted a security interest in the
12 common elements to a creditor of the association pursuant to
13 section 1603-112, the holder of that security interest must
14 exercise its right against the common elements before its
15 judgment lien on any unit may be enforced.

16 (c) Whether perfected before or after the creation of
17 the condominium, if a lien other than a mortgage, including
18 a judgment lien or lien attributable to work performed or
19 materials supplied before creation of the condominium,
20 becomes effective against 2 or more units, the unit owner of
21 an affected unit may pay to the lienholder the amount of the
22 lien attributable to his unit, and the lienholder, upon
23 receipt of payment, promptly shall deliver a release of the
24 lien covering the unit. The amount of the payment must be
25 proportionate to the ratio which that unit owner's common
26 expense liability bears to the common expense liabilities of
27 all unit owners whose units are subject to the lien. After
28 payment, the association may not assess or have a lien
29 against that unit owner's unit for any portion of the common
30 expenses incurred in connection with that lien.

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

35 §1603-118. Association records

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

41 §1603-119. Association as trustee

42 With respect to a 3rd person dealing with the associa-
43 tion in the association's capacity as a trustee under

1 section 1602-118 and 1603-113, the existence of trust powers
2 and their proper exercise by the association may be assumed
3 without inquiry. A 3rd person is not bound to inquire
4 whether the association has power to act as trustee or is
5 properly exercising trust powers and a 3rd person, without
6 actual knowledge that the association is exceeding or
7 improperly exercising its powers, is fully protected in
8 dealing with the association as if it possessed and properly
9 exercised the powers it purports to exercise. A 3rd person
10 is not bound to assure the proper application of trust
11 assets paid or delivered to the association in its capacity
12 as trustee.

13 ARTICLE 4
14 PROTECTION OF CONDOMINIUM PURCHASERS

15 §1604-101. Applicability; waiver

16 (a) This article applies to all units subject to this
17 Act, except as provided in subsection (b) or as modified or
18 waived by agreement of purchasers of units in a condominium
19 in which all units are restricted to nonresidential use.

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

22 (1) A gratuitous disposition of a unit;

23 (2) A disposition pursuant to court order;

24 (3) A disposition by a government or governmental
25 agency;

26 (4) A disposition by foreclosure or deed in lieu of
27 foreclosure;

28 (5) A disposition to a person in the business of
29 selling real estate who intends to offer those units to pur-
30 chasers; or

31 (6) A disposition which may be cancelled at any time
32 and for any reason by the purchaser without penalty.

33 §1604-102. Liability for public offering statement
34 requirements

35 (a) Except as provided in subsection (b) or section
36 1604-106, a declarant must, prior to the offering of any

1 interest in a unit to the public, prepare a public offering
2 statement conforming to the requirements of sections
3 1604-103, 1604-104 and 1604-105.

4 (b) A declarant may transfer responsibility for pre-
5 paration of all or a part of the public offering statement
6 to a successor declarant or to a person in the business of
7 selling real estate who intends to offer units in the condo-
8 minium for his own account. In the event of any such trans-
9 fer, the transferor must provide the transferee with any
10 information necessary to enable the transferee to fulfill
11 the requirements of subsection (a).

12 (c) Any declarant or other person in the business of
13 selling real estate who offers a unit for his own account to
14 a purchaser must deliver a public offering statement in the
15 manner prescribed in section 1604-107, subsection (a). If
16 the offeror prepared all or a part of the public offering
17 statement, he is liable under sections 1604-107 and
18 1604-116, for any materially false or misleading statement
19 set forth therein or for any omission of material fact
20 therefrom with respect to that portion of the public offer-
21 ing statement which he prepared. If a declarant did not
22 prepare any part of a public offering statement that he
23 delivers, he is not liable for any materially false or mis-
24 leading statement set forth therein or for any omission of
25 material fact therefrom unless he had actual knowledge of
26 such statement or omission or, in the exercise of reasonable
27 care, could have known of such statement or omission.

28 (d) If a unit is part of a condominium and is part of
29 any other real estate regime in connection with the sale of
30 which the delivery of a public offering statement is re-
31 quired under the laws of this State, a single public offer-
32 ing statement conforming to the requirements of sections
33 1604-103, 1604-104 and 1604-105, as those requirements
34 relate to all real estate regimes in which the unit is
35 located, and to any other requirements imposed under the
36 laws of this State, may be prepared and delivered in lieu of
37 providing 2 or more public offering statements.

38 §1604-103. Public offering statement; general provisions

39 (a) Except as provided in subsection (b), a public
40 offering statement must contain or fully and accurately dis-
41 close:

42 (1) The name and principal address of the declarant
43 and of the condominium;

1 (2) A general description of the condominium, includ-
2 ing, to the extent possible, the types, number and
3 declarant's schedule of commencement and completion of con-
4 struction of buildings and amenities which declarant antici-
5 pates including in the condominium;

6 (3) The number of units in the condominium;

7 (4) Copies and a brief narrative description of the
8 significant features of the declaration, other than the
9 plats and plans, and any other recorded covenants, condi-
10 tions, restrictions and reservations affecting the condomin-
11 ium; the bylaws and any rules and regulations of the associ-
12 ation; copies of any contracts and leases to be signed by
13 purchasers at closing, and a brief narrative description of
14 any contracts or leases that will or may be subject to can-
15 cellation by the association under section 1603-105;

16 (5) Any current balance sheet and a projected budget
17 for the association, either within or as an exhibit to the
18 public offering statement, for one year after the date of
19 the first conveyance to a purchaser; and thereafter the cur-
20 rent budget of the association, a statement of who prepared
21 the budget, and a statement of the budget's assumptions con-
22 cerning occupancy and inflation factors. The budget must
23 include, without limitation:

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

27 (ii) A statement of the amount and purpose of any
28 other reserves;

29 (iii) The projected common expense assessment by cate-
30 gory of expenditures for the association; and

31 (iv) The projected monthly common expense assessment
32 for each type of unit;

33 (6) Any services not reflected in the budget that the
34 declarant provides, or expenses that he pays, and that he
35 expects may become at any subsequent time a common expense
36 of the association and the projected common expense assess-
37 ment attributable to each of those services or expenses for
38 the association and for each type of unit;

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

1 (8) A description of any liens, defects or encum-
2 brances on or affecting the title to the condominium which
3 are noted in the property description included in the decla-
4 ration;

5 (9) A description of any financing offered or arranged
6 by the declarant;

7 (10) The terms and significant limitations of any war-
8 ranties provided by the declarant, including statutory war-
9 ranties and limitations on the enforcement thereof or on
10 damages;

11 (11) A statement that:

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

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

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

22 (12) A statement of any unsatisfied judgment or pend-
23 ing suits against the association, and the status of any
24 pending suits material to the condominium of which a declar-
25 ant has actual knowledge;

26 (13) A statement that any deposit made in connection
27 with the purchase of a unit will be held in an escrow ac-
28 count until closing and will be returned to the purchaser if
29 the purchaser cancels the contract pursuant to section
30 1604-107, together with the name and address of the escrow
31 agent;

32 (14) Any restraints on alienation of any portion of
33 the condominium;

34 (15) A description of the insurance coverage provided
35 for the benefit of unit owners;

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

1 (17) The extent to which financial arrangements have
2 been provided for completion of all improvements labeled
3 "MUST BE BUILT" pursuant to section 1604-118, Declarant's
4 obligation to complete and restore;

5 (18) A description of any common elements which may be
6 alienated pursuant to section 1603-112, and any conditions
7 on that right to alienate;

8 (19) A brief narrative description of any zoning and
9 other land use requirements affecting the condominium; and

10 (20) All unusual and material circumstances, features
11 and characteristics of the condominium and the units.

12 (b) If a condominium composed of not more than 12
13 units is not subject to development rights and no power is
14 reserved to a declarant to make the condominium part of a
15 larger condominium, group of condominiums or other real
16 estate, a public offering statement may but need not include
17 the information otherwise required by subsection (a), para-
18 graphs (9), (10), (15), (16), (17), (18), (19) and (20), and
19 the narrative description of documents required by subsec-
20 tion (a), paragraph (4).

21 (c) A declarant promptly shall amend the public offer-
22 ing statement to report any material change in the informa-
23 tion required by this section.

24 §1604-104. Public offering statement; condominiums subject
25 to development rights

26 If the declarant provides that a condominium is subject
27 to any development rights, the public offering statement
28 shall disclose, in addition to the information required by
29 section 1604-103:

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

32 (2) A statement of how many or what percentage of the
33 units which may be created will be restricted exclusively to
34 residential use, or a statement that no representations are
35 made regarding use restrictions;

36 (3) If any of the units that may be built within real
37 estate subject to development rights are not to be re-
38 stricted exclusively to residential use, a statement, with
39 respect to each portion of that real estate, of the maximum
40 percentage of the floor areas of all units that may be cre-

1 ated therein, that are not restricted exclusively to resi-
2 dential use;

3 (4) A brief narrative description of any development
4 rights reserved by a declarant and of any conditions relat-
5 ing to or limitations upon the exercise of development
6 rights;

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

10 (6) A statement of the extent to which any buildings
11 or other improvements that may be erected pursuant to any
12 development right in any part of the condominium will be
13 compatible with existing buildings and improvements in the
14 condominium in terms of architectural style, quality of
15 construction and size, or a statement that no assurances are
16 made in those regards;

17 (7) General descriptions of all other improvements
18 that may be made and limited common elements that may be
19 created within any part of the condominium pursuant to any
20 development right reserved by the declarant, or a statement
21 that no assurances are made in that regard;

22 (8) A statement of any limitations as to the locations
23 of any building or other improvement that may be made within
24 any part of the condominium pursuant to any development
25 right reserved by the declarant, or a statement that no
26 assurances are made in that regard;

27 (9) A statement that any limited common elements cre-
28 ated pursuant to any development right reserved by the
29 declarant will be of the same general types and sizes as the
30 limited common elements within other parts of the condomin-
31 ium, or a statement of the types and sizes planned, or a
32 statement that no assurances are made in that regard;

33 (10) A statement that the proportion of limited common
34 elements to units created pursuant to any development right
35 reserved by the declarant will be approximately equal to the
36 proportion existing within other parts of the condominium,
37 or a statement of any other assurances in that regard, or a
38 statement that no assurances are made in that regard;

39 (11) A statement that all restrictions in the declara-
40 tion affecting use, occupancy and alienation of units will
41 apply to any units created pursuant to any development right
42 reserved by the declarant, or a statement of any

1 differentiations that may be made as to those units, or a
2 statement that no assurances are made in that regard; and

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

7 §1604-105. Public offering statement; condominiums contain-
8 ing conversion buildings

9 (a) The public offering statement of a condominium
10 containing any conversion building must contain, in addition
11 to the information required by section 1604-103:

12 (1) A statement by the declarant, based on a report
13 prepared by an independent architect or engineer, who is not
14 affiliated with the declarant, describing the present condi-
15 tion of all structural components, waste disposal system,
16 water system and mechanical and electrical installations
17 material to the use and enjoyment of the building;

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

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

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

28 §1604-106. Public offering statement; condominium
29 securities

30 If an interest in a condominium is currently registered
31 with the Securities and Exchange Commission of the United
32 States or the Securities Division of the Bureau of Banking
33 of this State, a declarant satisfies all requirements relat-
34 ing to the preparation of a public offering statement of
35 this Act if he delivers to the purchaser a copy of the
36 public offering statement filed with the Securities and
37 Exchange Commission or the Securities Division. When a con-
38 dominium is located in a state other than Maine, under the
39 laws of which a public offering statement is required in
40 detail similar to the requirements of this Act, a declarant
41 satisfies all requirements relating to the preparation of a

1 public offering statement if he delivers to the purchaser a
2 copy of such public offering statement.

3 §1604-107. Purchaser's right to cancel

4 (a) A person required to deliver a public offering
5 statement pursuant to section 1604-102, subsection (c),
6 shall provide a purchaser of a unit with a copy of the
7 public offering statement and all amendments thereto before
8 conveyance of that unit, and not later than the date of any
9 contract of sale. Unless a purchaser is given the public
10 offering statement more than 15 days before execution of a
11 contract for the purchase of a unit, the purchaser, before
12 conveyance, may cancel the contract within 15 days after
13 first receiving the public offering statement.

14 (b) If a purchaser elects to cancel a contract pur-
15 suant to subsection (a), he may do so by hand delivering
16 notice thereof to the declarant or by mailing notice thereof
17 by prepaid United States' mail to the declarant or to his
18 agent for service of process. Cancellation is without pen-
19 alty and all payments made by the purchaser before cancella-
20 tion shall be refunded promptly.

21 (c) If a person required to deliver a public offering
22 statement pursuant to section 1604-102, subsection (c),
23 fails to provide a purchaser to whom a unit is conveyed with
24 that public offering statement and all amendments thereto as
25 required by subsection (a), the purchaser in addition to any
26 rights to damages or other relief is entitled to receive
27 from the declarant an amount equal to 10% of the sales price
28 of the unit.

29 §1604-108. Resales of units

30 (a) Except in the case of a sale where delivery of a
31 public offering statement is required, or unless exempt
32 under section 1604-101, subsection (b), a unit owner shall
33 furnish to a purchaser before execution of any contract for
34 sale of a unit, or otherwise before conveyance, a copy of
35 the declaration, other than the plats and plans, the bylaws,
36 the rules or regulations of the association, and a reason-
37 ably current certificate containing:

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

41 (2) A statement setting forth the amount of the
42 monthly common expense assessment and any unpaid common

1 expense or special assessment currently due and payable from
2 the selling unit owner;

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

5 (4) A statement of any capital expenditures antici-
6 pated by the association for the current and 2 next succeed-
7 ing fiscal year;

8 (5) A statement of the amount of any reserves for cap-
9 ital expenditures and of any portions of those reserves des-
10 ignated by the association for any specified projects;

11 (6) The most recent regularly prepared balance sheet
12 and income and expense statement, if any, of the associa-
13 tion;

14 (7) The current operating budget of the association;

15 (8) A statement of any unsatisfied judgments against
16 the association and the status of any pending suits in which
17 the association is a defendant;

18 (9) A statement describing any insurance coverage pro-
19 vided for the benefit of unit owners;

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

24 (11) A statement as to whether the executive board has
25 knowledge of any violations of the health or building codes
26 with respect to the unit, the limited common elements
27 assigned thereto, or any other portion of the condominium;
28 and

29 (12) A statement of the remaining term of any lease-
30 hold estate affecting the condominium and the provisions
31 governing any extensions or renewal thereof.

32 (b) The association, within 10 days after a request by
33 a unit owner and payment by such owner of any reasonable fee
34 therefor established by the association, shall furnish a
35 certificate containing the information necessary to enable
36 the unit owner to comply with this section. A unit owner
37 providing a certificate pursuant to subsection (a) is not
38 liable to the purchaser for any erroneous information pro-
39 vided by the association and included in the certificate.

1 (c) A purchaser is not liable for any unpaid assess-
2 ment or fee greater than the amount set forth in the certifi-
3 cate prepared by the association. A unit owner is not lia-
4 ble to a purchaser for the failure or delay of the associa-
5 tion to provide the certificate in a timely manner, but the
6 purchase contract is voidable by the purchaser until the
7 certificate has been provided and for 5 days thereafter or
8 until conveyance, whichever first occurs.

9 §1604-109. Escrow of deposits

10 Any deposit made in connection with the purchase or
11 reservation of a unit from a person required to deliver a
12 public offering statement pursuant to section 1604-102, sub-
13 section (c) shall be placed in escrow by declarant and held
14 either in this State or in the state where the unit is
15 located in an account designated solely for that purpose by
16 a licensed title insurance company, an attorney, a licensed
17 real estate broker or an institution whose accounts are
18 insured by a governmental agency or instrumentality until:
19 (1) Delivered to the declarant at closing; (2) Delivered
20 to the declarant because of purchaser's default under a con-
21 tract to purchase the unit; or (3) Refunded to the pur-
22 chaser.

23 §1604-110. Release of liens

24 In the case of a sale of a unit where delivery of a
25 public offering statement is required pursuant to section
26 1604-102, subsection (c), a seller shall, before or simulta-
27 neously with conveying a unit, record or furnish to the pur-
28 chaser releases of all liens affecting that unit and its
29 common element interest which the purchaser does not
30 expressly agree to take subject to or assume, or shall pro-
31 vide a surety bond or substitute collateral for or insurance
32 against the lien. This section does not apply to any real
33 estate which a declarant has the right to withdraw.

34 Before conveying real estate to the association, the
35 declarant shall have that real estate released from:

36 (1) All liens, the foreclosure of which would deprive
37 unit owners of any right of access to or easement of support
38 of their units; and

39 (2) All other liens on that real estate, unless the
40 public offering statement describes certain real estate
41 which may be conveyed subject to liens in specified amounts.

42 §1604-111. Conversion buildings

1 (a) A declarant of a condominium containing conversion
2 buildings, and any person in the business of selling real
3 estate for his own account who intends to offer units in
4 such a condominium shall give each of the residential ten-
5 ants and any residential subtenant in possession of a por-
6 tion of a conversion building notice of the conversion and
7 provide those persons with the public offering statement no
8 later than 120 days before the declarant will require the
9 tenants and any subtenant in possession to vacate. The
10 notice must set forth generally the rights of tenants and
11 subtenants under this section and shall be hand delivered to
12 the unit or mailed by prepaid United States' mail to the
13 tenant and subtenant at the address of the unit or any other
14 mailing address provided by a tenant. No tenant or
15 subtenant may be required by the declarant to vacate upon
16 less than 120 days' notice, except by reason of nonpayment
17 of rent, waste or conduct that disturbs other tenants'
18 peaceful enjoyment of the premises, and the terms of the
19 tenancy may not be altered during that period. Failure of a
20 declarant to give notice as required by this section is a
21 defense to an action for possession.

22 (b) For 60 days after delivery or mailing of the
23 notice described in subsection (a), the declarant shall
24 offer to convey each unit or proposed unit occupied for res-
25 idential use to the tenant who leases that unit. If a
26 tenant fails to purchase the unit during that 60-day period,
27 the declarant may not offer to dispose of an interest in
28 that unit during the following 180 days at a price or on
29 terms more favorable to the offeree than the price or terms
30 offered to the tenant. This subsection does not apply to
31 any unit in a conversion building if that unit will be re-
32 stricted exclusively to nonresidential use or the boundaries
33 of the converted unit do not substantially conform to the
34 dimensions of the residential unit before conversion.

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

43 (d) If a notice of conversion specifies a date by
44 which a unit or proposed unit must be vacated, and otherwise
45 complies with the provisions of Title 14, section 6001, the
46 notice also constitutes a notice to vacate specified by that
47 statute.

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

3 (f) Nothing in this Act shall be construed to prohibit
4 a municipality from enacting ordinances imposing more strin-
5 gent standards than those contained in subsections (a) and
6 (b), or otherwise provided for the protection of tenants or
7 the conversion of rental housing stock.

8 §1604-112. Express warranties of quality

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

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

19 (2) Any model or description of the physical charac-
20 teristics of the condominium, including plans and specifica-
21 tions of or for improvements, creates an express warranty
22 that the condominium, including plans and specifications of
23 or for improvements, creates an express warranty that the
24 condominium will substantially conform to the model or de-
25 scription;

26 (3) Any written description of the quantity or extent
27 of the real estate comprising the condominium, including
28 plats or surveys, creates an express warranty that the con-
29 dominium will conform to the description, subject to custom-
30 ary tolerances; and

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

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

39 (c) Any conveyance of a unit transfers to the pur-
40 chaser all express warranties of quality made by previous
41 sellers.

1 §1604-113. Implied warranties of quality

2 (a) A declarant and any person in the business of
3 selling real estate for his own account warrants that a unit
4 will be in at least as good condition at the earlier of the
5 time of the conveyance or delivery of possession as it was
6 at the time of contracting, reasonable wear and tear
7 excepted.

8 (b) A declarant and any person in the business of
9 selling real estate for his own account impliedly warrants
10 that a unit and the common elements in the condominium are
11 suitable for the ordinary uses of real estate of its type
12 and that any improvements made or contracted for by him, or
13 made by any person before the creation of the condominium,
14 will be:

15 (1) Free from defective materials; and

16 (2) Constructed in accordance with applicable law, ac-
17 ording to sound engineering and construction standards and
18 in a workmanlike manner.

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

24 (d) Warranties imposed by this section may be excluded
25 or modified as specified in section 1604-114.

26 (e) For purposes of this section, improvements made or
27 contracted for by an affiliate of a declarant, section
28 1601-103, paragraph (1), are made or contracted for by the
29 declarant.

30 (f) Any conveyance of a unit transfers to the pur-
31 chaser all of the declarant's implied warranties of quality.

32 §1604-114. Exclusion of modification or implied warranties of
33 quality

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

37 (1) May be excluded or modified by agreement of the
38 parties; and

1 (2) Are excluded by expression of disclaimer, such as
2 "as is," "with all faults," or other language which in com-
3 mon understanding calls the buyer's attention to the exclu-
4 sion of warranties.

5 (b) With respect to a purchaser of a unit that may be
6 occupied for residential use, no general disclaimer of
7 implied warranties of quality is effective, but a declarant
8 may disclaim liability in an instrument signed by the pur-
9 chaser, for a specified defect or specified failure to com-
10 ply with applicable law, if the defect or failure entered
11 into and became a part of the basis of the bargain.

12 §1604-115. Statute of limitations for warranties

13 (a) A judicial proceeding for breach of any obligation
14 arising under section 1604-112 or 1604-113 must be commenced
15 within 6 years after the cause of action accrues, but the
16 parties may agree to reduce the period of limitation to not
17 less than 2 years. With respect to a unit that may be occu-
18 pled for residential use, an agreement to reduce the period
19 of limitation must be evidenced by a separate instrument
20 executed by the purchaser.

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

24 (1) As to a unit, at the time the purchaser to whom
25 the warranty is first made enters into possession if a
26 possessory interest was conveyed or at the time of accep-
27 tance of the instrument of conveyance if a nonpossessory
28 interest was conveyed; and

29 (2) As to each common element, at the time the common
30 element is completed or, if later:

31 (i) As to a common element which may be added to the
32 condominium or portion thereof, at the time the first
33 unit therein is conveyed to a bona fide purchaser; or

34 (ii) As to a common element within any other portion
35 of the condominium, at the time the first unit in the
36 condominium is conveyed to a bona fide purchaser.

37 (c) If a warranty of quality explicitly extends to
38 future performance or duration of any improvement or compo-
39 nent of the condominium, the cause of action accrues at the
40 time the breach is discovered or at the end of the period
41 for which the warranty explicitly extends, whichever is ear-
42 lier.

1 §1604-116. Effect of violations on rights of action;
2 attorney's fees

3 If a declarant or any other person subject to this Act
4 fails to comply with any provision hereof or any provision
5 of the declaration or bylaws, any person or class of persons
6 adversely affected by that failure has a claim for appropri-
7 ate relief. Punitive damages may be awarded in the case of
8 a willful failure to comply with this Act. The court, in an
9 appropriate case, may award reasonable attorney's fees.

10 §1604-117. Labeling of promotional material

11 If any improvement contemplated in a condominium is
12 labeled "NEED NOT BE BUILT" on a plat or plan, or is to be
13 located within a portion of the condominium with respect to
14 which the declarant has reserved a development right, no
15 promotional material may be displayed or delivered to pros-
16 pective purchasers which describes or portrays that improve-
17 ment, unless the description or portrayal of the improvement
18 in the promotional material is conspicuously labeled or
19 identified as "NEED NOT BE BUILT."

20 §1604-118. Declarant's obligation to complete and restore

21 (a) The declarant shall complete all improvements
22 labeled "MUST BE BUILT" on plats or plans prepared pursuant
23 to section 1602-109.

24 (b) The declarant is subject to liability for the
25 prompt repair and restoration, to a condition compatible
26 with the remainder of the condominium, of any portion of the
27 condominium affected by the exercise of rights reserved pur-
28 suant to or created by sections 1602-110, 1602-111,
29 1602-112, 1602-113, 1602-115 and 1602-116.

30 STATEMENT OF FACT

31 The present Maine condominium laws are known as the
32 Unit Ownership Act and are found in Title 33, chapter 10.
33 The Unit Ownership Act was adopted in 1965 and, although
34 sufficient to provide legislative authority for the estab-
35 lishment of certain kinds of condominiums, it was written at
36 a time when the condominium form of ownership was in its
37 infancy in the United States. Since that time, the explo-
38 sive growth in condominium projects has led to a vast
39 proliferation of judicial decisions and statutes governing
40 many areas of condominium construction, marketing and opera-
41 tion which are not adequately covered by the Unit Ownership
42 Act.

1 The proposed Maine Condominium Act, containing 4 arti-
2 cles, has been prepared by a committee appointed by the Real
3 Estate and Title Section of the Maine Bar Association. It
4 is based on the Uniform Condominium Act, which was approved
5 by the Commissioners on Uniform State Laws in 1977, and by
6 the American Bar Association in 1978.

7 Article 1 of the Act contains general provisions.

8 Applicability. The Act applies to all condominiums
9 created after its effective date. Certain provisions
10 of the Act, covering taxation, eminent domain, applica-
11 bility of local ordinances, powers of owners' associa-
12 tions, liabilities, liens for assessments, resales of
13 units and others, would apply to condominiums created
14 before the effective date of the Act, but only with
15 respect to events and circumstances occurring after
16 that date. The Act contains a savings clause to pre-
17 vent it from invalidating any condominium documents
18 existing as of the date of the Act. In addition, con-
19 dominiums created before the effective date may choose,
20 by amending their documentation, to be fully subject to
21 the provisions of the Act.

22 Local laws and regulations. The Act preserves the
23 validity of local land use ordinances as they apply to
24 condominiums, but prohibits any requirements for condo-
25 miniums in local ordinances that would not also be
26 applicable to other physically identical developments.
27 It also prohibits any municipality from adopting or
28 enforcing any local ordinances which conflict with the
29 provisions of the Act.

30 Eminent domain. Existing law does not cover the pos-
31 sibility of a condominium project being taken in whole
32 or in part under the power of eminent domain. The Act
33 deals with this possibility in an equitable fashion.

34 Other provisions. The Act contains the usual provi-
35 sions regarding the applicability of other principles of
36 law, prohibition on implicit repeal and severability of
37 provisions. It also incorporates in the law the provision
38 that no document may be unconscionable, and that all actions
39 are governed by an obligation of good faith. Finally, it
40 provides that loans secured by a first mortgage of a condo-
41 minium unit are legal investments for financial insti-
42 tutions.

43 Article 2 concerns the creation, alteration and termi-
44 nation of condominiums.

1 Documents. The Act allows the condominium documents to
2 describe the condominium and its units and common ele-
3 ments with great flexibility, but also provides certain
4 standards for those instances where the condominium
5 documents do not cover matters of importance to the
6 creation of a condominium. For example, unit bounda-
7 ries may be described differently in the declaration,
8 but, if not described at all, the statute provides a
9 standard description.

10 Failure to comply. Of some importance is a new provi-
11 sion in the Act to the effect that an "insubstantial
12 failure" of the declaration to comply with the Act will
13 not affect the marketability of title to a unit. The
14 absence of such a provision in the existing Unit Owner-
15 ship Act has, on occasion, caused some problems.

16 Condominium character. A major feature of the Act is
17 the authorization for condominiums to be more flexible
18 than at present. The Act permits a developer to remove
19 unused real estate from a condominium, to add real
20 estate to a condominium, to create additional units
21 after the condominium has been declared, or to adjust
22 the nature of the units within a condominium. These
23 features of the Act are linked to detailed disclosure
24 requirements on the part of the developer so that buy-
25 ers may know what changes may or may not be taking
26 place in the future.

27 Leasehold condominiums. The Act specifically author-
28 izes leasehold condominiums, that is, condominiums
29 built on land leased to the developer for a long period
30 of time.

31 These condominiums have not been used in Maine because
32 of doubts regarding the authority to create them under
33 existing law.

34 Interests; votes; expenses. The Act permits greater
35 flexibility in the allocation of common element owner-
36 ship interests, votes in the association, and common
37 expense assessment to provide for the most equitable
38 arrangement as long as certain standards of allocation
39 and disclosure are met.

40 Plats and plans. The Act details requirements for
41 plats and plans needed to create a declaration, assur-
42 ing purchasers of standardized and complete information
43 regarding the project.

1 Other matters. The Act contains detailed provisions
2 governing the developer's rights to maintain sales
3 offices on the premises and to have an easement to com-
4 plete construction, and the procedures under which con-
5 dominium documents may be amended or the condominium
6 terminate.

7 Article 3 concerns the management of the condominium.

8 Unit owners' association. The Act requires the unit
9 owners' association to be incorporated as a nonprofit
10 corporation, though present law permits unincorporated
11 associations. The extensive provisions of Title 13-B,
12 governing nonprofit corporations, will clarify the
13 rights of members of the association.

14 Association's powers. The Act specifies the powers of
15 the unit owners' association and clarifies a number of
16 areas not covered by the existing law. For example,
17 the Act makes it clear that the owners' association may
18 impose charges for late payment of assessments and levy
19 reasonable fines for violations of the condominium
20 documents.

21 Declarant control. The Act addresses with specific
22 detail the critical period of declarant control of a
23 condominium. This is the period between the creation
24 of the condominium and the sale of the units, when the
25 declarant establishes the practices and procedures of
26 the association for the benefit of future owners.
27 Among other protective provisions, the Act provides
28 that agreements entered into by the association during
29 this period of time are subject to certain termination
30 provisions by the owners once they have assumed control
31 of the association.

32 Association procedures. A number of provisions guar-
33 antee to the owners proper conduct of the association
34 through the holding of meetings, required quorum limits
35 and voting rights.

36 Liability. Provisions govern the tort and contract
37 liability of the association and its duties with
38 respect to insuring the common elements and units.

39 Assessments. The Act covers the ability of the associ-
40 ation to assess the unit owners for common expenses and
41 to enforce these assessments. In particular, the Act
42 specifies which liens and mortgages have priority over
43 the assessment for common expenses and which do not.

1 Article 4 contains provisions protecting purchasers of
2 condominiums.

3 General provisions. A developer must provide pur-
4 chasers with an offering statement disclosing specified
5 matters material to the project prior to entering into
6 a contract for sale of a unit. A purchaser has the
7 opportunity to cancel any contract within 15 days after
8 receipt of the offering statement. Additional disclo-
9 sure requirements are imposed in the case of conver-
10 sions from apartment to condominium ownership. A
11 limited disclosure document is required in the event of
12 resales of units from one owner to the next, the infor-
13 mation for which is to be provided by the association.

14 Deposits. The Act requires that all deposits for the
15 purchase of a unit from the developer are to be placed
16 in escrow until closing or default.

17 Conversions. In the case of conversions, the Act re-
18 quires that any tenant be given at least 120 days'
19 notice prior to requiring him to vacate his apartment,
20 and requires that, for 60 days, the tenant shall have
21 an option to purchase the unit.

22 Warranties. The Act defines both express and implied
23 warranties given by a developer and methods of enforc-
24 ing these warranties. Any person who fails to comply
25 with any provision of the Act is subject to a claim for
26 relief. A court may award punitive damages where there
27 is a willful violation of the Act, and may award attor-
28 neys' fees in an appropriate case.

29 Obligation to complete. The Act makes clear the devel-
30 oper's obligation to complete all parts of the project
31 which he has indicated through the disclosure documents
32 will be completed, and to specify in those documents
33 the matters which will not be completed.

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