

ASSEMBLY, No. 1102

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman CORODEMUS

1 AN ACT concerning common interest ownership of property, revising  
2 parts of the statutory law and enacting chapter 8E of Title 46 of the  
3 Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1.

9

TITLE 46

10

CHAPTER 8E

11

UNIFORM COMMON INTEREST OWNERSHIP

12

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#### 40 ARTICLE I. IN GENERAL

- 41  
42 46:8E-1. Short title. This chapter shall be known and may be cited  
43 as the "Uniform Common Interest Ownership Act."  
44 46:8E-2. Definitions.  
45 As used in this chapter, unless specifically provided otherwise:  
46 "Affiliate of a declarant" means any person who controls, is

1 controlled by, or is under common control with a declarant. A person  
2 "controls" a declarant if the person (1) is general partner, officer,  
3 director, or employer of the declarant, (2) directly or indirectly or  
4 acting in concert with one or more other persons, (3) through one or  
5 more subsidiaries, owns, controls, holds with power to vote, or holds  
6 proxies representing, more than 20 percent of the election of a  
7 majority of the directors of the declarant, or (4) has contributed more  
8 than 20 percent of the capital of the declarant. A person "is controlled  
9 by" a declarant if the declarant (5) is a general partner, officer,  
10 director, employer of the person, (6) directly or indirectly or acting in  
11 concert with one or more other persons, or through one or more  
12 subsidiaries, owns, controls, holds with power to vote, or holds  
13 proxies representing, more than 20 percent of the voting interest in the  
14 person, (7) controls in any manner the election of a majority of the  
15 directors of the person, or (8) has contributed more than 20 percent  
16 of the capital of the person. Control does not exist if the powers  
17 described in this paragraph are held solely as security for an obligation  
18 and are not exercised.

19 "Allocated interests" means the following interest allocated to each  
20 unit: (1) in a condominium, the undivided interest in the common  
21 elements, the common expense liability, and votes in the association;  
22 (2) in a cooperative, the common expense liability and the ownership  
23 interest and votes in the association; and (3) in a planned community,  
24 the common expense liability and votes in the association.

25 "Association" or "unit owners' association" means the unit owners'  
26 association organized under R.S.46:8E-47.

27 "Common elements" means in the case of (1) a condominium or  
28 cooperative, all portions of the common interest community other than  
29 the units; (2) in a planned community, any real estate within a planned  
30 community which is owned or leased by the association, other than a  
31 unit; and (3) in all common interest communities, any other interests  
32 in real estate for the benefit of unit owners which are subject to the  
33 declaration.

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

36 "Common expense liability" means the liability for common  
37 expenses allocated to each unit pursuant to R.S.46:8E-29.

38 "Common interest community" means real estate with respect to  
39 which a person, by virtue of his ownership of a unit, is obligated to  
40 pay for real estate taxes, insurance premiums, maintenance, or  
41 improvement of other real estate described in a declaration.  
42 "Ownership of a unit" does not include holding a leasehold interest of  
43 less than 20 years in a unit, including renewal options.

44 "Condominium" means a common interest community in which  
45 portions of the real estate are designated for separate ownership and  
46 the remainder of the real estate is designated for common ownership

1 solely by the owners of those portions. A common interest community  
2 is not a condominium unless the undivided interests in the common  
3 elements are vested in the unit owners.

4 "Conversion building" means a building that at any time before  
5 creation of the common interest community was occupied wholly or  
6 partially by persons other than purchasers and persons who occupy  
7 with the consent of purchasers.

8 "Cooperative" means a common interest community in which the  
9 real estate is owned by an association, each of whose members is  
10 entitled by virtue of ownership interest in the association to exclusive  
11 possession of a unit.

12 "Dealer" means a person in the business of selling units for his own  
13 account.

14 "Declarant" means any person or group of persons acting in concert  
15 who (a) as part of a common promotional plan, offers to dispose of his  
16 or its interest in a unit not previously disposed of or (b) reserves or  
17 succeeds to any special declarant right.

18 "Declaration" means any instruments, however denominated, that  
19 create a common interest community, including any amendments to  
20 those instruments.

21 "Development rights" means any right or combination of rights  
22 reserved by a declarant in the declaration to (1) add real estate to a  
23 common interest community; (2) create units, common elements, or  
24 limited common elements within a common interest community; (3)  
25 subdivide units or convert units into common elements; or (4)  
26 withdraw real estate from a common interest community.

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

30 "Executive board" means the body, regardless of name, designated  
31 in the declaration to act on behalf of the association.

32 "Identifying number" means a symbol or address that identifies only  
33 one unit in a common interest community.

34 "Leasehold common interest community" means a common interest  
35 community in which all or a portion of the real estate is subject to a  
36 lease the expiration or termination of which will terminate the common  
37 interest community or reduce its size.

38 "Limited common element" means a portion of the common  
39 elements allocated by the declaration or by operation of subsection b.  
40 or d. of R.S.46:8E-24 for the exclusive use of one or more but fewer  
41 than all of the units.

42 "Master association" means an organization described in  
43 R.S.46:8E-43, whether or not it is also an association described in  
44 R.S.46:8E-47.

45 "Offering" means any advertisement, inducement, solicitation, or  
46 attempt to encourage any person to acquire any interest in a unit, other

1 than as security for an obligation. An advertisement in a newspaper  
2 or other periodical of general circulation, or in any broadcast medium  
3 to the general public, of a common interest community not located in  
4 this State, is not an offering if the advertisement states that an offering  
5 may be made only in compliance with the law of the jurisdiction in  
6 which the common interest community is located.

7 "Person" means an individual, corporation, business trust, estate,  
8 trust, partnership, association, joint venture, government,  
9 governmental subdivision or agency, or other legal or commercial  
10 entity. In the case of a land trust, however, "person" means the  
11 beneficiary of the trust rather than the trust or the trustee.

12 "Planned community" means a common interest community that is  
13 not a condominium or a cooperative. A condominium or cooperative  
14 may be part of a planned community.

15 "Proprietary lease" means an agreement with the association  
16 pursuant to which a member is entitled to exclusive possession of a  
17 unit in a cooperative.

18 "Purchaser" means a person, other than a declarant or a dealer,  
19 who by means of a voluntary transfer acquires a legal or equitable  
20 interest in a unit other than (1) a leasehold interest, including renewal  
21 options, of less than 20 years, or (2) as security for an obligation.

22 "Quorum" means the number of persons required to be present  
23 pursuant to R.S.46:8E-55.

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

31 "Residential purposes" means use for dwelling or recreational  
32 purposes, or both.

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

41 "Special declarant rights" means rights reserved for the benefit of  
42 a declarant to (1) complete improvements indicated on plats and plans  
43 filed with the declaration pursuant to R.S.46:8E-31 or, in a  
44 cooperative, to complete improvements described in the public  
45 offering statement pursuant to R.S.46:8E-68; (2) exercise any  
46 development right pursuant to R.S.46:8E-32; (3) maintain sales

1 offices, management offices, signs advertising the common interest  
2 community, and models pursuant to R.S.46:8E-38; (4) use easements  
3 through the common elements for the purpose of making  
4 improvements within the common interest community or within real  
5 estate which may be added to the common interest community  
6 pursuant to R.S.46:8E-39; (5) make the common interest community  
7 subject to a master association as defined in R.S.46:8E-43; (6) merge  
8 or consolidate a common interest community with another common  
9 interest community of the same form of ownership as defined in  
10 R.S.46:8E-44; or (7) appoint or remove any officer of the association  
11 or any master association or any executive board member during any  
12 period of declarant control pursuant to subsection d. of R.S.46:8E-49.

13 "Time share" means a right to occupy a unit or any of several units  
14 during five or more separated time periods over a period of at least  
15 five years, including renewal options, whether or not coupled with an  
16 estate or interest in a common interest community or a specified  
17 portion thereof.

18 "Unit" means a physical portion of the common interest community  
19 designated for separate ownership or occupancy, the boundaries of  
20 which are described pursuant to paragraph (5) of subsection a. of  
21 R.S.46:8E-27.

22 "Unit owner" means a declarant or other person who owns a unit,  
23 or a lessee of a unit in a leasehold common interest community whose  
24 lease expires simultaneously with any lease the expiration or  
25 termination of which will remove the unit from the common interest  
26 community, but does not include a person having an interest in a unit  
27 solely as security for an obligation. In a condominium or planned  
28 community, the declarant is the owner of any unit created by the  
29 declaration. In a cooperative, the declarant is treated as the owner of  
30 any unit to which allocated interests have been allocated  
31 (R.S.46:8E-29) until that unit has been conveyed to another person.

32 46:8E-3. Variation by agreement. Except as expressly provided  
33 in this act, its provisions may not be varied by agreement, and rights  
34 conferred by it may not be waived. A declarant may not act under a  
35 power of attorney, or use any other device, to evade the limitations or  
36 prohibitions of this act or the declaration.

37 46:8E-4. Separate titles and taxation.

38 a. In a cooperative, a unit owners interest in a unit and its allocated  
39 interests shall be deemed to be personal property. The transfer of any  
40 interest in a cooperative shall be by means of a document recorded in  
41 the county in which the cooperative is located. The transfer document  
42 is to contain the following information:

43 (1) The name of the cooperative;

44 (2) The unit designation;

45 (3) A reference to the last prior transfer of the unit, if previously  
46 transferred;

1 (4) The full name and address of the transferrer and transferee of  
2 the unit;

3 (5) An executed and acknowledged consent of the cooperative  
4 executive board authorizing and approving the transfer or assignment;

5 (6) The number of shares transferred;

6 (7) A statement of the full consideration paid for the cooperative  
7 unit which includes the purchase price paid plus the amount derived  
8 from application of the percent of ownership held in conjunction with  
9 the unit to the unpaid balance of the fee or leasehold mortgage  
10 encumbering the entire structure as of the date of the transfer or  
11 assignment; and

12 (8) All other matters, consistent with this act, which the parties  
13 may deem appropriate.

14 That interest, as personal property, shall be subject to the  
15 provisions of the "Homestead Property Tax Rebate Act of 1990,"  
16 P.L.1990, c.61 (C.54:4-8.57 et seq.), and sections 1, 3, 4 and 5 of  
17 P.L.1968, c.49 (C.46:15-5, C.46:15-7, C.46:15-8 and C.46:15-9  
18 respectively) with respect to the imposition of the realty transfer fee.

19 b. In a condominium or planned community:

20 (1) If there is any unit owner other than a declarant, each unit that  
21 has been created, together with its interest in the common elements,  
22 constitutes for all purposes a separate parcel of real estate. A unit  
23 shall be deemed created once it has been subjected to the declaration  
24 for the common interest community by the recordation of either the  
25 declaration or an amendment to the declaration.

26 (2) If there is any unit owner other than a declarant, each unit shall  
27 be separately taxed and assessed, and no separate tax or assessment  
28 may be rendered against any common elements for which a declarant  
29 has reserved no development rights.

30 c. Any portion of the common elements for which the declarant has  
31 reserved any development right shall be separately taxed and assessed  
32 against the declarant, and the declarant alone is liable for payment of  
33 those taxes.

34 d. If there is no unit owner other than a declarant, the real estate  
35 comprising the common interest community may be taxed and assessed  
36 in any manner provided by law. Until such time as a unit is conveyed,  
37 the assessed value of a common interest community shall not exceed  
38 that which would otherwise be assessable against it prior to the  
39 recordation of the declaration.

40 46:8E-5. Applicability of local ordinances, regulations, and  
41 building codes.

42 a. A construction code enforcing agent may not impose any  
43 requirement upon any structure in a common interest community  
44 which would not be imposed upon a physically identical development  
45 under a different form of ownership.

46 b. The condominium or cooperative form of ownership shall not be

1 prohibited through any zoning or land use law nor shall any such law  
2 impose a requirement upon a condominium or cooperative which  
3 would not be imposed upon a physically identical development under  
4 a different form of ownership.

5 c. Except as provided in subsections a. and b., the provisions of  
6 this act shall not invalidate or modify any provision of any ordinance,  
7 rule or regulation governing the use of real estate in this State.

8 46:8E-6. Eminent domain. a. If a unit is acquired by eminent  
9 domain or part of a unit is acquired by eminent domain leaving the unit  
10 owner with a remnant that may not practically or lawfully be used for  
11 any purpose permitted by the declaration, the award shall include  
12 compensation to the unit owner for that unit and its allocated interests,  
13 whether or not any common elements are acquired. Upon acquisition,  
14 unless the decree otherwise provides, that unit's allocated interests  
15 shall be reallocated to the remaining units in proportion to their  
16 allocated interests before the taking, and the association shall promptly  
17 prepare, execute, and record an amendment to the declaration  
18 reflecting the reallocations. Any remnant of a unit remaining after part  
19 of a unit is taken under this subsection shall thereafter be deemed a  
20 common element.

21 b. Except as provided in subsection a., if part of a unit is acquired  
22 by eminent domain, the award shall compensate the unit owner for the  
23 reduction in value of the unit and its interest in the common elements,  
24 whether or not any common elements are acquired. Upon acquisition,  
25 unless the decree otherwise provides, (1) that unit's allocated interests  
26 shall be reduced in proportion to the reduction in the size of the unit,  
27 or on any other basis specified in the declaration and (2) the portion  
28 of the allocated interests divested from the partially acquired unit shall  
29 be reallocated to that unit and to the remaining units in proportion to  
30 their interests before the taking, with the partially-acquired unit  
31 participating in the reallocation on the basis of its reduced allocated  
32 interests.

33 c. If part of the common elements is acquired by eminent domain,  
34 the portion of the award attributable to the common elements taken  
35 shall be paid to the association. Unless the declaration provides  
36 otherwise, any portion of the award attributable to the acquisition of  
37 a limited common element shall be equally divided among the owners  
38 of the units to which that limited common element was allocated at the  
39 time of acquisition.

40 d. The executive board of the association, on behalf of the  
41 association and all affected unit owners, shall have the power to amend  
42 the declaration to reallocate interests in accordance with this section.  
43 The executive board shall reallocate the interests by amending the  
44 declaration and recording the amendment together with the court  
45 decree in every county in which any portion of the common interest  
46 community is located.

1 46:8E-7. Principles of law supplement provisions of act. Unless  
2 displaced by particular provisions of this act, the principles of law and  
3 equity, including the law of corporations and unincorporated  
4 associations, the law of real property, and the law relative to capacity  
5 to contract, principal and agent, eminent domain, estoppel, fraud,  
6 misrepresentation, duress, coercion, mistake, receivership, substantial  
7 performance, or other validating or invalidating causes supplement its  
8 provisions.

9 46:8E-8. Construction against implicit repeal. As this act is a  
10 general act intended as a unified coverage of its subject matter, no part  
11 of it shall be construed to be impliedly repealed by subsequent  
12 legislation if that construction can reasonably be avoided.

13 46:8E-9. Uniformity of application and construction. This act shall  
14 be applied and construed to effectuate its general purpose to make  
15 uniform the law with respect to the subject of this act among states  
16 enacting it.

17 46:8E-10. Severability; Interpretation. a. If any provision of this  
18 act or the application thereof to any person or circumstances is held  
19 invalid, the invalidity does not affect other provisions or applications  
20 of this act which can be given effect without the invalid provisions or  
21 applications, and to this end the provisions of this act are severable.

22 b. In interpreting the terms of this act it is intended that: (1) any  
23 action, power, or right of an association, executive board, declarant or  
24 unit owner which is not expressly prohibited by this act or other law  
25 shall be permitted; and (2) any provision of a declaration which is not  
26 in conflict with this act or other law shall be valid.

27 46:8E-11. Unconscionable agreement or term of contract. A  
28 court, upon finding as a matter of law that a contract or contract  
29 clause relative to real estate owned or to be owned under a form of  
30 common interest ownership was unconscionable at the time the  
31 contract was made, may refuse to enforce the contract, enforce the  
32 remainder of the contract without the unconscionable clause, or limit  
33 the application of any unconscionable clause in order to avoid an  
34 unconscionable result.

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

39 a. The commercial setting of the negotiations;

40 b. Whether a party has knowingly taken advantage of the inability  
41 of the other party reasonably to protect his interests by reason of  
42 physical or mental infirmity, illiteracy, inability to understand the  
43 language of the agreement, or similar factors; and

44 c. The effect and purpose of the contract or clause.

45 46:8E-12. Obligation of good faith. Every contract or duty  
46 governed by this act imposes an obligation of good faith in its

1 performance or enforcement.

2 46:8E-13. Remedies to be liberally administered. a. The remedies  
3 provided by this act shall be liberally administered to the end that the  
4 aggrieved party is put in as good a position as if the other party had  
5 fully performed. However, consequential, special, or punitive damages  
6 may not be awarded except as specifically provided in this act or by  
7 other rule of law.

8 b. Any right or obligation declared by this act shall be enforceable  
9 by judicial proceeding.

10 46:8E-14. Adjustment of dollar amounts.

11 As used in this section:

12 "Index" means the changes in the Consumer Price Index for Urban  
13 Wage Earners and Clerical Workers; U.S. City Average, All Items  
14 1967 - 100, compiled by the Bureau of Labor Statistics, United States  
15 Department of Labor,

16 "Reference Base Index" means the index for December 1979, which  
17 was 230.

18 a. From time to time, the dollar amount specified in R.S.46:8E-17  
19 shall be adjusted, as provided in subsections b. and c.

20 b. The dollar amount specified in R.S.46:8E-17 and any amount  
21 stated in the declaration pursuant to that section, shall be adjusted on  
22 July 1 of each year if the percentage of change, calculated to the  
23 nearest whole percentage point, between the Index at the end of the  
24 preceding year and the Reference Base Index is 10 percent or more;  
25 however

26 (1) The portion of the percentage change in the Index in excess of  
27 a multiple of 10 percent shall be disregarded and the dollar amount  
28 shall be adjusted only in multiples of 10 percent of the dollar amount  
29 in effect on the date of enactment;

30 (2) The dollar amount shall not be adjusted if the amount required  
31 by this section is that currently in effect pursuant to this act as a result  
32 of earlier application of this section; and

33 (3) In no event may the dollar amount be adjusted below the  
34 amount in effect on the date of enactment.

35 c. If the Index is revised after December, 1979, the percentage of  
36 adjustment pursuant to this section shall be calculated on the basis of  
37 the revised Index. If a revision of the Index changes the Reference  
38 Base Index, a revised Reference Base Index shall be determined by  
39 multiplying the Reference Base Index then applicable by the rebasing  
40 factor furnished by the Bureau of Labor Statistics. If the Index is  
41 superseded, the index referred to in this section shall be the one  
42 represented by the Bureau of Labor Statistics as reflecting most  
43 accurately the changes in the purchasing power of the dollar for  
44 consumers.

45 46:8E-15. Applicability to new common interest communities;  
46 Existing common interest communities. a. Except as provided in

1 R.S.46:8E-16 and 17, this act applies to all common interest  
2 communities created within this State after the effective date of this  
3 act.

4 b. Common interest communities created prior to the effective date  
5 of this act may elect to be subject to this act, as follows: (1) if the  
6 executive board of a common interest community is controlled by the  
7 declarant, by the declarant filing a declaration in the county recording  
8 office of each county in which the common interest community is  
9 located expressly stating that the common interest community shall be  
10 subject to this act; or (2) if the executive board of a common interest  
11 community is controlled by non-declarant unit owners, by adopting, by  
12 the affirmative vote of 75 percent of the entire executive board, a  
13 resolution in recordable form expressly stating that the common  
14 interest community shall be subject to this act and the recording of the  
15 resolution in each county in which the common interest community is  
16 located.

17 This act shall be applicable to a common interest community which  
18 was created prior to the effective date of this act upon the recording  
19 of the declaration or resolution as provided above. Notwithstanding  
20 any provision of this act, the recording of a declaration or resolution  
21 as provided in this section shall not affect the priority of any lien  
22 recorded prior to the recording of such declaration or resolution.

23 46:8E-16. Applicability to small cooperatives. If a cooperative  
24 contains no more than 10 units and is not subject to any development  
25 rights, it shall be subject only to R.S.46:8E-5 and R.S.46:8E-6, unless  
26 the declaration provides that the cooperative shall be subject to the  
27 entire act.

28 46:8E-17. Applicability to small and limited expense liability  
29 planned communities.

30 a. If a planned community:

31 (1) contains no more than 10 units; or

32 (2) provides, in its declaration, that the annual average common  
33 expense liability of all units restricted to residential purposes, exclusive  
34 of optional user fees and any insurance premiums paid by the  
35 association, may not exceed \$300, as adjusted pursuant to  
36 R.S.46:8E-14, the planned community shall be subject only to  
37 R.S.46:8E-4, R.S.46:8E-5 and R.S.46:8E-6, unless the declaration  
38 provides that the community shall be subject to the entire act.

39 b. The exemption provided in paragraph (1) above shall apply only  
40 if:

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

44 (2) The declaration provides that the assessment may not be  
45 increased during the period of declarant control without the consent  
46 of all unit owners.

1 46:8E-18. Applicability to pre-existing common interest  
2 communities. Except as provided otherwise in R.S.46:8E-2,  
3 R.S.46:8E-4, R.S.46:8E-5, R.S.46:8E-6, R.S.46:8E-19, R.S.46:8E-25,  
4 R.S.46:8E-26, R.S.46:8E-43, paragraphs (1) through (6) and (11)  
5 through (16) of subsection a. of R.S.46:8E-48, R.S.46:8E-57,  
6 R.S.46:8E-62, R.S.46:8E-64, R.S.46:8E-72, R.S.46:8E-76 and to the  
7 extent necessary in construing any of those sections, each such section  
8 shall apply to all common interest communities created in this State  
9 before the effective date of this act; however, these sections shall  
10 apply only with respect to events and circumstances occurring after the  
11 effective date of this act and shall not invalidate existing provisions of  
12 a declaration, bylaws, or plats or plans of those common interest  
13 communities.

14 46:8E-19. Applicability to small pre-existing cooperatives and  
15 planned communities. If a cooperative or planned community created  
16 within this State before the effective date of this act contains no more  
17 than 12 units and is not subject to any development rights, it shall be  
18 subject only to R.S.46:8E-4, R.S.46:8E-5, and R.S.46:8E-6, unless the  
19 declaration is amended to provide that the small pre-existing  
20 cooperative or planned community shall be subject to all sections of  
21 this act.

22 46:8E-20. Amendments to governing instruments.  
23 Notwithstanding any law or regulation to the contrary, the declaration,  
24 bylaws, or plats and plans of any common interest community created  
25 before the effective date of this act may be amended to conform to this  
26 act.

27 An amendment to the declaration, bylaws, or plats and plans  
28 authorized by this section must be adopted in conformity with any  
29 procedures and requirements for amending the instruments specified  
30 in those instruments or, if there are none, in conformity with  
31 R.S.46:8E-40. If an amendment grants to any person any rights,  
32 powers, or privileges under this act, all correlative obligations,  
33 liabilities, and restrictions imposed by this act shall also apply to that  
34 person.

35 46:8E-21. Applicability to nonresidential and mixed use common  
36 interest communities.

37 As used in this section:

38 a. "Nonresidential common interest community" means a common  
39 interest community in which all units are restricted exclusively to  
40 nonresidential purposes.

41 b. A nonresidential common interest community is not subject to  
42 this act unless the declaration otherwise provides.

43 c. The declaration of a nonresidential common interest community  
44 may provide that this act in its entirety applies to the community or  
45 that only R.S.46:8E-4, R.S.46:8E-5 and R.S.46:8E-6 apply.

46 d. If a nonresidential common interest community has opted to be

1 subject to this act in its entirety, then the declaration may also require,  
2 subject to R.S.46:8E-11 that:

3 (1) Notwithstanding the provisions of R.S.46:8E-51 (Termination  
4 of contracts and leases), any management contract, employment  
5 contract, lease of recreational or parking areas or facilities, and any  
6 other contract or lease between an association and a declarant or an  
7 affiliate of a declarant, shall continue in force after the declarant turns  
8 over control of the association; and

9 (2) Notwithstanding the provisions of R.S.46:8E-3 (Variation by  
10 agreement), purchasers of units may be required to execute proxies,  
11 powers of attorney, or similar devices in favor of the declarant  
12 regarding particular matters enumerated in those instruments.

13 e. A common interest community that contains units restricted  
14 exclusively to nonresidential purposes and other units which may be  
15 used for residential purposes shall not be subject to this act unless the  
16 units that may be used for residential purposes would comprise a  
17 common interest community in the absence of the nonresidential units,  
18 or the declaration provides that this act applies as provided in  
19 subsections c. or d. of this section.

20 46:8E-22. Applicability to out-of-state common interest  
21 communities. This act shall not apply to common interest communities  
22 or units located outside this State which are governed by the "Real  
23 Estates Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et  
24 seq.).

25

26

## ARTICLE 2

27

28

### CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES

29

30

31 46:8E-23. Creation of common interest communities. A common  
32 interest community may be created pursuant to this act only by  
33 recording a declaration executed in the same manner as a deed and, in  
34 a cooperative, by conveying the real estate subject to that declaration  
35 to the association. The declaration must be recorded in every county  
36 in which any portion of the common interest community is located and  
37 must be indexed in the grantee's index in the name of the common  
38 interest community and the association and in the grantor's index in the  
39 name of each person executing the declaration.

40 46:8E-24. Unit boundaries. Except as provided by the declaration:

41 a. If walls, floors, or ceilings are designated as boundaries of a  
42 unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles,  
43 wallpaper, paint, finished flooring, and any other materials constituting  
44 any part of the finished surfaces thereof are a part of the unit, and all  
45 other portions of the walls, floors, or ceilings are a part of the  
46 common elements.

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

7       c. Subject to paragraph b., all spaces, interior partitions, and other  
8 fixtures and improvements within the boundaries of a unit are a part  
9 of the unit.

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

15       46:8E-25. Construction and validity of declaration and bylaws.

16       a. All provisions of the declaration and bylaws shall be severable.

17       b. The Rule Against Perpetuities shall not apply. Any provision of  
18 a declaration, bylaws, rules, or regulations adopted pursuant to  
19 paragraph (1) of subsection a. of R.S.46:8E-47 shall not be subject to  
20 or held to be in violation of any principle of law against perpetuities or  
21 restraints on alienation.

22       c. In the event of a conflict between the provisions of the  
23 declaration and the bylaws, the declaration shall prevail except to the  
24 extent the declaration is inconsistent with this act.

25       d. Title to a unit and common elements shall not be rendered  
26 unmarketable or otherwise affected by reason of failure of the  
27 declaration to comply with this act.

28       46:8E-26. Description of units. A description of a unit which sets  
29 forth the name of the common interest community, the recording data  
30 for the declaration, the county and municipality in which the common  
31 interest community is located, and the identifying number of the unit,  
32 shall be a legally sufficient description of that unit and all rights,  
33 obligations, and interests appurtenant to that unit which were created  
34 by the declaration or bylaws.

35       46:8E-27. Contents of declaration.

36       a. The declaration shall contain:

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

40       (2) The name of every county in which any part of the common  
41 interest community is situated;

42       (3) A legally sufficient description of the real estate included in the  
43 common interest community;

44       (4) In a condominium or planned community, a description of the  
45 boundaries of each unit created by the declaration, including the unit's  
46 identifying number, its size or number of rooms, and its location within

- 1 a building if it is within a building containing more than one unit;
- 2 (5) A description of any limited common elements, other than  
3 those specified in subsection b. and d. of R.S.46:8E-24, together with  
4 a statement that they may be so allocated;
- 5 (6) A description of any real estate, except real estate subject to  
6 development rights, that may be allocated subsequently as limited  
7 common elements, other than limited common elements specified in  
8 subsections b. and d. of R.S.46:8E-24, together with a statement that  
9 they may be so allocated;
- 10 (7) A description of any development rights and other special  
11 declarant rights reserved by the declarant, together with a legally  
12 sufficient description of the real estate to which each of those rights  
13 applies, and a time limit within which each of those rights must be  
14 exercised;
- 15 (8) If any development right may be exercised with respect to  
16 different parcels of real estate at different times, a statement to that  
17 effect together with (a) either a statement fixing the boundaries of  
18 those portions and regulating the order in which those portions may be  
19 subjected to the exercise of each development right or a statement that  
20 no assurances are made in those regards, and (b) a statement as to  
21 whether, if any development right is exercised in any portion of the  
22 real estate subject to that development right, that development right  
23 must be exercised in all or in any other portion of the remainder of that  
24 real estate;
- 25 (9) Any other conditions or limitations under which the rights  
26 described in paragraph (8) may be exercised or will lapse;
- 27 (10) An allocation to each unit of the allocated interests in the  
28 manner described in R.S.46:8E-29;
- 29 (11) Any restrictions (a) on alienation of the units, including any  
30 restrictions on leasing which exceed the restrictions on leasing units  
31 which executive boards may impose pursuant to subsection c. of  
32 R.S.46:8E-47, and (b) on the amount for which a unit may be sold or  
33 on the amount that may be received by a unit owner on sale,  
34 condemnation, or casualty loss to the unit or to the common interest  
35 community, or on termination of the common interest community;
- 36 (12) The recording data for recorded easements and licenses  
37 appurtenant to or included in the common interest community or to  
38 which any portion of the common interest community is or may  
39 become subject by virtue of a reservation in the declaration; and
- 40 (13) All matters required by R.S.46:8E-28 through R.S.46:8E-31,  
41 R.S.46:8E-39, and subsection d. of R.S.46:8E-49.
- 42 b. The declaration may contain any other matters the declarant  
43 considers appropriate, including any restrictions on the uses of a unit  
44 or the number or other qualifications of persons who may occupy  
45 units.
- 46 46:8E-28. Leasehold common interest communities.

1 a. Any lease the expiration or termination of which may terminate  
2 the common interest community or reduce its size must be recorded.  
3 Every lessor of such leases in a condominium or planned community  
4 shall sign the declaration. The declaration must state:

- 5 (1) The recording data for the lease;
- 6 (2) The date on which the lease is scheduled to expire;
- 7 (3) A legally sufficient description of the real estate subject to the  
8 lease;
- 9 (4) Any right of the unit owners to redeem the reversion and the  
10 manner whereby those rights may be exercised, or a statement that  
11 they do not have those rights;
- 12 (5) Any right of the unit owners to remove any improvements  
13 within a reasonable time after the expiration or termination of the  
14 lease, or a statement that they do not have those rights; and
- 15 (6) Any rights of the unit owners to renew the lease and the  
16 conditions of any renewal, or a statement that they do not have those  
17 rights.

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

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

30 d. If the expiration or termination of a lease decreases the number  
31 of units in a common interest community, the allocated interests shall  
32 be reallocated in accordance with subsection a. of 46:8E-6 as if those  
33 units had been taken by eminent domain. Reallocations shall be  
34 confirmed by an amendment to the declaration which shall be  
35 prepared, executed, and recorded by the association.

36 46:8E-29. Allocation of allocated interests.

37 a. The declaration must allocate to each unit:

- 38 (1) In a condominium, a fraction or percentage of undivided  
39 interests in the common elements and in the common expenses of the  
40 association as enumerated in subsection a. of R.S.46:8E-61, and a  
41 portion of the votes in the association;
- 42 (2) In a cooperative, an ownership interest in the association, a  
43 fraction or percentage of the common expenses of the association as  
44 enumerated subsection a. of R.S.46:8E-61, and a portion of the votes  
45 in the association; and
- 46 (3) In a planned community, a fraction or percentage of the

1 common expenses of the association as enumerated in subsection a. of  
2 R.S.46:8E-61, and a portion of the votes in the association.

3 b. The declaration must state the formulas used to establish  
4 allocations of interests. Those allocations may not discriminate in  
5 favor of units owned by the declarant or an affiliate of the declarant.

6 c. If units may be added to or withdrawn from the common interest  
7 community, the declaration must state the formulas to be used to  
8 reallocate the allocated interests among all units included in the  
9 common interest community after the addition or withdrawal.

10 d. The declaration may provide: (1) that different allocations of  
11 votes shall be made to the units on particular matters specified in the  
12 declaration; (2) for cumulative voting only for the purpose of electing  
13 members of the executive board; and (3) for class voting on specified  
14 issues affecting the class if necessary to protect valid interests of the  
15 class. A declarant may not utilize cumulative or class voting for the  
16 purpose of evading any limitation imposed on declarants by this act  
17 nor may units constitute a class because they are owned by a declarant.

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

25 f. In a condominium, the common elements shall not be subject to  
26 partition, and any purported conveyance, encumbrance, judicial sale,  
27 or other voluntary or involuntary transfer of an undivided interest in  
28 the common elements made without the unit to which that interest is  
29 allocated is void.

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

34 46:8E-30. Limited common elements.

35 a. Except for the limited common elements described in  
36 subsections b. and d. of R.S.46:8E-24, the declaration shall specify to  
37 which unit or units each limited common element is allocated. An  
38 allocation may not be altered without the consent of the unit owners  
39 whose units are affected.

40 b. Except as the declaration otherwise provides, a limited common  
41 element may be reallocated by an amendment to the declaration  
42 executed by the unit owners between or among whose units the  
43 reallocation is made. The persons executing the amendment shall  
44 provide a copy thereof to the association, which shall record it. The  
45 amendment must be recorded in the names of the parties and the  
46 common interest community.

1 c. A common element not previously allocated as a limited  
2 common element may be so allocated only pursuant to provisions in  
3 the declaration made in accordance with paragraph (7) of subsection  
4 a. of R.S.46:8E-27. The allocations must be made by amendments to  
5 the declaration.

6 46:8E-31. Plats and plans.

7 a. Plats and plans shall be a part of the declaration, and shall be  
8 required for all common interest communities except cooperatives.  
9 Separate plats and plans are not required if all of the information  
10 required by this section is contained in either a plat or plan. Each plat  
11 and plan shall be clear and legible and contain a certification that the  
12 plat or plan contains all of the information required by this section.

13 b. Each plat shall show or project:

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

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

20 (3) A legally sufficient description of any real estate subject to  
21 development rights, labeled to identify the rights applicable to each  
22 parcel;

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

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

28 (6) Except as provided in subsection h., the approximate location  
29 and dimensions of any vertical unit boundaries not shown or projected  
30 on plans recorded pursuant to subsection d. and that unit's identifying  
31 number;

32 (7) The location with reference to an established datum of any  
33 horizontal unit boundaries not shown or projected on plans recorded  
34 pursuant to subsection d. and that unit's identifying number;

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

38 (9) The distance between non-contiguous parcels of real estate  
39 comprising the common interest community;

40 (10) The approximate location and dimensions of any porches,  
41 decks, balconies, garages, or patios allocated as limited common  
42 elements, and shall also show or contain a narrative description of any  
43 other limited common elements; and

44 (11) In the case of real estate not subject to development rights, all  
45 other matters customarily shown on land surveys.

46 c. A plat may also show the intended location and dimensions of

1 any contemplated improvement to be constructed anywhere within the  
2 common interest community. Any contemplated improvement shown  
3 shall be labeled either "MUST BE BUILT" or "NEED NOT BE  
4 BUILT".

5 d. Except as provided in subsection h., to the extent not shown or  
6 projected on the plats, plans of the units shall show or project:

7 (1) The approximate location and dimensions of the vertical  
8 boundaries of each unit, and that unit's identifying number;

9 (2) The approximate location of any horizontal unit boundaries,  
10 with reference to an established datum, and that unit's identifying  
11 number; and

12 (3) The approximate location of any units in which the declarant  
13 has reserved the right to create additional units or common elements  
14 as enumerated in subsection c. of R.S.46:8E-32, identified  
15 appropriately.

16 e. Unless the declaration provides otherwise, the horizontal  
17 boundaries of part of a unit located outside a building shall have the  
18 same elevation as the horizontal boundaries of the inside part, and  
19 need not be depicted on the plats and plans.

20 f. Upon exercising any development right, the declarant shall  
21 record either new plats and plans necessary to conform to the  
22 requirements of subsections a., b., and d., or new certifications of plats  
23 and plans previously recorded if those plats and plans otherwise  
24 conform to the requirements of those subsections.

25 g. Any certification of a plat or plan required by this section shall  
26 be made by a professional surveyor, architect, or engineer who has  
27 been licensed by this State.

28 h. Plats and plans need not show the location and dimensions of the  
29 units' boundaries or their limited common elements if:

30 (1) The plat shows the location and dimensions of all buildings  
31 containing or comprising the units; and

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

36 46:8E-32. Exercise of development rights.

37 a. To exercise any development right reserved under paragraph (8)  
38 of subsection a. of R.S.46:8E-27, the declarant shall prepare, execute,  
39 and record an amendment to the declaration (R.S.46:8E-39) and, in a  
40 condominium or planned community, comply with R.S.46:8E-31. The  
41 declarant shall be the unit owner of any units thereby created. The  
42 amendment to the declaration shall assign an identifying number to  
43 each new unit created, and, except in the case of subdivision or  
44 conversion of units described in subsection b., reallocate the allocated  
45 interests among all units. The amendment shall describe any common  
46 elements and any limited common elements thereby created and, in the

1 case of limited common elements, designate the unit to which each is  
2 allocated to the extent required by R.S.46:8E-30 (Limited common  
3 elements).

4 b. Development rights may be reserved within any real estate added  
5 to the common interest community if the amendment adding that real  
6 estate includes all matters required by R.S.46:8E-27 or R.S.46:8E-28,  
7 as the case may be, and, in a condominium or planned community, the  
8 plats and plans include all matters required by R.S.46:8E-31. This  
9 provision does not extend the time limit on the exercise of  
10 development rights imposed by the declaration pursuant to paragraph  
11 (8) of subsection a. of R.S.46:8E-26.

12 c. Whenever a declarant exercises a development right to subdivide  
13 or convert a unit previously created into additional units, common  
14 elements, or both:

15 (1) If the declarant converts the unit entirely to common elements,  
16 the amendment to the declaration shall reallocate all the allocated  
17 interests of that unit among the other units as if that unit had been  
18 taken by eminent domain (R.S.46:8E-6); and

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

24 d. If the declaration provides, pursuant to paragraph (7) of subsection  
25 a. of R.S.46:8E-27, that all or a portion of the real estate is subject to  
26 a right of withdrawal:

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

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

33 46:8E-33. Alterations of units.

34 Subject to the provisions of the declaration and other provisions of  
35 law, a unit owner:

36 a. May make any improvements or alterations to his unit that do  
37 not impair the structural integrity or mechanical systems or lessen the  
38 support of any portion of the common interest community;

39 b. May not change the appearance of the common elements, or the  
40 exterior appearance of a unit or any other portion of the common  
41 interest community, without permission of the association; or

42 c. After acquiring an adjoining unit or an adjoining part of an  
43 adjoining unit, may remove or alter any intervening partition or create  
44 apertures therein, even if the partition in whole or in part is a common  
45 element, if those acts do not impair the structural integrity or  
46 mechanical systems or lessen the support of any portion of the

1 common interest community. Removal of partitions or creation of  
2 apertures under this paragraph is not an alteration of boundaries.

3 46:8E-34. Relocation of unit boundaries. a. Subject to the  
4 provisions of the declaration and other provisions of law, the  
5 boundaries between adjoining units may be relocated by an amendment  
6 to the declaration upon application to the association by the owners  
7 of those units. If the owners of the adjoining units have specified a  
8 reallocation between their units of their allocated interests, the  
9 application must state the proposed reallocations. Unless the  
10 executive board determines, within 30 days, that the reallocations are  
11 unreasonable, the association shall prepare an amendment that  
12 identifies the units involved and states the reallocations. The  
13 amendment must be executed by those unit owners, contain words of  
14 conveyance between them, and, on recordation, be indexed in the  
15 name of the grantor and the grantee, and in the grantee's index in the  
16 name of the association.

17 b. Subject to the provisions of the declaration and other provisions  
18 of law, boundaries between units and common elements may be  
19 relocated to incorporate common elements within a unit by an  
20 amendment to the declaration upon application to the association by  
21 the owner of the unit who proposes to relocate a boundary. Unless the  
22 declaration provides otherwise, the amendment may be approved only  
23 if persons entitled to cast at least 67 percent of the votes in the  
24 association, including 67 percent of the votes allocated to units not  
25 owned by the declarant, agree to the action. The amendment may  
26 describe any fees or charges payable by the owner of the affected unit  
27 in connection with the boundary relocation and the fees and charges  
28 are assets of the association. The amendment must be executed by the  
29 unit owner of the unit whose boundary is being relocated and by the  
30 association, contain words of conveyance between them, and on  
31 recordation be indexed in the name of the unit owner and the  
32 association as grantor or grantee, as appropriate.

33 c. The association in a condominium or planned community shall  
34 prepare and record plats or plans as necessary to show the altered  
35 boundaries of affected units, and their dimensions and identifying  
36 numbers. The association in a cooperative shall prepare and record  
37 amendments to the declaration, including any plans, as necessary to  
38 show or describe the altered boundaries of affected units, and their  
39 dimensions and identifying numbers.

40 46:8E-35. Conveyance of units within a cooperative. If a unit in  
41 a cooperative is sold, conveyed, voluntarily or involuntarily  
42 encumbered, or otherwise transferred by a unit owner, the interest in  
43 that unit which is sold, conveyed, encumbered, or otherwise  
44 transferred is the right to possession of that unit under a proprietary  
45 lease, coupled with the allocated interests of that unit, and the  
46 association's interest in that unit shall not be thereby affected.

1       46:8E-36. Subdivision of units. a. If the declaration expressly so  
2 permits, a unit may be subdivided into two or more units. Subject to  
3 the provisions of the declaration and other relevant provisions of law,  
4 upon application of a unit owner to subdivide a unit, the association  
5 shall prepare, execute, and record an amendment to the declaration,  
6 including in a condominium or planned community the plats and plans,  
7 subdividing that unit.

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

13       46:8E-37. Boundaries of units. The existing physical boundaries  
14 of a unit or the physical boundaries of a unit reconstructed in  
15 substantial accordance with the description contained in the original  
16 declaration are its legal boundaries, rather than the boundaries derived  
17 from the description contained in the original declaration, regardless  
18 of vertical or lateral movement of the building or minor variance  
19 between those boundaries and the boundaries derived from the  
20 description contained in the original declaration. This section does not  
21 relieve a unit owner of liability in case of his willful misconduct or  
22 relieve a declarant or any other person of liability for failure to adhere  
23 to any plats or plans or, in a cooperative, to any representation in the  
24 public offering statement.

25       46:8E-38. Use for sales purposes. Unless the declaration provides  
26 otherwise, a declarant may maintain sales offices, management offices,  
27 and models in units or on common elements in the common interest  
28 community. In a cooperative or condominium, any sales office,  
29 management office, or model not designated as a unit by the  
30 declaration is a common element. If a declarant ceases to be a unit  
31 owner, he ceases to have any rights with regard thereto unless it is  
32 removed promptly from the common interest community in accordance  
33 with a right to remove reserved in the declaration. Subject to any  
34 limitations in the declaration, a declarant may maintain signs on the  
35 common elements advertising the common interest community.

36       46:8E-39. Easement rights.

37       a. Subject to the provisions of the declaration, a declarant has an  
38 easement through the common elements as may be reasonably  
39 necessary for the purpose of discharging the declarant's obligations or  
40 exercising special declarant rights, whether arising under this act or  
41 reserved in the declaration.

42       b. In a planned community, subject to the provisions of paragraph  
43 (6) of subsection a. of R.S.46:8E-48 and R.S.46:8E-58, unit owners  
44 shall have an easement (1) in the common elements for purposes of  
45 access to their units and (2) to use the common elements and all real  
46 estate that must become common elements pursuant to paragraph (6)

1 of subsection a. of R.S.46:8E-27 for all other purposes.  
2 46:8E-40. Amendment of declaration.

3 a. Except in cases of amendments that may be executed by a  
4 declarant under subsection f. of R.S.46:8E-31 or R.S.46:8E-32, or by  
5 the association under R.S.46:8E-6, subsection d. of R.S.46:8E-28,  
6 subsection c. of R.S.46:8E-30, subsection a. of R.S.46:8E-34, or  
7 R.S.46:8E-35, or by certain unit owners under subsection b. of  
8 R.S.46:8E-30, subsection a. of R.S.46:8E-34, subsection b. of  
9 R.S.46:8E-35, or subsection b. of R.S.46:8E-40, and except as limited  
10 by subsection d. of this section, the declaration, including any plats  
11 and plans, may be amended only by vote or agreement of unit owners  
12 of units to which at least 67 percent of the votes in the association are  
13 allocated, or any larger majority the declaration specifies. The  
14 declaration may specify a smaller number only if all of the units are  
15 restricted exclusively to non-residential use.

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

19 c. Every amendment to a declaration shall be recorded in every  
20 county in which any portion of the common interest community is  
21 located and is effective only upon recordation. An amendment, except  
22 an amendment pursuant to subsection a. of R.S.46:8E-34, must be  
23 indexed in the grantee's index in the name of the common interest  
24 community and the association and in the grantor's index in the name  
25 of the parties executing the amendment.

26 d. Except to the extent expressly permitted or required by other  
27 provisions of this act, no amendment may create or increase special  
28 declarant rights, increase the number of units, change the boundaries  
29 of any unit or the allocated interests of a unit in the absence of  
30 unanimous consent of the unit owners.

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

36 f. By vote or agreement of unit owners of units to which at least 80  
37 percent of the votes in the association are allocated, or any larger  
38 percentage specified in the declaration, an amendment to the  
39 declaration may prohibit or materially restrict the permitted uses of or  
40 behavior in a unit or the number or other qualifications of persons who  
41 may occupy units. The amendment must provide reasonable  
42 protection for a valid use or occupancy existing at the time the  
43 amendment was adopted.

44 g. The time limits specified in the declaration pursuant to  
45 paragraph (8) of subsection a. of R.S.46:8E-27 (Contents of the  
46 declaration) within which reserved development rights must be

1 exercised may be extended, and additional development rights may be  
2 created, if persons entitled to cast at least 80 percent of the votes in  
3 the association, including 80 percent of the votes allocated to units  
4 not owned by the declarant, agree to that action. The agreement is  
5 effective 30 days after an amendment to the declaration reflecting the  
6 terms of the agreement is recorded, unless all the persons holding the  
7 affected special declarant rights or security interest in those rights: (1)  
8 record a written objection within that 30 day period, in which case the  
9 amendment is void; or (2) consent in writing at the time the  
10 amendment is recorded, in which case the amendment is effective when  
11 recorded.

12 46:8E-41. Termination of common interest community.

13 a. Except in the case of a taking of all the units by eminent domain  
14 pursuant to R.S.46:8E-6 or in the case of foreclosure against a  
15 cooperative of a security interest that has priority over the declaration  
16 of that cooperative, a common interest community may be terminated  
17 only by agreement of unit owners of units to which at least 80 percent  
18 of the votes in the association are allocated, or any larger percentage  
19 the declaration specifies. The declaration may specify a smaller  
20 percentage only if all of the units are restricted exclusively to  
21 nonresidential uses.

22 b. An agreement to terminate must be evidenced by the execution  
23 of a termination agreement, or ratifications thereof, in the same  
24 manner as a deed, by the requisite number of unit owners. The  
25 termination agreement must specify a date after which the agreement  
26 will be void unless it is recorded before that date. A termination  
27 agreement and all ratifications thereof shall be recorded in each county  
28 in which a portion of the common interest community is situated and  
29 is effective only upon recordation.

30 c. In the case of a condominium or planned community containing  
31 only units having horizontal boundaries described in the declaration,  
32 a termination agreement may provide that all of the common elements  
33 and units of the common interest community must be sold following  
34 termination. If, pursuant to the agreement, any real estate in the  
35 common interest community is to be sold following termination, the  
36 termination agreement must set forth the minimum terms of the sale.

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

43 e. The association, on behalf of the unit owners, may contract for  
44 the sale of real estate in a common interest community, but the  
45 contract is not binding on the unit owners until approved pursuant to  
46 subsections a. and b.. If any real estate is to be sold following

1 termination, title to that real estate, upon termination, vests in the  
2 association as trustee for the holders of all interests in the units.  
3 Thereafter, the association has all powers necessary and appropriate  
4 to effect the sale. Until the sale has been concluded and the proceeds  
5 thereof distributed, the association shall continue in existence with all  
6 of the powers it had before termination. Proceeds of the sale shall be  
7 distributed to unit owners and lien holders as their interests may  
8 appear, in accordance with subsections h., i., and j. of this section.  
9 Unless otherwise specified in the termination agreement, and as long  
10 as the association holds title to the real estate, each unit owner and the  
11 unit owner's successors in interest shall have an exclusive right to  
12 occupancy of the portion of the real estate that formerly constituted  
13 the unit. During the period of that occupancy, each unit owner and  
14 the unit owner's successors in interest shall remain liable for all  
15 assessments and other obligations imposed on unit owners by this act  
16 or the declaration.

17 f. In a condominium or planned community, if the real estate  
18 constituting the common interest community is not to be sold  
19 following termination, title to the common elements and, in a common  
20 interest community containing only units having horizontal boundaries  
21 described in the declaration, title to all the real estate in the common  
22 interest community, shall vest in the unit owners upon termination as  
23 tenants in common in proportion to their respective interests as  
24 provided in subsection j., and any liens encumbering those units shall  
25 survive and be applicable to the property so vested. While the tenancy  
26 in common exists, each unit owner and the unit owner's successors in  
27 interest have an exclusive right to occupancy of the portion of the real  
28 estate that formerly constituted the unit.

29 g. Following termination of a common interest community, the  
30 proceeds of any sale of real estate, together with the assets of the  
31 association, shall be held by the association as trustee for unit owners  
32 and holders of liens on the units as their interests may appear.

33 h. Following termination of a condominium or planned community,  
34 creditors of the association holding liens on the units, which were  
35 recorded, filed or otherwise perfected according to law, before  
36 termination, may enforce those liens in the same manner as any lien  
37 holder. All other creditors of the association are to be treated as if  
38 they had perfected liens on the units immediately before termination.

39 i. In a cooperative, the declaration may provide that all creditors  
40 of the association shall have priority over the interests of unit owners  
41 and creditors of unit owners. In that event, following termination,  
42 creditors of the association holding liens on the cooperative which  
43 were recorded, filed or otherwise perfected according to law, before  
44 termination, may enforce their liens in the same manner as any lien  
45 holder, and any other creditor of the association is to be treated as if  
46 he had perfected a lien against the cooperative immediately before

1 termination. Unless the declaration provides that all creditors of the  
2 association have that priority:

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

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

10 (3) The amount of the lien of an association's creditor described in  
11 paragraphs (1) and (2) against each of the unit owners' interest must  
12 be proportionate to the ratio which each unit's common expense  
13 liability bears to the common expense liability of all of the units;

14 (4) The lien of each creditor of each unit owner which was  
15 perfected before termination continues as a lien against that unit  
16 owner's unit as of the date the lien was perfected; and

17 (5) The assets of the association shall be distributed to all unit  
18 owners and all lien holders as their interests may appear in the order  
19 described in this section. Creditors of the association are not entitled  
20 to payment from any unit owner in excess of the amount of the  
21 creditor's lien against that unit owner's interest.

22 (j) The respective interests of unit owners referred to in  
23 subsections e., f., g., h., and i. of this section shall be as follows:

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

36 (2) If any unit or any limited common element is destroyed to the  
37 extent that an appraisal of the fair market value thereof before  
38 destruction cannot be made, the interests of all unit owners are: a. in  
39 a condominium, their respective common element interests  
40 immediately before the termination, b. in a cooperative, their  
41 respective ownership interests immediately before the termination, and  
42 c. in a planned community their respective common expense liabilities  
43 immediately before the termination.

44 k. In a condominium or planned community, except as provided in  
45 subsection l., foreclosure or enforcement of a lien or encumbrance  
46 against the entire common interest community does not terminate, of

1 itself, the common interest community, and foreclosure or enforcement  
2 of a lien or encumbrance against a portion of the common interest  
3 community, other than withdrawable real estate, does not withdraw  
4 that portion from the common interest community. Foreclosure or  
5 enforcement of a lien or encumbrance against withdrawable real estate,  
6 or against common elements that have been subjected to a security  
7 interest by the association under R.S.46:8E-58, does not withdraw, of  
8 itself, that real estate from the common interest community, but the  
9 person taking title thereto may require from the association, upon  
10 request, an amendment excluding the real estate from the common  
11 interest community.

12 1. In a condominium or planned community, if a lien or  
13 encumbrance against a portion of the real estate comprising the  
14 common interest community has priority over the declaration and the  
15 lien or encumbrance has not been partially released, the parties  
16 foreclosing the lien or encumbrance, upon foreclosure, may record an  
17 instrument excluding the real estate subject to that lien or  
18 encumbrance from the common interest community.

19 46:8E-42. Rights of secured lenders.

20 a. The declaration may require that all or a specified number or  
21 percentage of the lenders who hold security interests encumbering the  
22 units or who have extended credit to the association approve specified  
23 actions of the unit owners or the association as a condition to the  
24 effectiveness of those actions, but no requirement for approval may  
25 operate to (1) deny or delegate control over the general administrative  
26 affairs of the association by the unit owners or the executive board,  
27 or (2) prevent the association or the executive board from  
28 commencing, intervening in, or settling any litigation or proceeding,  
29 or (3) prevent any insurance trustee or the association from receiving  
30 and distributing any insurance proceeds except pursuant to  
31 R.S.46:8E-58.

32 b. A lender who has extended credit to an association secured by  
33 an assignment of income pursuant to paragraph (14) of subsection a.  
34 of R.S.46:8E-48 or an encumbrance on the common elements pursuant  
35 to R.S.46:8E-58 may enforce its security agreement in accordance  
36 with its terms, subject to the requirements of this act and other law.  
37 Requirements that the association must (1) deposit its periodic  
38 common assessments before default with the lender to which the  
39 association's income has been assigned, or (2) increase its common  
40 assessment at the lender's direction by amounts reasonably necessary  
41 to amortize the loan in accordance with its terms, will violate the  
42 prohibitions on lender approval contained in subsection a. of this  
43 section.

44 46:8E-42. Master associations.

45 a. If the declaration provides that any of the powers described in  
46 R.S.46:8E-48 are to be exercised by or may be delegated to a profit or

1 nonprofit corporation that exercises those or other powers on behalf  
2 of one or more common interest communities or for the benefit of the  
3 unit owners of one or more common interest communities, all  
4 provisions of this act applicable to unit owners' associations shall apply  
5 to any such corporation, except as modified by this section.

6 b. Unless it is acting in the capacity of an association described in  
7 R.S.46:8E-47, a master association may exercise the powers set forth  
8 in paragraph (2) of subsection a. of R.S.46:8E-48 only to the extent  
9 expressly permitted in the declarations of common interest  
10 communities which are part of the master association or expressly  
11 described in the delegations of power from those common interest  
12 communities to the master association.

13 c. If the declaration of any common interest community provides  
14 that the executive board may delegate certain powers to a master  
15 association, the members of the executive board shall have no liability  
16 for the acts or omissions of the master association with respect to  
17 those powers following delegation.

18 d. The rights and responsibilities of unit owners with respect to the  
19 unit owners' association as set forth in R.S.46:8E-49, R.S.46:8E-54,  
20 R.S.46:8E-55, R.S.46:8E-56 and R.S.46:8E-58 shall apply in the  
21 conduct of the affairs of a master association only to persons who  
22 elect the board of a master association, whether or not those persons  
23 are otherwise unit owners within the meaning of this act.

24 e. Regardless of the fact that a master association may also be an  
25 association as described in R.S.46:8E-47, the certificate of  
26 incorporation or other instrument creating the master association and  
27 the declaration of each common interest community, the powers of  
28 which are assigned by the declaration or delegated to the master  
29 association, may provide that the executive board of the master  
30 association shall be elected after the period of declarant control in any  
31 of the following ways:

32 (1) All of the unit owners of each of the common interest  
33 communities subject to the master association may elect all of the  
34 members of the master association's executive board.

35 (2) All of the members of the executive boards of all common  
36 interest communities subject to the master association may elect all  
37 members of the master association's executive board.

38 (3) All of the unit owners of each common interest community  
39 subject to the master association may elect specified members of the  
40 master association's executive board.

41 (4) All of the members of the executive board of each common  
42 interest community subject to the master association may elect  
43 specified members of the master association's executive board.

44 46:8E-43. Merger or consolidation of common interest  
45 communities.

46 a. Any two or more common interest communities of the same

1 form of ownership, by agreement of the unit owners as provided in  
2 subsection b., may be merged or consolidated into a single common  
3 interest community. In the event of a merger or consolidation, unless  
4 the agreement otherwise provides, the resultant common interest  
5 community is the legal successor, for all purposes, of all of the  
6 pre-existing common interest communities, and the operations and  
7 activities of all associations of the pre-existing common interest  
8 communities shall be merged and consolidated into a single association  
9 that shall hold all of the powers, rights, obligations, assets, and  
10 liabilities of the pre-existing associations.

11 b. An agreement of two or more common interest communities to  
12 merge or consolidate pursuant to subsection a. shall be evidenced by  
13 an agreement prepared, executed, recorded, and certified by the  
14 president of the association of each of the pre-existing common  
15 interest communities following approval by the owners of units to  
16 which are allocated the percentage of votes in each common interest  
17 community required to terminate that common interest community.  
18 The agreement must be recorded in each county in which a portion of  
19 the common interest community is located and shall not be effective  
20 until recorded.

21 c. Where a merger of two or more common interest communities  
22 involves the merger of two or more nonprofit corporations, the  
23 corporations shall comply with all of the requirements of  
24 N.J.S.15A:10-1, Procedure of Merger, of the "New Jersey Nonprofit  
25 Corporation Act," N.J.S.15A:1-1 et seq.

26 d. Every merger or consolidation agreement shall provide for the  
27 reallocation of the allocated interests in the pre-existing associations  
28 among the units of the resultant common interest community either (1)  
29 by stating the reallocations or the formulas upon which they are based  
30 or (2) by stating the percentage of overall allocated interests of the  
31 new common interest community which are allocated to all of the units  
32 comprising each of the pre-existing common interest communities, and  
33 providing that the portion of the percentages allocated to each unit  
34 formerly comprising a part of the pre-existing common interest  
35 community must be equal to the percentages of allocated interests  
36 allocated to that unit by the declaration of the pre-existing common  
37 interest community.

38 46:8E-45. Addition of unspecified real estate. In a planned  
39 community, if the right is originally reserved in the declaration, the  
40 declarant, in addition to any other development right, may amend the  
41 declaration at any time during as many years as are specified in the  
42 declaration for adding additional real estate to the planned community  
43 without describing the location of that real estate in the original  
44 declaration; but, the amount of real estate added to the planned  
45 community pursuant to this section may not exceed 10 percent of the  
46 real estate described in paragraph (3) of subsection a. of R.S.46:8E-27

1 and the declarant may not in any event increase the number of units in  
2 the planned community beyond the number stated in the original  
3 declaration pursuant to paragraph (5) of subsection a. of  
4 R.S.46:8E-27, unless by vote of unit owners (other than the declarant)  
5 to which at least unit owners of units to which 51 percent of the votes  
6 in the association are allocated approve: a. the addition of real estate  
7 in excess of 10 percent of the real estate described in paragraph (3) of  
8 subsection a. of R.S.46:8E-27 or b. a number of units in excess of the  
9 number stated in the original declaration pursuant to paragraph (5) of  
10 subsection a. of R.S.46:8E-27.

11 46:8E-46. Master planned communities.

12 a. The declaration for a common interest community may state that  
13 it is a master planned community if the declarant has reserved the  
14 development right to create at least 500 units that may be used for  
15 residential purposes and has obtained preliminary site plan or  
16 subdivision approval permitting declarant to construct at least 500  
17 residential units pursuant to the "Municipal Land Use Law," P.L.1975,  
18 c.291 (C.40:55D-1 et seq.).

19 b. If the requirements of subsection a. are satisfied, the declaration  
20 for the master planned community need not state a maximum number  
21 of units and need not contain any of the information required by  
22 paragraph (3) through (13) of subsection a. of R.S.46:8E-27 until the  
23 declaration is amended under subsection c. of this section.

24 c. At the time each unit in a master planned community is conveyed  
25 to a purchaser, the declaration must contain (1) a sufficient legal  
26 description of the unit and all portions of the master planned  
27 community in which any other units have been conveyed to a  
28 purchaser; and (2) all of the information required by paragraph (3)  
29 through (13) of subsection a. of R.S.46:8E-27 with respect to that  
30 real estate.

31 d. Notwithstanding any other provision of this act:

32 (1) The only real estate in a master planned community which shall  
33 be subject to this act is (a) units that have been declared or which are  
34 being offered for sale; and (b) any other real estate described pursuant  
35 to subsection c. of this section;

36 (2) Other real estate that is or may become part of the master  
37 planned community shall be subject only to other applicable laws and  
38 to any other restrictions and limitations that appear of record; and

39 (3) If the public offering statement conspicuously identifies the  
40 fact that the community is a master planned community, the disclosure  
41 requirements contained in Article 4 apply only with respect to units  
42 that have been declared or are being offered for sale in connection  
43 with the public offering statement and to the real estate described in  
44 subsection c. of this section.

45 e. The limitations contained in R.S.46:8E-45 (Addition of  
46 unspecified real estate) shall not apply to a master planned community.

1 f. Subject to the requirements of good faith (R.S.46:8E-12) and  
2 unconscionability (R.S.46:8E-11), the period of declarant control of  
3 the association for a master planned community shall terminate in  
4 accordance with any conditions specified in the declaration or  
5 otherwise at the time the declarant, in a recorded instrument and after  
6 filing written notice to all the unit owners, voluntarily surrenders all  
7 rights to control the activities of the association.

8

9

## ARTICLE 3

10

## 11 MANAGEMENT OF THE COMMON INTEREST COMMUNITY

12

## 13 46:8E-47. Organization of unit owners association

14

15 A unit owners association shall be organized no later than the date  
16 the first unit in the common interest community is conveyed or  
17 possession is taken. The membership of the association at all times  
18 shall consist exclusively of all of the unit owners or, following  
19 termination of the common interest community, of all of the former  
20 unit owners entitled to distributions of proceeds under R.S.46:8E-41  
21 or their heirs, successors or assigns. The association shall be  
22 organized as a for-profit or nonprofit corporation, trust, or  
23 partnership.

23

## 46:8E-48. Powers of unit owners' association.

24

25 a. Except as provided in subsection b., and subject to the  
26 provisions of the declaration, the bylaws, or other statute of this State,  
27 an association may:

27

(1) Adopt and amend bylaws and rules and regulations;

28

(2) Adopt and amend budgets for revenues; expenditures, and  
29 reserves and collect assessments for common expenses from unit  
30 owners;

31

(3) Hire and discharge managing agents and other employees,  
32 agents, and independent contractors;

33

(4) Institute, defend, or intervene in litigation or administrative  
34 proceedings in its own name on matters affecting the common interest  
35 community;

36

(5) Make contracts and incur liabilities;

37

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

39

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

41

(8) Acquire, hold, encumber, and convey in its own name any right,  
42 title, or interest to real estate or personal property, but (a) common  
43 elements in a condominium or planned community may be conveyed  
44 or subjected to a security interest only pursuant to R.S.46:8E-58 and  
45 (b) part of a cooperative may be conveyed, or all or part of a  
46 cooperative may be subjected to a security interest, only pursuant to

- 1 R.S.46:8E-58;
- 2 (9) Grant easements, leases, licenses, and concessions through or  
3 over the common elements;
- 4 (10) Impose and receive any payments, fees, or charges for the use,  
5 rental, or operation of the common elements, other than limited  
6 common elements described in subsections b. or f. of R.S.46:8E-24,  
7 and for services provided to unit owners;
- 8 (11) Impose charges for late payment of assessments and, after  
9 notice and an opportunity to be heard, levy reasonable fines for  
10 violations of the declaration, bylaws, rules and regulations of the  
11 association;
- 12 (12) Impose reasonable charges for the preparation and recordation  
13 of amendments to the declaration, resale certificates required by  
14 R.S.46:8E-72, or statements of unpaid assessments;
- 15 (13) Provide for the indemnification of its officers and executive  
16 board and maintain directors' and officers' liability insurance;
- 17 (14) Assign its right to future income, including the right to receive  
18 common expense assessments, but only to the extent the declaration  
19 expressly so provides;
- 20 (15) Exercise any other powers conferred by the declaration or  
21 bylaws in accordance with this act;
- 22 (16) Exercise all other powers that may be exercised in this State  
23 by legal entities of the same type as the association;
- 24 (17) Exercise any other powers necessary and proper for the  
25 governance and operation of the association; and
- 26 (18) By regulation, require that disputes between the executive  
27 board and unit owners or between two or more unit owners regarding  
28 the common interest community must be submitted to nonbinding  
29 alternative dispute resolution in the manner described in the regulation  
30 as a prerequisite to instituting a judicial proceeding.
- 31 b. The declaration may not impose limitations on the power of the  
32 association to deal with the declarant which are more restrictive than  
33 the limitations imposed on the power of the association to deal with  
34 other persons.
- 35 c. The association may adopt rules with respect to units that may  
36 be used for residential purposes to:
- 37 (1) Prevent any use of or behavior in residential units which  
38 violates the declaration or adversely affects the use and enjoyment of  
39 other units or the common elements by other unit owners; or
- 40 (2) Reasonably restrict the leasing of residential units so long as  
41 the rules are designed to meet the then-current underwriting  
42 requirements adopted by institutional lenders who regularly lend  
43 money secured by first mortgages on units in common interest  
44 communities, or regularly purchase those mortgages. Otherwise, the  
45 association may not regulate any use of or behavior in units unless  
46 empowered to do so by the declaration or this act.

1 d. If a tenant of a unit owner violates the declaration, bylaws, or  
2 rules or regulations of the association, in addition to exercising any of  
3 its powers against the unit owner, the association may:

4 (1) Exercise directly against the tenant the powers described in  
5 paragraph (11) of subsection a. of this section;

6 (2) After giving notice to the tenant and the unit owner and an  
7 opportunity to be heard, levy reasonable fines against the tenant for  
8 the violation; and

9 (3) Enforce any rights against the tenant for the violation which the  
10 unit owner as landlord might have exercised under the lease in  
11 accordance with state law, or which the association might have  
12 exercised directly against the unit owner or both.

13 e. The rights granted under paragraph (3) of subsection d. may be  
14 exercised only if the tenant or unit owner fails to cure the violation  
15 within 10 days after the association notifies the tenant and unit owner  
16 of that violation.

17 f. Unless a lease otherwise provides, this section does not:

18 (1) Affect rights that the unit owner may have to enforce its lease  
19 or that the association has under other law; or

20 (2) Permit the association to enforce a lease to which it is not a  
21 party in the absence of a violation of the declaration or bylaws or the  
22 association's rules or regulations.

23 46:8E-49. Executive board members and officers.

24 a. Except as provided in the declaration, the bylaws, subsection b.  
25 of this section, or other provisions of this act, the executive board may  
26 act in all instances on behalf of the association. In the performance of  
27 their duties, officers and members of the executive board shall act in  
28 good faith and exercise honest judgment in lawful and legitimate  
29 furtherance of the association's purposes.

30 b. The executive board may not act on behalf of the association to  
31 amend the declaration (R.S.46:8E-40), to terminate the common  
32 interest community (R.S.46:8E-41), or to elect members of the  
33 executive board or determine the qualifications, powers and duties, or  
34 terms of office of executive board members pursuant to subsection f.  
35 of this section, but the executive board may fill vacancies in its  
36 membership for the unexpired portion of any term.

37 c. Within 30 days after the adoption of a budget for a common  
38 interest community, the executive board shall provide a copy of the  
39 budget to all of the unit owners.

40 d. Subject to subsection e., the declaration may provide for a  
41 period of declarant control of the association, during which a  
42 declarant, or persons designated by him, may appoint and remove the  
43 officers and members of the executive board. Regardless of the period  
44 provided in the declaration, and except as provided in subsection f. of  
45 R.S.46:8E-45, a period of declarant control of the executive board  
46 shall terminate no later than the earlier of: (1) 60 days after

1 conveyance of 75 percent of the lot, parcels, units or interests that  
2 may be created to unit owners other than a declarant; (2) two years  
3 after all declarants have ceased to offer units for sale in the ordinary  
4 course of business; (3) two years after any right to add new units was  
5 last exercised; or (4) the date the declarant, after giving written notice  
6 to unit owners, records an instrument voluntarily surrendering all  
7 rights to control activities of the association. A declarant may  
8 voluntarily surrender the right to appoint and remove officers and  
9 members of the executive board before termination of that period, but  
10 in that event the declarant may require, for the duration of the period  
11 of declarant control, that specified actions of the association or  
12 executive board, as described in a recorded instrument executed by the  
13 declarant, be approved by the declarant before they become effective.

14 e. Not later than 60 days after conveyance of 25 percent of the lot,  
15 parcels, units or interests that may be created to unit owners other  
16 than a declarant, at least one member and not less than 25 percent of  
17 the members of the executive board shall be elected by unit owners  
18 other than a declarant. Not later than 60 days after conveyance of 50  
19 percent of the units that may be created to lot, parcels, units or interest  
20 owners other than the declarant, not less than 40 percent of the  
21 members of the executive board must be elected by unit owners other  
22 than the declarant.

23 f. Except as otherwise provided in subsection e. of R.S.46:8E-43,  
24 not later than the termination of any period of declarant control, the  
25 unit owners shall elect an executive board of at least three members,  
26 a majority of whom shall be unit owners. The executive board shall  
27 elect the officers. The executive board members and officers shall take  
28 office upon election.

29 g. Notwithstanding any provision of a declaration or bylaws to the  
30 contrary, the unit owners, by a two-thirds vote of all persons present  
31 and entitled to vote at any meeting of the unit owners at which a  
32 quorum is present, may remove any member of the executive board  
33 with or without cause, other than a member appointed by the  
34 declarant.

35 46:8E-50. Transfer of special declarant rights.

36 a. A special declarant right created or reserved under this act may  
37 be transferred only by an instrument evidencing the transfer and  
38 recorded in each county in which any portion of the common interest  
39 community is located. The instrument is not effective unless executed  
40 by the transferee.

41 b. Upon transfer of any special declarant right, the liability of a  
42 transferor declarant is as follows:

43 (1) A transferor is not relieved of any obligation or liability arising  
44 before the transfer and remains liable for warranty obligations imposed  
45 upon him by this act. Lack of privity shall not deprive any unit owner  
46 of standing to maintain an action to enforce any obligation of the

1 transferor.

2 (2) If a successor to any special declarant right is an affiliate of a  
3 declarant (R.S.46:8E-2), the transferor is jointly and severally liable  
4 with the successor for any obligations or liabilities of the successor  
5 relating to the common interest community.

6 (3) If a transferor retains any special declarant rights, but transfers  
7 other special declarant rights to a successor who is not an affiliate of  
8 the declarant, the transferor shall be liable for any obligations or  
9 liabilities imposed on a declarant by this act or by the declaration  
10 relating to the retained special declarant rights and arising after the  
11 transfer.

12 (4) A transferor has no liability for any act or omission or any  
13 breach of a contractual or warranty obligation arising from the  
14 exercise of a special declarant right by a successor declarant who is  
15 not an affiliate of the transferor.

16 c. Unless otherwise provided in a mortgage instrument, deed of  
17 trust, or other agreement creating a security interest, in the case of a  
18 foreclosure of a security interest, sale by a trustee under an agreement  
19 creating a security interest, tax sale, judicial sale, or sale under federal  
20 Bankruptcy Code or receivership proceedings, of any units owned by  
21 a declarant or real estate in a common interest community subject to  
22 development rights, a person acquiring title to all of the property being  
23 foreclosed or sold, upon his request, succeeds to all special declarant  
24 rights related to that property held by that declarant; otherwise such  
25 a person shall succeed only to those or to any rights reserved in the  
26 declaration pursuant to R.S.46:8E-38 and held by that declarant to  
27 maintain models, sales offices, and signs. The judgment or instrument  
28 conveying title shall provide for transfer of only those special declarant  
29 rights requested.

30 d. Upon foreclosure of a security interest, sale by a trustee under  
31 an agreement creating a security interest, tax sale, judicial sale, or sale  
32 under federal Bankruptcy Code or receivership proceedings, of all  
33 interests in a common interest community owned by a declarant:

34 (1) The declarant shall cease to have any special declarant rights,  
35 and

36 (2) The period of declarant control shall terminate unless the  
37 judgment or instrument conveying title provides for the transfer of all  
38 special declarant rights held by that declarant to a successor declarant.

39 e. The liabilities and obligations of a person who succeeds to  
40 special declarant rights are as follows:

41 (1). A successor to any special declarant right who is an affiliate of  
42 a declarant is subject to all obligations and liabilities imposed on the  
43 transferor by this act or by the declaration.

44 (2) A successor to only a right reserved in the declaration to  
45 maintain models, sales offices, and signs (R.S.46:8E-38) may not  
46 exercise any other special declarant right, and is not subject to any

1 liability or obligation as a declarant, except the obligation to provide  
2 a public offering statement and any liability arising as a result thereof.

3 (3) A successor to all special declarant rights held by a transferor  
4 who succeeded to those rights pursuant to a deed or other instrument  
5 of conveyance in lieu of foreclosure or a judgment or instrument  
6 conveying title under subsection c. of this section, may declare in a  
7 recorded instrument the intention to hold those rights solely for  
8 transfer to another person. Thereafter, until transferring all special  
9 declarant rights to any person acquiring title to any unit or real estate  
10 subject to development rights owned by the successor, or until  
11 recording an instrument permitting exercise of all those rights, that  
12 successor may not exercise any of those rights other than any right  
13 held by his transferor to control the executive board in accordance  
14 with subsection d. of R.S.46:8E-49 for the duration of any period of  
15 declarant control, and any attempted exercise of those rights is void.  
16 So long as a successor declarant may not exercise special declarant  
17 rights under this subsection, the successor declarant is not subject to  
18 any liability or obligation as a declarant other than liability for his acts  
19 and omissions under subsection d. of R.S.46:8E-49.

20 (4) A successor to any special declarant right, other than a  
21 successor described in paragraphs (1), (2) or (3) of this subsection  
22 shall be subject to the obligations and liabilities imposed by this act or  
23 the declaration:

24 (a) On a declarant which relate to the successor's exercise or  
25 nonexercise of special declarant rights; or

26 (b) On his transferor, other than:

27 (i) misrepresentations by any previous declarant;

28 (ii) warranty obligations on improvements made by any previous  
29 declarant, or made before the common interest community was  
30 created;

31 (iii) breach of any fiduciary obligation by any previous declarant or  
32 his appointees to the executive board; or

33 (iv) any liability or obligation imposed on the transferor as a result  
34 of the transferor's acts or omissions after the transfer.

35 f. Nothing in this section shall subject any successor to a special  
36 declarant right to any claims against or other obligations of a  
37 transferor declarant, other than claims and obligations arising under  
38 this act or the declaration.

39 46:8E-51. Termination of contracts and leases of declarant.

40 Except as provided in R.S.46:8E-21, the following contracts, if  
41 entered into before the executive board elected by the unit owners  
42 pursuant to subsection f. of R.S.46:8E-49 takes office, shall not be  
43 maintained for a period in excess of two years and may be terminated  
44 without penalty by the executive board at the end of any two-year  
45 period:

46 a. any management contract, employment contract, or lease of

1 recreational or parking areas or facilities;

2 b. any other contract or lease between the association and a  
3 declarant or an affiliate of a declarant; or

4 c. any contract or lease that is not bona fide or was unconscionable  
5 to the unit owners at the time entered into under the circumstances  
6 then prevailing.

7 This section shall not apply to:

8 Any lease the termination of which would terminate the common  
9 interest community or reduce its size, unless the real estate subject to  
10 that lease was included in the common interest community for the  
11 purpose of avoiding the right of the association to terminate a lease  
12 under this section, or a proprietary lease.

13 46:8E-52. Bylaws.

14 a. The bylaws of the association must provide:

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

17 (2) Election by the executive board of a president, treasurer,  
18 secretary, and any other officers of the association the bylaws may  
19 specify;

20 (3) The qualifications, powers and duties, terms of office, and  
21 manner of electing and removing executive board members and  
22 officers and filling vacancies;

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

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

27 (6) A method for amending the bylaws.

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

31 46:8E-53. Upkeep of common interest community.

32 a. Except to the extent provided by the declaration, subsection b.  
33 of this section, or subsection h. of R.S.46:8E-59, an association shall  
34 be responsible for the maintenance, repair, and replacement of the  
35 common elements, and each unit owner shall be responsible for  
36 maintenance, repair, and replacement of his unit. Each unit owner  
37 shall afford to the association and the other unit owners, and to their  
38 agents or employees, such access through his unit as reasonably  
39 necessary for those purposes. If damage is inflicted on the common  
40 elements or on any unit through which access is taken, the entity  
41 responsible for the damage shall be liable for the prompt repair  
42 thereof.

43 b. In addition to the liability that a declarant as a unit owner has  
44 under this act, the declarant alone is liable for all expenses in  
45 connection with real estate subject to development rights. A unit  
46 owner or other portion of the common interest community shall not be

1 subject to a claim for payment of development rights expenses. Unless  
2 the declaration provides otherwise, any income or proceeds from real  
3 estate subject to development rights shall inure to the declarant.

4 c. In a planned community, if all development rights have expired  
5 with respect to any real estate, the declarant shall remain liable for all  
6 expenses of that real estate unless, upon expiration, the declaration  
7 provides that the real estate becomes common elements or units.

8 46:8E-54. Meetings.

9 A meeting of an association shall be held at least once each year.  
10 Special meetings of an association may be called by the president, a  
11 majority of the executive board, or by unit owners having 20 percent,  
12 or any lower percentage specified in the bylaws, of the votes in the  
13 association. Not less than 10 nor more than 60 days in advance of any  
14 meeting, the secretary or other officer specified in the bylaws shall  
15 cause notice to be hand-delivered or placed in the United States mail  
16 in a postpaid envelope to the proper mailing address of each unit or to  
17 any other mailing address designated in writing by the unit owner. The  
18 notice of any meeting must state the time and place of the meeting and  
19 the items on the agenda, including the general nature of any proposed  
20 amendment to the declaration or bylaws, any budget changes, and any  
21 proposal to remove an officer or member of the executive board.

22 46:8E-55. Quorums.

23 a. Unless the bylaws provide otherwise, a quorum is present  
24 throughout any meeting of the association if persons entitled to cast  
25 20 percent of the votes that may be cast for election of the executive  
26 board are present in person or by proxy at the beginning of the  
27 meeting.

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

32 46:8E-56. Voting; Proxies.

33 a. If only one of several owners of a unit is present at a meeting of  
34 the association, that owner is entitled to cast all the votes allocated to  
35 that unit. If more than one of the owners are present, the votes  
36 allocated to that unit may be cast only in accordance with the  
37 agreement of a majority in interest of the owners, unless the  
38 declaration expressly provides otherwise. There is majority  
39 agreement if any one of the owners casts the votes allocated to that  
40 unit without protest being made promptly to the person presiding over  
41 the meeting by any of the other owners of the unit.

42 b. Votes allocated to a unit may be cast pursuant to a proxy duly  
43 executed by a unit owner. If a unit is owned by more than one person,  
44 each owner of the unit may vote, unless the additional vote would  
45 violate the terms of the declaration, or register protest to the casting  
46 of votes by the other owners of the unit through a duly executed

1 proxy. A unit owner may revoke a proxy given pursuant to this  
2 section only by actual notice of revocation to the person presiding  
3 over a meeting of the association. A proxy is void if it is not dated or  
4 purports to be revocable without notice. A proxy terminates one year  
5 after its date, unless it specifies a shorter term.

6 c. Votes allocated to a unit may be cast by ballot duly executed by  
7 a unit owner. If a unit is owned by more than one person, each owner  
8 of the unit may vote through a duly executed ballot, unless the  
9 additional ballot would violate the terms of the declaration. A unit  
10 owner may revoke a ballot executed pursuant to this section only by  
11 actual notice of revocation to the person presiding over a meeting of  
12 the association.

13 d. If the declaration requires that votes on specified matters  
14 affecting the common interest community be cast by lessees rather than  
15 unit owners of leased units: (1) the provisions of subsections a. and  
16 b. of this section apply to lessees as if they were unit owners; (2) unit  
17 owners who have leased their units to other persons may not cast  
18 votes on those specified matters; and (3) lessees are entitled to notice  
19 of meetings, access to records, and other rights respecting those  
20 matters as if they were unit owners. Unit owners must also be given  
21 notice, in the manner provided in R.S.46:8E-53, of all meetings at  
22 which lessees are entitled to vote.

23 e. No votes allocated to a unit owned by the association may be  
24 cast.

25 46:8E-57. Tort and contract liability.

26 a. A unit owner shall not be liable for an injury or damage arising  
27 out of the condition or use of the common elements. The association  
28 or a unit owner other than the declarant shall not be liable for that  
29 declarant's torts in connection with any part of the common interest  
30 community which that declarant has the responsibility to maintain.

31 b. An action alleging a wrongful act by the association, including  
32 an action arising out of the condition or use of the common elements,  
33 may be maintained against the association but not against any unit  
34 owner. If the wrongful act occurred during any period of declarant  
35 control and the association has given the declarant reasonable notice  
36 of and an opportunity to defend against the action, the declarant who  
37 then controlled the association shall be liable to the association or to  
38 any unit owner for: (1) all losses arising from that wrongful act not  
39 covered by insurance suffered by the association or that unit owner,  
40 and (2) all costs that the association would not have incurred but for  
41 the wrongful act, including any breach of contract remedies.  
42 Whenever a declarant is liable to the association under this section, the  
43 declarant shall also be liable for all expenses of litigation, including  
44 reasonable attorney's fees, incurred by the association.

45 c. Any statute of limitations affecting an association's right of  
46 action against a declarant under this act shall be tolled until the period

1 of declarant control terminates. A unit owner is not precluded from  
2 maintaining an action contemplated by this section because he is a unit  
3 owner or a member or officer of the association. Liens resulting from  
4 judgments against the association shall be governed by R.S.46:8E-62.

5 d. Where the bylaws provide, an association shall not be liable in  
6 any civil action brought by or on behalf of a unit owner to respond in  
7 damages as a result of bodily injury to the unit owner occurring on the  
8 common elements of the association. This subsection shall not grant  
9 immunity to any association causing bodily injury to a unit owner on  
10 the association's common elements by its willful, wanton or grossly  
11 negligent act of commission or omission.

12 46:8E-58. Conveyance or encumbrance of common elements.

13 a. In a condominium or planned community, portions of the  
14 common elements may be conveyed or subjected to a security interest  
15 by the association if persons entitled to cast at least 80 percent of the  
16 votes in the association, including 80 percent of the votes allocated to  
17 units not owned by a declarant, or any larger percentage the  
18 declaration specifies, agree to that action; but all owners of units to  
19 which any limited common element is allocated must agree in order to  
20 convey that limited common element or subject it to a security interest.  
21 The declaration may specify a smaller percentage only if all of the units  
22 are restricted exclusively to non-residential uses. Proceeds of the sale  
23 shall be an asset of the association, but the proceeds of a sale of  
24 limited common elements must be distributed equitably among the  
25 owners of units to which the limited common elements were allocated.

26 b. Part of a cooperative may be conveyed and all or part of a  
27 cooperative may be subjected to a security interest by the association  
28 if persons entitled to cast at least 80 percent of the votes in the  
29 association, including 80 percent of the votes allocated to units not  
30 owned by a declarant, or any larger percentage the declaration  
31 specifies, agree to that action; but, if fewer than all of the units or  
32 limited common elements are to be conveyed or subjected to a security  
33 interest, then all unit owners of those units, or the units to which those  
34 limited common elements are allocated, must agree in order to convey  
35 those units or limited common elements or subject them to a security  
36 interest. The declaration may specify a smaller percentage only if all  
37 of the units are restricted exclusively to nonresidential uses. Proceeds  
38 of the sale shall be an asset of the association. Any purported  
39 conveyance or other voluntary transfer of an entire cooperative, unless  
40 made pursuant to R.S.46:8E-41, is void.

41 c. An agreement to convey common elements in a condominium or  
42 planned community, or to subject them to a security interest, or in a  
43 cooperative, an agreement to convey any part of a cooperative or  
44 subject it to a security interest, must be evidenced by the execution of  
45 an agreement, or ratifications thereof, in the same manner as a deed,  
46 by the requisite number of unit owners. The agreement must specify

1 a date after which the agreement will be void unless recorded. The  
2 agreement and all ratifications thereof must be recorded in each county  
3 in which a portion of the common interest community is situated, and  
4 is effective only upon recordation.

5 d. An association, on behalf of the unit owners, may contract to  
6 convey an interest in a common interest community pursuant to  
7 subsection a., but the contract shall not be enforceable against the  
8 association until approved pursuant to subsections a., b., and c. of this  
9 section. Thereafter, the association shall have all of the powers  
10 necessary and appropriate to effect the conveyance or encumbrance,  
11 including the power to execute deeds or other instruments.

12 e. Unless made pursuant to this section, any purported conveyance,  
13 encumbrance, judicial sale, or other voluntary transfer of common  
14 elements or of any other part of a cooperative is void.

15 f. A conveyance or encumbrance of common elements or of a  
16 cooperative pursuant to this section does not deprive any unit of its  
17 rights of access and support.

18 g. Unless the declaration otherwise provides, if the holders of a  
19 first security interest on 80 percent of the units which are subject to  
20 security interests on the day the unit owners' agreement under  
21 subsection c. is recorded, consent in writing:

22 (1) A conveyance of common elements pursuant to this section  
23 terminates both the undivided interests in those common elements  
24 allocated to the units and the security interests in those undivided  
25 interests held by all persons holding security interests in the units; and

26 (2) An encumbrance of common elements pursuant to this section  
27 has priority over all preexisting encumbrances on the undivided  
28 interest in those common elements held by all persons holding security  
29 interests in the units.

30 h. The consent by holders of first security interests on units  
31 described in subsection g. of this section, or a certificate of the  
32 secretary affirming that those consents have been received by the  
33 association, may be recorded at any time before the date on which the  
34 agreement under subsection c. becomes void. Consents or certificates  
35 so recorded are valid from the date they are recorded for purposes of  
36 calculating the percentage of consenting first security interest holders,  
37 regardless of late sales or encumbrances on those units. Regardless of  
38 the consent of the required percentage of first security interest holders,  
39 a conveyance or encumbrance of common elements does not affect  
40 interests having priority over the declaration, or created by the  
41 association after the declaration was recorded.

42 i. In a cooperative, the association may acquire, hold, encumber,  
43 or convey a proprietary lease without complying with this section.

44 j. The effects of foreclosure of security interests granted pursuant  
45 to this section shall be governed by R.S.46:8E-41.

46 46:8E-59. Insurance.

1 a. Commencing not later than the date of the first conveyance of  
2 a unit to a person other than a declarant, the association shall maintain,  
3 to the extent reasonably available:

4 (1) Property insurance on the common elements and, in a planned  
5 community, also on property that must become common elements and  
6 all structural portions of the common interest community, insuring  
7 against all risks of direct physical loss commonly insured against or,  
8 in the case of a conversion building, against fire and extended  
9 coverage perils. Unless the association's declaration provides  
10 otherwise, the coverages under the property insurance shall be based  
11 upon replacement cost. If the declaration or bylaws do not provide  
12 for replacement cost insurance, the total amount of insurance after  
13 application of any deductibles shall not be less than 80 percent of the  
14 actual cash value of the insured property at the time the insurance is  
15 purchased and at each renewal date, exclusive of land, excavations,  
16 foundations, and other items normally excluded from property policies;

17 (2) Liability insurance, including medical payments insurance, in an  
18 amount determined by the executive board but not less than any  
19 amount specified in the declaration, covering all occurrences  
20 commonly insured against for death, bodily injury, and property  
21 damage arising out of or in connection with the use, ownership, or  
22 maintenance of the common elements and, in cooperatives, also of all  
23 units; and

24 (3) Any other insurance required by the declaration, association's  
25 bylaws, or applicable law.

26 b. In the case of a building that is part of a cooperative or that  
27 contains units having horizontal boundaries described in the  
28 declaration, the insurance maintained under paragraph (1) of  
29 subsection a., to the extent reasonably available, must include  
30 coverage of the units, but need not include improvements and  
31 betterments installed by unit owners.

32 c. If the insurance described in subsections a. and b. of this section  
33 is not reasonably available, the association promptly shall cause notice  
34 of that fact to be hand-delivered or placed in the United States mail in  
35 a postpaid envelope to all unit owners. The declaration may require  
36 the association to carry any other insurance, and the association in any  
37 event may carry any other insurance it considers appropriate to protect  
38 the association or the unit owners.

39 d. Insurance policies carried pursuant to subsections a. and b. of  
40 this section must provide that:

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

44 (2) The insurer waives its right to subrogation under the policy  
45 against any unit owner or member of his household;

46 (3) No act or omission by any unit owner, unless acting within the

1 scope of his authority on behalf of the association, will void the policy  
2 or be a condition to recovery under the policy;

3 (4) There is other insurance in the name of a unit owner covering  
4 the same risk covered by the policy; and,

5 (5) The association's policy provides primary insurance.

6 e. Any loss covered by the property policy under paragraph (1) of  
7 subsection a. and subsection b. of this section shall be adjusted with  
8 the association, but the insurance proceeds for that loss shall be  
9 payable to any insurance trustee designated for that purpose, or  
10 otherwise to the association, and not to any holder of a security  
11 interest. The insurance trustee or the association shall hold any  
12 insurance proceeds in trust for the association, unit owners, and lien  
13 holders as their interests may appear. Subject to the provisions of  
14 subsection h. of this section, the proceeds shall be disbursed first for  
15 the repair or restoration of the damaged property, and the association,  
16 unit owners, and lien holders shall not be entitled to receive payment  
17 of any portion of the proceeds unless there is a surplus of proceeds  
18 after the property has been completely repaired or restored, or the  
19 common interest community is terminated.

20 f. An insurance policy issued to the association shall not prevent a  
21 unit owner from obtaining insurance for his own benefit.

22 g. An insurer that has issued an insurance policy under this section  
23 shall issue certificates or memoranda of insurance to the association  
24 and, upon written request, to any unit owner or holder of a security  
25 interest. The insurer issuing the policy may not cancel or refuse to  
26 renew it until 30 days after notice of the proposed cancellation or  
27 non-renewal has been mailed to the association, and to each unit  
28 owner and each holder of a security interest to whom a certificate or  
29 memorandum of insurance has been issued at their respective last  
30 known addresses.

31 h. Any portion of the common interest community for which  
32 insurance is required under this section which is damaged or destroyed  
33 must be repaired or replaced promptly by the association unless (1) the  
34 common interest community is terminated, in which case R.S.46:8E-41  
35 applies, (2) repair or replacement would be illegal under any State or  
36 local statute or ordinance governing health or safety, or (3) 80 percent  
37 of the unit owners, including any owner of a unit or assigned limited  
38 common element that will not be rebuilt, vote not to rebuild. The cost  
39 of repair or replacement in excess of insurance proceeds and reserves  
40 shall be a common expense. If the entire common interest community  
41 is not repaired or replaced, (4) the insurance proceeds attributable to  
42 the damaged common elements must be used to restore the damaged  
43 area to a condition compatible with the remainder of the common  
44 interest community, and (5) except to the extent that other persons  
45 will be distributees (Subparagraph b. of paragraph 11 of subsection a.  
46 of R.S.46:8E-27), (i) the insurance proceeds attributable to units and

1 limited common elements that are not rebuilt must be distributed to the  
2 owners of those units and the owners of the units to which those  
3 limited common elements were allocated, or to lien holders, as their  
4 interests may appear, and (ii) the remainder of the proceeds must be  
5 distributed to all the unit owners or lien holders, as their interests may  
6 appear, as follows: In a condominium, in proportion to the common  
7 element interests of all the units and, in a cooperative or planned  
8 community, in proportion to the common expense liabilities of all the  
9 units. If the unit owners vote not to rebuild any unit, that unit's  
10 allocated interests are automatically reallocated upon the vote as if the  
11 unit had been condemned under subsection a. of R.S.46:8E-6, and the  
12 association promptly shall prepare, execute, and record an amendment  
13 to the declaration reflecting the reallocations.

14 i. The provisions of this section may be varied or waived in the  
15 case of a common interest community in which all units are restricted  
16 to non-residential use.

17 46:8E-60. Surplus funds.

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

23 46:8E-61. Assessments for common expenses.

24 a. Until the association makes a common expense assessment, the  
25 declarant shall pay all common expenses. After an assessment has  
26 been made by the association, assessments must be made at least  
27 annually, based on a budget which shall be adopted at least annually  
28 by the association.

29 b. Except for assessments under subsections c., d., and e. of this  
30 section, all common expenses must be assessed against all the units in  
31 accordance with the allocations set forth in the declaration pursuant to  
32 subsections a. and b. of R.S.46:8E-29. Any past due common expense  
33 assessment or installment thereof shall bear interest at the rate  
34 established by the association not exceeding 18 percent per year.

35 c. Unless the declaration provides otherwise:

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

40 (2) Any common expense or portion thereof benefiting fewer than  
41 all of the units must be assessed exclusively against the units benefited;  
42 and

43 (3) The costs of insurance must be assessed in proportion to risk  
44 and, if separately metered, the costs of utilities must be assessed in  
45 proportion to usage.

46 d. Assessments to pay a judgment against the association pursuant

1 to R.S.46:8E-63 may be made only against the units in the common  
2 interest community conveyed to unit owners other than the declarant  
3 at the time the judgment was entered, in proportion to their common  
4 expense liabilities.

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

8 f. If common expense liabilities are reallocated, common expense  
9 assessments and any installment thereof not yet due must be  
10 recalculated in accordance with the reallocated common expense  
11 liabilities.

12 46:8E-62. Lien for assessments.

13 a. The association shall have a statutory lien on a unit for any  
14 assessment levied against that unit or fines imposed against its unit  
15 owner. Unless the declaration otherwise provides, fees, charges, late  
16 charges, fines, and interest charged pursuant to paragraphs (10)  
17 through (12) of section a. of R.S.46:8E-47 are enforceable as  
18 assessments under this section. If an assessment is payable in  
19 installments, the full amount of the assessment is a lien from the time  
20 the first installment thereof becomes due.

21 b. A lien under this section shall be prior to all other liens and  
22 encumbrances on a unit except (1) liens and encumbrances recorded  
23 before the recordation of the declaration and, in a cooperative, liens  
24 and encumbrances which the association creates, assumes, or takes  
25 subject to, (2) a first security interest on the unit recorded before the  
26 date on which the assessment sought to be enforced became  
27 delinquent, or, in a cooperative, the first security interest encumbering  
28 only the unit owner's interest and perfected before the date on which  
29 the assessment sought to be enforced became delinquent, and (3) liens  
30 for real estate taxes and other governmental assessments or charges  
31 against the unit or cooperative. Such a lien shall also be prior to all  
32 security interests described in paragraph (2) above to the extent of the  
33 common expense assessments based on the periodic budget adopted  
34 by the association pursuant to subsection a. of R.S.46:8E-61 which  
35 would have become due in the absence of acceleration during the six  
36 months immediately preceding institution of an action to enforce the  
37 lien. This subsection does not affect the priority of mechanics' or  
38 materialmen's liens, or the priority of liens for other assessments made  
39 by the association.

40 c. Unless the declaration otherwise provides, if two or more  
41 associations have liens for assessments created at any time on the same  
42 property, those liens have equal priority.

43 d. Recording of the declaration constitutes record notice and  
44 perfection of the lien. No further recordation of any claim of lien for  
45 assessment under this section shall be required.

46 e. This section does not prohibit actions to recover sums for which

1 subsection a. of this section creates a lien or prohibit an association  
2 from taking a deed in lieu of foreclosure.

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

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

12 h. In a cooperative, upon nonpayment of an assessment on a unit,  
13 the unit owner may be evicted in the same manner as provided by law  
14 in the case of an unlawful holdover by a commercial tenant, and the  
15 lien may be foreclosed as provided by this section.

16 i. The association's lien may be foreclosed as provided in this  
17 subsection:

18 (1) In a condominium or planned community, an association's lien  
19 must be foreclosed in like manner as a mortgage on real estate.

20 (2) In a cooperative whose unit owners' interests in the units are  
21 real estate (R.S.46:8E-4), an association's lien shall be foreclosed in a  
22 like manner as a mortgage on real estate; or

23 (3) In a cooperative, an association's lien must be foreclosed in a  
24 like manner as a security interest under N.J.S.12A:9-501.

25 j. In an action by an association to collect assessments or to  
26 foreclose a lien for unpaid assessments, the court may appoint a  
27 receiver of the unit owner to collect all sums alleged to be due and  
28 owing to that unit owner before or during the pendency of the action.  
29 Such a receivership shall be governed by N.J.S. 15A:14-1 et seq. The  
30 court may order the receiver to pay any sums held by the receiver to  
31 the association during the pendency of the action to the extent of the  
32 association's common expense assessments adopted by the association  
33 pursuant to R.S.46:8E-61.

34 46:8E-63. Other liens.

35 a. In a condominium or planned community:

36 (1) Except as provided in paragraph (2) of this subsection, a  
37 judgment for money against the association if docketed shall not be a  
38 lien on the common elements, but shall be a lien in favor of the  
39 judgment lien holder against all of the units in the common interest  
40 community at the time the judgment was entered. No other property  
41 of a unit owner shall be subject to the claims of creditors of the  
42 association.

43 (2) If the association has granted a security interest in the common  
44 elements to a creditor of the association pursuant to R.S.46:8E-58, the  
45 holder of that security interest shall exercise its right against the  
46 common elements before its judgment lien on any unit may be

1 enforced.

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

16 (4) A judgment against an association shall be indexed in the name  
17 of the common interest community and the association and, when so  
18 indexed, is notice of the lien against the units.

19 b. In a cooperative:

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

26 (2) Whether or not a unit owner's unit is subject to the claims of  
27 the association's creditors, no other property of a unit owner shall be  
28 subject to those claims.

29 46:8E-64. Association records.

30 The association shall keep financial records sufficiently detailed to  
31 enable the association to comply with R.S.46:8E-72. All financial and  
32 other records must be made reasonably available for examination by  
33 any unit owner and his authorized agents except any records:

34 a. Disclosure of which would constitute an unwarranted invasion  
35 of individual privacy;

36 b. Concerning pending or anticipated litigation or contract  
37 negotiations;

38 c. Falling within the attorney-client privilege, to the extent that  
39 confidentiality is required in order for the attorney to exercise his or  
40 her ethical duties as a lawyer; or

41 d. Involving the employment, promotion, discipline or dismissal of  
42 a specific officer or employee of the association.

43 46:8E-63. Association as trustee.

44 With respect to a third person dealing with the association in the  
45 association's capacity as a trustee, the existence of trust powers and  
46 their proper exercise by the association may be assumed without

1 inquiry. A third person shall not be bound to inquire whether the  
2 association has power to act as trustee or is properly exercising trust  
3 powers. A third person, without actual knowledge that the association  
4 is exceeding or improperly exercising its powers, shall be fully  
5 protected in dealing with the association as if it possessed and properly  
6 exercised the powers it purports to exercise. A third person shall not  
7 be bound to assure the proper application of trust assets paid or  
8 delivered to the association in its capacity as trustee.

9 46:8E-66. Assignment of rents.

10 a. Subject to the rights of holders of first security interests, an  
11 association may collect, from rent due from a tenant to a delinquent  
12 unit owner, an amount not more than any unpaid common expenses,  
13 late fees, interest, and costs of collection, including reasonable  
14 attorneys fees. "Delinquent unit owner" means a unit owner who owes  
15 common expense fees which are 30 or more days past due.

16 b. Prior to taking any action permitted by this section, an  
17 association shall give written notice to the delinquent unit owner at the  
18 unit owner's last known address of its intent to collect the rent by  
19 certified mail, return receipt requested. The notice shall set forth the  
20 exact amount the association claims is due and shall indicate the intent  
21 of the association to collect the amount due from rent, along with any  
22 other amounts which become due in the future and which remain  
23 unpaid for 30 days after becoming due, including any common expense  
24 fees lawfully accelerated pursuant to the declaration or bylaws. A  
25 copy of the notice shall be sent to the holder of the unit's first security  
26 interest of record. Any cost incurred by the association to ascertain  
27 the identity of the holder of the first security interest, including the  
28 cost of the preparation of a title search, shall constitute additional  
29 common expense fees due with respect to the unit.

30 c. A delinquent unit owner shall have 10 days from receipt of the  
31 notice required to be sent pursuant to subsection b. of this section to  
32 provide proof of payment or a statement of the grounds upon which  
33 the assessment is disputed. Upon the failure of the unit owner to  
34 respond within 10 days after receipt of the notice, or within 15 days  
35 of mailing if no receipt is obtained, and provided that no notice is  
36 received from the holder of the first security interest that it is  
37 exercising its right of assignment of rental proceeds, the association  
38 shall be entitled to notify and direct each tenant renting a unit from the  
39 delinquent unit owner to pay to the association all or a portion of the  
40 rent otherwise due the delinquent unit owner. The amount to be  
41 applied from the rent shall be limited to the lesser of: (1) the amount  
42 as stated in the notice to the delinquent unit owner or, (2) an amount  
43 adjusted to reflect any calculation errors sought to be corrected by the  
44 unit owner, as stated in the response to the association, if timely sent.  
45 No offset shall be allowed for amounts which are unrelated to claims  
46 of calculation errors. The association shall have a continuing right to

1 collect the rent from the tenant or tenants until the delinquent sum is  
2 satisfied in full.

3 d. Nothing in this section shall prevent a unit owner or association  
4 from seeking a judicial remedy in a court of competent jurisdiction.  
5 If a court determines that a unit owner intentionally misrepresented or  
6 misstated a material fact, then the association shall be entitled to  
7 recover from that unit owner an amount equal to three times the  
8 unpaid assessment, in addition to any association fees accruing and  
9 remaining unpaid after the date of filing of the action, and reasonable  
10 attorney's fees.

11 e. A holder of a first security interest which is entitled to an  
12 assignment of rents and which has exercised its rights by written notice  
13 recorded at the county recording office in the county in which the  
14 property is located, and by written notice sent by certified mail to the  
15 association from which it received notice pursuant to subsection b. of  
16 this section, may collect such rents in accordance with an assignment  
17 of rents under which it is an assignee.

18

19

#### ARTICLE IV

20

21

#### PROTECTION OF PURCHASERS

22

23 46:8E-67. Applicability; Waiver.

24 a. This Article applies to all units subject to this act, except as  
25 provided in subsection b. of this section.

26 b. A resale certificate need not be prepared or delivered in the case  
27 of:

28 (1) A gratuitous disposition of a unit;

29 (2) A disposition pursuant to court order;

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

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

32 (5) A disposition to a dealer;

33 (6) A disposition that may be canceled at any time and for any  
34 reason by the purchaser without penalty; or

35 (7) A disposition of a unit restricted to nonresidential use, unless  
36 a majority of the voting interests in a common interest community  
37 devoted to nonresidential use determines that this Article shall apply,  
38 in full or part.

39 46:8E-68. Liability for public offering statement requirements.

40 a. Except as provided in subsection b. of this section, a declarant,  
41 before offering any interest in a unit to the public, shall prepare a  
42 public offering statement conforming to the requirements of section 8  
43 of "The Planned Real Estate Development Full Disclosure Act,"  
44 P.L.1977, c.419 (C.45:22A-28).

45 b. A declarant may transfer responsibility for preparation of all or  
46 a part of the public offering statement to a successor declarant

1 (R.S.46:8E-50) or to a dealer who intends to offer units in the  
2 common interest community. In the event of any such transfer, the  
3 transferor shall provide the transferee with any information necessary  
4 to enable the transferee to fulfill the requirements of subsection a. of  
5 this section.

6 c. Any declarant or dealer who offers a unit to a purchaser shall  
7 deliver a public offering statement in the manner prescribed by  
8 subsection a. of this section. The person who prepared all or a part of  
9 the public offering statement is liable under "The Planned Real Estate  
10 Development Full Disclosure Act" for any false or misleading  
11 statement set forth therein or for any omission of a material fact  
12 therefrom with respect to that portion of the public offering statement  
13 which he prepared. If a declarant did not prepare any part of a public  
14 offering statement that he delivers, he is not liable for any false or  
15 misleading statement set forth therein or for any omission of a material  
16 fact therefrom unless he had actual knowledge of the statement or  
17 omission or, on the exercise of reasonable care, should have known of  
18 the statement or omission.

19 d. If a unit is part of a common interest community and is part of  
20 any other real estate regime in connection with the sale of which the  
21 delivery of a public offering statement is required under the laws of  
22 this State, a single public offering statement conforming to the  
23 requirements of "The Planned Real Estate Development Full  
24 Disclosure Act" as those requirements relate to each regime in which  
25 the unit is located, and to any other requirements imposed under the  
26 laws of this State, may be prepared and delivered in lieu of providing  
27 two or more public offering statements.

28 46:8E-69. Public offering statement - The Planned Real Estate  
29 Development Full Disclosure Act.

30 Except as expressly set forth in R.S.46:8E-68, R.S.46:8E-70 and  
31 R.S.46:8E-71, this act shall not affect or amend the terms or  
32 applicability of "The Planned Real Estate Development Full Disclosure  
33 Act," P.L.1977, c.419 (C.45:22A-21 et seq.).

34 46:8E-70. Common interest communities subject to development  
35 rights.

36 If the declaration provides that a common interest community is  
37 subject to any development rights, the public offering statement shall  
38 disclose, subject to the limitations set forth in R.S.46:8E-46 (Master  
39 Planned Communities), and, in addition to the information required by  
40 section 8 of "The Planned Real Estate Development Full Disclosure  
41 Act," P.L.1977, c.419 (C.45:22A-28) the following:

42 a. The maximum number of units, and the maximum number of  
43 units per acre, that may be created;

44 b. A statement of how many or what percentage of the units that  
45 may be created will be restricted exclusively to residential use, or a  
46 statement that no representations are made regarding use restrictions;

- 1 c. If any of the units that may be built within real estate subject to  
2 development rights are not to be restricted exclusively to residential  
3 use, a statement, with respect to each portion of that real estate, of the  
4 maximum percentage of the real estate areas, and the maximum  
5 percentage of the floor areas of all units that may be created therein,  
6 that are not restricted exclusively to residential use;
- 7 d. A brief narrative description of any development rights reserved  
8 by a declarant and of any conditions relating to or limitations upon the  
9 exercise of development rights;
- 10 e. A statement of the maximum extent to which each unit's  
11 allocated interests may be changed by the exercise of any development  
12 right described in subsection c. of this section;
- 13 f. A statement of the extent to which any buildings or other  
14 improvements that may be erected pursuant to any development right  
15 in any part of the common interest community will be compatible with  
16 existing buildings and improvements in the common interest  
17 community in terms of architectural style, quality of construction, and  
18 size, or a statement that no assurances are made in those regards;
- 19 g. General descriptions of all other improvements that may be  
20 made and limited common elements that may be created within any  
21 part of the common interest community pursuant to any development  
22 right reserved by the declarant, or a statement that no assurances are  
23 made in that regard;
- 24 h. A statement of any limitations as to the locations of any building  
25 or other improvement that may be made within any part of the  
26 common interest community pursuant to any development right  
27 reserved by the declarant, or a statement that no assurances are made  
28 in that regard;
- 29 i. A statement that any limited common elements created pursuant  
30 to any development right reserved by the declarant will be of the same  
31 general types and sizes as the limited common elements within other  
32 parts of the common interest community, or a statement of the types  
33 and sizes planned, or a statement that no assurances are made in that  
34 regard;
- 35 j. A statement that the proportion of limited common elements to  
36 units created pursuant to any development right reserved by the  
37 declarant will be approximately equal to the proportion existing within  
38 other parts of the common interest community, or a statement of any  
39 other assurances in that regard, or a statement that no assurances are  
40 made in that regard;
- 41 k. A statement that all restrictions in the declaration affecting use,  
42 occupancy, and alienation of units will apply to units created pursuant  
43 to any development right reserved by the declarant, or a statement of  
44 any differentiations that may be made as to those units, or statement  
45 that no assurances are made in that regard; and
- 46 l. A statement of the extent to which any assurances made pursuant

1 to this section apply or do not apply in the event that any development  
2 right is not exercised by the declarant.

3 46:8E-71. Time shares subject to development rights.

4 If the declaration provides that ownership or occupancy of any  
5 units, is or may be in time shares, the public offering statement shall  
6 disclose, in addition to the information required by section 8 of "The  
7 Planned Real Estate Development Full Disclosure Act," P.L.1977,  
8 c.419 (C.45:22A-28):

9 a. The number and identity of units in which time shares may be  
10 created;

11 b. The total number of time shares that may be created;

12 c. The minimum duration of any time shares that may be created;  
13 and

14 d. The extent to which the creation of time shares will or may  
15 affect the enforceability of the association's lien for assessments  
16 provided in R.S.46:8E-62.

17 46:8E-72. Resales of units.

18 a. Except in the case of a sale in which delivery of a public offering  
19 statement is required pursuant to section 8 of "The Planned Real  
20 Estate Development Full Disclosure Act," P.L.1977, c.419  
21 (C.45:22A-28) or unless exempt under subsection b. of R.S.46:8E-67,  
22 a unit owner shall furnish to a purchaser before the earlier of the date  
23 of conveyance or transfer of the right to possession of a unit, a copy  
24 of the declaration (other than any plats and plans), the bylaws, the  
25 rules or regulations of the association, and a certificate containing:

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

29 (2) A statement setting forth the amount of the periodic common  
30 expense assessment currently due and payable from the selling unit  
31 owner;

32 (3) A statement of any other fees payable by the owner of the unit  
33 being sold;

34 (4) A statement of any capital expenditures approved by the  
35 association for the current and two next succeeding fiscal years;

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

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

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

42 (8) A statement of any unsatisfied judgments against the  
43 association and the status of any pending suits in which the association  
44 is a defendant;

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

1 (10) A statement as to whether the executive board has given or  
2 received written notice that any existing uses, occupancies, alterations  
3 or improvements in or to the unit or to the limited common elements  
4 assigned thereto violate any provision of the declaration;

5 (11) A statement as to whether the executive board has received  
6 written notice from a governmental agency of any violation of  
7 environmental, health, or building code with respect to the unit, the  
8 limited common elements assigned thereto, or any other portion of the  
9 common interest community which have not been cured;

10 (12) A statement of the remaining term of any leasehold estate  
11 affecting the common interest community and the provisions governing  
12 any extension or renewal thereof;

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

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

20 (15) A statement describing any pending sale or encumbrance of  
21 common elements; and

22 (16) A statement disclosing the effect on the unit to be conveyed  
23 of any restrictions on the owner's right to use or occupy the unit or to  
24 lease the unit to another person.

25 b. The association, within 10 days after a request by a unit owner,  
26 shall furnish a certificate containing the information necessary to  
27 enable the unit owner to comply with this section. A unit owner  
28 providing a certificate pursuant to subsection a. of this section, and  
29 any real estate broker or sales agent who provides brokerage services  
30 to the unit owner or purchaser shall not be liable to the purchaser for:  
31 (1) any erroneous information provided by the association and  
32 included in the certificate, or (2) any matter related to the common  
33 interest community except, with respect to liability between the unit  
34 owner and a purchaser, as may otherwise be agreed in writing.

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

42 46:8E-73. Release of liens.

43 a. In the case of a sale of a unit where delivery of a public offering  
44 statement is required pursuant to "The Planned Real Estate  
45 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et  
46 seq.), a seller:

1 (1) Before conveying a unit, shall record or furnish to the  
2 purchaser releases of all liens, except: (a) liens on real estate that a  
3 declarant has the right to withdraw from the common interest  
4 community, or (b) that the purchaser expressly agrees to take subject  
5 to or assume and that encumber:

6 (i) in a condominium, that unit and its common element interest,  
7 and

8 (ii) in a cooperative or planned community, that unit and any  
9 limited common elements assigned thereto.

10 (2) Shall provide a surety bond or substitute collateral for or  
11 insurance against the lien as provided for liens on real estate in the  
12 "Construction Lien Law," P.L.1993, c.318 (C.2A:44A-1 et seq.).

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

19 46:8E-74. Express warranties of quality.

20 a. Express warranties made by any seller to a purchaser of a unit,  
21 if relied upon by the purchaser, shall be created as follows:

22 (1) Any affirmation of fact or promise which relates to the unit, its  
23 use, or rights appurtenant thereto, area improvements to the common  
24 interest community that would directly benefit the unit, or the right to  
25 use or have the benefit of facilities not located in the common interest  
26 community, shall create an express warranty that the unit and related  
27 rights and uses will conform to the affirmation or promise;

28 (2) Any model or description of the physical characteristics of the  
29 common interest community, including plans and specifications of or  
30 for improvements, shall create an express warranty that the common  
31 interest community will conform to the model or description, unless  
32 express disclaimers in language in common understanding calling the  
33 purchaser's attention to the exclusion of this warranty are displayed on  
34 the plans and specifications or in the model and are explicitly  
35 referenced in the sales contract;

36 (3) Any description of the quantity or extent of the real estate  
37 comprising the common interest community, including plats or  
38 surveys, shall create an express warranty that the common interest  
39 community will conform to the description, subject to customary  
40 tolerances; and

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

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

1 create a warranty.

2 c. Any conveyance of a unit transfers to the purchaser all express  
3 warranties of quality made by previous sellers.

4 46:8E-75. Statute of limitations for warranties.

5 a. Unless the limitation period is tolled under R.S.46:8E-57 or  
6 affected by subsection d. of this section, a judicial proceeding for  
7 breach of any obligation arising under R.S.46:8E-71, or the warranties  
8 provided under "The Planned Real Estate Development Full Disclosure  
9 Act," P.L.1977, c.419 (C.45:22A-21 et seq.) must be commenced  
10 within six years after the cause of action accrues, but the parties may  
11 agree to reduce the period of limitation to not less than two years.  
12 With respect to a unit that may be occupied for residential use, an  
13 agreement to reduce the period of limitation must be evidenced by a  
14 separate instrument executed by the purchaser.

15 b. Subject to subsection c. of this section, a cause of action for  
16 breach of warranty of quality, regardless of the purchaser's lack of  
17 knowledge of the breach, shall accrue:

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

22 (2) As to each common element, at the time the common element  
23 is completed or, if later, as to (a) a common element that is added to  
24 the common interest community by exercise of development rights, at  
25 the time the first unit which was added to the condominium by the  
26 same exercise of development rights is conveyed to a bona fide  
27 purchaser, or (b) a common element within any other portion of the  
28 common interest community, at a time the first unit is conveyed to a  
29 bona fide purchaser.

30 c. If a warranty of quality explicitly extends to future performance  
31 or duration of any improvement or component of the common interest  
32 community, the cause of action shall accrue at the time the breach is  
33 discovered or at the end of the period for which the warranty explicitly  
34 extends, whichever is earlier.

35 d. During the period of declarant control, the association may,  
36 pursuant to R.S.46:8E-81, authorize an independent committee of the  
37 executive board to evaluate and enforce by any lawful means warranty  
38 claims involving the common elements, and to compromise those  
39 claims. If the committee is so created, the limitation period for  
40 claims for these warranties shall begin to run from the date of the first  
41 meeting of the committee, regardless of when the period of declarant  
42 control terminates.

43 46:8E-76. Effect of violations on rights of action; Attorney's fees.

44 a. If a declarant or any other person subject to this act fails to  
45 comply with any of its provisions or any provision of the declaration  
46 or bylaws, any person or class of persons adversely affected by the

1 failure to comply shall have a claim for appropriate relief. Punitive  
2 damages may be awarded for a willful failure to comply with this act.  
3 The court, as appropriate, may award court costs and reasonable  
4 attorney's fees.

5 b. Parties to a dispute arising under this act, the declaration, or the  
6 bylaws may agree to resolve the dispute by any form of binding or  
7 nonbinding alternative dispute resolution, but;

8 (1) A declarant may agree with the association to do so only after  
9 the period of declarant control passes, unless the agreement is made  
10 with an independent committee of the executive board elected  
11 pursuant to R.S.46:8E-81; and

12 (2) An agreement to submit to binding arbitration shall be in a  
13 writing signed by the parties.

14 46:8E-77. Labeling of promotional material.

15 No promotional material may be displayed or delivered to a  
16 prospective purchaser which describes or portrays an improvement  
17 that is not in existence unless the description or portrayal of the  
18 improvement in the promotional material is conspicuously labeled or  
19 identified either as "MUST BE BUILT" or as "NEED NOT BE  
20 BUILT."

21 46:8E-78. Declarant's obligation to complete and restore.

22 a. Except for improvements labeled "NEED NOT BE BUILT" the  
23 declarant shall complete all recreational and parking facilities or  
24 amenities depicted on any site plan or other graphic representation,  
25 including any plats or plans prepared pursuant to R.S.46:8E-31,  
26 whether or not that site plan or other graphic representation is  
27 contained in the public offering statement or in any promotional  
28 material distributed by or for the declarant.

29 b. The declarant is subject to liability for the prompt repair and  
30 restoration, to a condition compatible with the remainder of the  
31 common interest community affected by the exercise of rights reserved  
32 pursuant to or created by R.S.46:8E-32 to R.S.8E-36, R.S.46:8E-38  
33 and R.S.8E-39.

34 46:8E-79. Substantial completion of units.

35 In the case of a sale of a unit in which delivery of a public offering  
36 statement is required, a contract of sale may be executed, but no  
37 interest in that unit may be conveyed, until the declaration is recorded  
38 and the unit is substantially completed, as evidenced by an independent  
39 licensed architect, surveyor or engineer, or by issuance of a certificate  
40 of occupancy authorized by law.

41 46:8E-80. Alternative dispute resolution.

42 a. An association shall provide for a method of alternative dispute  
43 resolution prior to the commencement of any suit in the courts of this  
44 State with respect to a matter concerning the enforcement of any term  
45 of a declaration recorded pursuant to this act, or under the powers of  
46 the executive board.

1       b. The requirement to provide for alternative dispute resolution  
2 shall not apply to:

3       (1) Any suit by the association to enforce the obligation to pay any  
4 common expense assessment;

5       (2) Any suit by an association to obtain a temporary restraining  
6 order (or equivalent emergency equitable relief) and such other  
7 ancillary relief as the court may deem necessary in order to maintain  
8 the status quo and preserve the association's ability to enforce the  
9 provisions of the declaration; or

10       (3) Any suit between unit owners seeking redress on the basis of  
11 a claim which would constitute a cause of action under the laws of this  
12 State in the absence of a claim based on the declaration or bylaws, if  
13 the amount in controversy exceeds \$5,000.

14       The holding of a hearing by the executive board or a committee  
15 designated to hear such matters, in accordance with procedures  
16 intended to provide for a fair and efficient procedure as set forth in the  
17 declaration, bylaws or a resolution validly adopted by the executive  
18 board, shall constitute a method of alternative dispute resolution which  
19 satisfies the requirements of this section.

20       46:4E-81. Phased resolution of claims involving common elements  
21 and other improvements to be maintained by association.

22       a. During the period of declarant control after the initial election  
23 of unit owner board members other than the declarant, the executive  
24 board of the association may authorize an independent committee of  
25 at least five unit owners other than the declarant to evaluate,  
26 compromise and enforce by any lawful means as provided in this  
27 section any claims involving the common elements or any other  
28 improvements in the common interest community which the  
29 association is obligated to maintain. Only members of the executive  
30 board elected by the unit owners other than the declarant and other  
31 unit owners appointed by those independent members may serve on  
32 the committee, and the committee's decisions shall be free of any  
33 control by the declarant or any member of the executive board or  
34 officer appointed by the declarant. Any vacancies on the committee  
35 shall be filled by the independent board members within 30 days, and  
36 in the case of any tie votes by such board members, by the vote of the  
37 unit owners other than the declarant within 60 days after the vacancy  
38 occurs.

39       b. If the committee is established and there has been substantial  
40 completion of the common elements and public improvements in any  
41 phase of the common interest community which are not covered by the  
42 performance or maintenance guarantees posted with any governmental  
43 agencies having jurisdiction, the committee shall, at the declarant's  
44 request, cause such common elements and improvements to be  
45 inspected and evaluated for compliance with the declarant's warranty  
46 and construction obligations with the assistance of qualified

1 independent engineering and legal consultants selected by the  
2 committee. The fees for such consultants shall be paid from funds  
3 contributed at closing for such purposes by unit owners other than the  
4 declarant or by regular or special common expense assessments or by  
5 both; provided, however, that the declarant shall have the option to  
6 supplement such funds to the extent that it deems appropriate.

7 c. Public improvements to be dedicated to any governmental entity  
8 shall be exempt from any direct warranty or construction defect  
9 claims by the association or the unit owners other than the declarant,  
10 provided that (1) each member of the committee is given at least 14  
11 days prior written notice of any application by the declarant for the  
12 release or reduction of any performance or maintenance guarantees  
13 and (2) notice of any such application is published in a newspaper  
14 having general circulation in the municipality in which the common  
15 interest community is located at least 14 days prior to any public  
16 hearing or meeting with respect to such application. Acceptance of  
17 any such public improvements by the governmental entity to which  
18 they are to be dedicated shall be deemed conclusive evidence that such  
19 improvements have been satisfactorily completed and the declarant  
20 shall have no further obligation with respect to same to the  
21 association, any unit owners other than the declarant, or to any  
22 governmental agency having jurisdiction.

23 d. Within 120 days after the association's receipt of any request for  
24 inspection of any phase of the completed common elements or other  
25 improvements, the committee shall cause its engineering consultant to  
26 inspect the particular completed improvements and render a written  
27 evaluation of same to the committee. A copy of the final report,  
28 following the committee's review of the initial evaluation, shall be  
29 furnished to the declarant within 30 days after the committee's receipt  
30 of same. Thereafter, the committee or its designated representatives  
31 and the declarant shall conduct one or more joint inspections of the  
32 common elements and other improvements covered by the declarant's  
33 request and pursue good faith negotiations to resolve any warranty or  
34 construction defect claims against the declarant. All fees and related  
35 expenses incurred by the committee for engineering and legal  
36 consultants shall be paid promptly by the association from available  
37 designated funds upon receipt of the committee's written authorization  
38 to make such payments.

39 e. If a settlement agreement is finalized between the committee and  
40 the declarant, the declarant controlled executive board shall have the  
41 authority to execute such an agreement and to release the declarant  
42 from all liability with respect to the completed common elements and  
43 improvements, subject to such terms and conditions as may be  
44 acceptable to the committee. Any such settlement agreement and  
45 release shall be legally binding upon the association and the unit  
46 owners, provided that its form is approved by the independent legal

1 counsel retained by the committee on behalf of the association.

2 f. If no settlement agreement is approved by the committee within  
3 180 days after the committee's receipt of the declarant's request for  
4 inspection, the parties shall be obligated to proceed to mediation  
5 within 30 days thereafter in accordance with the rules of the American  
6 Arbitration Association. If no settlement is reached through mediation  
7 within 15 days after commencement of same, then the parties shall  
8 promptly proceed to non-binding arbitration of any remaining issues  
9 in accordance with the rules of the American Arbitration Association  
10 and such mediation and non-binding arbitration shall be conditions  
11 precedent to any litigation of the warranty and construction defect  
12 claims against the developer, which shall also require the approval of  
13 a majority of the unit owners other than the declarant. All professional  
14 fees and expenses reasonably incurred by the association with regard  
15 to the mediation or arbitration or both shall be borne by the  
16 non-declarant unit owners and paid by the association promptly upon  
17 the receipt of written authorization of the committee.

18 g. In the event that no settlement agreement and releases are  
19 executed with respect to any phase of completed common elements or  
20 improvements during the period of declarant control of the executive  
21 board of the association, any statutes of limitation or repose applicable  
22 to such phase shall be extended for a period of one year after the  
23 assumption of control of the executive board by unit owners other than  
24 the declarant. In addition, the declarant controlled board shall not be  
25 obligated to commence suit for any such claims during its period of  
26 control.

27 h. The procedures set forth in this section shall also apply to and  
28 be binding upon the declarant and the association after the unit owners  
29 other than the declarant assume control of the executive board of the  
30 association; provided, however, that the independent unit owner  
31 controlled executive board of the association shall not be bound by the  
32 recommendations of the committee.

33

34 2. This act shall take effect on the first day of the thirteenth month  
35 after enactment.

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#### STATEMENT

39

40 This bill is the product of a statewide drafting committee consisting  
41 of community association attorneys, developer attorneys, property  
42 managers and homeowners. It is a New Jersey version of the Uniform  
43 Common Interest Ownership Act (UCIOA) which has been adopted,  
44 in full or substantial part, by 12 states. The UCIOA itself is an act of  
45 the National Conference of Commissioners on Uniform State Laws.  
46 It is a comprehensive, state-of-the-art statute that would provide

1 uniform guidelines for all forms of residential community associations  
2 and is generally applicable to condominiums, fee simple multifamily  
3 projects, home owner associations and cooperatives.

4 Due to the great demand upon available land and its resultant high  
5 cost, New Jersey contains a significantly disproportionate number of  
6 common interest communities in relation to its population base.  
7 Hence, the proliferation of all types of common interest communities  
8 calls for the adoption of the most modern, comprehensive law  
9 available.

10 Originally drafted in 1982, the UCIOA was most recently amended  
11 by the Uniform Commissioners in August of 1994 with changes to  
12 reflect a small number of modifications recommended by community  
13 law practitioners who were knowledgeable of experience under the  
14 act. Currently, the only substantive enabling legislation in the state,  
15 the "Condominium Act," representing some concepts almost a  
16 generation old, deals exclusively with the condominium form of  
17 ownership, leaving all other forms without a statutory basis. Without  
18 a single "home" for other forms of ownership, some community law  
19 issues, for example, find themselves inappropriately a part of the  
20 Planned Real Estate Development Full Disclosure Act, a statute often  
21 unrelated to such issues.

22 The term "common interest community" is used as an inclusive term  
23 to encompass any real estate with respect to which a person, by virtue  
24 of his ownership in a unit, is obligated to pay for real estate taxes,  
25 insurance premiums, maintenance, or improvement of other real estate  
26 described in a declaration. Where necessary, specific provisions are  
27 included for special needs. For instance, if time shares, leasehold  
28 estates, or cooperative projects require specific treatment, the act  
29 makes allowance for those forms of ownership. A description of some  
30 of the more salient issues that are addressed by the act follow.

31 The act addresses the problems inherent in phased developments by  
32 allowing developers more flexibility in the planning process to meet  
33 changed conditions in the marketplace. At the same time, unit  
34 purchasers in phased developments must be specifically informed of  
35 the potential risks and consequences if there is modification of the  
36 development plan.

37 The act encourages and enables developers and unit owners to  
38 address and remedy construction defect and warranty claims for  
39 construction that has been completed during the period of developer  
40 control of an association. The legislation helps to insulate foreclosing  
41 construction mortgage lenders from liability for acts of the developer  
42 or borrower or both and permits the withdrawal and sale of the  
43 undeveloped portions of a distressed or foreclosed project.

44 Its uniform provisions should benefit lenders by helping to ensure  
45 the adequacy of the legal documents. This is preferred to leaving such  
46 documents to the legal skills of the attorneys involved in the project.

1 Further, the act requires associations to furnish purchasers of resale  
2 units with disclosure certificates setting forth essential information  
3 concerning such matters as association finances, insurance, and code  
4 violations. If the association provides the certificate, neither the seller  
5 or the real estate broker or sales personnel involved in the transaction  
6 will have any liability for any erroneous information in the certificate  
7 or for any other matter related to the community, unless the buyer and  
8 seller agree otherwise.

9 In addition, the act makes clear that associations also have the  
10 authority to impose fines and late charges against delinquent unit  
11 owners. That will resolve the problems created by the holdings in  
12 Walker v. Briarwood Condo Association, 274 N.J. Super 422 (App.  
13 Div. 1994) and in Holbert v. Great Gorge Village, 281 N.J. Super 222  
14 (Ch. Div. 1994). The act further makes clear that associations have,  
15 among other powers, the power to grant easements over common  
16 property, pledge assessment income in connection with loans, and  
17 require non-binding alternative dispute resolution as a prerequisite to  
18 litigation.

19 In conclusion, the UCIOA contains numerous benefits over existing  
20 law. Its many "default" provisions will ensure against substantially  
21 inadequate governing documents. Its specific terms identifying the  
22 powers of the associations should eliminate unanticipated judicial  
23 holdings resulting from enabling legislation that has failed to address  
24 basic issues. And, finally, it will provide a statutory basis for all  
25 associations, not just condominiums.

26

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29

30 The "Uniform Common Interest Ownership Act.