

SENATE, No. 1637

STATE OF NEW JERSEY

INTRODUCED OCTOBER 28, 1996

By Senators PALAIA and CIESLA

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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38 ARTICLE I. IN GENERAL 39

- 40 46:8E-1. Short title. This chapter shall be known and may be cited
41 as the "Uniform Common Interest Ownership Act."
42 46:8E-2. Definitions.
43 As used in this chapter, unless specifically provided otherwise:
44 "Affiliate of a declarant" means any person who controls, is
45 controlled by, or is under common control with a declarant. A person
46 "controls" a declarant if the person (1) is general partner, officer,

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

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

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

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

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

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

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

42 "Condominium" means a common interest community in which
43 portions of the real estate are designated for separate ownership and
44 the remainder of the real estate is designated for common ownership
45 solely by the owners of those portions. A common interest community
46 is not a condominium unless the undivided interests in the common

1 elements are vested in the unit owners.

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

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

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

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

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

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

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

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

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

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

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

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

43 "Offering" means any advertisement, inducement, solicitation, or
44 attempt to encourage any person to acquire any interest in a unit, other
45 than as security for an obligation. An advertisement in a newspaper
46 or other periodical of general circulation, or in any broadcast medium

1 to the general public, of a common interest community not located in
2 this State, is not an offering if the advertisement states that an offering
3 may be made only in compliance with the law of the jurisdiction in
4 which the common interest community is located.

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

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

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

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

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

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

29 "Residential purposes" means use for dwelling or recreational
30 purposes, or both.

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

39 "Special declarant rights" means rights reserved for the benefit of
40 a declarant to (1) complete improvements indicated on plats and plans
41 filed with the declaration pursuant to R.S.46:8E-31 or, in a
42 cooperative, to complete improvements described in the public
43 offering statement pursuant to R.S.46:8E-68; (2) exercise any
44 development right pursuant to R.S.46:8E-32; (3) maintain sales
45 offices, management offices, signs advertising the common interest
46 community, and models pursuant to R.S.46:8E-38; (4) use easements

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

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

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

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

30 46:8E-3. Variation by agreement. Except as expressly provided
31 in this act, its provisions may not be varied by agreement, and rights
32 conferred by it may not be waived. A declarant may not act under a
33 power of attorney, or use any other device, to evade the limitations or
34 prohibitions of this act or the declaration.

35 46:8E-4. Separate titles and taxation.

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

41 (1) The name of the cooperative;

42 (2) The unit designation;

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

45 (4) The full name and address of the transferrer and transferee of
46 the unit;

- 1 (5) An executed and acknowledged consent of the cooperative
2 executive board authorizing and approving the transfer or assignment;
3 (6) The number of shares transferred;
4 (7) A statement of the full consideration paid for the cooperative
5 unit which includes the purchase price paid plus the amount derived
6 from application of the percent of ownership held in conjunction with
7 the unit to the unpaid balance of the fee or leasehold mortgage
8 encumbering the entire structure as of the date of the transfer or
9 assignment; and
10 (8) All other matters, consistent with this act, which the parties
11 may deem appropriate.

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

17 b. In a condominium or planned community:

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

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

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

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

38 46:8E-5. Applicability of local ordinances, regulations, and
39 building codes.

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

44 b. The condominium or cooperative form of ownership shall not be
45 prohibited through any zoning or land use law nor shall any such law
46 impose a requirement upon a condominium or cooperative which

1 would not be imposed upon a physically identical development under
2 a different form of ownership.

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

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

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

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

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

45 46:8E-7. Principles of law supplement provisions of act. Unless
46 displaced by particular provisions of this act, the principles of law and

1 equity, including the law of corporations and unincorporated
2 associations, the law of real property, and the law relative to capacity
3 to contract, principal and agent, eminent domain, estoppel, fraud,
4 misrepresentation, duress, coercion, mistake, receivership, substantial
5 performance, or other validating or invalidating causes supplement its
6 provisions.

7 46:8E-8. Construction against implicit repeal. As this act is a
8 general act intended as a unified coverage of its subject matter, no part
9 of it shall be construed to be impliedly repealed by subsequent
10 legislation if that construction can reasonably be avoided.

11 46:8E-9. Uniformity of application and construction. This act shall
12 be applied and construed to effectuate its general purpose to make
13 uniform the law with respect to the subject of this act among states
14 enacting it.

15 46:8E-10. Severability; Interpretation. a. If any provision of this
16 act or the application thereof to any person or circumstances is held
17 invalid, the invalidity does not affect other provisions or applications
18 of this act which can be given effect without the invalid provisions or
19 applications, and to this end the provisions of this act are severable.

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

25 46:8E-11. Unconscionable agreement or term of contract. A
26 court, upon finding as a matter of law that a contract or contract
27 clause relative to real estate owned or to be owned under a form of
28 common interest ownership was unconscionable at the time the
29 contract was made, may refuse to enforce the contract, enforce the
30 remainder of the contract without the unconscionable clause, or limit
31 the application of any unconscionable clause in order to avoid an
32 unconscionable result.

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

37 a. The commercial setting of the negotiations;

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

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

43 46:8E-12. Obligation of good faith. Every contract or duty
44 governed by this act imposes an obligation of good faith in its
45 performance or enforcement.

46 46:8E-13. Remedies to be liberally administered. a. The remedies

1 provided by this act shall be liberally administered to the end that the
2 aggrieved party is put in as good a position as if the other party had
3 fully performed. However, consequential, special, or punitive damages
4 may not be awarded except as specifically provided in this act or by
5 other rule of law.

6 b. Any right or obligation declared by this act shall be enforceable
7 by judicial proceeding.

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

9 As used in this section:

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

14 "Reference Base Index" means the index for December 1979, which
15 was 230.

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

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

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

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

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

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

43 46:8E-15. Applicability to new common interest communities;
44 Existing common interest communities. a. Except as provided in
45 R.S.46:8E-16 and 17, this act applies to all common interest
46 communities created within this State after the effective date of this

1 act.

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

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

21 46:8E-16. Applicability to small cooperatives. If a cooperative
22 contains no more than 10 units and is not subject to any development
23 rights, it shall be subject only to R.S.46:8E-5 and R.S.46:8E-6, unless
24 the declaration provides that the cooperative shall be subject to the
25 entire act.

26 46:8E-17. Applicability to small and limited expense liability
27 planned communities.

28 a. If a planned community:

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

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

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

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

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

45 46:8E-18. Applicability to pre-existing common interest
46 communities. Except as provided otherwise in R.S.46:8E-2,

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

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

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

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

32 46:8E-21. Applicability to nonresidential and mixed use common
33 interest communities.

34 As used in this section:

35 a. "Nonresidential common interest community" means a common
36 interest community in which all units are restricted exclusively to
37 nonresidential purposes.

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

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

43 d. If a nonresidential common interest community has opted to be
44 subject to this act in its entirety, then the declaration may also require,
45 subject to R.S.46:8E-11 that:

46 (1) Notwithstanding the provisions of R.S.46:8E-51 (Termination

1 of contracts and leases), any management contract, employment
2 contract, lease of recreational or parking areas or facilities, and any
3 other contract or lease between an association and a declarant or an
4 affiliate of a declarant, shall continue in force after the declarant turns
5 over control of the association; and

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

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

17 46:8E-22. Applicability to out-of-state common interest
18 communities. This act shall not apply to common interest communities
19 or units located outside this State which are governed by the "Real
20 Estates Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27 et
21 seq.).

22

23

ARTICLE 2

24

25

CREATION, ALTERATION, AND TERMINATION OF

26

COMMON INTEREST COMMUNITIES

27

28 46:8E-23. Creation of common interest communities. A common
29 interest community may be created pursuant to this act only by
30 recording a declaration executed in the same manner as a deed and, in
31 a cooperative, by conveying the real estate subject to that declaration
32 to the association. The declaration must be recorded in every county
33 in which any portion of the common interest community is located and
34 must be indexed in the grantee's index in the name of the common
35 interest community and the association and in the grantor's index in the
36 name of each person executing the declaration.

37 46:8E-24. Unit boundaries. Except as provided by the declaration:

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

44 b. If any chute, flue, duct, wire, conduit, bearing wall, bearing
45 column, or any other fixture lies partially within and partially outside
46 the designated boundaries of a unit, any portion thereof serving only

1 that unit is a limited common element allocated solely to that unit, and
2 any portion thereof serving more than one unit or any portion of the
3 common elements is a part of the common elements.

4 c. Subject to paragraph b., all spaces, interior partitions, and other
5 fixtures and improvements within the boundaries of a unit are a part
6 of the unit.

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

12 46:8E-25. Construction and validity of declaration and bylaws.

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

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

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

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

25 46:8E-26. Description of units. A description of a unit which sets
26 forth the name of the common interest community, the recording data
27 for the declaration, the county and municipality in which the common
28 interest community is located, and the identifying number of the unit,
29 shall be a legally sufficient description of that unit and all rights,
30 obligations, and interests appurtenant to that unit which were created
31 by the declaration or bylaws.

32 46:8E-27. Contents of declaration.

33 a. The declaration shall contain:

34 (1) The names of the common interest community and the
35 association and a statement that the common interest community is
36 either a condominium, cooperative, or planned community;

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

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

41 (4) In a condominium or planned community, a description of the
42 boundaries of each unit created by the declaration, including the unit's
43 identifying number, its size or number of rooms, and its location within
44 a building if it is within a building containing more than one unit;

45 (5) A description of any limited common elements, other than
46 those specified in subsection b. and d. of R.S.46:8E-24, together with

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

- 1 shall sign the declaration. The declaration must state:
- 2 (1) The recording data for the lease;
- 3 (2) The date on which the lease is scheduled to expire;
- 4 (3) A legally sufficient description of the real estate subject to the
- 5 lease;
- 6 (4) Any right of the unit owners to redeem the reversion and the
- 7 manner whereby those rights may be exercised, or a statement that
- 8 they do not have those rights;
- 9 (5) Any right of the unit owners to remove any improvements
- 10 within a reasonable time after the expiration or termination of the
- 11 lease, or a statement that they do not have those rights; and
- 12 (6) Any rights of the unit owners to renew the lease and the
- 13 conditions of any renewal, or a statement that they do not have those
- 14 rights.
- 15 b. After the declaration for a leasehold condominium or leasehold
- 16 planned community is recorded, neither the lessor nor the lessor's
- 17 successor in interest may terminate the leasehold interest of a unit
- 18 owner who makes timely payment of a unit owner's share of the rent
- 19 and otherwise complies with all covenants which, if violated, would
- 20 entitle the lessor to terminate the lease. A unit owner's leasehold
- 21 interest in a condominium or planned community is not affected by
- 22 failure of any other person to pay rent or fulfill any other covenant.
- 23 c. Acquisition of the leasehold interest of any unit owner by the
- 24 owner of the reversion or remainder does not merge the leasehold and
- 25 fee simple interests unless the leasehold interests of all unit owners
- 26 subject to that reversion or remainder are acquired.
- 27 d. If the expiration or termination of a lease decreases the number
- 28 of units in a common interest community, the allocated interests shall
- 29 be reallocated in accordance with subsection a. of 46:8E-6 as if those
- 30 units had been taken by eminent domain. Reallocations shall be
- 31 confirmed by an amendment to the declaration which shall be
- 32 prepared, executed, and recorded by the association.
- 33 46:8E-29. Allocation of allocated interests.
- 34 a. The declaration must allocate to each unit:
- 35 (1) In a condominium, a fraction or percentage of undivided
- 36 interests in the common elements and in the common expenses of the
- 37 association as enumerated in subsection a. of R.S.46:8E-61, and a
- 38 portion of the votes in the association;
- 39 (2) In a cooperative, an ownership interest in the association, a
- 40 fraction or percentage of the common expenses of the association as
- 41 enumerated subsection a. of R.S.46:8E-61, and a portion of the votes
- 42 in the association; and
- 43 (3) In a planned community, a fraction or percentage of the
- 44 common expenses of the association as enumerated in subsection a. of
- 45 R.S.46:8E-61, and a portion of the votes in the association.
- 46 b. The declaration must state the formulas used to establish

1 allocations of interests. Those allocations may not discriminate in
2 favor of units owned by the declarant or an affiliate of the declarant.

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

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

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

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

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

31 46:8E-30. Limited common elements.

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

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

44 c. A common element not previously allocated as a limited
45 common element may be so allocated only pursuant to provisions in
46 the declaration made in accordance with paragraph (7) of subsection

- 1 a. of R.S.46:8E-27. The allocations must be made by amendments to
2 the declaration.
- 3 46:8E-31. Plats and plans.
- 4 a. Plats and plans shall be a part of the declaration, and shall be
5 required for all common interest communities except cooperatives.
6 Separate plats and plans are not required if all of the information
7 required by this section is contained in either a plat or plan. Each plat
8 and plan shall be clear and legible and contain a certification that the
9 plat or plan contains all of the information required by this section.
- 10 b. Each plat shall show or project:
- 11 (1) The name and a survey or general schematic map of the entire
12 common interest community;
- 13 (2) The location and dimensions of all real estate not subject to
14 development rights, or subject only to the development right to
15 withdraw, and the location and dimensions of all existing
16 improvements within that real estate;
- 17 (3) A legally sufficient description of any real estate subject to
18 development rights, labeled to identify the rights applicable to each
19 parcel;
- 20 (4) The extent of any encroachments by or upon any portion of the
21 common interest community;
- 22 (5) To the extent feasible, a legally sufficient description of all
23 easements serving or burdening any portion of the common interest
24 community;
- 25 (6) Except as provided in subsection h., the approximate location
26 and dimensions of any vertical unit boundaries not shown or projected
27 on plans recorded pursuant to subsection d. and that unit's identifying
28 number;
- 29 (7) The location with reference to an established datum of any
30 horizontal unit boundaries not shown or projected on plans recorded
31 pursuant to subsection d. and that unit's identifying number;
- 32 (8) A legally sufficient description of any real estate in which the
33 unit owners will own only an estate for years, labeled as "leasehold
34 real estate";
- 35 (9) The distance between non-contiguous parcels of real estate
36 comprising the common interest community;
- 37 (10) The approximate location and dimensions of any porches,
38 decks, balconies, garages, or patios allocated as limited common
39 elements, and shall also show or contain a narrative description of any
40 other limited common elements; and
- 41 (11) In the case of real estate not subject to development rights, all
42 other matters customarily shown on land surveys.
- 43 c. A plat may also show the intended location and dimensions of
44 any contemplated improvement to be constructed anywhere within the
45 common interest community. Any contemplated improvement shown

1 shall be labeled either "MUST BE BUILT" or "NEED NOT BE
2 BUILT".

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

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

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

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

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

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

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

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

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

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

34 46:8E-32. Exercise of development rights.

35 a. To exercise any development right reserved under paragraph (8)
36 of subsection a. of R.S.46:8E-27, the declarant shall prepare, execute,
37 and record an amendment to the declaration (R.S.46:8E-39) and, in a
38 condominium or planned community, comply with R.S.46:8E-31. The
39 declarant shall be the unit owner of any units thereby created. The
40 amendment to the declaration shall assign an identifying number to
41 each new unit created, and, except in the case of subdivision or
42 conversion of units described in subsection b., reallocate the allocated
43 interests among all units. The amendment shall describe any common
44 elements and any limited common elements thereby created and, in the
45 case of limited common elements, designate the unit to which each is
46 allocated to the extent required by R.S.46:8E-30 (Limited common

1 elements).

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

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

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

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

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

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

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

31 46:8E-33. Alterations of units.

32 Subject to the provisions of the declaration and other provisions of
33 law, a unit owner:

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

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

40 c. After acquiring an adjoining unit or an adjoining part of an
41 adjoining unit, may remove or alter any intervening partition or create
42 apertures therein, even if the partition in whole or in part is a common
43 element, if those acts do not impair the structural integrity or
44 mechanical systems or lessen the support of any portion of the
45 common interest community. Removal of partitions or creation of
46 apertures under this paragraph is not an alteration of boundaries.

1 46:8E-34. Relocation of unit boundaries. a. Subject to the
2 provisions of the declaration and other provisions of law, the
3 boundaries between adjoining units may be relocated by an amendment
4 to the declaration upon application to the association by the owners
5 of those units. If the owners of the adjoining units have specified a
6 reallocation between their units of their allocated interests, the
7 application must state the proposed reallocations. Unless the
8 executive board determines, within 30 days, that the reallocations are
9 unreasonable, the association shall prepare an amendment that
10 identifies the units involved and states the reallocations. The
11 amendment must be executed by those unit owners, contain words of
12 conveyance between them, and, on recordation, be indexed in the
13 name of the grantor and the grantee, and in the grantee's index in the
14 name of the association.

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

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

38 46:8E-35. Conveyance of units within a cooperative. If a unit in
39 a cooperative is sold, conveyed, voluntarily or involuntarily
40 encumbered, or otherwise transferred by a unit owner, the interest in
41 that unit which is sold, conveyed, encumbered, or otherwise
42 transferred is the right to possession of that unit under a proprietary
43 lease, coupled with the allocated interests of that unit, and the
44 association's interest in that unit shall not be thereby affected.

45 46:8E-36. Subdivision of units. a. If the declaration expressly so
46 permits, a unit may be subdivided into two or more units. Subject to

1 the provisions of the declaration and other relevant provisions of law,
2 upon application of a unit owner to subdivide a unit, the association
3 shall prepare, execute, and record an amendment to the declaration,
4 including in a condominium or planned community the plats and plans,
5 subdividing that unit.

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

11 46:8E-37. Boundaries of units. The existing physical boundaries
12 of a unit or the physical boundaries of a unit reconstructed in
13 substantial accordance with the description contained in the original
14 declaration are its legal boundaries, rather than the boundaries derived
15 from the description contained in the original declaration, regardless
16 of vertical or lateral movement of the building or minor variance
17 between those boundaries and the boundaries derived from the
18 description contained in the original declaration. This section does not
19 relieve a unit owner of liability in case of his willful misconduct or
20 relieve a declarant or any other person of liability for failure to adhere
21 to any plats or plans or, in a cooperative, to any representation in the
22 public offering statement.

23 46:8E-38. Use for sales purposes. Unless the declaration provides
24 otherwise, a declarant may maintain sales offices, management offices,
25 and models in units or on common elements in the common interest
26 community. In a cooperative or condominium, any sales office,
27 management office, or model not designated as a unit by the
28 declaration is a common element. If a declarant ceases to be a unit
29 owner, he ceases to have any rights with regard thereto unless it is
30 removed promptly from the common interest community in accordance
31 with a right to remove reserved in the declaration. Subject to any
32 limitations in the declaration, a declarant may maintain signs on the
33 common elements advertising the common interest community.

34 46:8E-39. Easement rights.

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

40 b. In a planned community, subject to the provisions of paragraph
41 (6) of subsection a. of R.S.46:8E-48 and R.S.46:8E-58, unit owners
42 shall have an easement (1) in the common elements for purposes of
43 access to their units and (2) to use the common elements and all real
44 estate that must become common elements pursuant to paragraph (6)
45 of subsection a. of R.S.46:8E-27 for all other purposes.

46 46:8E-40. Amendment of declaration.

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

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

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

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

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

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

42 g. The time limits specified in the declaration pursuant to
43 paragraph (8) of subsection a. of R.S.46:8E-27 (Contents of the
44 declaration) within which reserved development rights must be
45 exercised may be extended, and additional development rights may be
46 created, if persons entitled to cast at least 80 percent of the votes in

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

10 46:8E-41. Termination of common interest community.

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

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

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

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

41 e. The association, on behalf of the unit owners, may contract for
42 the sale of real estate in a common interest community, but the
43 contract is not binding on the unit owners until approved pursuant to
44 subsections a. and b.. If any real estate is to be sold following
45 termination, title to that real estate, upon termination, vests in the
46 association as trustee for the holders of all interests in the units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 46:8E-42. Rights of secured lenders.

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

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

42 46:8E-42. Master associations.

43 a. If the declaration provides that any of the powers described in
44 R.S.46:8E-48 are to be exercised by or may be delegated to a profit or
45 nonprofit corporation that exercises those or other powers on behalf
46 of one or more common interest communities or for the benefit of the

1 unit owners of one or more common interest communities, all
2 provisions of this act applicable to unit owners' associations shall apply
3 to any such corporation, except as modified by this section.

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

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

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

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

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

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

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

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

42 46:8E-43. Merger or consolidation of common interest
43 communities.

44 a. Any two or more common interest communities of the same
45 form of ownership, by agreement of the unit owners as provided in
46 subsection b., may be merged or consolidated into a single common

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

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

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

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

36 46:8E-45. Addition of unspecified real estate. In a planned
37 community, if the right is originally reserved in the declaration, the
38 declarant, in addition to any other development right, may amend the
39 declaration at any time during as many years as are specified in the
40 declaration for adding additional real estate to the planned community
41 without describing the location of that real estate in the original
42 declaration; but, the amount of real estate added to the planned
43 community pursuant to this section may not exceed 10 percent of the
44 real estate described in paragraph (3) of subsection a. of R.S.46:8E-27
45 and the declarant may not in any event increase the number of units in
46 the planned community beyond the number stated in the original

1 declaration pursuant to paragraph (5) of subsection a. of
2 R.S.46:8E-27, unless by vote of unit owners (other than the declarant)
3 to which at least unit owners of units to which 51 percent of the votes
4 in the association are allocated approve: a. the addition of real estate
5 in excess of 10 percent of the real estate described in paragraph (3) of
6 subsection a. of R.S.46:8E-27 or b. a number of units in excess of the
7 number stated in the original declaration pursuant to paragraph (5) of
8 subsection a. of R.S.46:8E-27.

9 46:8E-46. Master planned communities.

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

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

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

29 d. Notwithstanding any other provision of this act:

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

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

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

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

45 f. Subject to the requirements of good faith (R.S.46:8E-12) and
46 unconscionability (R.S.46:8E-11), the period of declarant control of

1 the association for a master planned community shall terminate in
2 accordance with any conditions specified in the declaration or
3 otherwise at the time the declarant, in a recorded instrument and after
4 filing written notice to all the unit owners, voluntarily surrenders all
5 rights to control the activities of the association.

6

7

ARTICLE 3

8

9 MANAGEMENT OF THE COMMON INTEREST COMMUNITY

10

11 46:8E-47. Organization of unit owners association

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

21 46:8E-48. Powers of unit owners' association.

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

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

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

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

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

34 (5) Make contracts and incur liabilities;

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

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

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

46 (9) Grant easements, leases, licenses, and concessions through or

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

- 1 its powers against the unit owner, the association may:
- 2 (1) Exercise directly against the tenant the powers described in
3 paragraph (11) of subsection a. of this section;
- 4 (2) After giving notice to the tenant and the unit owner and an
5 opportunity to be heard, levy reasonable fines against the tenant for
6 the violation; and
- 7 (3) Enforce any rights against the tenant for the violation which the
8 unit owner as landlord might have exercised under the lease in
9 accordance with state law, or which the association might have
10 exercised directly against the unit owner or both.
- 11 e. The rights granted under paragraph (3) of subsection d. may be
12 exercised only if the tenant or unit owner fails to cure the violation
13 within 10 days after the association notifies the tenant and unit owner
14 of that violation.
- 15 f. Unless a lease otherwise provides, this section does not:
- 16 (1) Affect rights that the unit owner may have to enforce its lease
17 or that the association has under other law; or
- 18 (2) Permit the association to enforce a lease to which it is not a
19 party in the absence of a violation of the declaration or bylaws or the
20 association's rules or regulations.
- 21 46:8E-49. Executive board members and officers.
- 22 a. Except as provided in the declaration, the bylaws, subsection b.
23 of this section, or other provisions of this act, the executive board may
24 act in all instances on behalf of the association. In the performance of
25 their duties, officers and members of the executive board shall act in
26 good faith and exercise honest judgment in lawful and legitimate
27 furtherance of the association's purposes.
- 28 b. The executive board may not act on behalf of the association to
29 amend the declaration (R.S.46:8E-40), to terminate the common
30 interest community (R.S.46:8E-41), or to elect members of the
31 executive board or determine the qualifications, powers and duties, or
32 terms of office of executive board members pursuant to subsection f.
33 of this section, but the executive board may fill vacancies in its
34 membership for the unexpired portion of any term.
- 35 c. Within 30 days after the adoption of a budget for a common
36 interest community, the executive board shall provide a copy of the
37 budget to all of the unit owners.
- 38 d. Subject to subsection e., the declaration may provide for a
39 period of declarant control of the association, during which a
40 declarant, or persons designated by him, may appoint and remove the
41 officers and members of the executive board. Regardless of the period
42 provided in the declaration, and except as provided in subsection f. of
43 R.S.46:8E-45, a period of declarant control of the executive board
44 shall terminate no later than the earlier of: (1) 60 days after
45 conveyance of 75 percent of the lot, parcels, units or interests that
46 may be created to unit owners other than a declarant; (2) two years

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

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

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

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

33 46:8E-50. Transfer of special declarant rights.

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

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

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

46 (2) If a successor to any special declarant right is an affiliate of a

1 declarant (R.S.46:8E-2), the transferor is jointly and severally liable
2 with the successor for any obligations or liabilities of the successor
3 relating to the common interest community.

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

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

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

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

32 (1) The declarant shall cease to have any special declarant rights,
33 and

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

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

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

42 (2) A successor to only a right reserved in the declaration to
43 maintain models, sales offices, and signs (R.S.46:8E-38) may not
44 exercise any other special declarant right, and is not subject to any
45 liability or obligation as a declarant, except the obligation to provide
46 a public offering statement and any liability arising as a result thereof.

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

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

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

24 (b) On his transferor, other than:

25 (i) misrepresentations by any previous declarant;

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

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

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

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

37 46:8E-51. Termination of contracts and leases of declarant.

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

44 a. any management contract, employment contract, or lease of
45 recreational or parking areas or facilities;

46 b. any other contract or lease between the association and a

1 declarant or an affiliate of a declarant; or

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

5 This section shall not apply to:

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

11 46:8E-52. Bylaws.

12 a. The bylaws of the association must provide:

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

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

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

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

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

25 (6) A method for amending the bylaws.

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

29 46:8E-53. Upkeep of common interest community.

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

41 b. In addition to the liability that a declarant as a unit owner has
42 under this act, the declarant alone is liable for all expenses in
43 connection with real estate subject to development rights. A unit
44 owner or other portion of the common interest community shall not be
45 subject to a claim for payment of development rights expenses. Unless
46 the declaration provides otherwise, any income or proceeds from real

1 estate subject to development rights shall inure to the declarant.

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

6 46:8E-54. Meetings.

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

20 46:8E-55. Quorums.

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

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

30 46:8E-56. Voting; Proxies.

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

40 b. Votes allocated to a unit may be cast pursuant to a proxy duly
41 executed by a unit owner. If a unit is owned by more than one person,
42 each owner of the unit may vote, unless the additional vote would
43 violate the terms of the declaration, or register protest to the casting
44 of votes by the other owners of the unit through a duly executed
45 proxy. A unit owner may revoke a proxy given pursuant to this
46 section only by actual notice of revocation to the person presiding

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

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

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

21 e. No votes allocated to a unit owned by the association may be
22 cast.

23 46:8E-57. Tort and contract liability.

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

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

43 c. Any statute of limitations affecting an association's right of
44 action against a declarant under this act shall be tolled until the period
45 of declarant control terminates. A unit owner is not precluded from
46 maintaining an action contemplated by this section because he is a unit

1 owner or a member or officer of the association. Liens resulting from
2 judgments against the association shall be governed by R.S.46:8E-62.

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

10 46:8E-58. Conveyance or encumbrance of common elements.

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

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

39 c. An agreement to convey common elements in a condominium or
40 planned community, or to subject them to a security interest, or in a
41 cooperative, an agreement to convey any part of a cooperative or
42 subject it to a security interest, must be evidenced by the execution of
43 an agreement, or ratifications thereof, in the same manner as a deed,
44 by the requisite number of unit owners. The agreement must specify
45 a date after which the agreement will be void unless recorded. The
46 agreement and all ratifications thereof must be recorded in each county

1 in which a portion of the common interest community is situated, and
2 is effective only upon recordation.

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

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

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

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

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

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

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

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

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

44 46:8E-59. Insurance.

45 a. Commencing not later than the date of the first conveyance of
46 a unit to a person other than a declarant, the association shall maintain,

1 to the extent reasonably available:

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

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

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

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

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

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

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

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

44 (3) No act or omission by any unit owner, unless acting within the
45 scope of his authority on behalf of the association, will void the policy
46 or be a condition to recovery under the policy;

1 (4) There is other insurance in the name of a unit owner covering
2 the same risk covered by the policy; and,
3 (5) The association's policy provides primary insurance.

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

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

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

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

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

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

15 46:8E-60. Surplus funds.

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

21 46:8E-61. Assessments for common expenses.

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

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

33 c. Unless the declaration provides otherwise:

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

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

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

44 d. Assessments to pay a judgment against the association pursuant
45 to R.S.46:8E-63 may be made only against the units in the common
46 interest community conveyed to unit owners other than the declarant

1 at the time the judgment was entered, in proportion to their common
2 expense liabilities.

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

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

10 46:8E-62. Lien for assessments.

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

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

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

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

44 e. This section does not prohibit actions to recover sums for which
45 subsection a. of this section creates a lien or prohibit an association
46 from taking a deed in lieu of foreclosure.

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

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

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

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

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

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

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

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

32 46:8E-63. Other liens.

33 a. In a condominium or planned community:

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

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

46 (3) Whether perfected before or after the creation of the common

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

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

17 b. In a cooperative:

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

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

27 46:8E-64. Association records.

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

32 a. Disclosure of which would constitute an unwarranted invasion
33 of individual privacy;

34 b. Concerning pending or anticipated litigation or contract
35 negotiations;

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

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

41 46:8E-63. Association as trustee.

42 With respect to a third person dealing with the association in the
43 association's capacity as a trustee, the existence of trust powers and
44 their proper exercise by the association may be assumed without
45 inquiry. A third person shall not be bound to inquire whether the
46 association has power to act as trustee or is properly exercising trust

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

7 46:8E-66. Assignment of rents.

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

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

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

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

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

16 ARTICLE IV

17 PROTECTION OF PURCHASERS

18 46:8E-67. Applicability; Waiver.

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

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

23 (1) A gratuitous disposition of a unit;

24 (2) A disposition pursuant to court order;

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

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

27 (5) A disposition to a dealer;

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

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

34 46:8E-68. Liability for public offering statement requirements.

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

40 b. A declarant may transfer responsibility for preparation of all or
41 a part of the public offering statement to a successor declarant
42 (R.S.46:8E-50) or to a dealer who intends to offer units in the
43 common interest community. In the event of any such transfer, the
44
45
46

1 transferor shall provide the transferee with any information necessary
2 to enable the transferee to fulfill the requirements of subsection a. of
3 this section.

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

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

26 46:8E-69. Public offering statement - The Planned Real Estate
27 Development Full Disclosure Act.

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

32 46:8E-70. Common interest communities subject to development
33 rights.

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

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

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

45 c. If any of the units that may be built within real estate subject to
46 development rights are not to be restricted exclusively to residential

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

1 46:8E-71. Time shares subject to development rights.

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

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

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

10 c. The minimum duration of any time shares that may be created;
11 and

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

15 46:8E-72. Resales of units.

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

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

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

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

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

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

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

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

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

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

45 (10) A statement as to whether the executive board has given or
46 received written notice that any existing uses, occupancies, alterations

1 or improvements in or to the unit or to the limited common elements
2 assigned thereto violate any provision of the declaration;

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

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

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

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

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

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

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

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

40 46:8E-73. Release of liens.

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

45 (1) Before conveying a unit, shall record or furnish to the
46 purchaser releases of all liens, except: (a) liens on real estate that a

1 declarant has the right to withdraw from the common interest
2 community, or (b) that the purchaser expressly agrees to take subject
3 to or assume and that encumber:

4 (i) in a condominium, that unit and its common element interest,
5 and

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

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

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

17 46:8E-74. Express warranties of quality.

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

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

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

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

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

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

46 c. Any conveyance of a unit transfers to the purchaser all express

1 warranties of quality made by previous sellers.

2 46:8E-75. Statute of limitations for warranties.

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

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

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

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

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

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

41 46:8E-76. Effect of violations on rights of action; Attorney's fees.

42 a. If a declarant or any other person subject to this act fails to
43 comply with any of its provisions or any provision of the declaration
44 or bylaws, any person or class of persons adversely affected by the
45 failure to comply shall have a claim for appropriate relief. Punitive
46 damages may be awarded for a willful failure to comply with this act.

1 The court, as appropriate, may award court costs and reasonable
2 attorney's fees.

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

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

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

12 46:8E-77. Labeling of promotional material.

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

19 46:8E-78. Declarant's obligation to complete and restore.

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

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

32 46:8E-79. Substantial completion of units.

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

39 46:8E-80. Alternative dispute resolution.

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

45 b. The requirement to provide for alternative dispute resolution
46 shall not apply to:

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

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

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

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

18 46:4E-81. Phased resolution of claims involving common elements
19 and other improvements to be maintained by association.

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

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

1 contributed at closing for such purposes by unit owners other than the
2 declarant or by regular or special common expense assessments or by
3 both; provided, however, that the declarant shall have the option to
4 supplement such funds to the extent that it deems appropriate.

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

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

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

46 f. If no settlement agreement is approved by the committee within

1 180 days after the committee's receipt of the declarant's request for
2 inspection, the parties shall be obligated to proceed to mediation
3 within 30 days thereafter in accordance with the rules of the American
4 Arbitration Association. If no settlement is reached through mediation
5 within 15 days after commencement of same, then the parties shall
6 promptly proceed to non-binding arbitration of any remaining issues
7 in accordance with the rules of the American Arbitration Association
8 and such mediation and non-binding arbitration shall be conditions
9 precedent to any litigation of the warranty and construction defect
10 claims against the developer, which shall also require the approval of
11 a majority of the unit owners other than the declarant. All professional
12 fees and expenses reasonably incurred by the association with regard
13 to the mediation or arbitration or both shall be borne by the
14 non-declarant unit owners and paid by the association promptly upon
15 the receipt of written authorization of the committee.

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

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

31

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

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STATEMENT

37

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

1 projects, home owner associations and cooperatives.

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

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

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

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

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

42 Its uniform provisions should benefit lenders by helping to ensure
43 the adequacy of the legal documents. This is preferred to leaving such
44 documents to the legal skills of the attorneys involved in the project.
45 Further, the act requires associations to furnish purchasers of resale
46 units with disclosure certificates setting forth essential information

1 concerning such matters as association finances, insurance, and code
2 violations. If the association provides the certificate, neither the seller
3 or the real estate broker or sales personnel involved in the transaction
4 will have any liability for any erroneous information in the certificate
5 or for any other matter related to the community, unless the buyer and
6 seller agree otherwise.

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

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

24

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26

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28 The "Uniform Common Interest Ownership Act."