

## **PENNSYLVANIA**

### **UNIFORM CONDOMINIUM ACT**

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#### **§ 3101. Short title of subpart**

This subpart shall be known and may be cited as the "Uniform Condominium Act."

#### **§ 3102. Applicability of subpart**

(a) GENERAL RULE.-- This subpart applies to all condominiums created within this Commonwealth after the effective date of this subpart. Subsection (b) and sections 3105 (relating to separate titles and taxation), 3106 (relating to applicability of local ordinances, regulations and building codes), 3107 (relating to eminent domain), 3203 (relating to construction and validity of declaration and bylaws), 3204 (relating to description of units), 3222 (relating to master associations), 3223 (relating to merger or consolidation of condominiums), 3302(a)(1) through (6), (9) and (11) through (16) (relating to powers of unit owners' association), 3311 (relating to tort and contract liability), 3315 (relating to lien for assessments), 3316 (relating to association records), 3407 (relating to resales of units) and 3412 (relating to effect of violations on rights of action), and section 3103 (relating to definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate existing provisions of the declaration, code of regulations or declaration plan of those condominiums.

##### **(A.1) RETROACTIVITY.--**

(1) Sections 3103 (relating to definitions), 3108 (relating to supplemental general principles of law), 3112 (relating to obligation of good faith), 3219 (relating to amendment of declaration), 3220(i) (relating to termination of condominium), 3302(a)(8)(i), (16) and (17) (relating to powers of unit owners' association), 3303(a) and (b) (relating to executive board members and officers), 3307 (relating to upkeep of condominium), 3314 (relating to assessments for common expenses) and 3319 (relating to other liens affecting the condominium), to the extent necessary in construing any of those sections, shall apply to all condominiums created in this Commonwealth before the effective date of this subsection; but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate existing provisions of the declaration, code of regulations, bylaws or declaration plan of those condominiums.

(2) Section 3303(c) and (d), to the extent necessary in construing any of those subsections, applies to all condominiums created in this Commonwealth before the effective date of this subpart; but those subsections apply only with respect to events and circumstances occurring 180 days after the effective date of this subsection and do not invalidate existing provisions of the declaration, code of regulations or declaration plan of those condominiums.

(b) PRIOR STATUTORY LAW.-- The provisions of the act of July 3, 1963 (P.L. 196, No. 117), known as the Unit

Property Act, do not apply to condominiums created after the effective date of this subpart and do not invalidate any amendment to the declaration, code of regulations or declaration plan of any condominium created before the effective date of this subpart if the amendment would be permitted by this subpart. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by the provisions of the Unit Property Act. If the amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person. By amendment to the declaration, code of regulations and declaration plan, a condominium created pursuant to the Unit Property Act may be made subject to all of the provisions of this subpart in lieu of the provisions of the Unit Property Act, effective as of the date of recordation of such amendments and without in any way terminating the condominium status of the property or in any way affecting any lien or encumbrance on the property, if the terms of such amended documents conform to the requirements of this subpart and if such amendments have been approved by 67% of the persons whose actions would have been required to effect a removal of the property from the Unit Property Act pursuant to section 601 thereof. No amendment of:

- (1) the declaration, code of regulations or declaration plan of a condominium created pursuant to the Unit Property Act; or
- (2) the declaration, bylaws or plats and plans of a condominium created pursuant to this subpart; may increase the obligations or responsibilities of a declarant (as such and not as a unit owner) without the joinder of the declarant in such amendment.

(c) **CONDOMINIUMS OUTSIDE COMMONWEALTH.**-- This subpart does not apply to condominiums or units located outside this Commonwealth, but the public offering statement provisions (sections 3402 through 3405) apply to all dispositions thereof in this Commonwealth unless exempt under section 3401(b)(5) (relating to applicability; waiver).

### **§ 3103. Definitions**

The following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless specifically provided otherwise or unless the context clearly indicates otherwise:

"**ADDITIONAL REAL ESTATE.**" Real estate that may be added to a flexible condominium.

"**AFFILIATE OF A DECLARANT.**" Any person who controls, is controlled by, or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

- (i) is a general partner, officer, director or employer of the declarant;
- (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20% of the voting interests of the declarant;
- (iii) controls in any manner the election of a majority of the directors of the declarant; or
- (iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

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

(3) Control does not exist if the powers described in paragraphs (1) and (2) are held solely as security for an obligation and are not exercised. "**ASSOCIATION**" or "**UNIT OWNERS' ASSOCIATION.**" The unit owners' association organized under section 3301 (relating to organization of unit owners' association). "**COMMON ELEMENTS.**" All portions of a condominium other than the units. "**COMMON EXPENSES.**" Expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves, including general common expenses and limited common expenses. "**COMMON EXPENSE LIABILITY.**" The liability for common expenses allocated to each unit pursuant to section 3208 (relating to allocation of common element interests, votes and common expense liabilities). "**CONDOMINIUM.**" Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless= the undivided interests in the common elements are vested in the unit owners. "**CONVERSION BUILDING.**" A building that, at any time before the conversion notice date with respect to the condominium

in which the building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers. "CONVERSION NOTICE." The notice required to be given to tenants or subtenants by the terms of section 3410(a) (relating to condominiums containing conversion buildings). "CONVERSION NOTICE DATE." The date on which the conversion notice is placed in the United States mail, in the case of mailed notices, or delivered to the unit leased by the recipient, in the case of hand-delivered notices.

"CONVERTIBLE REAL ESTATE." A portion of a flexible condominium not within a building containing a unit, within which additional units or limited common elements, or both, may be created. "DECLARANT."

(1) If the condominium has been created, "declarant" means:

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

(ii) any person who succeeds under section 3304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the condominium has not yet been created, "declarant" means any person who offers to dispose of or disposes of his interest in a unit to be created and not previously disposed of.

(3) If a declaration is executed by a trustee of a land trust, "declarant" means the beneficiary of the trust. "DISPOSE" or "DISPOSITION." A voluntary transfer of any legal or equitable interest in a unit or a proposed unit, other than as security for an obligation. "EXECUTIVE BOARD." The body, regardless of name, designated in the declaration to act on behalf of the association.

"FLEXIBLE CONDOMINIUM." A condominium containing withdrawable or convertible real estate, a condominium to which additional real estate may be added, or a combination thereof.

"IDENTIFYING NUMBER." A symbol that identifies only one unit in a condominium.

"INSTALLMENT SALES CONTRACT." An executory contract for the purchase and sale of a unit or interest in a unit whereby the purchaser is obligated to make six or more installment payments to the seller after the execution of the contract and before the time appointed for the conveyance of title to the unit or interest in the unit.

"LEASEHOLD CONDOMINIUM." A condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size. "LIMITED COMMON ELEMENT." A portion of the common elements allocated by or pursuant to the declaration or by operation of section 3202(2) or

(4) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units. "LIMITED COMMON EXPENSES." All expenses identified as such pursuant to section 3314(c) (relating to assessments for common expenses). "MASTER ASSOCIATION." An organization described in section 3222 (relating to master associations), whether or

not it is an association described in section 3301 (relating to organization of unit owners' association). "OFFER" or "OFFERING." Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this Commonwealth,

is not an offer or offering if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the condominium is located. "ORIGINAL LEASE TERMINATION DATE." The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of such lease or sublease, after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date. "PERSON." A natural person, corporation, partnership,

association, trust, other entity or any combination thereof. "PURCHASER." Any person, other than a declarant, who by means of a disposition acquires a legal or equitable interest in a unit, other than:

(1) a leasehold interest (including renewal options) of less than 20 years, but a person who will become a unit owner in a leasehold condominium upon consummation of the disposition shall be deemed to be a purchaser; or

(2) as security for an obligation. "REAL ESTATE." Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"RESIDENTIAL TENANT" or "RESIDENTIAL SUBTENANT." A tenant or subtenant, respectively, who is a natural person lawfully occupying real estate for residential use. "SPECIAL DECLARANT RIGHTS." Rights reserved for the benefit of a declarant to:

- (1) Complete improvements indicated on plats and plans filed with the declaration (section 3210).
  - (2) Convert convertible real estate in a flexible condominium (section 3211).
  - (3) Add additional real estate to a flexible condominium (section 3211).
  - (4) Withdraw withdrawable real estate from a flexible condominium (section 3212).
  - (5) Convert a unit into two or more units, common elements, or into two or more units and common elements (section 3215).
  - (6) Maintain offices, signs and models (section 3217).
  - (7) Use easements through the common elements for the purpose of making improvements within the condominium or within any convertible or additional real estate (section 3218).
  - (8) Cause the condominium to be merged or consolidated with another condominium (section 3223).
  - (9) Make the condominium subject to a master association (section 3222).
  - (10) Appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (section 3303(c)).
- "UNIT." A portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to section 3205(4) (relating to contents of declaration; all condominiums).
- "UNIT OWNER." A declarant who owns a unit, a person to whom ownership of a unit has been conveyed, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium. "Unit owner" does not include a person having an interest in a unit solely as security for an obligation. "WITHDRAWABLE REAL ESTATE." Real estate that may be withdrawn from a flexible condominium.

#### **§ 3104. Variation by agreement**

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

#### **§ 3105. Separate titles and taxation**

- (a) TITLE. --Except as provided in subsection (b), each unit together with its common element interest constitutes for all purposes a separate parcel of real estate.
- (b) TAXATION AND ASSESSMENT. --If there is a unit owner other than a declarant, each unit together with its common element interest, but excluding its common element interest in convertible or withdrawable real estate, shall be separately taxed and assessed, and each portion of any convertible or withdrawable real estate shall be separately taxed and assessed; otherwise, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

#### **§ 3106. Applicability of local ordinances, regulations and building codes**

A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation. Without limiting the other provisions of this section, the creation of a condominium pursuant to section 3201 (relating to creation of condominium) out of an entire lot, parcel or tract of real estate shall not, in and of itself, constitute a subdivision or land development, for the purposes of these laws, ordinances and regulations.

#### **§ 3107. Eminent domain**

- (a) GENERAL RULE. --If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its common element interest, whether or not any common element interest is acquired. Upon acquisition, unless the decree otherwise provides, that unit's entire common element interest, votes in the association and common expense liability are automatically reallocated to the remaining units in proportion to the respective interests, votes and liabilities of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the

declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) ACQUISITION OF PART OF A UNIT. --Except as provided in subsection (a), if part of a unit is acquired by eminent domain the award must compensate the unit owner for the reduction in value of the unit and its common element interest. Upon acquisition:

(1) that unit's common element interest, votes in the association and common expense liability are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(2) the portion of common element interest, votes and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective interests, votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced interest, votes and liabilities.

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

### **§ 3108. Supplemental general principles of law**

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

### **§ 3109. Construction against implicit repeal**

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

### **§ 3110. Uniformity of application and construction**

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

### **§ 3111. Unconscionable agreement or term of contract**

(a) POWERS OF COURT. --The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

(1) refuse to enforce the contract;

(2) enforce the remainder of the contract without the unconscionable clause; or

(3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

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

(1) The commercial setting of the negotiations.

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

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

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

### **§ 3112. Obligation of good faith**

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

### **§ 3113. Remedies to be liberally administered**

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

(b) JUDICIAL ENFORCEMENT OF RIGHTS AND OBLIGATIONS. --Any right or obligation declared by this subpart is enforceable by judicial proceeding.

### **§ 3201. Creation of condominium**

A condominium may be created pursuant to this subpart only by recording a declaration executed, in the same manner as a deed, by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size, provided, however, in any such lease wherein the lessor is the Commonwealth of Pennsylvania, a municipal government or any agency thereof, said lessor need not execute the declaration if they shall have previously given written consent to its filing and agreed to be bound by the provisions of the Pennsylvania Uniform Condominium Act, in which case said declaration shall be executed by the lessee then in possession of the subject property. The declaration shall be recorded in every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed against each declarant as the grantor and the name of the condominium as the grantee.

### **§ 3202. Unit boundaries**

Except as provided by the declaration:

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

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

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

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

### **§ 3203. Construction and validity of declaration and bylaws**

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

(b) APPLICATION OF RULE AGAINST PERPETUITIES. --The rule against perpetuities may not be applied to defeat any provision of the declaration or this subpart, or any instrument executed pursuant to the declaration or this subpart.

(c) CONFLICT BETWEEN DECLARATION AND BYLAWS. --In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this subpart.

(d) EFFECT OF NONCOMPLIANCE ON TITLE TO UNIT. --Title to a unit and its common element interest is not rendered unmarketable or otherwise affected by any provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this subpart.

### **§ 3204. Description of units**

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or counties in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and its common element interest even if the common element interest is not described or referred to therein. Deeds, leases and mortgages of units shall be recorded in the same records as are maintained by the recorder for the recording of like instruments and shall be indexed by the recorder in the same manner as like instruments are indexed.

### **§ 3205. Contents of declaration; all condominiums**

The declaration for a condominium must contain:

- (1) The name of the condominium which must include the word "condominium" or be followed by the words "a condominium."
- (2) The name of every county in which any part of the condominium is situated.
- (3) A legally sufficient description of the real estate included in the condominium.
- (4) A description or delineation of the boundaries of each unit including the unit's identifying number.
- (5) A statement of the maximum number of units that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 3215(c) (relating to subdivision or conversion of units).
- (6) A description of any limited common elements as provided in section 3209 (relating to limited common elements) and limited common expenses, if any, and how they are to be assessed.
- (7) A description of any common elements not within the boundaries of any convertible real estate which may be allocated subsequently as limited common elements together with a statement that they may be so allocated and a description of the method by which the allocations are to be made.
- (8) An allocation to each unit of an undivided interest in the common elements, a portion of the votes in the association and a percentage or fraction of the common expenses of the association (section 3208).
- (9) Any restrictions created by the declarant on use, occupancy and alienation of the units.
- (10) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject.
- (11) If all or any of the units are or may be owned in time-share estates as defined in section 3403(a) (relating to public offering statement; time-share estates), which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the condominium, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.
- (12) If the declarant wishes to retain the special declarant right to cause section 3222 (relating to master associations) to become applicable to a condominium, then:
  - (i) an explicit reservation of such right;
  - (ii) a statement of the time limit, not exceeding seven years after the recordation of the declaration, upon which the option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit; and
  - (iii) the information required to be included in the declaration by the provisions of section 3222.
- (13) If the declarant wishes to retain the special declarant right to merge or consolidate the condominium pursuant to section 3223 (relating to merger or consolidation of condominiums), then:
  - (i) an explicit reservation of such right;
  - (ii) a statement of the time limit, not exceeding seven years after the recording of the declaration, upon which any option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit;
  - (iii) a statement of the name and location of each other condominium that may be subject to such a merger or consolidation if such other condominiums exist and if such other condominiums do not exist, then the declaration shall include the following:
    - (A) A statement of the extent to which the common element interest, relative voting strength in the association and share of common expense liability of each unit in the condominium at the time the merger or consolidation is effectuated may be increased or decreased by actions pursuant to any option reserved under subparagraph (i), including the formulas to be used for those reallocations.
    - (B) Legally sufficient descriptions of each portion of real estate which is part of any other condominiums which may be created and with which the condominium may merge or consolidate.
    - (C) If mergers or consolidations may be effectuated at different times, a statement to that effect together with:
      - (I) either a statement fixing the boundaries of those condominiums and regulating the order in which they may be merged or consolidated or a statement that no assurances are made in those regards; and
      - (II) a statement as to whether, if any other condominiums are merged or consolidated with the condominium, all or any of such condominiums must be merged or consolidated.
    - (D) A statement of:
      - (I) the maximum number of units that may be created within any such other condominiums, the boundaries of which are fixed pursuant to clause (C);
      - (II) how many of those units will be restricted exclusively to residential use; and



(III) the maximum number of units per acre that may be created within any such other condominiums, the boundaries of which are not fixed pursuant to clause (C).

(E) If any of the units that may be built within any such other condominiums are not to be restricted exclusively to residential use, a statement with respect to each portion of such other condominiums of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use.

(F) A statement of the extent to which any buildings and units that may be part of such other condominiums will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(G) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any such other condominiums or a statement of any differentiations that may be made as to those units.

(H) General descriptions of all other improvements and limited common elements that may be made or created within such other condominiums or a statement that no assurances are made in that regard.

(I) A statement of any limitations as to the locations of any buildings or other improvements that may be made within such other condominiums or a statement that no assurances are made in that regard.

(J) A statement that any limited common elements created within any such other condominiums will be of the same general types and sizes as those within the condominium or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(K) A statement that the proportion of limited common elements to units created within such other condominiums will be approximately equal to the proportion existing within the condominium or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(L) A statement of the extent to which any assurances made in the declaration regarding such other condominiums pursuant to clauses (C) through (K) apply in the event any such condominiums are not merged or consolidated with the condominium or a statement that those assurances do not apply if the condominiums are not merged or consolidated with the condominium; and

(iv) a summary description of the other provisions which materially change any rights, obligations or liabilities that

will be included in the agreement of merger or consolidation if such right is exercised.

(14) Any other matters the declarant deems appropriate.

### **§ 3206. Contents of declaration; flexible condominiums**

The declaration for a flexible condominium shall include, in addition to the matters specified in section 3205 (relating to contents of declaration; all condominiums):

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

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

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

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

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

(6) If portions of any convertible, additional or withdrawable real estate may be converted, added or withdrawn at different times, a statement to that effect together with:

(i) either a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added or withdrawn or a statement that no assurances are made in those regards; and

(ii) a statement as to whether, if any portion of convertible, additional or withdrawable real estate is converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn.

(7) A statement of:

(i) the maximum number of units that may be created within any additional or convertible real estate, or within any portion of either, the boundaries of which are fixed pursuant to paragraph (6);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per acre that may be created within any portions the boundaries of which are not fixed pursuant to paragraph (6).

(8) If any of the units that may be built within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement with respect to each portion of the additional and convertible real estate of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use.

(9) A statement of the extent to which any buildings and units that may be erected upon each portion of the additional or convertible real estate will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction and size, or a statement that no assurances are made in those regards.

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

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

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

(13) A statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard.

(14) A statement that the proportion of limited common elements to units created within convertible or additional real estate will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard.

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

### **§ 3207. Leasehold condominiums**

(a) RECORDING LEASE AND CONTENTS OF DECLARATION. --Any lease the expiration or termination of which may terminate the condominium or reduce its size shall be recorded and the declaration shall state:

(1) The recording data for the lease.

(2) The date on which the lease is scheduled to expire.

(3) A legally sufficient description of the real estate subject to the lease.

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights.

(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights.

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

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

(c) MERGER OF LEASEHOLD AND FEE SIMPLE INTERESTS. --Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) REALLOCATION OF INTERESTS IF NUMBER OF UNITS REDUCED. --If the expiration or termination of a lease decreases the number of units in a condominium, the common element interests, votes in the association and common expense liabilities shall be reallocated in accordance with section 3107 (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

### **§ 3208. Allocation of common element interests, votes and common expense liabilities**

(a) GENERAL RULE.-- The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

(b) FLEXIBLE CONDOMINIUMS.-- If units may be added to, including by conversion of convertible real estate to one or more units, or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the fractions or percentages of undivided interests in the common elements and in the common expenses of the association and the portions of the votes in the association among all units included in the condominium after the addition or withdrawal.

(c) VOTES.-- Each unit in the condominium shall be allocated one or more votes in the condominium association.

The declaration shall specify how votes in the condominium shall be allocated among the units and may provide:

(1) for different allocations of votes among the units on particular matters specified in the declaration; and

(2) for class voting on specified issues affecting a particular class of units if necessary to protect the valid interests of the owners of such units and not affecting units outside of the class.

Cumulative voting shall only be permitted if so provided expressly in the declaration and only for the purpose of electing members of the executive board. A declarant may not utilize cumulative or class voting for the purpose of evading any limitations imposed upon declarants by this subpart. The declaration may provide that different allocations of votes shall be made to the units on particular matters specified in the declaration.

(d) ALTERATION OR PARTITION OF ALLOCATIONS.-- Except in the case of eminent domain (section 3107), expansion or conversion of a flexible condominium (section 3211), withdrawal of withdrawable real estate (section 3212), relocation of boundaries between adjoining units (section 3214) or subdivision of units (section 3215), the common element interest, votes and common expense liability allocated to any unit may not be altered without unanimous consent of all unit owners. The common elements are not subject to partition and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which it is allocated is void.

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

### **§ 3209. Limited common elements**

(a) ALLOCATION. --Except for the limited common elements described in section 3202(2) and (4) (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) REALLOCATION. --Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made, or by an amendment to the declaration executed by those unit owners. The persons executing the assignment or amendment to the declaration shall provide a copy thereof to the association.

(c) COMMON ELEMENTS NOT PREVIOUSLY ALLOCATED. --A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 3205(7) (relating to contents of declaration; all condominiums). The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association, or by amendments to the declaration.

### **§ 3210. Plats and plans**

(a) GENERAL RULE.-- Plats and plans are a part of the declaration. Separate plats and plans are not required by this subpart if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible. The plats and plans must contain, on the first page of the plats and plans, a certification that all of the plats and plans contain all information required by this section.

(b) CONTENTS OF PLAT.-- Each plat must show:

- (1) The name, location and dimensions of the condominium.
- (2) The location and dimensions of all existing improvements.
- (3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium labeled either "MUST BE BUILT" or "NEED NOT BE BUILT" but need not show contemplated improvements within the boundaries of convertible real estate.
- (4) The location and dimensions of any convertible real estate, labeled as such.
- (5) The location and dimensions of any withdrawable real estate, labeled as such.
- (6) The extent of any encroachments by or upon any portion of the condominium.
- (7) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.
- (8) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit's identifying number.
- (9) The location with reference to established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit's identifying number.
- (10) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate."
- (11) The distance between noncontiguous parcels of real estate comprising the condominium.
- (12) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in section 3202(2) and (4) (relating to unit boundaries) not shown on plans recorded pursuant to subsection (c).
- (13) All other matters customarily shown on land surveys.

(c) CONTENTS OF PLAN.-- Plans of every building that contains or comprises all or part of any unit and is located or must be built within any portion of the condominium, other than within the boundaries of any convertible real estate, must show:

- (1) The location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number.
- (2) Any horizontal unit boundaries, with reference to established datum, not shown on plats recorded pursuant to subsection (b), and that unit's identifying number.
- (3) Any units that may be converted by the declarant to create additional units or common elements (section 3215(c)), identified appropriately.
- (4) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in section 3202(2) and (4) not shown on plats recorded pursuant to subsection (b).

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

(e) CONVERTING OR ADDING REAL ESTATE.-- Upon converting convertible real estate or adding additional real estate (section 3211), the declarant shall record new plats for that real estate conforming to the requirements of subsection

(b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of the remaining portion.

(f) CONVERTING UNITS.-- If a declarant converts any unit into two or more units, limited common elements, or

both (section 3215), he shall record new plans showing the location and dimensions of any new units and limited common elements thus created as well as the location and dimensions of any portion of that space not being converted.

(g) ALTERNATIVE RECORDING.-- Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

(h) WHO MAY MAKE CERTIFICATIONS.-- Any certification of a plat or plan required by this section must be made by an independent registered surveyor, architect or professional engineer.

### **§ 3211. Conversion and expansion of flexible condominiums**

(a) GENERAL RULE.-- To convert convertible real estate or add additional real estate pursuant to an option reserved under section 3206(1) (relating to contents of declaration; flexible condominiums), the declarant shall prepare, execute and record an amendment to the declaration (section 3219) and comply with section 3210 (relating to plats and plans). The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate and reallocate common element interests, votes in the association and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 3209 (relating to limited common elements).

(b) CREATIONS WITHIN ADDITIONAL REAL ESTATE.-- Convertible or withdrawable real estate may be created within any additional real estate added to the condominium if the amendment adding that real estate includes all matters required by section 3205 (relating to contents of declaration; all condominiums) or section 3206 (relating to contents of declaration; flexible condominiums), as the case may be, and the plat includes all matters required by section 3210(b) (relating to plats and plans). This provision does not extend the time limit on conversion or contraction of a flexible condominium imposed by the declaration pursuant to section 3206(2).

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

### **§ 3212. Withdrawal of withdrawable real estate**

(a) GENERAL RULE. --To withdraw withdrawable real estate from a flexible condominium pursuant to an option reserved under section 3206(1) (relating to contents of declaration; flexible condominiums), the declarant shall prepare, execute and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate common element interests, votes in the association and common expense liabilities to the remaining units in the condominium in proportion to the respective interests, votes and liabilities of those units before the withdrawal, and the reallocation is effective when the amendment is recorded.

(b) WHEN WITHDRAWAL PROHIBITED. --If a portion of the withdrawable real estate was described pursuant to section 3206(6), that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

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

### **§ 3213. Alterations of units**

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

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.

(2) May not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without permission of the association.

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

#### **§ 3214. Relocation of boundaries between adjoining units**

(a) GENERAL RULE. --Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their

common element interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the

association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them and, upon recordation, is indexed in the name of the grantor and the grantee.

(b) PREPARING AND RECORDING PLATS OR PLANS. --The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

#### **§ 3215. Subdivision or conversion of units**

(a) GENERAL RULE.-- If the declaration expressly so permits, a unit may be subdivided into two or more units or,

in the case of a unit owned by a declarant, may be subdivided or converted into two or more units, common elements, or

a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law,

upon application of a unit owner to subdivide a unit or upon application of a declarant to convert a unit the association

shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing or converting

that unit.

(b) EXECUTION AND CONTENTS OF AMENDMENT.-- The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created and reallocate the common

element interest, votes in the association and common expense liability formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(c) CONVERSION OF UNIT OF DECLARANT TO COMMON ELEMENTS.-- In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration must reallocate

among the other units the common element interest, votes in the association and common expense liability formerly allocated to the converted unit on a pro rata basis, inter se.

#### **§ 3216. Easement for encroachments**

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for

the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor Relieve a declarant or any contractor, subcontractor or materialman of liability for failure to adhere to the plats and plans.

#### **§ 3217. Declarant's offices, models and signs**

(a) COMMON ELEMENTS.-- A declarant may maintain offices and models in the common element portion of the condominium only in connection with the management, sale or rental of units owned by the declarant in the condominium if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and

relocation thereof. At such time as a declarant ceases to be a unit owner, he ceases to have any rights with regard to such

portions of the common elements so used unless such portions are removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Upon the relocation of a model or office constituting a common element, a declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed common elements, and any personal property not so removed shall be deemed the property of the association.

(b) SIGNS.-- Subject to any limitations in the declaration, a declarant may maintain signs in his units and on the common elements advertising units in the condominium owned by the declarant for sale or lease.

(c) UNITS.-- A declarant shall have the right to locate, relocate and maintain offices and models used only in connection with the management, sale or rental of units owned by the declarant in the condominium in his unit or units in the condominium, notwithstanding the fact that the declaration would otherwise preclude use of units for such purpose, but subject to all other provisions in the declaration, including, without limitation, modification or elimination of declarant's rights pursuant to this subsection by specific reference thereto.

### **§ 3218. Easement to facilitate completion, conversion and expansion**

(1) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, however arising.

(2) Without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict usage by vehicles of more than ten tons gross weight if:

(i) the restrictions are imposed only on a week-by-week basis for an aggregate period not to exceed eight weeks during any calendar year;

(ii) the thaw conditions are reviewed by the association at least weekly; and

(iii) signs are conspicuously posted by the association at all entrances to the condominium advising when and where the thaw restrictions are applicable.

(3) An association shall not have the power to impose any fees or charges or required financial security, including surety bonds, letters of credit or escrow deposits for the use of the easement rights under this section except for the repair of damage caused to common elements in the exercise of the easement rights.

(4) The declarant or owner who exercises the easement rights under this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements

damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement, or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements so damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

### **§ 3219. Amendment of declaration**

(a) NUMBER OF VOTES REQUIRED.-- Except in cases of amendments that may be executed by a declarant under

section 3210(e) and (f) (relating to plats and plans), 3211(a) (relating to conversion and expansion of flexible condominiums) or 3212(a) (relating to withdrawal of withdrawable real estate); the association under subsection (f) or section

3107 (relating to eminent domain), 3207(d) (relating to leasehold condominiums), 3209(c) (relating to limited common elements) or 3215(a) (relating to subdivision or conversion of units); or certain unit owners under section 3209(b) (relating to limited common elements), 3214(a) (relating to relocation of boundaries between adjoining units), 3215(b) (relating

to subdivision or conversion of units) or 3220(b) (relating to termination of condominium), and except as limited by subsection (d) and section 3221 (relating to rights of secured lenders), the declaration, including the plats and plans,

may be amended only by vote or agreement of unit owners of units to which at least 67% of the votes in the association

are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) **LIMITATION OF ACTION TO CHALLENGE AMENDMENT.**-- No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) **RECORDING AMENDMENT.**-- Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the condominium in both the grantor and grantee index. An amendment is effective only upon recordation.

(d) **WHEN UNANIMOUS CONSENT REQUIRED.**-- Except to the extent expressly permitted or required by other provisions of this subpart, no amendment may create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the common element interest, common expense liability or voting strength in the association allocated to a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(e) **OFFICER AUTHORIZED TO EXECUTE AMENDMENT.**-- Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified by any officer of the association

designated for that purpose or, in the absence of designation, by the president of the association.

(f) **CORRECTIVE AMENDMENTS.**-- Except as otherwise provided in the declaration, if any amendment to the declaration

is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision thereof or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the condominium or association, or to make a reasonable accommodation

or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or

regulations applicable to the association, unit owners, residents, tenants or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the

unit owners or the holders of any liens on all or any part of the condominium, upon receipt by the executive board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this subsection.

### **§ 3220. Termination of condominium**

(a) **NUMBER OF VOTES REQUIRED.**-- Except in the case of a taking of all the units by eminent domain (section 3107), a condominium may be terminated only by agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) **EXECUTION AND RECORDING AGREEMENT AND RATIFICATIONS.**-- An agreement of unit owners to terminate a condominium must be evidenced by their execution of a termination agreement or ratifications thereof, in

the same manner as a deed, by the requisite number of unit owners who are owners of record as of the date preceding the date of recordation of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement will become null and void unless it is recorded on or before the earlier of:

(1) The expiration of one year from the date it was first executed or ratified by a unit owner.

(2) Such date as shall be specified in the termination agreement.

If, pursuant to a termination agreement, the real estate constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is located in the same records as are maintained



for the recording of deeds of real property and shall be indexed in the name of the condominium in both the grantor index and the grantee index. A termination agreement is effective only upon recordation.

(c) STATUS IF REAL ESTATE SOLD.-- The association, on behalf of the unit owners, may contract for the sale of the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b).

If the real estate constituting the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association

holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

(d) STATUS IF REAL ESTATE NOT SOLD.-- If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f) and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(e) DISTRIBUTION OF ASSETS OF ASSOCIATION.-- Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, shall be held by the association as trustee or unit owners and holders of liens on the units as their interests may appear. Following termination creditors of the association holding liens on the units which were recorded, filed of public record or otherwise perfected before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(f) RESPECTIVE INTERESTS OF UNIT OWNERS.-- The respective interests of unit owners referred to in subsections

(c), (d) and (e) are as follows:

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

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

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

(h) EXCLUSION FROM CONDOMINIUM UPON FORECLOSURE.-- If a lien or encumbrance against a portion of

the real estate comprising the condominium has priority over the declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

(i) **INEFFECTIVENESS OF TERMINATION PROVISION.**-- In the case of a declaration that contains no provision expressly providing for a means of terminating the condominium other than a provision providing for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the condominium would otherwise be terminated, owners of units to which at least 80% of the votes in the condominium are allocated vote that the self-executing termination provision shall be annulled, in which event the self-executing termination provision shall have no force or effect.

### **§ 3221. Rights of secured lenders**

(a) **SECURED LENDER APPROVAL.**-- The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions but no requirement for approval may operate to:

- (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or
- (2) prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding or receiving and distributing any insurance proceeds pursuant to section 3312 (relating to insurance).

(b) **SECURED LENDER APPROVAL PROCEDURES.**-- If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified.

If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days, and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the actions specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, as evidenced by United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender, or in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record and at the address to which the unit owner mails any periodic payment paid to the secured lender. The notice to the secured lender shall include a statement of the specified action and a copy of the full text of any proposed amendment and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.

### **§ 3222. Master associations**

(a) **APPLICABILITY OF SECTION.**-- If the declaration for a condominium provides that any of the powers described in section 3302 (relating to powers of unit owners' association) with respect to the condominium are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more other condominiums or other incorporated or unincorporated associations, then, except as modified by this section, all provisions of this subpart applicable to unit owners' associations shall apply to any such master association insofar as its actions affect the condominium.

(b) **POWERS.**-- Unless a master association is acting in the capacity of an association described in section 3301 (relating to organization of unit owners' association) with respect to a condominium which is part of the master association, it

may exercise with respect to the condominium only such powers set forth in section 3302 and only to the extent expressly permitted in the declaration of condominium which provides for the delegation of powers from its condominium association to the master association and accepted by such master association as indicated in the provisions of the declaration or other organizational documents of such master association.

(c) LIABILITY OF EXECUTIVE BOARD MEMBERS AND OFFICERS.-- If the declaration of a condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following such delegation. The officers and members of the governing board of the master association are subject to liability to the condominium association whose powers are delegated thereto and the unit owners of such condominium on the same basis as officers and executive board members of such condominium immediately before such delegation of powers.

(d) RIGHTS AND RESPONSIBILITIES OF PERSONS ELECTING GOVERNING BODY.-- The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 3303 (relating to executive board members and officers), 3308 (relating to meetings), 3309 (relating to quorums), 3310 (relating to voting; proxies) and 3320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association with respect to the exercise of powers delegated pursuant to a condominium declaration to such master association, but apply only to those persons who elect the governing body of a master association, whether or not those persons are otherwise unit owners within the meaning of this subpart.

(e) ELECTION OF MASTER ASSOCIATION GOVERNING BODY.-- Notwithstanding the provisions of section 3303(e) with respect to the election of the executive board by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 3301, the instrument creating the master association and the declaration of each condominium or the organizational documents of other associations the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association shall provide that the governing body of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums and other properties subject to the master association elect all members of the governing body of the master association.

(2) All members of the governing bodies of the condominium associations and other property owners' associations subject to the master association elect all members of the master association governing body.

(3) All unit owners of each condominium and other property owners' associations subject to the master association elect specified members of the master association governing body.

(4) All members of the governing bodies of the condominiums and other property associations subject to the master association elect specified members of the master association governing body.

(f) DELEGATION OF RESPONSIBILITY AND AUTHORITY.-- The provisions of this section shall apply to a condominium if and when:

(1) there occurs either a date specified in the declaration or any amendment thereto from and after which this section shall apply to the condominium;

(2) there occurs an event or action that the declaration or any amendment thereto states shall cause this section to become applicable, and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) such event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the condominium; and

(ii) that a copy of such instrument has been sent to all unit owners; or

(3) the declarant executes and records an instrument stating that this section shall thereafter apply to the condominium

and that a copy of such instrument has been sent to the executive board and all unit owners. Paragraph (3) shall be applicable only if the declarant shall have expressly reserved in the declaration, pursuant to section

3205(12) (relating to contents of declaration; all condominiums), the special declarant right to make this section applicable to the condominium and only if the instrument exercising such right shall have been recorded during the time period allowed for the exercise of such right.

(g) DELEGATION OF ALL POWERS.-- If all the powers of a condominium association are delegated to a master

association and accepted by such master association pursuant to subsection (b), then the governing body of the master association may act in all respects as the executive board of the condominium and no separate executive board need be elected or exist.

### **§ 3223. Merger or consolidation of condominiums**

(a) GENERAL RULE.-- Any two or more condominiums by agreement of the unit owners as provided in subsection

(b) may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums, and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant condominium shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting condominiums shall have been established under this subpart.

(b) REQUIREMENTS OF AGREEMENT.-- The merger or consolidation of two or more condominiums pursuant to

subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate such condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until so recorded.

(c) REALLOCATIONS.-- Every merger or consolidation agreement must provide for the reallocation of the common element interests, common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association among the units of the resulting condominium either:

(1) by stating the reallocations or the formulas upon which they are based; or

(2) by stating the common element interests, common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the common element interests, common expense liability, including

both general and limited common expenses, and portion of the votes in the association for the resulting condominium shall be the same as was allocated to each unit formerly comprising a part of the preexisting condominium by the declaration of the preexisting condominium.

(d) ACTION BY DECLARANT.-- Notwithstanding the provisions of subsections (a) and (b), if a declarant expressly

retained the special declarant right to merge or consolidate a condominium pursuant to section 3205(13) (relating to contents of declaration; all condominiums) and if the declarant exercised such right within the time period allowed for

such exercise by giving written notice to that effect to all unit owners accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of

the association of that condominium and without the necessity for approval or consent by unit owners or their mortgagees,

provided that the agreement is recorded within the time period allowed for the exercise of this special declarant right.

### **§ 3301. Organization of unit owners' association**

A unit owners' association shall be organized no later than the date the first unit of the condominium is conveyed to a person other than a successor declarant. The membership of the association at all times shall consist exclusively of all

the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 3220 (relating to termination of condominium) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

**§ 3302. Powers of unit owners' association**

- (a) GENERAL RULE.-- Subject to the provisions of the declaration, the association, even if unincorporated, may:
- (1) Adopt and amend bylaws and rules and regulations.
  - (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
  - (3) Hire and terminate managing agents and other employees, agents and independent contractors.
  - (4) Institute, defend or intervene in litigation or administrative proceedings or engage in arbitrations or mediation in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
  - (5) Make contracts and incur liabilities.
  - (6) Regulate the use, maintenance, repair, replacement and modification of common elements; and to make reasonable accommodations or permit reasonable modifications to be made to units, the limited common elements or the common elements to accommodate handicapped, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.
  - (7) Cause additional improvements to be made as a part of the common elements.
  - (8) (i) Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property other than common elements; and  
(ii) convey or subject to a security interest common elements only pursuant to the provisions of section 3318 (relating to conveyance or encumbrance of common elements).
  - (9) Grant easements, leases, licenses and concessions through or over the common elements, but any such easement, lease, license or concession:
    - (i) that is not for the benefit of all or substantially all of the unit owners shall not be granted without the same unit owner approval that is required for an amendment to the declaration; or
    - (ii) that materially impairs any right or benefit that one or more unit owners may have with respect to the common elements shall not be granted without the prior written approval of those unit owners.
  - (10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 3202(2) and (4) (relating to unit boundaries).
  - (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.
  - (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 3407 (relating to resales of units) or statements of unpaid assessments. In addition, the association may impose a capital improvement fee, but no other fees, on the resale or transfer of units in accordance with the following:
    - (i) The capital improvement fee for any unit shall not exceed the annual assessments for general common expense charged to such unit during the most recently completed fiscal year of the association; provided that:
      - (A) in the case of resale or transfer of a unit consisting of unimproved real estate, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to such unit during the most recently completed fiscal year of the association;
      - (B) in the case of resale or transfer of a unit which was created or added to the condominium in accordance with section 3211 (relating to the conversion and expansion of flexible condominiums) at some time during the most recently completed fiscal year of the association, but was not in existence for the entire fiscal year, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to a unit comparable to such unit during the most recently completed fiscal year of the association; and

(C) capital improvement fees are not refundable upon any sale, conveyance or any other transfer of the title to a unit.

(ii) Capital improvement fees allocated by an association must be maintained in a separate capital account and may be expended only for new capital improvements or replacement of existing common elements, improvements on the common elements and may not be expended for operation, maintenance or other purposes.

(iii) No capital improvement fee shall be imposed on any gratuitous transfer of a unit between any of the following family members; spouses, parent and child, siblings, grandparent and grandchild; nor on any transfer of a unit by foreclosure sale or deed in lieu of foreclosure to a secured lending institution as defined by the act of December 3, 1959 (P.L. 1688, No. 621), known as the Housing Finance Agency Law.

(iv) No fees may be imposed upon any person who:

(A) acquires a unit consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within 18 months.

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

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

(15) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

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

(17) Assign its right to future income, including the right to receive the payments made on account of common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(18) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions

of section 3222 (relating to master associations) and accept any assignment or delegation of powers from one or more condominiums or other incorporated or unincorporated associations.

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

### **§ 3303. Executive board members and officers**

(a) POWERS AND FIDUCIARY STATUS.-- Except as provided in the declaration, the bylaws, in subsection (b) or

other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance

of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may

serve, in good faith in a manner they reasonably believe to be in the best interests of the association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and

shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor

rule). In performing his duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more other officers or employees of the association whom the officer or executive board member reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the officer or executive board member reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the executive board upon which he does not serve, duly designated in accordance with law, as to

matters within its designated authority, which committee the officer or executive board member reasonably believes to merit confidence.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have

no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with such care in the manner set forth in this section.

(b) LIMITATION ON AUTHORITY.-- The executive board may not act on behalf of the association to amend the declaration (section 3219), to terminate the condominium (section 3220) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members (section 3303(e)) but the executive board may fill vacancies in its membership for the unexpired portion of any term. The executive board shall deliver to all unit owners copies of each budget approved by the executive board and notice of any capital expenditure approved by the executive board promptly after either such approval. In addition to other rights conferred by the declaration, bylaws or this subpart, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board, within 30 days after the approval.

(c) STATUS DURING PERIOD OF DECLARANT CONTROL.-- Subject to subsection (d), the declaration may provide for a period of declarant control of the association during which period a declarant or persons designated by him may appoint and remove the officers and members of the executive board. Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period not exceeding seven years in the case of a flexible condominium containing convertible real estate or to which additional real estate may be added, or five years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates no later than 180 days after conveyance of 75% of the units to unit owners other than a declarant.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period but in that event he may require, for the duration of the period of declarant control, that

specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(d) ELECTION OF MEMBERS DURING TRANSFER OF DECLARANT CONTROL.-- Not later than 60 days after conveyance of 25% of the units to unit owners other than a declarant, not less than 25% of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50% of the units to unit owners other than a declarant, not less than 33 1/3% of the members of the executive board shall be elected by unit owners other than the declarant.

(e) ELECTION OF MEMBERS AND OFFICERS FOLLOWING DECLARANT CONTROL.-- Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members at least a majority of whom must be unit owners, except that the executive board may consist of two members, both of whom must be unit owners, if the condominium consists of two units. The executive board shall elect the officers. The persons elected shall take office upon election.

(f) CALCULATION OF PERCENTAGES OF UNITS CONVEYED.-- In determining whether the period of declarant control has terminated under subsection (c), or whether unit owners other than a declarant are entitled to elect members of the executive board under subsection (d), the percentage of the units conveyed is presumed to be that percentage which would have been conveyed if all the units the declarant has built or reserved the right to build in the declaration were included in the condominium.

#### **§ 3304. Transfer of special declarant rights**

(a) EXECUTION AND RECORDING INSTRUMENT OF TRANSFER.-- No special declarant rights (section 3103)

created or reserved under this subpart may be transferred except by an instrument evidencing the transfer recorded in

every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the condominium in both the grantor and grantee index.

The instrument is not effective unless executed by the transferee.

(b) LIABILITY OF DECLARANT FOLLOWING TRANSFER.-- Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

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

(2) If a successor to any special declarant right is an affiliate of a declarant (section 3103), the transferor is jointly and severally liable with any successor for the liabilities and obligations or liabilities of the successor relating to the condominium.

(2.1) If a transferor retains any special declarant right, but transfers one or more other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this subpart or by the declaration relating to the retained special declarant rights arising after the transfer.

(3) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor and to whom the special declarant right has not theretofore been assigned.

(c) RIGHTS OF PURCHASER IN FORECLOSURE, ETC. PROCEEDINGS.-- Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust or sale under 11 U.S.C. (relating to bankruptcy) or receivership proceedings of any units owned by a declarant in the condominium

or additional real estate in a flexible condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to such units or additional real estate, or

only to any rights reserved in the declaration pursuant to section 3217 (relating to declarant's offices, models and signs)

and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) RIGHTS OF DECLARANT FOLLOWING FORECLOSURE, ETC. PROCEEDINGS.-- Upon foreclosure, tax, sale, judicial sale, sale by a trustee under a deed of trust or sale under 11 U.S.C. (relating to bankruptcy) or receivership

or similar proceedings of all units and other real estate in a condominium owned by a declarant:

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

(2) the period of declarant control (section 3303(c)) terminates unless the judgment or instrument conveying title provides

for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) LIABILITIES AND OBLIGATIONS OF SUCCESSORS.-- The liabilities and obligations of persons who succeed to special declarant rights are as follows:

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

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this subpart or the declaration:

(i) on a declarant which relate to his exercise or nonexercise of special declarant rights; or

(ii) on his transferor, other than:

(A) misrepresentations by any previous declarant, except to the extent knowingly continued or permitted to continue without correcting such misrepresentations;

(B) warranty obligations on improvements made by any previous declarant or made before the condominium was created;

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

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

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs (section 3217), if

he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability



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

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of section 3303(c) (relating to executive board members and officers) for the duration of any period of declarant control and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection he is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under section 3303(c).

(f) LIMITATION ON LIABILITY OF SUCCESSOR.-- Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations arising under this subpart or the declaration.

### **§ 3305. Termination of contracts and leases of declarant**

If entered into before the executive board elected by the unit owners pursuant to section 3303(e) (relating to executive board members and officers) takes office:

- (1) any management contract, employment contract or lease of recreational or parking areas or facilities;
- (2) any other contract or lease to which a declarant or an affiliate of a declarant is a party; or
- (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing; may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to section 3303(e) takes office upon not less than 90 days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size unless the real estate subject to that lease was submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

### **§ 3306. Bylaws**

(a) MANDATORY PROVISIONS.-- The bylaws of the association must provide for:

- (1) The number of members of the executive board and the titles of the officers of the association.
- (2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.
- (3) The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies.
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.
- (5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.
- (6) The method of amending the bylaws.

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

### **§ 3307. Upkeep of condominium**

(a) GENERAL RULE. --Except to the extent provided by the declaration or section 3312(d) (relating to insurance), the association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible is liable for the prompt repair thereof.

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

### **§ 3308. Meetings**

The bylaws must require that meetings of the association be held at least once each year and provide for special meetings. The bylaws must specify which of the association's officers, not less than ten nor more than 60 days in advance of any meeting, shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget or assessment changes and, where the declaration or bylaws require approval of unit owners, any proposal to remove an executive board member or officer.

### **§ 3309. Quorums**

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

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

### **§ 3310. Voting; proxies**

(a) UNIT OWNER OTHER THAN NATURAL PERSON.-- If the owner of a unit is a corporation, joint venture, partnership or unincorporated association, the natural person who shall be entitled to cast the vote for such unit shall be the person named in a certificate executed by such entity pursuant to its governing documents. If the owner of a unit is a trust, the trustee or trustees shall be deemed to be the owner for the voting purposes. Where the ownership of a unit is in more than one person, the natural person who shall be entitled to cast the vote of such unit shall be the person named in a certificate executed by all of the owners of such unit and filed with the secretary or, in the absence of such named person from the meeting or the failure to execute and file such a certificate, the person who shall be entitled to cast the vote of such unit shall be the person owning such unit who is present. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with their unanimous agreement unless the declaration expressly provides otherwise. There shall be deemed to be unanimous agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. Such certificate shall be valid until revoked by a subsequent certificate similarly executed.

Except where execution by owners of a unit in the same manner as a deed is required in this subpart and subject to the provisions of the declaration and bylaws, wherever the approval or disapproval of a unit owner is required by this subpart, the declaration or the bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such unit at any meeting of the association.

(b) PROXIES.-- Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is

not dated or purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter term.

(c) Deleted by Act 1992, Dec. 18, P.L. 1279, No. 168, § 5, effective in 45 days.

(d) UNITS OWNED BY ASSOCIATION.-- No votes allocated to a unit owned by the association may be cast.

### **§ 3311. Tort and contract liability**

(a) GENERAL RULE.--

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

(2) Except as otherwise provided by paragraph (1):

(i) An action in tort alleging a wrong done by the association or by an agent or employee of the association, or an action arising from a contract made by or on behalf of the association, shall be brought against the association.

(ii) A unit owner shall not be subject to suit or, except as otherwise provided by subsection (b), be otherwise directly or indirectly held accountable for the acts of the association or its agents or employees on behalf of the association.

(3) If the tort or breach of contract occurred during any period of declarant control (section 3303(c)), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney's fees. If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this paragraph unless the association shall have given the declarant:

(i) notice of the existence of such a claim promptly after the date on which one or more members of the executive board who are not designees of the declarant learns of the existence of such a claim; and

(ii) an opportunity to defend against such claim on behalf of the association but at the declarant's expense. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(4) A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

(b) LIEN OF JUDGMENT.-- Except as otherwise provided in this subpart, a judgment for money against the association,

if and when entered of record against the name of the association in the office of the clerk of the court of common pleas of the county or counties where the condominium is located, or in the office of the branch of the court of common

pleas embracing such county or counties, shall also constitute a lien against each unit for a pro rata share of the amount of that judgment, including interest thereon, based on the common expense liability allocated to that unit (section 3208).

No other property of a unit owner is subject to the claims of creditors of the association.

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

(d) APPLICABILITY OF SECTION.-- The provisions of this section shall be applicable to all associations without regard to whether the association is organized as a corporation or as an unincorporated association.

### **§ 3312. Insurance**

(a) INSURANCE TO BE CARRIED BY ASSOCIATION.-- Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units exclusive of improvements and betterments installed in units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not

less than 80% of the actual cash value of the insured property exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the

executive board but not less than any amount specified in the declaration covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

(3) Any property or comprehensive general liability insurance carried by the association may contain a deductible provision.

(b) OTHER INSURANCE CARRIED BY ASSOCIATION.-- If the insurance described in subsection (a) is not maintained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance and the association in any event may carry any other insurance in such reasonable amounts and with such reasonable deductibles as the executive board may deem appropriate to protect the association or the unit owners.

(c) CONTENTS OF INSURANCE POLICIES.-- Insurance policies carried pursuant to subsection (a) must provide that:

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

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household.

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

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

(d) PROCEEDS FROM PROPERTY INSURANCE.-- Any loss covered by the property policy under subsection

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

(e) UNIT OWNER MAY OBTAIN INSURANCE.-- A unit owner may insure his unit for all losses to his unit, including

all losses not covered by the insurance maintained by the association due to a deductible provision or otherwise. An insurance policy issued to the association shall not prevent a unit owner from obtaining insurance for his own benefit.

(f) EVIDENCE AND CANCELLATION OF INSURANCE.-- An insurer that has issued an insurance policy under

this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurance may not be cancelled until 30 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

(g) DISPOSITION OF INSURANCE PROCEEDS.--

(1) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly by the association unless:

(i) the condominium is terminated;

(ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or

(iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves which have not been identified by the executive board to fund costs

of capital expenditures for the current fiscal year of the association is a common expense.

(2) If the entire condominium is not repaired or replaced:

(i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium;

(ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned; and

(iii) the remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interests.

If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the association and

common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section

3107(a) (relating to eminent domain) and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(3) Notwithstanding the provisions of this subsection, section 3220 (relating to termination of condominium) governs

the distribution of insurance proceeds if the condominium is terminated.

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

(i) RECOVERY OF DEDUCTIBLES.-- If any insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 3314(c) (relating to assessments for common expenses).

### **§ 3313. Surplus funds**

Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which such limited common expenses pertain in excess of the amount required for actual limited

common expenses and reserves for future limited common expenses shall be credited to each unit assessed for a share of such limited common expenses in proportion to the share of such limited common expenses so assessed, these credits to

be applied, unless the declaration provides otherwise, to the next monthly assessments of limited common expenses against that unit under the then current fiscal year's budget, and thereafter, until exhausted. Any amounts accumulated

from assessments for general common expenses and income from the operation of the common elements, other than

limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common expenses and reserves for future general common expenses shall be credited to each

unit in accordance with such unit's interests in common elements, these credits to be applied, unless the declaration provides

otherwise, to the next monthly assessments of general common expenses against that unit under the then current fiscal year's budget, and thereafter, until exhausted.

### **§ 3314. Assessments for common expenses**

(a) GENERAL RULE.-- Until the association makes a common expense assessment, the declarant shall pay all the expenses of the condominium. After any assessment has been made by the association, assessments shall be made at

least annually and shall be based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

(b) ALLOCATION AND INTEREST.-- Except for assessments under subsection (c), common expenses shall be assessed

against all the units in accordance with the common expense liability allocated to each unit (section 3208) in the

case of general common expenses and in accordance with subsection (c) in the case of special allocations of expenses.

Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding 15% per year.

(c) SPECIAL ALLOCATIONS OF EXPENSES.-- Except as provided by the declaration:

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

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

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

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

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

### **§ 3315. Lien for assessments**

(a) GENERAL RULE.-- The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed

in like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage thereon, except the mortgage for which the sale is being held, if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. §

8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for condominium assessments created under

this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3302(a)(10), (11) and (12) (relating to powers of unit owners' association) and reasonable costs and expenses of

the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable

as assessments under this section. If an assessment is payable in installments and one or more installments is not

paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) PRIORITY OF LIEN.-- (1) GENERAL RULE.-- A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recordation of the declaration.

(ii) (A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment, if the assessment is not payable in installments, or the due date of the unpaid installment, if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by mortgages or deeds of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) LIMITED NONDIVESTITURE.-- The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 3314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to

enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 3314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial

sale are adequate to pay these assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of

the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month

period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) MONETARY EXEMPTION.-- The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

(c) NOTICE AND PERFECTION OF LIEN.-- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(d) LIMITATION OF ACTIONS.-- A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

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

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

(g) STATEMENT OF UNPAID ASSESSMENTS.-- The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit pursuant to section 3313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(h) APPLICATION OF PAYMENTS.-- Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable, notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

### **§ 3316. Association records**

During the period of declarant control, the association shall keep detailed financial records, including, without limitation, a record of expenses paid by the declarant until the commencement of common expense assessments by the association under section 3314(a) (relating to assessments for common expenses), the commencement date of common expense assessments by the association and, for the period commencing on such date, a record for each unit in the condominium (including those owned by the declarants) of its common expense assessments and the payments thereof. The association shall keep financial records sufficiently detailed to enable the association to comply with section 3407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

### **§ 3317. Association as trustee**

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

### **§ 3318. Conveyance or encumbrance of common elements**

(a) GENERAL RULE.-- Portions of the common elements may be conveyed or subjected to a security interest by the association if the persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant or any larger percentage the declaration specifies, agree to that action, but all the

owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

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

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

(d) **OTHER CONVEYANCES OR ENCUMBRANCES VOID.**-- Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) **RIGHT OF ACCESS AND SUPPORT.**-- A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its right of access and support.

(f) **PREEXISTING ENCUMBRANCES.**-- Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(g) **LIMITATION.**-- Common elements which may be conveyed or encumbered pursuant to this section shall not include any land, buildings or other facilities:

- (1) containing or comprising one or more units; or
- (2) necessary for the use or operation of one or more units.

### **§ 3319. Other liens affecting the condominium**

(a) **GENERAL RULE.**-- Except as provided in subsection (b), a judgment for money against the association, if and when the judgment has been perfected as a lien on real property, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) **IF SECURITY INTEREST IN COMMON ELEMENTS.**-- If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3318 (relating to conveyance or encumbrance of common elements), the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) **RELEASE UPON PAYMENT OF UNIT OWNER'S SHARE.**-- Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liability

of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) **INDEXING OF JUDGMENTS.**-- A judgment against the association must be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.

### **§ 3320. Declarant delivery of items to association**

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant



control pursuant to section 3303(c) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the unit owners and of the association

held by or controlled by the declarant, including, without limitation, all of the following items, if applicable, as to each condominium or other owners' association operated by the association:

(1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy

is delivered, such photocopy shall reflect the recording information and shall be accompanied by an affidavit executed

by the declarant certifying such photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any taxexempt elections made by or on behalf of the association.

(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control pursuant to section 3303(c)

or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time

period between the last audit of the association's financial books and records and the date of termination of the period of

declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting

principles, the costs of which audit are to be borne equally by the declarant and the association. If the condominium consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property and inventories thereof:

(i) that may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements; or

(ii) that is otherwise property of the association.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation

or remodeling of any buildings and improvements within the condominium and in the construction and installation of

any mechanical components and equipment serving the buildings and improvements and property, if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant

and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the condominium, unless no public offering statement is required for any unit in the condominium

in which event such period shall commence on the date of the recordation of the condominium declaration or amendment thereto with respect to such improvements, and ending on the date by which compliance with this section is required.

In the event such construction, rehabilitation, renovation, remodeling or installation was

substantially completed within such period but not by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be

to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to

obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If such construction,

rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners, operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the condominium. A declarant's delivery of any plans, drawings or specifications pursuant to this paragraph shall not constitute a representation or warranty of the accuracy or completeness of such plans, drawings or specifications and shall not expand or otherwise affect the declarant's warranties created under section 3411 (relating to warranty against structural defects).

(13) All insurance policies insuring the association then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the condominium, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the condominium property which are then currently in force, all notices of violations of governmental requirements then outstanding and uncured and all reports of investigations for the presence of hazardous conditions as defined in section 3402(a)(26) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the condominium property or have supplied equipment or services to the condominium property.

(17) A roster of unit owners and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

#### **§ 3401. Applicability; waiver**

(a) GENERAL RULE.-- This chapter applies to all units subject to this subpart, except as provided in subsection (b) and section 3411 (relating to warranty against structural defects) or as modified or waived by agreement of the purchaser of any unit which is intended for nonresidential use at the time of sale of such unit by the declarant or by agreement of purchasers of units in a condominium who are or intend to be in the business of buying and selling condominium units, provided that:

(1) a purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 3411 with regard to such unit and the common elements;

(2) with regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units have agreed to such modification or waiver and, with regard to any common elements, other than limited common elements, in a condominium in which all units are restricted to nonresidential use, all unit owners have agreed to such modification or waiver; and

(3) no modification or waiver shall prevent any unit owner from indirectly benefiting from any provision in this chapter by reason of such unit owner being a unit owner in the condominium and a member of the association.

(b) PUBLIC OFFERING STATEMENTS.-- A public offering statement need not be prepared or delivered in the case of:

(1) a gratuitous transfer of a unit;

(2) a disposition pursuant to court order;

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

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

(5) a disposition of a condominium situated wholly outside this Commonwealth pursuant to a contract executed wholly outside this Commonwealth; or

(6) a transfer to which section 3407 (relating to resales of units) applies.

(c) RESALE CERTIFICATES.-- A resale certificate as described in section 3407 need not be prepared or delivered in the cases described in subsection(b)(1) through (5).

(d) UNIFIED PUBLIC OFFERING STATEMENT.-- If a unit is part of a condominium and is part of any other real

estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 3402 (relating to

public offering statement; general provisions), 3403 (relating to public offering statement; time-share estates) and 3404

(relating to public offering statement; condominiums containing conversion buildings) as those requirements relate to

any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth may be prepared and delivered in lieu of providing two or more public offering statements.

### **§ 3402. Public offering statement; general provisions**

(a) GENERAL RULE.-- Except as provided in subsection (b), a public offering statement must contain or fully and= accurately disclose:

(1) The name and principal address of the declarant and of the condominium.

(2) A general description of the condominium, including without limitation the types, number and declarant's schedule of commencement and completion of construction of all buildings, units and amenities. The public offering statement

shall also contain a narrative description of the type and character of units offered, including a statement of the degree of completion to be provided or undertaken by the declarant of such units and the common elements necessary for use and enjoyment of such units upon the conveyance by the declarant of the units offered.

(3) The total number of additional units that may be included in the condominium and the proportion of units the declarant intends to rent or market in blocks of units to investors.

(4) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 3206(1) (relating to contents of declaration; flexible condominiums) and the expected effects that withdrawal would have on the remaining portion of the condominium.

(5) Copies and a brief narrative description of the significant features of the declaration (other than the plats and

plans), and the bylaws, rules and regulations, the agreement of sale, copies of any contracts and leases to be signed by the purchasers prior to or at closing and a brief narrative description of any other contracts or leases or agreements of a

material nature to the condominium that will or may be subject to cancellation by the association under section 3305

(relating to termination of contracts and leases of declarant).

(6) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public

offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of

the association, a statement of who prepared the budget and a statement of the budget's material assumptions, including

those concerning occupancy and inflation factors. The budget must include, without limitation:

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

(ii) A statement containing a description of any provisions made in the budget for reserves for anticipated material capital expenditures or any other reserves or, if no provision is made for reserves, a statement to that effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(7) Any:

(i) services not reflected in the budget that the declarant provides, or expenses that he pays, and that he expects may

become at any subsequent time a common expense of the association; and

(ii) personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and

enjoyment of the common elements after such personal property is no longer provided by the declarant, and the projected common expense assessment for the association and for each type of unit attributable to each of those services or expenses and purchase or rental of such personal property.

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

(9) A description of any liens, defects or encumbrances on or affecting the title to the condominium.

(10) A description of any financing for purchasers offered or arranged by the declarant.

(11) The terms and significant limitations of any warranties provided by the declarant including statutory warranties and limitations on the enforcement thereof or on damages.

(12) A statement in at least ten-point bold face type, appearing on the first page of the public offering statement, as follows:

(i) That within 15 days after receipt of a public offering statement, or within seven days in the case of the sale of a time-share estate, or an amendment to the public offering statement that materially and adversely affects the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) That if a declarant fails to provide a public offering statement, and any amendments thereto, to a purchaser before conveying a unit, that purchaser may recover from the declarant damages as provided in section 3406(c) (relating to purchaser's right to cancel).

(iii) A description of such damages.

(iv) That if a purchaser receives the public offering statement more than 15 days before signing a contract, he cannot cancel the contract, or more than seven days in the case of the sale of a time-share estate, except that, in accordance with subparagraph (i), he shall have the right to cancel the contract before conveyance within 15 days (seven days in the case of the sale of a time-share estate) after receipt of any amendment thereto that would have a material and adverse effect on the rights or obligations of that purchaser.

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

(14) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account in accordance with the provisions of section 3408 (relating to escrow of deposits) and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 3406.

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

(16) A description of all insurance coverage provided or intended to be provided if such insurance is not then in effect

for the benefit of unit owners, including the types and extent of coverage and the extent to which such coverage includes

or excludes improvements or betterments made to units.

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

(18) The extent to which financial arrangements have been provided for completion of all improvements labeled

"MUST BE BUILT" pursuant to section 3414 (relating to declarant's obligation to complete and restore).

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

(20) In the case of a leasehold condominium, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

- (v) Whether the lessee has any right to terminate the lease.
- (vi) The information contained in the declaration as required by section 3207(a) (relating to leasehold condominiums).
- (vii) The following notice in bold type: "Purchasers should be aware that this is a leasehold condominium and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability."
- (21) A statement containing a declaration as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and major repairs if known or ascertainable, and the expected useful life of each item, together with the estimated cost (in current dollars) of replacing each of the same.
- (22) A description of how votes are allocated among the units and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. Such statement shall also explain the operation of such cumulative or class voting.
- (23) A description of any circumstances under which the association is to become a master association or part of a master association.
- (24) A statement of all governmental approvals and permits required for the use and occupancy of the condominium indicating the name and expiration date of each such approval or permit that has been obtained and, as to any governmental approvals or permits that have not been obtained, a statement indicating when each such permit or approval is expected to be obtained and the person who shall bear the expense of obtaining each such permit or approval.
- (25) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be cured and the person who shall bear the expense of curing such violation.
- (26) A statement as to whether the declarant has knowledge of any one or more of the following:
- (i) Hazardous conditions, including contamination affecting the condominium site by hazardous substances, hazardous wastes or the like, or the existence of underground storage tanks for petroleum products or other hazardous substances.
- (ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the condominium site.
- (iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority in order to correct any hazardous conditions, and any action taken pursuant to those recommendations.
- If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect. Declarant shall also set forth the address and phone number of the regional offices of the Department of Environmental Resources and the United States Environmental Protection Agency where information concerning environmental conditions affecting the condominium site may be obtained.
- (b) EXCEPTIONS.-- If a condominium composed of not more than 12 units is not a flexible condominium and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, a public offering statement may but need not include the information otherwise required by subsection (a)(3), (4) and (18) and the narrative descriptions of documents required by subsection (a)(5).
- (c) AMENDMENT FOR MATERIAL CHANGE IN INFORMATION.-- A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

**§ 3403. Public offering statement; time-share estates**

- (a) DEFINITION.-- For purposes of this section, "time-share estate" means either:
- (1) an "interval estate," meaning a combination of:

(i) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with

(ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate; or

(2) a "time-span estate," meaning a combination of:

(i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established

by the declaration or by the deed conveying the time-span estate, coupled with

(ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.

(b) GENERAL RULE.-- If the declaration provides that ownership or occupancy of any units are or may be owned in time-shares, the public offering statement shall contain or disclose in addition to the information required by section

3402 (relating to public offering statement; general provisions):

(1) The total number of units in which time-share estates may be created.

(2) The total number of time-share estates that may be created in the condominium.

(3) The projected common expense assessment for each time-share estate and whether those assessments may vary seasonally.

(4) A statement of any services not reflected in the budget which the declarant provides, or expenses which he pays,

and which he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for each time-share estate.

(5) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit.

(6) The extent to which a suit for partition may be maintained against a unit owned in time-share estates.

(7) The extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

(8) A statement in at least ten-point bold face type, appearing on the first page of the public offering statement, that:

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

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, the purchaser

may recover from the declarant damages as provided in section 3406(c) (relating to purchaser's right to cancel) and a

description of such damages.

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

#### **§ 3404. Public offering statement; condominiums containing conversion buildings**

(a) GENERAL RULE.-- The public offering statement of a condominium containing a conversion building must contain, in addition to the information required by section 3402 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer:

(i) describing the age and present condition and, if known or reasonably ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air conditioning and elevators, material to the use and enjoyment of the condominium; and

(ii) describing the results of the inspection of the units and common elements required pursuant to section 3411(c) (relating to warranty against structural defects) for visible conditions that adversely affect the health or safety of residential

occupants. The statement should also state the extent to which the report by the architect or professional engineer

is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) including the current replacement costs of such item.

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

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence at the condominium of any visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

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

#### **§ 3405. Public offering statement; condominium securities**

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this subpart if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not, in and of itself, a security under the provisions of the act of December 5, 1972 (P.L. 1280, No. 284), known as the Pennsylvania Securities Act of 1972, and the offer and sale of condominium units in accordance with the requirements of this chapter shall not also be subject to the registration requirements of sections 201 or 301 of the Pennsylvania Securities Act of 1972 or the promotional real estate sales requirements of the act of February 19, 1980 (P.L. 15, No. 9), known as the Real Estate Licensing and Registration Act.

#### **§ 3406. Purchaser's right to cancel**

(a) GENERAL RULE.-- In cases where delivery of a public offering statement is required under section 3401 (relating to applicability; waiver), a declarant shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto not later than the date the purchaser executes the contract of sale for such unit or, if no contract of sale is executed, 15 days before conveyance of such unit. Unless a purchaser is given the public offering statement, including all the currently effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement and all currently effective amendments thereof, except in the case of the sale of a time-share estate. Unless a purchaser of a time-share estate is given the public offering statement, including all the currently effective amendments thereof, more than seven days before the purchaser executes the contract for the purchase of such unit or, if no contract of sale is executed, seven days before conveyance of such unit, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement and all currently effective amendments thereof. If a public offering statement is amended after the public offering statement has been received by a purchaser of a unit, the amendment shall be provided to the purchaser promptly after it becomes effective, and, if the amendment materially and adversely affects the rights or obligations, or both, of the purchaser, then the purchaser, before conveyance, may cancel the contract of sale within 15 days, or seven days in case of the sale of a time-share estate, after receiving the amendment.

(b) METHOD AND EFFECT OF CANCELLATION.-- If a purchaser elects to cancel a contract pursuant to subsection

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

(c) **PENALTY FOR NONCOMPLIANCE BY DECLARANT.**-- If a declarant fails to provide a purchaser to whom a unit is conveyed with a public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any other relief, is entitled to receive from the declarant an amount equal to 5% of the sales price of the unit up to the maximum of \$ 2,000, or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto, that is not willful, shall entitle the purchaser to recover only actual damages, if any.

**§ 3407. Resales of units**

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

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

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any surplus fund credits to be applied with regard to the unit pursuant to section 3313 (relating to surplus funds).

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

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

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

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

(7) The current operating budget of the association.

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

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

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or

to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements

or knowledge of the existence of any hazardous conditions pursuant to section 3402(a)(26) (relating to public

offering statement; general provisions) or with respect to the unit, the limited common elements assigned thereto or any other portion of the condominium.

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

(13) A statement as to whether the declaration provides for cumulative voting or class voting.

(14) A statement as to whether an agreement to terminate the condominium has been submitted to the unit owners for approval and remains outstanding.

(15) A statement of whether the condominium is a master association or is part of a master association or could become a master association or part of a master association.

(16) A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the condominium.

(17) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the condominium and, if so, the information describing such right which was supplied by the declarant pursuant to section

3205(13) (relating to contents of declaration; all condominiums), if any.

(b) **INFORMATION SUPPLIED BY ASSOCIATION.**-- The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information and copies of documents necessary to enable the unit owner



to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser

for any erroneous information provided by the association and included in the certificate.

(c) LIABILITY FOR ERROR OR INACTION BY ASSOCIATION.-- A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) PURCHASE CONTRACT VOIDABLE.-- The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

### **§ 3408. Escrow of deposits**

Any deposit (which shall not include any installment payment under an installment sales contract nor payments specifically

stated in a sales contract to be in payment of or on account of extras, changes or custom work) made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this Commonwealth

by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company, in an account, or in the form of a certificate of deposit, designated solely for that

purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

- (1) delivered to the declarant at closing, or in the case of the sale of a unit pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit;
- (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or
- (3) refunded to the purchaser.

### **§ 3409. Release of liens**

(a) GENERAL RULE.-- Before conveying a unit, other than by deed in lieu of foreclosure, to a purchaser other than

a declarant, a declarant shall record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien adequate in nature and amount. This subsection does not apply to any convertible or withdrawable real estate in which no unit has been conveyed.

(b) OTHER LIENS.-- Before conveying real estate to the association, the declarant shall have the real estate released from:

- (1) All liens, the foreclosure of which would deprive unit owners of any right of access to or easements of support of their units.
- (2) All other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

### **§ 3410. Condominiums containing conversion buildings**

(a) NOTICE OF CONVERSION.-- The declarant of every condominium containing one or more conversion buildings

shall give each of the residential tenants and residential subtenants, if any, lawfully in possession of a unit or units in a conversion building or buildings, a conversion notice no later than one year before the declarant will require such

residential tenant and residential subtenant to vacate. The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid

United States certified or registered mail return receipt requested to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by a residential tenant. Every notice shall be

accompanied by a public offering statement concerning the proposed sale of condominium units within such building or buildings. Except as otherwise provided in subsection (f), no residential tenant or residential subtenant in a conversion

building may be required by the declarant to vacate the unit he leases earlier than one year after the conversion notice

date, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises and the terms of the tenancy, including those terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered, but may be enforced, during that period. Failure of a declarant to give notice to a residential tenant or residential subtenant entitled to such notice pursuant to this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

(b) OFFER TO TENANT TO PURCHASE UNIT.-- For six months after the conversion notice date, the declarant shall offer to convey each unit or proposed unit occupied for residential use in a conversion building to the tenant who

leases that unit. If the tenant fails to purchase his unit during that six-month period, the declarant may not offer to dispose of an interest in that unit during the following six months at a price or on terms more favorable to the offeree than

the price or terms offered to the tenant. This subsection shall not apply to any rental unit which immediately prior to the conversion notice date was restricted or devoted exclusively to nonresidential use or the boundaries of which unit, after the creation of the condominium, will not substantially conform to the boundaries of such unit on the conversion notice date.

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

(b).

(d) NOTICE TO VACATE.-- If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection (i), and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L. 69, No. 20), known as The Landlord and Tenant Act of 1951.

(e) IMPROPER LEASE TERMINATION PROHIBITED.--

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

(2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice pursuant to subsection

(a), from terminating any lease without any liability for such termination provided such tenant gives the building owner 90 days' written notice of the intent to terminate the lease.

(3) The declarant or owner of any proposed conversion condominium shall not engage in any activity of any nature

which would coerce the tenant into terminating any lease, including but not limited to stampeding, harassing tenants or withholding normal services or repairs.

(f) UNITS LEASED TO SENIOR CITIZENS AND DISABLED PERSONS.--

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies a unit in a conversion building as his principal residence and is 62 years of age or older or

is disabled, and has occupied the unit for at least two years. For the purpose of this subsection, a person shall be deemed to be "disabled" if on the conversion notice date he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant, or subtenant, in possession of a unit, who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility.

Any eligible tenant or subtenant who has established his eligibility as aforesaid shall be entitled to remain in possession

of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the

condominium, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date,

may not be altered, but may be enforced, during the time period between the original lease termination date and the expiration

of this two-year period except as is otherwise provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period commencing upon the later to occur of the original

lease termination date or the first anniversary of the conversion notice date and ending upon the expiration of the two-year period described in paragraph (2) shall be the same monthly rental as was payable for the month immediately

preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased

by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the

Consumer Price Index as calculated and published by the United States Department of Labor for the six-month time period commencing on the first day of the first full calendar month after the conversion notice date.

(4) Failure of a declarant to comply with the provisions of this subsection is a defense to an action for possession.

(g) TENANT MEETINGS; OPEN TO THE PUBLIC.-- With respect to any conversion building containing one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a

tenant meeting open to the public in the municipality where the proposed conversion building is located at a place and

time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to residential tenants and subtenants in lawful possession of their units in the same

manner as is required for the giving of the conversion notice and to the general public by a notice in a newspaper of

general circulation in the municipality in which the condominium is located, except that no notice to the general public need be given with respect to conversion buildings as to which the provisions of section 3402(b) (relating to public offering

statement; general provisions) are applicable. At such meeting, representatives of the declarant shall briefly describe

the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants pursuant to this section.

(2) Improvements, if any, then planned to be made to the condominium by the declarant.

(3) The anticipated approximate range of initial unit sales prices. Specific unit sales prices need not, however, be provided.

(4) The anticipated approximate range of estimated monthly common expenses for various types of units, however, specific per unit estimates need not be provided.

(h) COMMUNITY DEVELOPMENT GRANTS.-- If Federal funds under Title I of the Community Development Act of 1974 have been used to finance the rehabilitation of multifamily rental housing, with the intent that such housing subsequent to the rehabilitation is to be used for residential rental purposes, such housing shall not be converted to a condominium for a period of ten years from the date the rehabilitation is completed.

(i) REVOCATION.-- A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) is given prior to the conveyance of any unit in the condominium occurring after the conversion notice date other than a unit or units conveyed to a successor declarant or as a result of foreclosure of a mortgage on the unit or a deed in lieu thereof;

(2) is given in the same manner as is required for the giving of the conversion notice; and

(3) is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given. The giving of a notice of revocation revokes all rights granted under this section, but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

(j) WAIVER OF PURCHASE RIGHTS.-- Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant may waive his right to purchase a unit pursuant to subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) an extension of the term of the tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsection (a) or (f) as applicable;

(2) the tenant entering into an agreement to purchase another unit in the condominium; or

(3) all occupants of the unit making alternative living arrangements.

(k) ALTERATION OF TERMS OF TENANCY.-- Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

(l) APPLICATION OF SECTION.-- The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants are in lawful occupancy on the conversion notice date and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of conversion building on the date the declarant gives the conversion notice; or

(2) who commence their tenancy after the notice of conversion is given to the other residential tenants without having been notified in writing, at or prior to the commencement of their tenancy, that the property is then a condominium and that they are not entitled to the rights granted under this section. Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

### **§ 3411. Warranty against structural defects**

(a) DEFINITION.-- As used in this section, "structural defects" means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement.

Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) GENERAL RULE.-- A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a bona fide purchaser, and all of the common elements for two years. Any conveyance of a unit

during the two-year warranty period shall be deemed to transfer to the purchaser all of the declarant's warranties created

under this section. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) as to any common element within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser;

(2) as to any common element within any convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; and

(3) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed to a bona fide purchaser.

(c) CONDOMINIUMS CONTAINING CONVERSION BUILDINGS.-- A declarant of a condominium containing one or more conversion buildings warrants as follows:

(1) That there are no structural defects in components installed anywhere in the condominium by or on behalf of the

declarant or in work done or improvements made by or on behalf of the declarant anywhere in the condominium.

(2) That all units and common elements in each conversion building have been inspected for visible structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants, as required by section 3404(a)(1) (relating to public offering statement; condominiums containing conversion buildings), except that no such inspection is required of any unit if the tenant or other lawful occupant of the unit does not permit such inspection to be conducted.

(3) That any such defects and other visible conditions found have been repaired.

The warranties set forth in subsection (b) shall be applicable to any units and common elements that are located within a building that contains or comprises one or more units and is not a conversion building. Otherwise, such a declarant may offer the units, common elements, or both, in an "as is" condition. The declarant of a condominium containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by

this subsection commence and the duration of such warranties shall be as provided in subsection (b).

(d) EXCLUSION OR MODIFICATION OF WARRANTY.-- Except with respect to a purchaser of a unit for residential

use, the warranty against structural defects:

(1) may be excluded or modified by agreement of the parties; and

(2) is excluded by expression of disclaimer, such as "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(e) LIMITATION OF ACTIONS.-- No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins.

#### **§ 3412. Effect of violations on rights of action**

If a declarant or any other person subject to this subpart violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the subpart.

#### **§ 3413. Labeling of promotional material**

If any improvement contemplated in a condominium is required by section 3210(b)(3) (relating to plats and plans) to be labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

#### **§ 3414. Declarant's obligation to complete and restore**

(a) COMPLETING IMPROVEMENTS.-- The declarant shall complete all improvements labeled "MUST BE

BUILT" on plats or plans prepared pursuant to section 3210 (relating to plats and plans).

(b) REPAIR AND RESTORATION.-- The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 3211 (relating to conversion and expansion of flexible condominiums), 3212 (relating to withdrawal of withdrawable real estate), 3217 (relating to declarant's offices, models and signs) and 3218 (relating to easement to facilitate completion, conversion and expansion).

(c) SUBSTANTIAL COMPLETION PREREQUISITE TO CONVEYANCE.-- A unit which is part of or constitutes a structure shall not be conveyed unless all structural components and common element mechanical systems of the structure containing or constituting such unit or units are substantially completed to the extent required of declarant so as to permit the use of such unit or units and any limited common elements appurtenant thereto for their intended use. Such substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

(d) SUBSTANTIAL COMPLETION OF UNIT.-- No interest in a unit shall be conveyed until the unit is substantially completed in accordance with the descriptions set forth in both the declaration pursuant to section 3205(4) (relating to contents of declaration; all condominiums) and in the public offering statement pursuant to section 3402(a) (relating to public offering statement; general provisions) as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or professional engineer.

(e) CONSTRUCTION OF SECTION.-- Nothing contained in this subpart shall prevent the offering for sale of a unit or interest in a unit or the execution of any agreement to sell and purchase a unit or any interest in a unit (as opposed to actual conveyance) prior to the completion of the unit or any other portion of the condominium.