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FOR DISCUSSION ONLY

AMEND OR REVISE THE UNIFORM COMMON INTEREST OWNERSHIP ACT AND THE UNIFORM CONDOMINIUM ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

March 20, 2020 Drafting Committee Meeting

CLEAN DRAFT

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March 19, 2020

AMEND OR REVISE THE UNIFORM COMMON INTEREST OWNERSHIP ACT AND THE UNIFORM CONDOMINIUM ACT

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TABLE OF CONTENTS

AMEND OR REVISE THE UNIFORM COMMON INTEREST OWNERSHIP ACT AND THE UNIFORM CONDOMINIUM ACT

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SECTION 1-103. DEFINITIONS. In this [act]:

* * *

(34) "Time share" means a right to occupy a unit or any of several units during [five] or more separated time periods over a period of at least [five] years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a common interest community or a specified portion thereof.

* * *

(36) "Unit owner" means a declarant or other person that owns a unit, a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, or an owner or co-owner of a time share, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 12) asks:" Should UCIOA deal with Time shares? Should each time share be fractionalized or treated as a separate unit?" In addition, the Study Committee recommends that the Drafting Committee "consider clarification and amplification of the definitions in UCIOA regarding time shares." See also Study Committee Report pp. 37-38 for discussion of time-share issues. The Drafting Committee at its January 2020 meeting discussed various time-share issues and asked the Reporter to draft language for consideration.

2. The proposed amendment to the definition of "Time share" tracks the precise language of the definition of "time share" in the ULC's Model Real Estate Time-Share Act. It avoids use of the word "interest," which may create ambiguity – every time-share right, even if only a license, contract right, or membership right, might be an "interest" in a common interest community.

3. It is not clear that the definition of "Unit owner" includes a person who holds time-share rights. Is that a person "that owns a unit.? The proposed amendment tracks the language of the model act and expressly includes time-share owners as unit owners. If UCOIA is to cover time-shares to some extent, a time-share owner should always be a "unit owner."

Comment

* * *

25. Definition (30) (34), "Time share," is based on Section 1-102(14) and (18) of the Model Real Estate Time-Share Act.

When this Act was first promulgated in 1982, such concepts as "time share" and "interval ownership" were relatively new; they were neither fully developed nor generally accepted in the marketplace. Moreover, the nature of the relationship between the various forms of common interest ownership and time fractionalization of real estate was not at all clearly understood.

In these circumstances, the Conference adopted a "minimalist" approach in dealing with the concept of time sharing. To that end, the Act simply defined the term "time share" in Section 1-103 (34) and then required disclosure of any time share provisions in the common interest community; *see* Section 4-105. Otherwise, this Act did not attempt to regulate time sharing or any of the other forms of interval ownership. That task was left to the Model Real Estate Time Sharing Act.

Experience over the intervening dozen years suggests that this minimalist approach remains appropriate. Without a doubt, the evolving field of interval ownership of both personal and real property poses important issues of public policy. However, this Act does not regulate those substantive issues. Instead, whether or not a particular interval ownership project must comply with this Act depends on whether or not the ownership arrangement meets the definition of a "common interest community." If it does, then the Act would apply in the same degree as it would to any common interest community.

26. Definition (35), "Unit," describes a tangible, physical part of the project rather than a right in, or claim to, a tangible physical part of the property. Therefore, for example, the sale of a unit to 5 persons as tenants in common does not create 5 new units – there are, rather, 5 owners of the unit. (Under the section on voting (Section 3-110), a majority of the tenants in common are entitled to cast the vote assigned to that unit.)

* * *

27. Definition (36), "Unit owner," contemplates that a seller under a land installment contract would remain the unit owner until the contract is fulfilled. As between the seller and the buyer, various rights and responsibilities must be assigned to the buyer by the contract itself, but the association would continue to look to the seller (for payment of any arrears in common expense assessments, for example,) as long as the seller holds title.

The definition makes it clear that a declarant, so long as he owns units in a common interest community, is the unit owner of any unit created by the declaration, and is therefore subject to all of the obligations imposed on other unit owners, including the obligation to pay common expense assessments. This provision is designed to resolve ambiguities on this point which have arisen under several existing state statutes.

In the special case of a cooperative, the declarant is treated as the owner of a unit or "potential unit" to which allocated interests have been allocated, until that unit is conveyed to another.

The definition expressly includes the buyers of time shares, whether the buyer has a real property interest in the unit, a license classified as personal property, a membership, or something else. Time-share owners are generally treated the same as other unit owners under the [act]. For example, if 12 different persons buy a time-share interest in a unit, each holding the right to occupy the unit for one month, under the section on voting (Section 3-110), a majority of the time-share owners of a unit are entitled to cast the vote assigned to that unit.

Reporter's Drafting Notes

The proposed amendment to Comment 26 replaces the hypothetical of 12 time-share owners in the explanation of the definition of "Unit" with a hypothetical of 5 tenants in common. The amendment moves the time-share hypothetical to the explanation of the definition of "Unit owner" in Comment 27, where it is a better fit.

* * *

SECTION 1-201. APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES. Except as otherwise provided in this [part], this [act] applies to all common interest communities created within this state after [the effective date of this act]. The provisions of [insert reference to all present statutes expressly applicable to planned communities, condominiums, cooperatives, or horizontal property regimes] do not apply to common interest communities created after [the effective date of this act]. Amendments to this [act] apply to all

common interest communities created after [the effective date of this act] or made subject to this [act] by amendment of the declaration of the common interest community, regardless of when the amendment to this [act] becomes effective.

SECTION 1-204. APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES.

(a) Except for a cooperative or planned community described Section 1-205 or a nonresidential common interest community described in Section 1-207, the following sections apply to a common interest community created in this state before [the effective date of this act]:

(1) Section 1-105;

(2) Section 1-106;

(3) Section 1-107;

(4) Section 1-206;

(5) Section 2-102;

(6) Section 2-103;

(7) Section 2-104;

(8) Section 2-117 (h) and (i);

(9) Section 2-121;

(10) Section 2-124;

(11) Section 3-102(a)(1) through (6) and (11) through (16);

(12) Section 3-103;

(13) Section 3-111;

(14) Section 3-116;

(15) Section 3-118;

(16) Section 3-124;

(17) Section 4-109;

(18) Section 4-117; and

(19) Section 1-103 to the extent necessary to construe those sections.

(b) The sections described in subsection (a) apply only to events and circumstances occurring after the effective date of this [act] and do not invalidate existing provisions of the [declaration, bylaws, or plats or plans] of those common interest communities.

SECTION 1-205. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES AND PLANNED COMMUNITIES. If a cooperative or planned community created within this state before [the effective date of this act] contains no more than 12 units and is not subject to any development right, it is subject only to Sections 1-105, 1-106, and 1-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of Section 1-206, in which case, all the sections enumerated in Section 1-204(a) apply to that cooperative or planned community.

SECTION 1-206. AMENDMENTS TO GOVERNING INSTRUMENTS.

(a) The declaration, bylaws, or plats and plans of any common interest community created before [the effective date of this act] may be amended to achieve any result permitted by this [act], regardless of what applicable law provided before this [act] was adopted.

(b) Except as otherwise provided in Section 2-117(i) and (j), an amendment to the declaration, bylaws, or plats and plans authorized by this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this [act]. If

an amendment grants to a person a right, power, or privilege permitted by this [act], any correlative obligation, liability, or restriction in this [act] also applies to the person.

Reporter's Drafting Notes

The Study Committee Report (topic #11) identifies the question of retroactive application of UCIOA "as one of the more significant issues on their agenda." The Study Committee observed "there is increasing sentiment that:

> (1) the lack of uniformity within a state regarding which laws apply and which do not has become a complex issue for the legal community;
> (2) it would be a considerable improvement in the administration of law and practice within a state if all communities were, to the maximum extent feasible, subject to the same law; and
> (3) the Study Committee members thought that courts would likely look more favorably on the topic today than once might have been the case."

UCIOA presently addresses questions of prospective and retrospective application in several of the sections in Part 2 dealing with "Applicability." Some of these are "scope" provisions that exempt certain communities from UCIOA, whether they were formed before or after the effective date of UCOIA: Section 1-202 (small cooperatives), Section 1-203 (planned communities with very small common expenses), and Section 1-207 (nonresidential and mixed-use common interest communities). For all three of these types, the common interest community is able to opt-in by a provision in the declaration stating that UCOIA applies.

Section 1-201, Section 1-204, Section 1-205, and Section 1-206 (all reproduced above) are the four sections that address prospective and retrospective application. The general rule is that UCOIA applies only prospectively, to common interest communities created after the effective date of the enacting legislation. Section 1-201. Then Section 1-204 provides an exception to the general rule, mandating the retroactive application of certain specified UCOIA sections to pre-existing communities.

Significantly, the 1994 UCOIA amendments departed from the general rule of prospective-application-only when it added a new sentence to Section 1-201 dealing with amendments to UCOIA: "Amendments to this [act] apply to all common interest communities created after [the effective date of this act] or made subject to this [act] by amendment of the declaration of the common interest community, regardless of when the amendment to this [act] becomes effective." This is a bright-line rule that makes common interest communities already subject to UCOIA automatically subject to all statutory amendments, whether those amendments are minor or major changes.

UCOIA allows existing communities to opt-in to the act. This is perhaps not as explicit as it could be, but it follows from Section 1-206 (amendments to governing instruments) and the last sentence of Section 1-201 (although discussing amendments to UCOIA, this allows preexisting communities to be "made subject to the act by amendment of the declaration").

If the Drafting Committee decides to amend the UCOIA retroactivity sections to make more preexisting communities subject to the act, we might replace Section 1-201 and Section 1-204 with a single section that starts with the general proposition that after a future transition date, all preexisting communities are subject to the Act. Then the next, essential, step would be to decide what exceptions should apply to the general principle. This is the model that legislation generally follows when it applies to institutions with a long life-span. For example, this is what typically happens when state legislatures revise their laws governing corporations and other organizations. The act designates an effective date several years in the future. E.g., Tex. Bus. Orgs. Code § 402.005, Applicability to Existing Entities (new business organizations code, enacted in 2003 with an effective date of January 1, 2006, provides: "On or after January 1, 2010 . . . this code applies to [entities formed before 2006] and all actions taken by the managerial officials, owners, or members of the entity, except as otherwise expressly provided by this title"). The new Texas Business Organizations Code also allowed early adoption of the new code by entities before the mandatory date of January 1, 2010. Id. §§ 402.003, 402.004.

SECTION 2-108. LIMITED COMMON ELEMENTS.

(a) Except for the limited common elements described in Section 2-102(2) and (4), the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

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

(c) Except as provided in subsection (d), a common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made

in accordance with Section 2-105(a)(7). The allocations must be made by amendments to the declaration.

(d) A unit owner may apply to the association to amend the declaration to designate a common element immediately adjacent to the owner's unit as a limited common element allocated for the exclusive use of the unit. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least [67] percent of the votes in the association, including [67] percent of the votes allocated to units not owned by the declarant, agree to the action; provided, no vote is required if the limited common element does not exceed [50] square feet in area and is generally inaccessible and not of general use to any unit owner other than the unit owner requesting the allocation. The amendment may describe any fees or charges payable by the owner of the benefitted unit in connection with the allocation of the limited common element, and the fees and charges are assets of the association. The amendment must be executed by the owner of benefitted unit and recorded in the county where the original declaration is recorded.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 16) asks: "Should the HOA's Board of Directors be allowed to convert common elements into limited common elements benefitting fewer than all the unit owners without a vote of some or all of the unit owners?" New subsection (d) addresses this topic. The language of subsection (d) borrows from the existing text of Section 2-112(b), added to UCOIA as part of the 1994 amendments, which allows a unit owner to incorporate a common element into the owner's unit with a vote of the membership. Under new subsection (d), a vote of the unit owners is required for the reallocation of a common element as a limited common element unless the area of the common element to be reallocated is small and not generally accessible to other owners. Examples are (1) extending an upstairs balcony of a unit, (2) opening up the attic space over a unit, and (3) creating a storage closet from the airspace under a stairway that adjoins only the unit of the requesting owner.

2. Section 3-102(a)(9) allows the executive board to "grant easements, leases, licenses, and concessions through or over the common elements." A board might avoid the procedures of Section 2-108 and Section 2-112 by granting an easement, lease, or license to a unit owner in lieu of redesignation as a limited common element or the relocation of the boundary. Accordingly, an amendment to Section 3-102(a)(9) is proposed to prohibit this avenue (see Section 3-102 below).

Alternative A

[SECTION 2-114. 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 other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.]

Alternative B

[SECTION 2-114. MONUMENTS AS BOUNDARIES. The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.]

End of Alternatives

Comment

Two approaches are presented here as alternatives, since uniformity on this issue is not essential, and various States have adopted one approach or the other. Both theories recognize the

fact that the actual physical boundaries may differ somewhat from what is shown on the plats and plans, and the practical effect of both is the same.

The easement approach of Alternative A creates easements for whatever discrepancies may arise, while the "monuments as boundaries" approach of Alternative B would make the title lines move to follow movement of the physical boundaries caused by such discrepancies or subsequent settling or shifting.

Reporter's Drafting Notes

The Study Committee Report (topic #4) calls for a consideration of the topic of shifting unit boundaries addressed by Section 2-114. Commissioner Cardi prepared an extensive analysis of the topic, identifying potential problems and raising a number of questions. His analysis is reproduced in the Study Committee Report, beginning at p. 45. The Drafting Committee at its January 2020 meeting briefly discussed this topic and asked the Reporter to study the matter further and report back at our April 2020 meeting.

The Reporter believes that Commissioner Cardi has identified substantial problems and recommends that the committee consider amendments to the statutory text and the comments, guided by a discussion of Commissioner Cardi's materials. Both Section 2-114 Alternatives leave a number of points open and unsettled and leave much to the imagination. The basic idea of Section 2-114 is clear and simple: Most encroachments ought to be cleared up by the creation of an easement (Alternative A) or by an adjustment of the legal boundary to conform to the space occupied by the encroachment (Alternative B). The problems and questions arise at the next level and include:

- What does "most" mean? Which encroachments should not be tolerated, leaving the encroached-upon owner to pursue the normal equitable and legal remedies available for trespass?
- When a unit owner acquires an easement for encroachment or more space due to a boundary adjustment, should the unit owner ever have to pay compensation to the "victim"?
- What does "willful misconduct" mean? Is this the same as proof that a unit owner knowingly trespassed when making the encroachment?
- What is the relevance of deviations from plats and plans contained in the declaration? Who are the "other persons" described in both Alternatives who must comply with plats and plans? Is the unit owner an "other person"?
- What is "substantial accordance" with the original boundaries or a "minor variance" from the original boundaries? Why does this matter for Alternative B but not for Alternative A?
- Is there a difference between encroachments arising from the declarant's original construction of improvements and subsequent changes? (See Commissioner Cardi's condominium hypothetical and stone wall hypothetical.)

- Is there a difference between encroachments on units and encroachments on common areas?

The Comment asserts that "the practical effect of both [Alternatives] is the same." This may be true in the general sense that awarding an easement for encroaching improvements versus transferring fee title to the airspace occupied by encroaching improvements does not make a significant difference for either party. But if the Comment's assertion means that actual cases should be resolved the same way under both Alternatives, the Reporter doubts this is accurate (see bullet points above and Commissioner Cardi's extensive analysis).

SECTION 2-118. TERMINATION OF COMMON INTEREST COMMUNITY.

(a) Except for a taking of all the units by eminent domain, foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in Section 2-124, a common interest community may be terminated only if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The declaration may specify a larger percentage and may require other approvals for termination. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement is void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every [county] in which a portion of the common interest community is situated and is effective only upon recordation.

(c) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following

termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

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

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

(1) title to the real estate not already owned by the association shall vest, upon termination, in the association as trustee for the holders of all interests in the units; and

(2) the termination agreement must state that title to the units is conveyed to the association as trustee at the time of termination.

Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (h), (i), and (j). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this [act] or the declaration.

(f) In a condominium or planned community, if the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (j), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

(g) Following termination of the common interest community, the proceeds of sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(h) Following termination of a condominium or planned community, creditors of the association holding liens on the units, which were [recorded] [docketed] [insert other procedures required under state law to perfect a lien on real estate as a result of a judgment] before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(i) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were [recorded]

[docketed] [insert other procedures required under state law to perfect a lien on real estate as a result of a judgment] before termination may enforce their liens in the same manner as any lien holder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

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

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

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

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

(5) the assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above; and

(6) creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and (i) are as follows:

(1) Except as otherwise provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common

elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent 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 its allocated interests by the total fair market values of all the units and their allocated interests.

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

(A) in a condominium, their respective common element interests immediately before the termination;

(B) in a cooperative, their respective ownership interests immediately before the termination; and

(C) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as otherwise provided in subsection (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the

association under Section 3-112, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(*l*) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 5) recommends: "A drafting committee should consider whether amendments are needed to UCIOA § 2-118 regarding termination of a common interest community." A variety of issues are identified. The first issue concerns the existing text in Section 2-118(a), which allows termination with a vote of at least 80 percent of the declared units. See Study Committee Report pp. 16-17. Section 2-118(a) allows a declarant who has sold less than 20 percent of the units to terminate the project without the approval of any of the buyers of units. This may create substantial hardships for buyers. One problem is that termination results in a tenancy in common, which may lead to partition by sale at a price that does not fully compensate the buyers who are forced to sell their units.

The Drafting Committee discussed this issue at its January 2020 meeting, with the consensus that the Reporter prepare language adding a requirement of approval by the owners of 80 percent of the sold units. The amendment to subsection (a) modifies the voting procedure by requiring the approval of 80 percent of the sold units in addition to 80 percent of all units. This adopts an existing voting procedure used in Section 2-117(g) for creating new development rights or extending the time limit for the exercise of development rights.

2. The second issue identified by the Study Committee is whether separate provisions are advisable to deal with condominium "deconversions" that have taken place frequently in recent years. See Study Committee Report pp. 17-18. The present approval requirement for a termination and a sale of all of the common interest community turns on whether all of the units have horizontal boundaries (the typical condominium with stacked units). If there are only units with horizontal boundaries, Section 2-118(c) authorizes a sale with an 80-percent supermajority vote of unit owners. But if community consists of units without

horizontal boundaries (or is a hybrid with both stacked and non-stacked units), a unanimous vote of the unit owners is required under Section 2-118(d). This section might be simplified by requiring the same vote for all condominiums (or planned communities) regardless of unit configuration. The Illinois Condominium Property Act takes this approach for condominiums. 765 ILCS 605/15 makes a 75-percent supermajority vote binding on all condominium unit owners.

Another issue stemming from condominium deconversions is the proper division of sales proceeds among unit owners. Presumably, few problems should result when all unit owners have approved a sale, but when the vote for sale is not unanimous, an objecting unit owner might not receive adequate compensation. After the payment of liens, unit owners are to receive proportions of sales proceeds based on "the fair market values of their units . . . immediately before termination." Section 2-118(j)(1). The executive board is in control of the process. Section 2-118(j)(1) requires the association to obtain one or more independent appraisals, which become final unless disapproved by a vote of at least 25 percent of the unit owners. The Illinois act, like several other condominium statutes, affords greater rights to dissident unit owners. 765 ILCS 605/15 guarantees a unit owner not voting in favor of sale a share of the proceeds equal to the greater of (i) the owner's mortgage debt secured by the unit or (ii) a "fair appraisal," determined in the case of disagreement by a panel of three expert appraisers (one appointed by the unit owner, one by the prospective purchaser, and one by the first two appraisers).

The above text does not include proposed amendments to handle voting or the division of sales proceeds for deconversions. The Drafting Committee should consider these issues further.

3. The third issue identified by the Study Committee concerns what happens to title to real property at the time of termination. See Study Committee Report p. 18. If termination is to result in a sale, the existing text provides that title to the real estate vests in the association as trustee. Section 2-118(e) But the association already has title to the real estate in a cooperative and title to common areas in a planned community. The amendment to subsection (e) clarifies the meaning by stating that title vests only for the real estate not already owned by the association. In addition, the amendment requires that the termination agreement recite the fact that title to the units passes to the association. This makes the transfer of record because the termination agreement is recorded in the public land records. Section 2-118(b).

Comment

* * *

8. Subsection (f) contemplates the possibility that a planned community or condominium might be terminated but the real estate not sold.

Termination without sale is not likely to be the usual case, but might occur if the unit owners plan to form a new common interest community. In a condominium or planned community, title to the common elements following termination vests in the unit owners as tenants in common if that real estate is not to be sold. In the case of a condominium or planned community which contains only units with horizontal boundaries, these title rules also apply to all the units. In the remaining case, i.e., the case where there are some units with horizontal boundaries and some without horizontal boundaries, subsection (f) provides that unit owners become tenants in common of the common elements, but continue to hold individual titles to their units. Therefore, in a condominium or planned community with units located in both a high rise building and in single story structures, the unit owners in the high-rise building will hold individual title to their unit upon termination, and either the declaration or the termination agreement should address the needs for easements of support and access for the high-rise units over the real estate which all the unit owners will own as tenants in common. Undoubtedly, the unit owners will immediately reconstitute themselves as some form of common interest community.

9. Subsection (f) does not cover the possibility that a cooperative might be terminated but the real estate not sold. While this is not likely to be the usual case, termination without sale might occur if the cooperative unit owners plan conversion to another form of common interest community, such as a condominium. Since, after termination of a cooperative title to the real estate remains in the association, it could record a new declaration corresponding to the new form of common interest community adopted, convey the units to the former unit holders, and then itself continue as the new common interest community's association. Since, after termination of a cooperative title to the real estate remains in the association, it could record a new declaration corresponding to the new form of common interest community adopted, convey the units to the former unit holders, and then itself continue as the new common interest community's association. [RENUMBER SUBSEQUENT COMMENTS]

Reporter's Drafting Notes

The Study Committee Report (topic #5) recommends a review of the Section 2-118 Comments. Above are proposed amendments to existing Comment 8, which splits the content into two Comments, a revised Comment 8 and a new Comment 9. The amendments are intended to clean up two points in existing Comment 8. First, existing Comment focuses on subsection (f), which addresses only the termination without sale of condominiums and planned communities; yet the Comment discusses the termination of cooperatives. Second, language in the Comment discusses sales and includes a cross-reference to sales proceeds in subsection (g). The amendments limit Comment 8 to discussion of the operation of subsection (f) and add a new Comment 9 to address the termination of cooperatives without a sale of the real estate.

REVISE DEFINITION OF "MASTER ASSOCIATION" SECTION 1-103(22)

(22) "Master association" means an organization that holds any of the powers described

in Section 3-102 or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities. A master association may also be a unit owners association.

Reporter's Drafting Notes

The proposed amendment to the definition of "Master Association" moves some of the language from existing Section 2-120(a) (below) and is designed to achieve consistency of usage throughout section 2-120.

SECTION 2-120. MASTER ASSOCIATIONS.

(a) The declaration may assign any of the powers described in Section 3-102 to a master association.

(b) Unless restricted by the declaration, an executive board of a unit owners association may delegate any of the powers described in Section 3-102 to a master association. At the next meeting of the unit owners association, consideration of the delegation shall be an item on the agenda for the meeting. The unit owners may revoke the delegation by a majority of the votes cast at the meeting. This subsection does not limit the right of the executive board or the unit owners to revoke the delegation of any power to a master association at any other time.

(c) An assignment or delegation of powers to a master association is effective upon acceptance by the master association. All provisions of this [act] applicable to unit owners associations apply to a master association, except as modified by this section.

(d) Unless it is acting in the capacity of a unit owners association, a master association may exercise the powers set forth in Section 3-102(a)(2) only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(e) The members of the executive board of the unit owners association have no liability for the acts or omissions of the master association with respect to the powers held by the master association.

(f) The rights and responsibilities of unit owners with respect to the unit owners association set forth in Sections 3-103, 3-108, 3-109, 3-110, and 3-112 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this [act].

(g) Even if a master association is also a unit owners association, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board 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 common interest communities subject to the master association may elect all members of the master association's executive board.

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

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

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

Reporter's Drafting Notes

1. The Study Committee Report (topic # 6) asks: "To what extent may the unit owners association in a common interest community delegate any of its statutory authority to a Master Association for a larger planned community of which that HOA is a part?" The Drafting Committee at its January 2020 meeting voted in favor of an amendment to allow the executive board to delegate powers to a master association, subject to the right of unit owners to disapprove of the delegation by majority vote.

The amendments to subsections (a) and (b) clearly differentiate between provisions in the declaration that establish and assign powers to a master association and a subsequent decision of the executive board of the common interest community to delegate powers to a master association.

Subsection (b) reflects a compromise. A subsequent decision to delegate powers to a master association often has a substantial impact on unit owners. The act might allow a delegation only if authorized in the declaration or by a subsequent vote of the unit owners. Instead, subsection (b) allows the executive board to delegate powers to a master association on its own initiative, subject to the ability of the unit owners to revoke the delegation at the next unit owners meeting, whether a regular or special meeting.

2. At its January 2020 meeting the consensus of the Drafting Committee was to add a provision stating that an assignment to a master association is effective only if accepted by the master association. The new sentence added to subsection (c) makes it clear what was implicit: A transfer or delegation of powers to a master association becomes effective only if accepted by the master association. In most cases, the master association's agreement is manifested in writing.

3. The amendment to subsection (e) makes it clear that the board members of the common interest community are insulated from liability for the acts and omissions of the master association after the transfer of powers, regardless of how the master association acquired the powers.

SECTION 2-123 [NEW]. ADVERSE POSSESSION AND PRESCRIPTION OF COMMON ELEMENTS. No unit owner shall acquire any title by adverse possession or any easement by prescription to any common element in derogation of the title of the other unit owners or the association.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 2) recommends: "A drafting committee should consider drafting a statute describing the circumstances when the enacting State's substantive law of adverse possession should apply in a common interest community. The Drafting Committee at its January 2020 meeting discussed the issues and considered the Reporter's Memorandum on Adverse Possession, dated January 24, 2020, which includes four possible statutory approaches to deal with adverse possession. The Drafting Committee voted in favor of Approach 2, which immunizes common elements from loss by adverse possession by claims of unit owners. The Committee also agreed that the immunity should extend to prescriptive easements.

2. The proposed new Section 2-123 protects all the common elements from loss of title by claims of adverse possession or prescription. This immunity applies to claims made by any person, including unit owners and neighboring property owners. This immunity is limited to real estate defined as "common elements" in UCOIA.

3. The new section leaves intact the enacting State's substantive law of adverse possession to govern claims made by the association or the unit owners collectively as tenants in common. Claims of this type may be asserted when the common elements are subject to a title defect: a person other than association or the unit owners owns or has a potential claim to a common element. An adverse possession claim of this type protects the unit owners' interest in the common elements, rather than jeopardizing the unit owners' expectations of ownership and use of the common elements.

4. The language in this section is based on Minn. Stat. § 508.02, which provides: "No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession, but the common law doctrine of practical location of boundaries applies to registered land whenever registered."

Like the Minnesota statute, this section refers to both "adverse possession" and "prescription." A Minnesota court has interpreted the statutory reference to "prescription" to preclude the creation of a prescriptive easement against registered land. Moore v. Henricksen, 165 N.W.2d 209, 216–17 (Minn. 1968). Accordingly, this provision is intended to immunize the common elements from claims of prescriptive easements made by any person.

5. This section provides a more limited immunity than Approach 1 described in the Reporter's Memorandum in its protection of the common elements. This Section precludes only a claim made by a unit owner. When the unit owners own the common elements in tenancy in common, this provision modifies existing law by not allowing a unit owner to acquire adverse possession

by proving an "ouster" of the other cotenants. When the association owns the common elements, this provision modifies existing law, which in most states lacks reported law clearly delineating the requirements for a person to acquire adverse possession title to property owned by an association of which the person is a member.

SECTION 3-102. POWERS AND DUTIES OF UNIT OWNERS ASSOCIATION.

(a) Except as otherwise provided in subsection (b) and other provisions of this [act], the association

* * *

(6) may regulate the use, maintenance, repair, replacement, and modification of common elements;

* * *

(9) may grant easements, leases, licenses, and concessions through or over the common elements to any person other than a unit owner;

* * *

Reporter's Drafting Notes

This proposed amendment is a companion to the proposed amendment to Section 2-108 discussed above, dealing with the ability of the executive board to covert common elements into limited common elements. The amendment to Section 3-102(a)(9) is designed to make this section compatible with the procedures of Section 2-108 and Section 2-112, which generally require a vote of the membership for the executive board to allocate a common element for the exclusive use of a unit owner by redesignation as a limited common element or relocation of the boundary between the unit and the common element. A board might avoid these procedures by granting an easement or a long-term lease or license to a unit owner. Section 3-102(6) allows the board to "regulate the use" of common elements, but this should not be interpreted to allow the board to assign the exclusive use to one or less than all of the unit owners.

SECTION 3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS.

(a) Except as otherwise provided in the declaration, the bylaws, subsection (b), or other provisions of this [act], the executive board acts on behalf of the association. In the performance

of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under [insert reference to state nonprofit corporation law]. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) The executive board may not:

(1) amend the declaration except as provided in Section 2-117;

(2) amend the bylaws;

(3) terminate the common interest community;

(4) elect members of the executive board but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members; or

(5) determine the qualifications, powers, duties, or terms of office of executive board members.

* * *

Reporter's Drafting Notes

The Study Committee Report (topics # 10 and 17) recommends two issues for consideration by the Drafting Committee:

10. The relationship of the HOA's board of directors with individual unit owners.
17. Should the Study Committee revisit the balance between the right of a unit owner to have information and comment and the need of the board to act in an efficient manner?

The Drafting Committee at its January 2020 meeting discussed the model of representative governance generally used in UCOIA Article 3 and the possibility of augmenting owner participation. One question is whether to allow unit owners to rescind a new rule or regulation passed by the board. Presently the avenue for relief is voting in a new board or recalling board members. The Drafting Committee agreed to defer consideration of this question for its April 2020 meeting.

Comment

1. Subsection (a) makes officers and members of the executive board appointed by the declarant liable as trustees of the unit owners with respect to their actions or omissions as members of the board. This provision imposes a very high standard of duty because the board is vested with great power over the property interests of unit owners, and because there is a great potential for conflicts of interest between the unit owners and the declarant. The 1994 amendment to subsection (a) added precision by changing the standard of care for declarant-appointed officers and members from "fiduciary" to "trustee." The law contemplates many forms of fiduciary relationships; among them, the trustee's duty is the highest.

Originally subsection (a) specified that officers and members elected by the unit owners have a duty of "ordinary and reasonable care. The 1994 amendment conforms the Act to expectations of owners, members of executive boards, and courts. The duties owed by an elected officer or board member ought to parallel the standards imposed on persons holding equivalent positions in non-profit corporations in the state where the common interest community is located.

For both declarant-appointed and elected officers and members, subsection (a) looks to other state law to measure the standard of care and the basis of liability. For declarant-appointed persons, the law of trusts determines the precise content of the fiduciary duties, as well as other duties including conflict-of-interest rules, owed to the unit owners. For elected officers and members, the standards of conduct and the standards of liability are determined by the content of the state nonprofit corporation statute.

A majority of states have adopted a version of the ABA's Model Nonprofit Corporation Act (MNCA) (3d ed. 1987; the ABA is presently working on a 4th edition). MNCA Section 8.30 sets forth standards of conduct and section 8.31 sets forth standards of liability for directors. Executive board members are treated as "directors" whether or not they have the formal title of "director" as a member of the association's governing board. Section 8-31 has several components, one of which reflects some of the principal elements of the common-law business judgment rule. In many judicial decisions, courts have decided to use the business judgment rule as the basis for evaluating the activities of the executive board of a unit owners association, e.g., Committee for a Better Twin Rivers v. Twin Rivers Homeowners Association, 929 A.2d 1060 (N.J. 2007). Under subsection (a) executive board members often will continue to obtain the benefits of the business judgment rule. MNCA Section 8.42 prescribes standards of conduct for officers; they include a duty to act with the care of "an ordinarily prudent person." States without the model act may apply different rules for director conduct, such as a trust rule or the rules applicable to directors of standard, for-profit corporations, as well as different rules for officers.

* * *

Reporter's Drafting Notes

The Study Committee Report (topic # 17) asks: "Should the Study Committee revisit the balance between the right of a unit owner to have information and comment and the need of the board to act in an efficient manner?" The Study Committee identifies one subissue: "B. Whether the UCIOA standard of care for the board to act [is] the proper standard?" The Drafting Committee at its January 2020 meeting discussed the issue and asked the Reporter to draft a Comment explaining various types of standards of care and when UCOIA provides standards and when it points to other state law to provide standards.

The proposed amendment to Comment 1 of Section 3-103 explains that UCOIA now looks outside the act to other state law to determine the standard of care and standard of liability for association officers and members of the executive board. The proposed amendment deletes Comment 5, which covers the same topic, and incorporates some of the deleted material into the additions to Comment 1.

SECTION 3-104. TRANSFER OF SPECIAL DECLARANT RIGHTS.

NOTE – This revised section was formerly §3-104(a)

(a) A declarant may transfer a special declarant right (Section 1-103(33)) reserved under this [act] only by an instrument evidencing the transfer executed by the declarant and the transferee.

(b) Except as provided in Section 3-104D, a declarant who transfers less than all of its special declarant rights to a transferee retains all special declarant rights that are not transferred.

(c) An instrument transferring special declarant rights must be recorded in every [county] in which any portion of the common interest community is located and is effective only upon recordation.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 15) calls for consideration of issues concerning declarant liability and the liability of successor declarants, both those who are affiliates and not affiliates of the original declarant. See Study Committee Report pp. 51-58. The Drafting Committee at its January 2020

meeting discussed many of the issues and asked the committee Chair and the Reporter to attempt to rewrite and reorganize the set of rules contained in existing Section 3-104. Their effort includes the division of content from existing Section 3-104 into a series of new sections, denominated Section 3-104 (above), Sections 3-104A through 3-104E (below), and a new definition of "Non-affiliate successor" that serves as a companion to the existing definition of "Affiliate of a declarant" in Section 1-103(1).

2. New subsection (b) addresses a concern raised by the Study Committee based on a sentence in existing Comment 3 to Section 3-104: "The transfer by a declarant of all of his interest in a project to a successor without a concomitant transfer of the special rights of a declarant pursuant to this subsection, results in the automatic termination of such special declarant rights and of any period of declarant control." See Study Committee Report p. 56 (Issue Six). The Drafting Committee at its January 2020 meeting discussed this issue, with the consensus that special declarant rights that are not transferred remain with the declarant. The Comment does not have support in the existing statutory language. Subsection (b) calls for the opposite outcome, and Comment 3 should be deleted.

3. The Study Committee questions whether a transfer of special declarant rights should be effective between the transferor and transferee before recordation. See Study Committee Report p. 54 (Issue Two). The language of existing Section 3-104(a) appears to indicate the transfer is effective only upon recordation. The Drafting Committee at its January 2020 meeting discussed the issue, with the consensus that recording is necessary. New subsection (c) makes this explicit, tracking the language used in Section 2-118(b) for the effectiveness of termination agreements. This is an exception to the normal rule that agreements and conveyances are effective between the parties when executed, prior to recordation. The purpose of delaying effectiveness, even between the parties, is to perform a notice function. Recording allows all third parties, including unit owners, to ascertain who holds and may exercise special declarant rights at all times, and thus who has obligations and liabilities stemming from special declarant rights.

4. The Study Committee asks whether there should be limits on how many persons may receive and hold special declarant rights at one point in time, asking whether it would be preferable to identify a single declarant who is in control and responsible. See Study Committee Report p. 55 (Issue Four). The Drafting Committee at its January 2020 meeting discussed the issue, with the consensus that the intent of existing Section 3-104 is not to limit transfers and the fragmentation of special declarant rights. Subsections (a) and (b) make it clearer that the act imposes no limits. Usually a developer will not find it advantageous to divide special declarant rights among more than a few persons. Fragmentation when it occurs may sometimes make it harder for third parties, including unit owners, to determine who holds what special declarant rights and who is responsible for certain obligations and liabilities. The recording rule discussed

above (Note 3) and the reorganization of the rules addressing obligations and liabilities (see new sections below) should allow third parties to find this information.

Comment

* * *

3. Subsection (a) provides that a successor in interest to a declarant may acquire the special rights of the declarant only by recording an instrument which reflects a transfer of those rights. This recordation requirement is important to determine the duration of the period of declarant control pursuant to Section 3-103(d) and (e), as well as to place unit owners on notice of all persons entitled to exercise the special rights of a declarant under this Act.

A declarant may wish to transfer special declarant rights as a part of his transfer to another person of units already constructed in a cooperative. . . .

Reporter's Drafting Notes

This sentence in Comment 3 is deleted because it is inconsistent with the existing statutory text of Section 3-104 and with a proposed addition to Section 3-104. See Reporter's Drafting Note 2 to Section 3-104 (above).

ADD A NEW DEFINITION TO ARTICLE 1, SECTION 1-103

(x) "Non-affiliate successor" means any person who succeeds to any special declarant right and is not an affiliate of the declarant who transferred special declarant rights to the person.

SECTION 3-104A. LIABILITY OF A TRANSFEROR DECLARANT.

NOTE – This new section was formerly §3-104(b)

(a) If a transferor declarant transfers any special declarant right to an affiliate of the declarant, the transferor declarant and the successor declarant become jointly and severally liable for all obligations and liabilities imposed upon either party by this [act] or the declaration. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation or liability of the transferor or the transferee.

(b) If a transferor declarant transfers any special declarant right to a non-affiliate successor, the transferor remains liable for any obligation or liability arising before the transfer,

including warranty obligations imposed upon the transferor declarant by this [act]. The transferor is not liable for any obligations or liabilities arising after the transfer imposed upon the successor by this [act] or by the declaration relating to the transferred special declarant rights.

SECTION 3-104B. LIABILITY OF A SUCCESSOR DECLARANT.

NOTE – This new section was formerly §3-104(e)(1)-(3)

(a) Except as otherwise provided in this section, a successor to any special declarant right is subject to all obligations and liabilities imposed on the transferor by this [act] or by the declaration.

(b) A non-affiliate successor who acquires less than all the special declarant rights held by the transferor is not subject to obligations or liabilities that relate to special declarant rights not acquired by the successor.

(c) A non-affiliate successor is not subject to any obligations or liabilities that relate to:

(1) misrepresentations by any previous declarant;

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

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

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

(d) A non-affiliate successor who acquires only a special declarant right to maintain offices, signs, and models (Section 2-115) may not exercise any other special declarant right and is not subject to any obligation or liability as a declarant, except obligations and liabilities related

to a public offering statement [and obligations under [Article] 5].

(e) A successor who acquires special declarant rights after foreclosure of a security interest, tax sale, judicial sale, or sale in bankruptcy or receivership proceedings and complies with the requirements of Sections 104D, 104E, and 104F is not subject to any obligation or liability as a declarant other than liability for his acts and omissions under Section 3-103(d).

Reporter's Drafting Notes

One concern raised by the Study Committee is whether the existing language of Section 3-104(b) is sufficiently clear with respect to the allocation of liability for warranties between the transferor declarant and the transferee declarant. The proposed amendments clarify the issue. When the transferee is an affiliate, the joint and several liability of both parties under Section 3-104A(a) "for all obligations and liabilities" includes all warranty obligations, regardless of when improvements are made and when a breach occurs.

When a transferor declarant transfers a special declarant right to a non-affiliate successor, under Section 3-104A(b) the transferor remains liable for "warranty obligations imposed upon the successor." A transferee declarant who is not an affiliate of the transferor becomes liable for all warranty obligations except for "warranty obligations on improvements made by any previous declarant, or made before the common interest community was created" under Section 3-104B(c)(3). In other words, the transferee declarant is liable for warranties on improvements made after its acquisition of special declarant rights.

SECTION 3-104C. TRANSFER OF SPECIAL DECLARANT RIGHTS FOLLOWING INVOLUNTARY SALE.

NOTE – This new section was formerly §3-104(c)

(a) This section applies if a declarant owned units or real estate in a common interest community subject to development rights that are sold in foreclosure of a security interest, tax sale, judicial sale, or sale in bankruptcy or receivership proceedings.

(b) Unless otherwise provided in an instrument creating the security interest being foreclosed, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request, succeeds to all special declarant rights related to the property held by the

declarant or only to the special declarant rights to maintain offices, signs, and models pursuant to Section 2-115. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

Reporter's Drafting Notes

This new section and the following two sections are a reorganization of the parts of existing Section 3-104 that address the foreclosure sales with the transfer of special declarant rights from the defaulting declarant to a foreclosure purchaser. The Chair and Reporter reorganized without attempting to make changes of substance to the existing statutory text.

The Reporter, however, recommends that the Drafting Committee review the substance and consider whether changes are advisable, either to make changes of substance or to clarify how the provisions are intended to operate. Points to discuss include the following:

- The scope of the provision is the foreclosure of real estate when the declarant owns development rights. Development rights are defined in Section 1-201(16) and they are one of the ten types of special declarant rights. See Section 1-201(33)(B). What if the declarant does not have development rights at the time of the foreclosure but owns other special declarants rights? Should the scope be expanded to cover transfer of special declarant rights in this situation?

- The provision may mean that the foreclosure purchaser has three choices: take all of the declarant's special declarant rights, take none of them, or take only the special declarant right under Section 1-201(33)(C) to maintain offices, signs, and models. Should the purchaser have the right to "pick and choose," the same as in a voluntary transfer under Section 3-104 above?

- The Reporter believes that most of the special declarant rights defined in Section 1-201(33) are intangible personal property; specifically, general intangibles under UCC Article 9. The existing provision appears to treat special declarant rights as if they are real property. Although the statute does not say this directly, Section 3-104 Comment 7 states that a declarant's "right to create additional units . . . is an interest in land which may be sold or in which a security interest may be granted." UCOIA defines "security interest" as "an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation." We should consider how our Section 3-104C, D, and E provisions fit with Article 9.

- Which involuntary transfers should the provision cover? Section 3-104 Comment 7 refers to "a conveyance in lieu of foreclosure" but this is not in the statutory text.

- The provision appears to contemplate that a foreclosure sale will transfer all of the declarant's units and real estate in the community. What if a foreclosure or other involuntary sale transfers only some of the declarant's units or property? Is that within the scope of the provision, and if so, what happens?

SECTION 3-104D. CONSEQUENCES OF INVOLUNTARY SALE OF ALL REAL ESTATE IN A COMMON INTEREST COMMUNITY HELD BY A DEFAULTING DECLARANT.

NOTE – This new section was formerly §3-104(d)

Upon foreclosure of a security interest, tax sale, judicial sale, or sale in bankruptcy or receivership proceedings, of all interests in a common interest community owned by a declarant:

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

(2) the period of declarant control (Section 3-103(d)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

SECTION 3-104E. LIMITATION ON LIABILITY OF A SUCCESSOR HOLDING SPECIAL DECLARANT RIGHTS SOLELY FOR TRANSFER.

NOTE – This new section was formerly §3-104(e)(4)

(a) If a successor to all special declarant rights held by a transferor succeeded to those rights pursuant to Section 3-104C, the successor may declare its intention in a recorded instrument to hold those rights solely for transfer to another person.

(b) After recording the instrument, the successor may not exercise any special declarant right other than any right held by the transferor to control the executive board in accordance with

Section 3-103(d), and any attempt to exercise those rights in violation of this section is void.

(c) A successor declarant described in subsection (a) may, at any time until the periods for exercising special declarant rights ends pursuant to Section 2-105(a)(8) expire, transfer some or all its special declarant rights to any person acquiring title to some or all the units or real estate subject to development rights owned by the successor.

(d) So long as a successor declarant described in subsection (a) complies with this section, the successor declarant is not subject to any obligation or liability as a declarant other than liability for its acts and omissions under Section 3-103(d).

SECTION 3-110. VOTING; PROXIES; BALLOTS.

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person or by electronic ballot, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c) or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

(b) At a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by this [act] or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least [three] days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws**,** the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) 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.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person may not cast undirected proxies representing more than [15] percent of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event**,** the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than [three] days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing

the action.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) this section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

(h) All electronic ballots under this section require the use of an Internet-based online voting system that is able to:

(1) authenticate the unit owner's identity;

(2) authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;

(3) transmit a receipt from the online voting system to each unit owner who casts an electronic vote; and

(4) create a record of electronic votes that is capable of retention, retrieval, and review.

A unit owner may revoke an electronic ballot either using the online voting system or by actual notice of revocation to the person presiding over a meeting of the association. Except as provided

in subsection (d) for a vote without a meeting, an electronic ballot is valid only for the meeting at which it is cast and any recessed session of that meeting.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 20) asks: "Under UCIOA Sec. 3-110(d), an association is permitted to vote by electronic ballot. Should unit owners be allowed to change an electronic vote after viewing comments from others?" The Drafting Committee at its January 2020 meeting discussed various issues concerning electronic ballots, including whether they should remain valid for postponed meetings. The consensus was that any ballot can be revoked or amended prior to the meeting when the vote is made.

2. The existing language of Section 3-110 expressly authorizes electronic ballots, but only when a vote is conducted without a meeting. Section 3-110(a)(d). The provisions for absentee ballots and proxy votes (subsections (c) and (d)) do not say whether electronic absentee ballots or electronic proxies are allowed. The amendment authorizes electronic ballots for votes taken at live meetings and sets forth minimum requirements for an electronic voting system selected by the association. New subsection (h) is based on Fla. § 718.128, adopted in 2015 as a new section in the Florida condominium act to regulate electronic voting. The Florida statute has more detail and additional requirements than subsection (h).

3. New subsection (h) authorizes a unit owner to revoke an electronic ballot by using the electronic voting system or by an appearance at the meeting (the same procedure allowed for revocation as a proxy under subsection (c)). A voter may decide to revoke based on comments made by other members or for any reason. The amendment does not require the association to organize a system for voters to post comments, but obviously the association or any member or members may do so.

SECTION 3-115. ASSESSMENTS.

(a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After the association makes its first assessment, it must make periodic common expense assessments at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c), (d), (e), (f), and (g), or as otherwise provided in this [act], all common expenses must be assessed against all the units in accordance

with the allocations set forth in the declaration pursuant to Section 2-107(a) and (b). The association may charge interest on any past due assessment or portion thereof at the rate established by the association, not exceeding [18] percent per year.

(c) The declaration may expressly provide for the assessment of common expenses associated with the maintenance, repair, or replacement of a limited common element against the units to which that limited common element is assigned. If the declaration so provides, the assessment must be made equally against the units or in any other proportion set forth in the declaration.

(d) The declaration may expressly provide that common expenses benefiting fewer than all of the units are to be assessed exclusively against the units benefitted, but only if the declaration specifies which common expenses are to be assessed exclusively and which units are subject to the assessment. If the declaration so provides, the assessment must be made in accordance with the allocation set forth in the declaration.

(e) The declaration may expressly provide for the assessment of the costs of insurance in proportion to risk. If the declaration so provides, the assessment must be made in accordance with the allocation set forth in the declaration.

The declaration may expressly provide for the assessment of the costs of utilities in proportion to usage. If the declaration so provides, the assessment must be made in accordance with the allocation set forth in the declaration.

(f) Assessments to pay a judgment against the association may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(g) If damage to a unit or other part of the common interest community, or if any other

common expense is caused by the willful misconduct or gross negligence of any unit owner or a guest or invitee of a unit owner, the association may assess that expense exclusively against that owner's unit, even if the association maintains insurance with respect to that damage or common expense.

(h) If common expense liabilities are reallocated, common expense assessments and any instalment thereof not yet due must be recalculated in accordance with the reallocated common expense liabilities.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 3) asks: "Under what circumstances may the Association's Executive Board assess common expenses against some but not all units in a common interest community?" The Drafting Committee at its January 2020 meeting discussed the issue. The consensus was that sharing common expenses among all unit owners should be a strong norm, that the "who is benefitted standard" is vague, and that owners are entitled to sufficient notice of the circumstances in which they must pay all or a higher share of certain common expenses.

2. The amendments are intended to clarify the circumstances in which assessments of common expenses to less than all of the units are appropriate. When the Study Committee considered the issue, Commissioner Cannel stated that three different interpretations of the statutory language are possible:

> (i) If the declaration details specifies certain common expenses that "must" be assessed against fewer than all units, then those, and only those, common expenses must be so allocated;
> (ii) If the declaration details specifies certain common expenses that "may" be assessed against fewer than all units, then those, and only those, common expenses may be so allocated if the Board chooses to do so, but the Board has discretion in that regard; or
> (iii) The section simply allows the declaration generally to empower the Executive Board of the Association to decide from time to time whether any common expenses shall be assessed against fewer than all units, but until such a decision is made by the Board, no such variable assessments should be made"

Study Committee Report p. 21. The proposed amendments adopt the first approach. There is a strong norm that common expenses ought to be allocated to all the units. A departure from this norm is appropriate only when the declaration

specifically describes certain common expenses that are to be assessed to certain specifically described units.

Example 1: A community has two buildings, a ten-story tower and a long two-story row-house building. Maintenance, repair, and replacement of the roofs are common expenses. The declaration states the common expenses must be assessed in accordance with their allocated interests in the common elements, but it allows the association "to assess a common expense benefiting fewer than all of the units exclusively against the units benefitted." The Board replaces the roof on the ten-story tower. Under subsection (d), the Board must assess the common expenses for the roof replacement to all units in both buildings. The Board has no discretion to assess the common expenses only to the units in the tower. The general reference in the declaration to assessing those units that are benefitted does not satisfy the requirement in subsection (d) that the declaration specify "which common expenses are to be assessed exclusively and which units or unit owners are subject to the assessment." Under the existing language of Section 3-115, the Board arguably had discretion to assess the common expenses for the tower roof replacement only against the tower units.

Example 2: A community has two buildings, a ten-story tower and a long two-story row-house building. Maintenance, repair, and replacement of the roofs are common expenses. The declaration states the costs for maintenance, repair, and replacement of a building's roof shall be assessed to the units in the building." The Board replaces the roof on the ten-story tower. Under subsection (d), the Board must assess common expenses for the roof on the ten-story tower to the units in the tower. The reference in the declaration satisfies the requirement in subsection (d) that the declaration specify "which common expenses are to be assessed exclusively and which units or unit owners are subject to the assessment." The Board has no discretion to assess the common expenses to the units in both buildings.

Comment

1. This section contemplates that a declarant might find it advantageous, particularly in the early stages of project development, to pay all of the expenses of the common interest community himself rather than assessing each unit individually. Such a situation might arise, for example, where a declarant owns most of the units in the project and wishes to avoid building the costs of each unit separately and crediting payment to each unit. It might also arise in the case of a declarant who, although willing to assume all expenses of the common interest community, is unwilling to make payments for replacement reserves or for other expenses which he expects will ultimately be part of the association's budget. Subsection (a) grants the declarant such flexibility while at the same time providing that once an assessment is made against any unit, all units, including those owned by the declarant, must be assessed for their full portion of the common expense liability.

2. Common expenses are by their nature recurring, and the association must collect what the act calls the "periodic common expense assessment." Subsection (a) requires assessment "at least annually" and allows any shorter period. Monthly assessments are most commonly used. The association may choose to change its periodic common expense assessment if it determines a shorter or longer period is appropriate.

Reporter's Drafting Notes

1. The Study Committee Report (topic # 9) asks "What is the meaning of 'periodic assessments' in UCIOA?" and recommends: "A drafting Committee might consider the extent to which amendments might be made either to the text of the Act or the comments to clarify what was meant by the term 'periodic common expense assessment.'" The Drafting Committee at its January 2020 meeting discussed the issue. The consensus was that any period not to exceed one year is acceptable and the comments should be revised to reflect this.

2. This addition to the comment makes it clear that the association has the discretion to select any period for assessment and payment of common expenses, provided that the period does not exceed one year. The contrary might be inferred from two references, one in the existing text (Section 4-103(b)) and one in the comments (Section 3-123 Comment 3), both referring to "monthly" assessments. Amendments are proposed to delete both references (see immediately below).

SECTION 3-123. ADOPTION OF BUDGETS; SPECIAL ASSESSMENTS.

* * *

Comment

* * *

3. . . .

(b) The public offering statement must contain any current balance sheet and a projected budget for the association, **** The budget must include:

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

(B) a statement of any other reserves;

(C) the projected common expense assessment by category of expenditures for the association; and

(D) the projected periodic common expense assessment for each type of unit**.**

* * *

SECTION 4-103. PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS.

(a) Except as otherwise provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

* * *

(14) any restraints on alienation of any portion of the common interest community and any restrictions:

(A) on use, occupancy, and alienation of the units; and

(B) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

* * *

(19) any other unusual and material circumstances, features, and characteristics of the common interest community and the units;

* * *

(b) The public offering statement must contain 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 assumptions concerning occupancy and inflation factors. The budget must include:

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

(B) a statement of any other reserves;

(C) the projected common expense assessment by category of expenditures for

the association; and

(D) the projected periodic common expense assessment for each type of unit**.**

* * *

Reporter's Drafting Notes

Section 4-103(b) requires that the public offering statement contain a projected budget, including "the projected monthly common expense assessment for each type of unit." Although monthly assessments are the common practice, UCOIA allows any period up to annual assessments. See Section 3-115(a) ("assessments must be made at least annually"). The amendment corrects this subsection by replacing "monthly common expense assessment" with "periodic common expense assessment," the term presently used in Section 4-109(a)(2) to describe content in the certificate to be provided to the purchaser of a resale unit.

Comment

* * *

7. Paragraph (14) requires that the declarant disclose the existence of any restrictions on the use and occupancy of units, including restrictions on rentals or the creation of time-share arrangements. The declarant must disclose any rights of first refusal or other restrictions on the classes of persons to whom units may be sold. It also requires disclosure of any provisions limiting the amount for which units may be sold or on the part of the sales price which may be retained by the selling unit owner. In some existing housing cooperatives for low income families the unit owner is required to sell at no more than a fixed sum; sometimes the amount which the unit owner paid; sometimes that plus a fixed appreciation. In addition to that practice, the section contemplates other possible limitations on the owner's right to receive sales proceeds such as a provision under which the developer shares in any appreciation in value.

* * *

10. In addition to the information required to be disclosed by paragraphs (1) through (18), paragraph (19) requires that the declarant disclose all other "unusual and material circumstances, features, and characteristics" of the common interest community and all units therein. This requires only information which is both "unusual and material." Thus, the provision does not require the disclosure of "material" factors which are commonly understood to be part of the common interest community (*e.g.*, the fact that buildings have a roof, walls, doors, and windows.) Similarly, the provision does not require the disclosure of "unusual" information about the common interest community which is not also "material" (*e.g.*, the fact that a common interest community is the first development of its type in a particular locality). Information which would normally be required to be disclosed pursuant to paragraph (19) might include, to the extent that they are unusual and material, environmental conditions affecting the use or enjoyment of the common interest community, features of the location of the common interest

community (*e.g.*, near the end of an airport runway or a planned rendering plant), a plan to convert any units to time-share ownership, and the like.

Reporter's Drafting Notes

1. The proposed amendment to Comment 7 makes explicit what was already implicit: requiring the disclosure of restrictions on sale means a provision in the declaration that prohibits the creation of time-share arrangements should be disclosed. The amendment also cleans up the language and includes restrictions on rentals, including restrictions on short-term rentals.

2. The proposed amendment to Comment 10 requires the disclosure of any plan to allow some or all of the units to be devoted to time-share arrangements. Such a provision would be unusual in many communities. If the plan is set forth in the declaration, Section 4-105 also requires inclusion in the public offering statement.

SECTION 4-105. SAME; TIME SHARES. If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by Section 4-103:

(1) the number and identity of units in which time shares may be created;

(2) the total number of time shares that may be created;

(3) the minimum duration of any time shares that may be created; and

(4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in Section 3-116.

Comment

1. Time sharing has become increasingly frequent since the 1960s, particularly in resort common interest communities. In recognition of this fact, this section requires the disclosure of certain information with respect to time sharing. This section does not apply to the sale of time-share units that are subject to another state statute requiring the declarant to file a public offering statement with a state agency. See Section 4-107.

2. Some existing state statutes dealing with condominiums, planned communities, or cooperatives are silent with respect to time-share ownership. The inclusion of disclosure provisions for certain forms of time sharing in this Act, however, does not imply that other law regulating time sharing is affected in any way in a State merely because that State enacts this Act.

The Uniform Law Commissioners' Model Real Estate Time-Share Act specifies more extensive disclosures for time-share properties. A "time-share property" may include part or all of the common interest community, and Section 1-109 of the Model Act governs conflicts between this Act and time-share legislation.

Reporter's Drafting Notes

The amendment updates the language of the Comment and refers to Section 4-107, which contains a proposed amendment for an exemption from this act's requirement of a public offering statement when the declarant has prepared a time-share public offering statement.

SECTION 4-107. SAME; COMMON INTEREST COMMUNITY REGISTERED WITH FEDERAL OR STATE AGENCY. If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States or with the state pursuant to [insert appropriate state time-share statute], a declarant satisfies all requirements relating to the preparation of a public offering statement of this [act] if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission or the appropriate state agency. [An interest in a common interest community is not a security under the provisions of [insert appropriate state securities regulation statutes].]

Reporter's Drafting Notes

The proposed amendment provides an exemption from the public offering statement provisions of this article when the state has enacted a time-share statute that requires the developer or seller of time shares to prepare a public offering statement to be filed with a state agency and given to purchasers. The amendment follows the language of Nev. Rev. Stat. § 116.4107, which provides an exemption for a common interest community registered to sell time-shares with the Real Estate Division of the Department of Business and Industry.

SECTION 4-109. RESALES OF UNITS.

(a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under Section 4-101(b), a unit owner shall furnish to a purchaser

before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration, other than any 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 held by the association;

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

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

(4) a statement of any capital expenditures approved by the association for the current and succeeding fiscal years;

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

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

(7) the current operating budget of the association;

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

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

(10) a statement as to whether the executive board has given or received notice in a record that any existing uses, occupancies, alterations, or improvements in or 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 received notice in a record from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community which has not been cured;

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

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

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

(15) a statement describing any pending sale or encumbrance of common elements; and

(16) a statement disclosing any restrictions on the use or occupancy of any unit, including restrictions on leases and other rentals.

* * *

Reporter's Drafting Notes

The amendment expands the scope of the disclosure in Section 9-106(a)(16) to include not only standard leases, but also time-share arrangements and sharing platforms that sell licenses to guests, such as Airbnb. The amendment also expands the disclosure to include all units, not only the unit to be conveyed, because it is often important for purchasers to understand the extent to which the common interest community may be devoted to rentals.