

D R A F T
FOR DISCUSSION ONLY

HOMEOWNER BILL OF RIGHTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 24, 2007

Without Prefatory Note and Comments

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ON UNIFORM STATE LAWS

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January 8, 2007

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HOMEOWNER BILL OF RIGHTS ACT

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1 **HOMEOWNER BILL OF RIGHTS ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Homeowner Bill
4 of Rights Act.

5 **[SECTION 2. DEFINITIONS.** In the declaration and bylaws (Section 3-106), unless
6 specifically provided otherwise or the context otherwise requires, and in this [act]:

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

21 (2) “Allocated interests” means the following interests allocated to each unit: (i) in a
22 condominium, the undivided interest in the common elements, the common expense liability,
23 and votes in the association; (ii) in a cooperative, the common expense liability and the

ownership interest and votes in the association; and (iii) in a planned community, the common expense liability and votes in the association.

(2A) “Assessment” means the sums attributable to each unit and due to the association as a result of the common expense liability allocated to each unit. Assessments for common expenses are made in the manner described in Section 3-115.

(3) “Association” or “unit owners’ association” means the unit owners’ association organized under Section 3-101.

(3A) “Bylaws” mean the document that contains the procedures for conduct of the affairs of the association of a common interest community in accordance with Section 3-106, regardless of the form of the association’s legal entity or the name by which the document comprising the bylaws is identified.

(4) “Common elements” means (i) in the case of (A) a condominium or cooperative, all portions of the common interest community other than the units; and (B) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit; and (ii) in all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration.

(5) “Common expenses” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) “Common expense liability” means the liability for common expenses or limited common expenses allocated to each unit pursuant to Section 2-107.

(7) “Common interest community” means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of or services or other

1 expenses related to common elements, other units or other real estate described in a that
2 declaration. However, arrangements described in Section 2-124 [Other Exempt Real Estate
3 Arrangements] do not create a common interest community. “Ownership of a unit” does not
4 include holding a leasehold interest of less than [20] years in a unit, including renewal options.

5 (8) “Condominium” means a common interest community in which portions of the real
6 estate are designated for separate ownership and the remainder of the real estate is designated for
7 common ownership solely by the owners of those portions. A common interest community is
8 not a condominium unless the undivided interests in the common elements are vested in the unit
9 owners.

10 (9) “Conversion building” means a building that at any time before creation of the
11 common interest community was occupied wholly or partially by persons other than purchasers
12 and persons who occupy with the consent of purchasers.

13 (10) “Cooperative” means a common interest community in which the real estate is
14 owned by an association, each of whose members is entitled by virtue of his ownership interest
15 in the association to exclusive possession of a unit.

16 (11) “Dealer” means a person in the business of selling units for his own account.

17 (12) “Declarant” means any person or group of persons acting in concert who (i) as part
18 of a common promotional plan, offers to dispose of his or its interest in a unit not previously
19 disposed of or (ii) reserves or succeeds to any special declarant right [, or (iii) applies for
20 registration of a common interest community under [Article] 5].

21 (13) “Declaration” means any instruments, however denominated, that create a common
22 interest community, including any amendments to those instruments.

23 (14) “Development rights” means any right or combination of rights reserved by a

1 declarant in the declaration to (i) add real estate to a common interest community; (ii) create
2 units, common elements, or limited common elements within a common interest community;
3 (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a
4 common interest community.

5 (15) “Dispose” or “disposition” means a voluntary transfer to a purchaser of any legal or
6 equitable interest in a unit, but the term does not include the transfer or release of a security
7 interest.

8 (16) “Executive board” means the body, regardless of name, designated in the
9 declaration to act on behalf of the association.

10 (17) “Identifying number” means a symbol or address that identifies only one unit in a
11 common interest community.

12 (18) “Leasehold common interest community” means a common interest community in
13 which all or a portion of the real estate is subject to a lease the expiration or termination of which
14 will terminate the common interest community or reduce its size.

15 (19) “Limited common element” means a portion of the common elements allocated by
16 the declaration or by operation of Section 2-102(2) or (4) for the exclusive use of one or more
17 but fewer than all of the units.

18 (20) “Master association” means an organization described in Section 2-120, whether or
19 not it is also an association described in Section 3-101.

20 (21) “Offering” means any advertisement, inducement, solicitation, or attempt to
21 encourage any person to acquire any interest in a unit, other than as security for an obligation.
22 An advertisement in a newspaper or other periodical of general circulation, or in any broadcast
23 medium to the general public, of a common interest community not located in this State, is not

1 an offering if the advertisement states that an offering may be made only in compliance with the
2 law of the jurisdiction in which the common interest community is located.

3 (22) “Person” means an individual, corporation, business trust, estate, trust, partnership,
4 association, joint venture, government, governmental subdivision or agency, or other legal or
5 commercial entity. [In the case of a land trust, however, “person” means the beneficiary of the
6 trust rather than the trust or the trustee.]

7 (23) “Planned community” means a common interest community that is not a
8 condominium or a cooperative. A condominium or cooperative may be part of a planned
9 community.

10 (24) “Proprietary lease” means an agreement with the association pursuant to which a
11 member is entitled to exclusive possession of a unit in a cooperative.

12 (25) “Purchaser” means a person, other than a declarant or a dealer, who by means of a
13 voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest
14 (including renewal options) of less than 20 years, or (ii) as security for an obligation.

15 (26) “Real estate” means any leasehold or other estate or interest in, over, or under land,
16 including structures, fixtures, and other improvements and interests that by custom, usage, or law
17 pass with a conveyance of land though not described in the contract of sale or instrument of
18 conveyance. “Real estate” includes parcels with or without upper or lower boundaries, and
19 spaces that may be filled with air or water.

20 (27) “Residential purposes” means use for dwelling or recreational purposes, or both.

21 (27A) “Rule” or “Rules” means any rule, procedure or regulation of the association,
22 however denominated, that does not appear in the declaration or bylaws and that governs either
23 the management of the association or the common interest community or the conduct of persons

1 or property within the common interest community. Adoption of rules is governed by Section 3-
2 121.]

3 (28) "Security interest" means an interest in real estate or personal property, created by
4 contract or conveyance, which secures payment or performance of an obligation. The term
5 includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed,
6 land sales contract, lease intended as security, assignment of lease or rents intended as security,
7 pledge of an ownership interest in an association, and any other consensual lien or title retention
8 contract intended as security for an obligation.

9 (29) "Special declarant rights" means rights reserved for the benefit of a declarant to (i)
10 complete improvements indicated on plats and plans filed with the declaration (Section 2-109)
11 or, in a cooperative, to complete improvements described in the public offering statement
12 pursuant to Section 4-103(a)(2); (ii) exercise any development right (Section 2-110); (iii)
13 maintain sales offices, management offices, signs advertising the common interest community,
14 and models (Section 2-115); (iv) use easements through the common elements for the purpose of
15 making improvements within the common interest community or within real estate which may
16 be added to the common interest community (Section 2-116); (v) make the common interest
17 community subject to a master association (Section 2-120); (vi) merge or consolidate a common
18 interest community with another common interest community of the same form of ownership
19 (Section 2-121); ~~or~~ (vii) appoint or remove any officer of the association of any master
20 association or any executive board member during any period of declarant control (Section 3-
21 103(d); (viii) control any construction or design review committee or process; (ix) attend
22 meetings of the unit owners and, except during an executive session, the executive board; or (x)
23 have access to the records of the association to the same extent as a unit owner (Section 3-118).

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

5 (31) “Unit” means a physical portion of the common interest community designated for
6 separate ownership or occupancy, the boundaries of which are described pursuant to Section
7 2-105(a)(5). If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily
8 or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit
9 which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession
10 of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the
11 association’s interest in that unit is not thereby affected.

12 (32) “Unit owner” means a declarant or other person who owns a unit, or a lessee of a
13 unit in a leasehold common interest community whose lease expires simultaneously with any
14 lease the expiration or termination of which will remove the unit from the common interest
15 community, but does not include a person having an interest in a unit solely as security for an
16 obligation. In a condominium or planned community, the declarant is the owner of any unit
17 created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to
18 which allocated interests have been allocated (Section 2-107) until that unit has been conveyed
19 to another person.

20 **SECTION 3. VARIATION BY AGREEMENT.** Except as expressly provided in this
21 [act], its provisions may not be varied by agreement, and rights conferred by it may not be
22 waived.

23 **SECTION 4. CONSTRUCTION AGAINST IMPLICIT REPEAL.** This [act] being

1 a general act intended as a unified coverage of its subject matter, no part of it shall be construed
2 to be impliedly repealed by subsequent legislation if that construction can reasonably be
3 avoided.

4 **SECTION 5. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This
5 [act] shall be applied and construed so as to effectuate its general purpose to make uniform the
6 law with respect to the subject of this [act] among States enacting it.

7 **SECTION 6. SEVERABILITY.** If any provision of this [act] or the application thereof
8 to any person or circumstances is held invalid, the invalidity does not affect other provisions or
9 applications of this [act] which can be given effect without the invalid provisions or applications,
10 and to this end the provisions of this [act] are severable.

11 **SECTION 7. OBLIGATION OF GOOD FAITH.** Every contract or duty governed by
12 this [act] imposes an obligation of good faith in its performance or enforcement.

13 **SECTION 8. REMEDIES TO BE LIBERALLY ADMINISTERED.**

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

18 (b) Any right or obligation declared by this [act] is enforceable by judicial proceeding.

19 **SECTION 9. APPLICABILITY TO PRE-EXISTING COMMON INTEREST**
20 **COMMUNITIES.** To the extent necessary in construing any of those sections, this [act] applies
21 to all common interest communities created in this State before the effective date of this [act];
22 but this [act] applies only with respect to events and circumstances occurring after the effective
23 date of this [act] and do not invalidate existing provisions of the [declaration, bylaws, or plats or

plans] of those common interest communities.

SECTION 10. CONSTRUCTION AND VALIDITY OF DECLARATION AND

BYLAWS. In the event of a conflict between the provisions of the association's [charter][articles], declaration and the bylaws, the [charter][articles] prevails over the declaration and the bylaws; prevails, and in the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails; except to the extent the [charter][articles] or the declaration is inconsistent with this [act].

SECTION 11. CONTENTS OF DECLARATION.

(a) The declaration must contain:

(12) any restrictions (i) on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to Section ~~3-102(c)(2)~~ 3-120(d), and (ii) 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;

(14) provisions that either: (i) mandate that the association create and maintain reserves for the replacement of common elements, together with a statement of the basis on which those reserves are to be calculated and funded; or (ii) a statement that the association may but is not required to create and maintain reserves;

(15) Any authorization pursuant to which the association may regulate the display of American flags or political signs within the common interest community;

(16) any authorization pursuant to which the association may adopt rules to establish and enforce construction and design criteria in the manner provided in Section 3-120;

1 (17) provisions creating the Association and Executive Board.

2 **[SECTION 12. POWERS OF UNIT OWNERS' ASSOCIATION.**

3 (a) Except as provided in subsection (b) and other provisions of this [act], and subject to
4 ~~the provisions of the declaration, the association~~ [, even if unincorporated,] may:

5 (1) must adopt and amend bylaws ~~and rules and regulations;~~ consistent with
6 section 3-106 and may adopt reasonable rules and regulations consistent with section 3-120;

7 (2) must adopt and amend budgets ~~for revenues, expenditures, and reserves~~
8 pursuant to section 3-124 and collect assessments for common expenses from unit owners and
9 may invest any funds of the association;

10 (3) may hire and discharge managing agents and other employees, agents, and
11 independent contractors;

12 (4) may institute, defend, or intervene in litigation or administrative proceedings
13 in its own name on behalf of itself or two or more unit owners on matters affecting the common
14 interest community subject to, in the case of litigation involving the declarant, the provisions of
15 Section 3-121;

16 (5) may make contracts and incur liabilities;

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

19 (7) may cause additional improvements to be made as a part of the common
20 elements;

21 (8) may acquire, hold, encumber, and convey in its own name any right, title, or
22 interest to real estate or personal property, but (i) common elements in a condominium or
23 planned community may be conveyed or subjected to a security interest only pursuant to Section

1 3-112 and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be
2 subjected to a security interest, only pursuant to Section 3-112;

3 (9) may grant easements, leases, licenses, and concessions through or over the
4 common elements;

5 *(10) may impose and receive any payments, fees, or charges for the use, rental,
6 or operation of the common elements, other than limited common elements described in Section
7 2-102(2) and (4), and for services provided to unit owners;

8 *(11) may suspend privileges of unit owner or services provided to unit owners
9 by the association and may impose charges for late payment of assessments and, after notice and
10 an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and
11 rules, and regulations of the association but the association may not suspend the right of a unit
12 owner to vote on any matter submitted to a vote of unit owners;

13 *(12) may impose reasonable charges for the preparation and recordation of
14 amendments to the declaration, resale certificates required by Section 4-109, or statements of
15 unpaid assessments;

16 (13) may provide for the indemnification of its officers and executive board and
17 maintain directors' and officers' liability insurance;

18 (14) may assign its right to future income, including the right to receive common
19 expense assessments, ~~but only~~ except to the extent limited by the declaration expressly so
20 provides;

21 (15) may exercise any other powers conferred by the declaration or bylaws;

22 (16) may exercise all other powers that may be exercised in this State by legal
23 entities of the same type as the association;

1 (17) may exercise any other powers necessary and proper for the governance and
2 operation of the association; and

3 *(18) by ~~regulation rule~~, may require that disputes between the executive board
4 and unit owners or between two or more unit owners regarding the common interest community
5 ~~must~~ be submitted to nonbinding alternative dispute resolution in the manner described in the
6 ~~regulation rule~~ as a prerequisite to commencement of a judicial proceeding.

7 (b) The declaration may not impose limitations on the power of the association to:

8 (i) deal with the declarant which are more restrictive than the limitations imposed
9 on the power of the association to deal with other persons; or

10 *(ii) commence litigation against any person, but (A) the association must comply
11 with Section 3-121, if applicable, before commencing any action against any person in
12 connection with construction defects; and (B) the executive board shall promptly provide notice
13 to the unit owners of any litigation in which the association is a party other than litigation
14 involving enforcement of rules and claims for common charges.

15 (f) The association need not act with respect to an alleged or actual violation of the
16 declaration, bylaws or rules if the executive board, acting with due care, in good faith and
17 without a conflict of interest, concludes that a response to the violation would be impractical,
18 excessively expensive compared to the benefit conferred or unlikely to result in compliance. An
19 association's action or failure to act on any one occasion does not affect its right to enforce or
20 not enforce those instruments on another occasion but the executive board's course of
21 performance with respect to enforcement of the declaration, bylaws and rules is relevant to show
22 whether the executive board has waived its right to enforce any provision or whether that
23 provision has been modified.

1 ~~(g)~~ the association may compromise any claim made by or against it, [including claims
2 for unpaid assessments].

3 **SECTION 13. EXECUTIVE BOARD MEMBERS AND OFFICERS.**

4 (a) The declaration must create an executive board. Except as provided in the
5 declaration, the bylaws, subsection (b), or other provisions of this [act], the executive board may
6 act in all instances on behalf of the association. In the performance of their duties, officers and
7 members of the executive board appointed by the declarant shall exercise the degree of care and
8 loyalty to the association required of a trustee. Officers and members of the executive board not
9 appointed by the declarant shall exercise the degree of care and loyalty to the association
10 required of an officer or director of a corporation organized under [insert reference to state non-
11 profit corporation law] and are subject to the conflict of interest rules governing directors and
12 officers of that law. The standards of care and loyalty described in this section apply regardless
13 of the form of legal entity in which the association is organized.

14 (b) The executive board may not act on behalf of the association to amend the declaration
15 (Section 2-117) or the bylaws (Section 3-106), to terminate the common interest community
16 (Section 2-118), or to elect members of the executive board or determine the qualifications,
17 powers and duties, or terms of office of executive board members (Section 3-103(f)), but the
18 executive board may fill vacancies in its membership for the unexpired portion of any term.

19 ~~?(d)~~(c) Subject to subsection ~~(e)~~(d), the declaration may provide for a period of declarant
20 control of the association, during which a declarant, or persons designated by him, may appoint
21 and remove the officers and members of the executive board. Regardless of the period provided
22 in the declaration, and except as provided in Section 2-123(g) (Master Planned Communities), a
23 period of declarant control terminates no later than the earlier of: (i) [60] days after conveyance

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

10 ~~(f)(e)~~ Except as otherwise provided in ~~Section~~ Sections 2-120(e) and 3-103(f), not later
11 than the termination of any period of declarant control, the unit owners ~~shall~~ must elect an
12 executive board of at least three members, at least a majority of whom must be unit owners. ~~The~~
13 Unless the declaration provides for the election of officers by the unit owners, the executive
14 board shall elect the officers. The executive board members and officers shall take office upon
15 election or appointment.

16 **SECTION 14. BYLAWS.**

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

18 (1) the number of members of the executive board and the titles of the officers of
19 the association;

20 (2) election by the executive board or, if the declaration so requires, by the unit
21 owners, of a president, treasurer, secretary, and any other officers of the association the bylaws
22 specify;

23 (3) the qualifications, powers and duties, terms of office, and manner of electing

1 and removing executive board members and offices and filling vacancies;

2 (4) which, ~~if any,~~ of its powers the executive board or officers may delegate to
3 other persons or to a managing agent;

4 (5) which of its officers may prepare, execute, certify, and record amendments to
5 the declaration on behalf of the association; ~~and~~

6 (6) a method for amending the bylaws by vote of the unit owners;

7 (7) any provisions that may be necessary to satisfy requirements in this [act] or
8 the declaration concerning meetings, voting, quorums and other matters concerning the activities
9 of the association; and

10 (8) any other matters required by the laws of this State to appear in the bylaws of
11 legal entities organized in the same manner as the association .

12 (b) Subject to the provisions of the declaration, the bylaws may provide for any other
13 matters the association deems necessary and appropriate unless the declaration or this [act]
14 requires that those provisions appear in the declaration.

15 **SECTION 15. UNIT OWNER MEETINGS.**
16

17 (a) An association shall hold a meeting of unit owners annually at a time stated in or
18 fixed in accordance with the bylaws.

19 (b) An association shall hold a special meeting of unit owners on call of:

20 (1) its president, or a majority of the executive board;; or by

21 (2) unit owners having 20 at least twenty percent; or any lower percentage
22 specified in the bylaws, of the votes in the association. ~~Not less than [10] nor more than [60]~~
23 ~~days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause~~
24 ~~notice to be hand-delivered~~ Only business within the purpose or purposes described in the

1 meeting notice required by subsection (c) of this section may be conducted at a special meeting.

2 (c) An association shall notify unit owners of the date, time, and place of each annual and
3 special unit owners' meeting no fewer than ten nor more than 60 days before the meeting date.
4 Notice may be by hand delivery to each unit owner by any means described in Section 3-122 or
5 sent pre-paid by United States mail to the ~~any~~ mailing address of each unit or to any other
6 mailing address designated in writing by the unit owner designates in writing.

7 (d) The notice of any meeting must state the time and place of the meeting and the items
8 on the agenda, including : (i) a statement of the general nature of any proposed amendment to
9 the declaration or bylaws, (ii) a statement that in the absence of objection from any unit owner
10 present at the meeting, the president may add items to the agenda; (iii) any budget changes, and
11 (iv) any proposal to remove an officer or member of the executive board.

12 (e) The amount of time required notice required by (c) may be reduced or waived in the
13 case of a meeting called to deal with an emergency.

14 (f) Regardless of the agenda, unit owners shall be given a reasonable opportunity at any
15 meeting to offer comments to the executive board regarding any matter affecting the common
16 interest community.

17 **[NEW] SECTION 16. EXECUTIVE BOARD MEETINGS.**

18 (a) A meeting of the executive board must be held at least quarterly. Special meetings
19 of the executive board may be called by the president or a majority of the executive board. For
20 purposes of this section, "meetings of the executive board" do not include gatherings of directors
21 at which the directors do not consider association business. The executive board and individual
22 directors shall not use incidental or social gatherings of directors or other devices to evade the
23 open meeting requirements of this section.

1 (b) Except when a schedule of meetings has been distributed to unit owners that
2 identifies the meeting in question or in cases of meetings called to deal with an emergency, the
3 secretary or other officer specified in the bylaws shall cause notice of any regular or special
4 executive board meeting to be delivered to each member of the board and to each unit owner by
5 any means described in Section 3-122 not less than [10] in advance of the meeting. Notice to
6 unit owners must be given not later than the time notice of the meeting is sent to members of the
7 executive board).[tinker more] The association shall also make available the materials provided
8 to the executive board to unit owners at the time they are provided to the board except any
9 materials to be considered in executive session. The notice must state the time and place of the
10 meeting and the items to be considered, including reasonable opportunity for unit owners to offer
11 comments to the executive board regarding any matter affecting the common interest
12 community. Distributing an agenda does not preclude the executive board from adding items to
13 the agenda.

14 (c) [After the period of declarant control ends,] All meetings of the executive board shall
15 be open to the unit owners except for executive sessions held for purposes of (i) discussing
16 litigation, mediation, arbitration, administrative proceedings or any contract matter; (ii) labor or
17 personnel matters; or (iii) if the executive board determines that public knowledge would violate
18 the privacy of a unit owner.

19 (d) In lieu of a meeting, the executive board may act by unanimous consent as
20 documented in a record signed by all its members, but the executive board, after the period of
21 declarant control, may not act by unanimous consent to: (i) adopt a rule, budget or special
22 assessment, (ii) impose a fine or take action to enforce the declaration, bylaws or rules, (iii) buy
23 or sell real property, (iv) borrow money, or (v) contract for any sum greater than one percent

1 [1%] of the association's annual budget . The secretary shall promptly notify all unit owners of
2 any action taken by unanimous consent.

3 (e) [add a comment to 4-117 to make clear that a violation of this section may be
4 possible] [do we say something about this in a comment – void or voidable left to other law]

5 **SECTION 17. QUORUMS.**

6 (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of
7 the association if:

8 (1) persons entitled to cast [20] percent of the votes that may be cast for election
9 of the executive board are present in person or by proxy at the beginning of the meeting; or

10 (2) ballots solicited in accordance with Section 3-110 (f) are [delivered to the
11 secretary] [cast] in a timely manner by persons who, together with those physically present at the
12 meeting, would comprise a quorum for that meeting.

13 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present
14 throughout any meeting of the executive board if persons entitled to cast [50] percent of the
15 votes on that board are present at the beginning of the meeting.

16 **SECTION 18. VOTING; PROXIES.**

17 **[10-06 Reporter Notes]**

18 This text to be revised before April '07 meeting with alternatives from Florida and New
19 Jersey.

20 **[10-06 Reporter Notes]**

21 New voting protocols to be retroactive; amend 1-204. Related issues are nominating
22 committees, providing optional voting systems.

23
24
25
26 (a) If only one of several owners of a unit is present at a meeting of the association, that

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

7 (b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit
8 owner. If a unit is owned by more than one person, each owner of the unit may vote or register
9 protest to the casting of votes by the other owners of the unit through a duly executed proxy. A
10 unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation
11 to the person presiding over a meeting of the association. A proxy is void if it is not dated or
12 purports to be revocable without notice. A proxy terminates one year after its date, unless it
13 specifies a shorter term. No person may hold or cast proxies representing units owned by more
14 than [] unit owners in the common interest community.

15 (c) If the declaration requires that votes on specified matters affecting the common
16 interest community be cast by lessees rather than unit owners of leased units: (i) the provisions
17 of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have
18 leased their units to other persons may not cast votes on those specified matters; and (iii) lessees
19 are entitled to notice of meetings, access to records, and other rights respecting those matters as
20 if they were unit owners. Unit owners must also be given notice, in the manner provided in
21 Section 3-108, of all meetings at which lessees are entitled to vote.

22 (d) ~~No votes~~ Votes allocated to a unit owned by the association may not be cast and shall
23 not be calculated either in a quorum or in any percentage of unit votes needed for any action by

1 the unit owners.

2 (e) Except in cases where a greater percentage or fraction of the votes in the association
3 is required by this [act] or the declaration, a majority of the votes cast in person or by proxy at a
4 meeting of unit owners where a quorum is present shall determine the outcome of any action of
5 the association where a vote is taken.

6 (f) [NEW] Action By Ballot Without Meeting

7 (i) Unless prohibited or limited by the declaration or bylaws, any action that the
8 association may take at any meeting of members may be taken without a meeting if the
9 association delivers a written or electronic ballot to every member entitled to vote on the matter.
10 A ballot shall set forth each proposed action and provide an opportunity to vote for or against
11 each proposed action.

12 (ii) All solicitations for votes by ballot shall: (A) indicate the number of responses
13 needed to meet the quorum requirements; (B) state the percentage of approvals necessary to
14 approve each matter other than election of directors; and (c) specify the time by which a ballot
15 must be delivered to the association in order to be counted, which time shall not be less than [3]
16 days after the date that the association delivers the ballot.

17 (iii) Approval by ballot pursuant to this section is valid only if: (A) the number of
18 votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing
19 the action; and (B) the number of approvals equals or exceeds the number of votes that would be
20 required to approve the matter at a meeting at which the total number of votes cast was the same
21 as the number of votes cast by ballot.

22 (iv) Except as otherwise provided in the declaration or bylaws, a ballot shall not
23 be revoked after delivery to the association by death, disability or revocation by the person who

1 cast that vote.

2 (g) No provision of the declaration, bylaws or rules and no action of the Association may
3 suspend the voting rights of a unit owner regardless of any violation of those documents.

4 **SECTION 19. LIEN FOR ASSESSMENTS; FORECLOSURE.**

5 (a) The association has a statutory lien on a unit for any assessment levied against that
6 unit or fines imposed against its unit owner. Unless the declaration otherwise provides,
7 reasonable attorneys fees and court costs, other fees, charges, late charges, fines, and interest
8 charged pursuant to Section 3-102(a)(10), (11), and (12) and any other sums due to the
9 association under the declaration, this [act] or as a result of an administrative or judicial decision
10 are enforceable in the same manner as unpaid assessments under this section. If an assessment is
11 payable in installments, the lien is for the full amount of the assessment from the time the first
12 installment thereof becomes due. Unless the declaration provides for a different rate of interest,
13 interest on unpaid assessments shall accrue at the rate provided in [insert State statute governing
14 interest on judgment liens].

15 (b) A lien under this section is prior to all other liens and encumbrances on a unit except
16 (i) liens and encumbrances recorded before the recordation of the declaration and, in a
17 cooperative, liens and encumbrances which the association creates, assumes, or takes subject to,
18 (ii) a first security interest on the unit recorded before the date on which the assessment sought to
19 be enforced became delinquent, or, in a cooperative, the first security interest encumbering only
20 the unit owner's interest and perfected before the date on which the assessment sought to be
21 enforced became delinquent, and (iii) liens for real estate taxes and other governmental
22 assessments or charges against the unit or cooperative. The lien is also prior to all security
23 interests described in clause (ii) above to the extent of: (i) the common expense assessments

1 based on the periodic budget adopted by the association pursuant to Section 3-115(a) which
2 would have become due in the absence of acceleration during the six months immediately
3 preceding institution of an action to enforce the lien; and (ii) reasonable attorneys fees and court
4 costs incurred by the association in foreclosing the association's lien. This subsection does not
5 affect the priority of mechanics' or materialmen's liens, or the priority of liens for other
6 assessments made by the association. [The lien under this section is not subject to the provisions
7 of [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

8 (c) Unless the declaration otherwise provides, if two or more associations have liens for
9 assessments created at any time on the same property, those liens have equal priority.

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

12 (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
13 are instituted within [3] years after the full amount of the assessments becomes due.

14 (f) This section does not prohibit actions against unit owners to recover sums for which
15 subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

16 (g) A judgment or decree in any action brought under this section must include costs and
17 reasonable attorney's fees for the prevailing party.

18 (h) The association upon written request shall furnish to a unit owner a statement setting
19 forth the amount of unpaid assessments against the unit. If the unit owner's interest is real
20 estate, the statement must be in recordable form. The statement must be furnished within [10]
21 business days after receipt of the request and is binding on the association, the executive board,
22 and every unit owner.

23 (i) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be

1 evicted in the same manner as provided by law in the case of an unlawful holdover by a
2 commercial tenant, and the lien may be foreclosed as provided by this section.

3 (j) The association's lien may be foreclosed as provided in this subsection and
4 subsection (m):

5 (1) In a condominium or planned community, the association's lien must be
6 foreclosed in like manner as a mortgage on real estate [or by power of sale under [insert
7 appropriate state statute]];

8 (2) In a cooperative whose unit owners' interests in the units are real estate
9 (Section 1-105), the association's lien must be foreclosed in like manner as a mortgage on real
10 estate [or by power of sale under [insert appropriate state statute]] [or by power of sale under
11 subsection (k)]; or

12 (3) In a cooperative whose unit owners' interests in the units are personal
13 property (Section 1-105), the association's lien must be foreclosed in like manner as a security
14 interest under [insert reference to Article 9, Uniform Commercial Code.]

15 [(4) In the case of foreclosure under [insert reference to state power of sale
16 statute], the association shall give reasonable notice of its action to all lien holders of the unit
17 whose interest would be affected.]

18 [(k) In a cooperative, if the unit owner's interest in a unit is real estate (Section 1-105):

19 (1) The association, upon non-payment of assessments and compliance with this
20 subsection, may sell that unit at a public sale or by private negotiation, and at any time and place.

21 Every aspect of the sale, including the method, advertising, time, place, and terms must be
22 reasonable. The association shall give to the unit owner and any lessees of the unit owner
23 reasonable written notice of the time and place of any public sale or, if a private sale is intended,

1 or the intention of entering into a contract to sell and of the time after which a private disposition
2 may be made. The same notice must also be sent to any other person who has a recorded interest
3 in the unit which would be cut off by the sale, but only if the recorded interest was on record
4 seven weeks before the date specified in the notice as the date of any public sale or seven weeks
5 before the date specified in the notice as the date after which a private sale may be made. The
6 notices required by this subsection may be sent to any address reasonable in the circumstances.
7 Sale may not be held until five weeks after the sending of the notice. The association may buy at
8 any public sale and, if the sale is conducted by a fiduciary or other person not related to the
9 association, at a private sale.

10 (2) Unless otherwise agreed, the debtor is liable for any deficiency in a
11 foreclosure sale.

12 (3) The proceeds of a foreclosure sale must be applied in the following order:

13 (i) the reasonable expenses of sale;
14 (ii) the reasonable expenses of securing possession before sale; holding,
15 maintaining, and preparing the unit for sale, including payment of taxes and other governmental
16 charges, premiums on hazard and liability insurance, and, to the extent provided for by
17 agreement between the association and the unit owner, reasonable attorney's fees and other legal
18 expenses incurred by the association;

19 (iii) satisfaction of the association's lien;
20 (iv) satisfaction in the order of priority of any subordinate claim of record;
21 and

22 (v) remittance of any excess to the unit owner.

23 (4) A good faith purchaser for value acquires the unit free of the association's

1 debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate
2 interest, even though the association or other person conducting the sale failed to comply with
3 the requirements of this section. The person conducting the sale shall execute a conveyance to
4 the purchaser sufficient to convey the unit and stating that it is executed by him after a
5 foreclosure of the association's lien by power of sale and that he was empowered to make the
6 sale. Signature and title or authority of the person signing the conveyance as grantor and a
7 recital of the facts of non-payment of the assessment and of the giving of the notices required by
8 this subsection are sufficient proof of the facts recited and of his authority to sign. Further proof
9 of authority is not required even though the association is named as grantee in the conveyance.

10 (5) At any time before the association has disposed of a unit in a cooperative or
11 entered into a contract for its disposition under the power of sale, the unit owners or the holder of
12 any subordinate security interest may cure the unit owner's default and prevent sale or other
13 disposition by tendering the performance due under the security agreement, including any
14 amounts due because of exercise of a right to accelerate, plus the reasonable expenses of
15 proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of
16 the creditor.]

17 (l) In an action by an association to collect assessments or to foreclose a lien for unpaid
18 assessments, the court may appoint a receiver to collect all sums alleged to be due and owing to
19 a unit owner before commencement or during pendency of the action. The receivership is
20 governed by [insert state law generally applicable to receiverships]. The court may order the
21 receiver to pay any sums held by the receiver to the association during pendency of the action to
22 the extent of the association's common expense assessments based on a periodic budget adopted
23 by the association pursuant to Section 3-115.

1 (m) The following restrictions apply to any action by the association to foreclose its lien
2 under this section:

3 (1) no foreclosure action may be commenced unless the unit owner, at the time
4 the action is commenced, owes a sum equal to at least three (3) months of common expense
5 assessments based on the periodic budget last adopted by the association pursuant to Section 3-
6 115(a) the unit owner has failed to accept or comply with a payment plan offered by the
7 association; and

8 (2) the executive board expressly votes to commence a foreclosure action
9 against that specific unit.

10 (3) The association shall apply any sums paid by unit owners who are delinquent
11 in paying assessments as follows: (i) first, to unpaid assessments; (ii) then to late charges; (iii)
12 then to attorneys fees and other reasonable collection charges and costs; and (iv) finally, to all
13 other unpaid fees, charges, penalties, interest and late charges.

14 (4) If the only sums due with respect to a unit consist of fines or charges for
15 services provided by the association and related sums levied against that unit, a foreclosure
16 action may not be commenced against that unit unless the association has first secured a
17 judgment against the unit owner with respect to those fines and has perfected a judgment lien
18 against the unit under [insert reference to State statute on perfection of judgment liens].

19 (5) Any sale or other disposition conducted in connection with a foreclosure
20 action under this section shall be commercially reasonable.

21 **SECTION 20. ASSOCIATION RECORDS.**

22 (a) [Maintenance of Records] [Adapted from the Revised Model Non-Profit Corporation
23 Act]

1 The association shall maintain the following records in written form or in another form
2 capable of conversion into written form within a reasonable time:

3 (1) Detailed records of receipts and expenditures affecting the operation and
4 administration of the association and other appropriate accounting records. All financial books
5 and records shall be kept in accordance with generally accepted accounting practices.

6 (2) Minutes of all meetings of its members and executive board, a record of all
7 actions taken by the members or executive board without a meeting, and a record of all actions
8 taken by a committee of the executive board in place of the board or directors on behalf of the
9 association.

10 (3) A record of its members in a form that permits preparation of a list of the
11 names and addresses of all members, in alphabetical order by class, showing the number of votes
12 each member is entitled to cast and the members' class of membership, if any; and

13 (4) In addition, the association shall keep a copy of the following records at its
14 principal office: (i) Its original or restated organizational documents and bylaws and all
15 amendments to them currently in effect; (ii) the minutes of all members' meetings and records of
16 all action taken by members without a meeting for the past three years; (iii) any financial
17 statements and tax returns of the association prepared for the past three years; (iv) a list of the
18 names and business addresses of its current directors and officers; (v) its most recent annual
19 report delivered to the [Secretary of the State]; and (vi) financial and other records sufficiently
20 detailed to enable the association to comply with Section 4-109.

21 (b) Subject to subsection (c), all books and records kept by the association, including the
22 association's membership list and address, and aggregate salary information of employees of the
23 association, shall be available for examination and copying by a unit owner or his authorized

1 agent. This right of examination may be exercised (i) only during reasonable business hours or at
2 a mutually convenient time and location, and (ii) upon [5] days' written notice reasonably
3 identifying the specific books and records of the association requested. The association shall not
4 be obligated to compile or synthesize information. Information provided pursuant to this section
5 shall not be used for commercial purposes. [The Chairman has further comments]

6 (c) Books and records kept by an association may be withheld from inspection and
7 copying to the extent that they concern:

8 (1) Personnel matters relating to specific persons or a person's medical records;

9 (2) Contracts, leases, and other commercial transactions to purchase or provide
10 goods or services, currently in or under negotiation;

11 (3) Pending or threatened litigation;

12 (4) Matters involving state or local administrative or other formal proceedings
13 before a government tribunal for enforcement of the declaration, bylaws or rules;

14 (5) Communications with legal counsel which are otherwise protected by the
15 attorney-client privilege or the attorney work product doctrine;

16 (6) Disclosure of information in violation of law;

17 (7) Confidential records of an executive session of the executive board; or

18 (8) Individual unit owner files other than those of the requesting owner.

19 (d) The association may charge a fee for providing copies of any books and records under
20 this section and for supervising the unit owner's inspection but those fees may not exceed the
21 actual cost of any materials and labor incurred by the association.

22 (e) The right to copy records under this section includes the right to receive copies by
23 photocopying or other means, including copies through an electronic transmission if available

1 and so requested by the unit owner.

2 **[NEW] SECTION 21. RULES.**

3 (a) Before adopting, substantially amending or repealing any rule, the executive board
4 must notify all unit owners of (i) its intention to adopt, amend or repeal a rule and provide the
5 test of the proposed change; (ii) a date on which the executive board will convene a meeting to
6 receive comments on them from the unit owners. Following adoption, amendment or repeal of a
7 rule, the association shall notify the unit owners of its action and a copy of any new or revised
8 rule.

9 (b) If the right is reserved in the declaration pursuant to Section 3-102 (a) (16), the
10 association may adopt rules to establish and enforce construction and design criteria and
11 aesthetic standards. If it does so, the association must also adopt procedures for enforcement of
12 those standards and for approval of applications, including a reasonable time within which the
13 association must act after an application is submitted. The association's power under this section
14 is subject to any reserved special declarant right to control any construction or design review
15 process during the period of declarant control.

16 (c) No rule may prohibit display of the flag of the United States contrary to federal law.
17 No rule may prohibit display on a unit or on a limited common element adjoining a unit of a flag
18 of this State or signs regarding candidates for public office or ballot questions but if the
19 declaration so permits, the association may adopt rules governing the time, place or manner of
20 those displays.

21 (d) [Previously §3-102(c)] Unless otherwise permitted by the declaration or this [act], an
22 association may only adopt rules that affect the use of or behavior in units that may be used for
23 residential purposes only to:

1 (1) prevent any use of a unit which violates the declaration;

2 (2) regulate any behavior in or occupancy of a unit which violates the declaration
3 or adversely affects the use and enjoyment of other units or the common elements by other unit
4 owners; or

5 (3) restrict the leasing of residential units to the extent those rules are reasonably
6 designed to meet underwriting requirements of institutional lenders who regularly lend money
7 secured by first mortgages on units in common interest communities or regularly purchase those
8 mortgages.

9 (e) All rules adopted by the association must be reasonable.

10 **[NEW] SECTION 22. NOTICE.**

11 (a) When this [act] or the declaration or bylaws requires that any notice be given to unit
12 owners, then, notwithstanding any additional method for giving notice required by this [act] or
13 those documents, that notice may be: (i) hand-delivered to each unit; (ii) sent prepaid by United
14 States mail to the mailing address of each unit to any other unless that owner has designated in
15 writing a different mailing address; or (iii) sent by electronic means in the manner described in
16 sub-section (b).

17 (b) An association provides effective notice of a meeting or effectively delivers
18 information to a unit owner by electronic means if: (i) The unit owner gives the association prior
19 written authorization to provide that notice, together with an electronic address; and (ii) An
20 officer or agent of the association certifies in writing that the association has provided the notice
21 as authorized by the unit owner.

22 (c) The inadvertent failure to deliver notice by any authorized means does not invalidate
23 any meeting or other action.[this subsection becomes a comment]

1 **[NEW] SECTION 23. REMOVAL OF OFFICERS AND DIRECTORS [formerly**
2 **section 3-103 (g)].**

3 (a) The unit owners may vote at any meeting of the unit owners to remove any member
4 of the executive board with or without cause, except that: (i) a member appointed by the
5 declarant may not be removed by a unit owner vote during the period of declarant control, (ii) a
6 person appointed under subsection (f) of Section 3-103 may only be removed by the person that
7 appointed that member; and (iii) the unit owners may not consider the question of whether to
8 remove a member of the executive board at any meeting of the unit owners unless that subject
9 was listed in the notice of the meeting.

10 (b) At any meeting at which a vote to remove a member of the executive board is to be
11 taken, the executive board shall provide a reasonable opportunity to speak before the vote to all
12 persons favoring and opposing removal of that member, including without limitation the member
13 being considered for removal.

14 (c) At any meeting called for the purpose of removing a member of the executive board,
15 the following rules apply, whether or not a quorum is present at that meeting in person or by
16 proxy:

17 (1) After all persons present at the meeting have been given a reasonable
18 opportunity to speak, the meeting may be recessed for a period calculated in the manner
19 described in sub-section 2.

20 (2) Promptly following any recess, the association shall notify all unit owners of
21 the recessed meeting and inform the unit owners of their opportunity to cast votes either in favor
22 or against removal during the [] day period following the day that the notice is sent. The notice
23 shall specifically inform the unit owners of their right to cast votes either: in a secret written

1 ballot, on a form provided to the unit owners; or by electronic means. [The Reporter needs
2 assistance in describing this procedure.][We undoubtedly require additional provisions].

3 (d) Whether the vote is taken before or after a recess, and whether or not taken by
4 electronic means a member of the executive board may be removed only if the number of votes
5 cast in favor of removal exceeds the number of votes cast in opposition to removal.

6 **[NEW] SECTION 24. ADOPTION OF BUDGETS. [Previously Section 3-103 (c),**
7 **amended as shown]**

8 (a) The executive board shall, at least annually, prepare a proposed budget for the
9 common interest community for consideration by the unit owners. Within [30] days after
10 adoption of any proposed budget, the executive board shall provide a summary of the budget,
11 including any reserves, to all the unit owners, and shall set a date for a meeting of the unit
12 owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing
13 of the summary. Unless at that meeting a majority of all unit owners or any larger vote specified
14 in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In
15 the event the If a proposed periodic budget is rejected, the periodic budget last ratified by the
16 unit owners must be continued until such time as the unit owners ratify a subsequent budget
17 proposed by the executive board.

18 (b) In addition to adoption of its regular budget, the executive board may at any time
19 propose a budget which would require a special assessment. If the executive board determines
20 by a two-thirds vote that the special assessment is necessary in order to respond to an
21 emergency, then: (i) the special assessment shall become effective immediately in accordance
22 with the terms of the vote; (ii) notice of the emergency assessment shall be promptly provided to
23 all unit owners; and (iii) the executive board shall spend the funds paid on account of the

1 emergency assessment solely for the purposes described in the vote. Otherwise, as a condition to
2 the adoption of a budget funded entirely or partially through a special assessment, the executive
3 board shall follow the procedures for adoption of a budget described in subsection (a).

4 **SECTION 25. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION;**
5 **ATTORNEY’S FEES.**

6 (a) If a declarant or any other person subject to this [act] fails to comply with any of its
7 provisions or any provision of the declaration or bylaws, any person or class of persons
8 adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages
9 may be awarded for a willful failure to comply with this [act]. The court, in an appropriate case,
10 may award court costs and reasonable attorney’s fees.

11 (b) Parties to a dispute arising under this [act], the declaration, or the bylaws may agree
12 to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

13 (1) a declarant may agree with the association to do so only after the period of
14 declarant control passes unless the agreement is made with an independent committee of the
15 executive board elected pursuant to Section 4-116(d); and

16 (2) an agreement to submit to any form of binding alternative dispute resolution
17 must be in a writing signed by the parties.

18 (c) Unless the declaration provides otherwise, an individual unit owner has no standing
19 to enforce an alleged violation of a rule by another owner.