

**COVER MEMORANDUM**  
**UNIFORM COMMON INTEREST OWNERSHIP ACT AND THE UNIFORM**  
**CONDOMINIUM ACT**

TO: Commissioners of the Uniform Law Commission

FROM: Jim Smith, Reporter

DATE: Aug. 4, 2020

For the first reading of amendments to the Uniform Common Interest Ownership Act (UCIOA), the following documents are available for your review:

(1) *Amendments to Uniform Common Interest Ownership Act*. This is a redlined draft that includes only the sections of the act that have revisions, and only Comments for which there are proposed comment additions or revisions. The full act with all comments is available at the ULC website.

(2) Reporter's *Memorandum on Scope the Uniform Common Interest Ownership Act* (Aug. 4, 2020).

(3) Reporter's *Memorandum on Constitutional Issues Raised by the Retroactive Application of the Uniform Common Interest Ownership Act* (Aug. 4, 2020).

Below are brief descriptions of the major changes in the draft. Revisions that are only stylistic or are intended only to clarify the meaning of the existing statutory text are not included.

**1. Scope of the act.** The scope of the act, as it has been in the past, remains an important issue under consideration by the Drafting Committee. The scope provisions are in Part 2, titled "Applicability," Sections 1-201 through 1-210. The act since its inception in 1982 has generally applied only to common interest communities created after the act's effective date. Older communities are grandfathered, regulated by preexisting state law. At its two meetings, the Drafting Committee has discussed the question whether to recommend a revision to apply the act to many or all old ("preexisting") common interest communities. The committee has not yet made a decision, and the topic will be on the agenda for its November 2020 meeting. Policy issues are discussed in the Reporter's *Memorandum on Scope of the Uniform Common Interest Ownership Act*, and constitutional issues are discussed in the Reporter's *Memorandum on Constitutional Issues Raised by the Retroactive Application of the Uniform Common Interest Ownership Act*, both dated Aug. 4, 2020.

**2. Section 2-108. Limited Common Elements.** Sometimes it's useful for an association to convert a common element into a limited common element, such as a parking space to be used by a particular unit owner or ground space next to a patio door. The act allows this only if authorized by the declaration. The draft adds flexibility by allowing a conversion by approval of the executive board of the association and a vote of the unit owners. No vote is required if the area is small and of no practical use to anyone other than the benefitted unit owner.

**3. Section 2-114. Building Encroachments.** This section has two alternatives to deal with shifting unit boundaries, which result from the encroachments of improvements on boundaries of units and common areas, and discrepancies between record boundary lines and buildings as constructed. The basic idea is that encroachments and discrepancies are tolerated by the creation of an easement or the adjustment of legal boundaries, if they are not extreme or the consequence of willful misconduct or fault. The draft rewrites this section to clear up ambiguities, vagueness, and possible conflicting interpretations in the existing language.

**4. Section 2-118. Termination of Common Interest Community.** During the past decade, terminations of common interest communities have become more frequent, triggered by older buildings becoming obsolescent and by casualty destruction. Many condominium “deconversions” have taken place, especially in expensive urban markets. Termination is usually followed by the sale of all of the properties for redevelopment. The draft has a number of revisions, three of particular importance. First, the existing text generally allows termination by a supermajority vote: 80 percent of the units. This rule sometimes works to the prejudice of unit buyers when a developer has sold less than 20 percent of the units and wishes to terminate a project that appears unsuccessful. The developer then has enough votes to terminate without the approval of any buyers. The proposed revision protects buyers by requiring the approval of 80 percent of the sold units in addition to 80 percent of all units. Second, the existing text applies the 80-percent rule only to communities with multi-story dwelling units (stacked-units, like a typical condominium building). The existing text requires unanimity (100 percent vote) when any non-stacked units are present. The draft alters this, allowing termination and sale by 80 percent vote for all communities, regardless of building type. This is an important issue of policy. It would create a default rule allowing the sale of a neighborhood with detached single-family houses by a supermajority 80 percent vote. Third, the existing text divides the sales proceeds among the owners based on an appraisal obtained by the association’s executive board. A proposed revision protects an owner from a low appraisal by allowing the owner to obtain an independent appraisal. If an agreement on fair market value is not reached, an arbitral panel of three appraisers determines the value.

**5. Section 2-120. Master Associations.** The draft adds flexibility by allowing the executive board to delegate powers to a master association. Delegations to master associations often have substantial impacts on unit owners and their community. The amendment includes an approval right of unit owners. They may revoke a delegation by majority vote. The draft allows a board-approved delegation to become effective immediately, subject to revocation at the next unit owners’ meeting. The Drafting Committee is still considering whether it may be better to make the delegation effective only when and if approved by the unit owners.

**6. Section 2-125. Adverse Possession and Prescriptive Easements.** UCOIA does not presently address the law of adverse possession. Claims of adverse possession and prescription arise frequently in common interest communities. This new section fills the gap by addressing one important type of claim. Sometimes a unit owner makes long-term use of a common element and when confronted by the owner’s unauthorized use, raises adverse possession as a defense. The draft immunizes common elements from loss by adverse possession or prescriptive easement by claims of unit owners.

**7. Section 3-102. Powers and Duties of Unit Owners Association.** The act allows an executive board to grant an easement or lease on a common element to a unit owner. This may serve as a loophole, bypassing the proper procedure under the act of relocating a unit boundary or converting a common element to limited common element, both of which generally require a vote of unit owners to protect the community. The draft closes this loophole.

**8. Section 3-104. Transfer of Special Declarant Rights.** The act regulates “special declarant rights,” which include rights of the declarant (developer) to make changes to the community and to control the executive board. The draft reorganizes the existing section into three sections (3-104 - *Transfer of Special Declarant Rights*; 3-104A - *Liability after Transfer of Special Declarant Rights*; 3-104B - *Foreclosure of Special Declarant Rights*) to add clarity and resolve ambiguities and gaps. The most significant policy issues concern transfer and foreclosure. The Drafting Committee has perceived an unresolved question as to the nature of special declarant rights. Are they contract rights (intangible personal property) and generally freely alienable; or are they appurtenant to particular parcels of real estate owned by the declarant and thus restricted to real estate ownership? The draft contains two alternatives for further consideration, which implement the two competing views. The Drafting Committee expects to select one alternative or perhaps a hybrid or variation.

**9. Section 3-108. Meetings and Section 3-110. Voting; Proxies; Ballots.** The draft has revisions to these sections to permit and facilitate electronic meetings of unit owners, a topic that has become especially timely since the coronavirus pandemic. The draft authorizes unit owners to participate remotely at a meeting held at a geographic location and authorizes “all-electronic” meetings where there is no geographic location for in-person attendees. The draft also includes new rules for electronic ballots, the duration of ballots, and the revocation of ballots.

**10. Section 3-115. Assessments.** The draft responds to the practice of executive boards, which appears to happen with increasing frequency, of assessing common expenses against some but not all units in a common interest community. The existing section gives the board discretion to assess a common expense to one or a few unit owners who are “benefitted” by the expense (usually a replacement or repair of a common element, such as a porch deck or skylight). The “benefitted” standard appears vague and fails to give owners advance notice of the circumstances in which they must pay all or a higher share of certain common expenses. The act retains the “benefitted” standard, but removes board discretion by requiring that the declaration specify which common expenses (if any) are to be assessed to fewer than all the unit owners.

**11. Time shares.** Common interest communities sometimes contain time-share units, especially within communities located in popular resort and vacation destinations. The draft makes several revisions, including revising the definition of “Time share” (Section 1-103(34)), requiring the disclosure of time-share arrangements and restrictions in the public offering statement (Section 4-103), and providing an exemption from the act’s public offering statement rules when a state agency regulates time-share developments (Section 4-107).