

**SECTION 1-117. MANDATORY AND DEFAULT RULES.**

(a) Except as otherwise provided in subsection (b), this [act] governs the rights, obligations, and liabilities of the declarant, the association, the executive board, unit owners, and other persons having an interest in a common interest community.

(b) The declaration or bylaws may vary the following provisions in the following listed sections:

(1) Section 1-105(a), which deals with the classification of a unit in a cooperative as real estate or personal property.

(2) Section 1-107(b) and (c), which deal with the reallocation of allocated interests after a taking by eminent domain of part of a unit and for allocation of proceeds attributable to limited common elements.

(3) Article 1, Part 2, and Article 5 to the extent that they allows elections with respect to applicability of this [act].

(4) Section 2-102, which deals with boundary lines between units and common elements.

(5) Section 2-108(b), which provides for a reallocation of limited common elements.

(6) Section 2-109(e), which deals with the horizontal boundaries of units.

(7) Section 2-111, which deals with alterations of units and common elements made by unit owners.

(8) Section 2-112(a) and (b), which deal with the relocation of boundaries of units.

(9) Section 2-113(a), which deals with the subdivision of units.

(10) Section 2-115 to the extent it deals with signs maintained by a declarant on the common elements.

(11) Section 2-116(a) and (c), which deal with easements through, and rights to use,

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common elements.

(12) Section 2-117(a) to the extent it allows a change in the percentage of votes required to amend the declaration.

(13) Section 2-118 to the extent it allows a change in the percentage of votes required to terminate a common interest community.

(14) Section 2-119 to the extent it allows lender approval of actions of unit owners and the association.

(15) Section 2-120(a) to the extent it allows the executive board to delegate powers to a master association.

(16) Section 2-122 to the extent it allows a declarant to add real estate to a planned community.

(17) Section 3-102(a) to the extent that it grants powers to the association.

(18) Section 3-103(a) to the extent that the executive board acts on behalf of the association.

(19) Section 3-107(a) to the extent it allocates responsibility for maintenance, repair, and replacement of units and common elements.

(20) Section 3-108(a)(2) to the extent it allows a change in the percentage of unit owners who may request a special meeting.

(21) Section 3-109, which deals with quorum requirements for meetings and rules for conducting meetings.

(22) Section 3-110 to the extent it deals with voting by proxies, voting by ballots, voting without a meeting, and voting by lessees.

(23) Section 3-112 (a), (b), and (g) to the extent they allow a change in the percentage of

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votes required to convey or encumber common elements.

(24) Section 3-113(k), which allows nonresidential common interest communities to vary or waive insurance requirements.

(25) Section 3-114, which deals with the payment of surplus funds of the association.

(26) Section 3-115 to the extent it allows changes in assessments of common expenses.

(27) Section 3-116(a) to the extent it treats fees, costs, charges, and other sums as assessments for lien purposes.

**Reporter's Note (5/19)**

1. Statutory provisions that draw the line between mandatory and default rules can be drafted in one of two ways. Some acts start from the premise that most rules ought to be “changeable” default rules and provide a list of mandatory (non-changeable) rules. Examples are UCC Article 9, § 9-602, *Waiver and Variance of Rights and Duties*; Uniform Trust Code § 105, *Default and Mandatory Rules*. Other acts, often those thought to be more directed to consumer protection, start from the opposite premise: most rules are mandatory, and a limited number are changeable default rules. New Section 1-117 follows the second way, which is consistent with UCIOA existing Section 1-104, *No Variation by Agreement*.

2. Subsection (a) states the general rule that provisions of this act are not subject to override in the governing instruments (the declaration and bylaws) when they confer rights or impose obligations and liabilities on unit owners, declarants, and other persons. Subsection (b) provides a list of default provisions of the act that are changeable by the governing instruments. The principal source used by the drafting committee in fashioning subsection (b), which lists default provisions that are changeable in the declaration or bylaws, is UCC § 9-602.

3. New Section 1-117 overlaps with existing Section 1-104, *No Variation by Agreement*, which provides: “Except as expressly provided in this [act], the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as otherwise provided in Section 1-207, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this [act] or the declaration.” The list of sections in new Section 1-117(b) is based on existing Section 1-104, Comment 4, which lists 33 sections that “permit variation.” New Section 1-117(b) lists 27 sections and is shorter for two reasons. First, subsection (b) only deals with rules that may be changed in the governing instruments (declaration and bylaws) rather than “by agreement.” *ULC acts with “mandatory rules” almost always list what may be changed by governing instruments, rather than what may be changed “by agreement.”*

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This means that the following 3 sections listed in the Comment (text of Comment quoted below) are not carried over to subsection (b):

Section 4-101 (Applicability; Waiver). All of Article 4 is modifiable or waivable by agreement in a common interest community restricted to non-residential use.

Section 4-115 (Warranties). Implied warranties of quality may be excluded or modified by agreement.

Section 4-116 (Statute of Limitation on Warranties). The six-year limitation may be modified by agreement of the parties.

Three sections listed in the Comment (text of Comment quoted below) are not carried over to subsection (b) because they do not actually allow the declaration or bylaws to change the effect of provisions of the act:

Section 1-103 (Definitions). All definitions used in the declaration and bylaws may be varied in the declaration, but not in interpretation of the Act.

Section 2-105 (Contents of Declaration). A declarant may add any information he desires to the required content of the declaration.

Section 3-106 (Bylaws). Subject to the provisions of the declaration, the bylaws may contain any matter in addition to that required by the Act.

***4. The drafting committee should consider whether the first sentence of Section 1-104, quoted above, should be modified or deleted due to the addition of new Section 1-117. At a minimum, Comment 4 to Section 1-104 needs to be withdrawn or revised.***