

DRAFT  
FOR DISCUSSION ONLY

**AMENDMENTS TO ~~OR REVISE~~ THE UNIFORM  
COMMON INTEREST OWNERSHIP ACT ~~AND THE~~  
~~UNIFORM CONDOMINIUM ACT~~**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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February 2, 2021

**AMEND~~MENTS TO OR REVISE~~ THE UNIFORM COMMON INTEREST  
OWNERSHIP ACT  
~~AND THE UNIFORM CONDOMINIUM ACT~~**

The committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

WILLIAM R. BREETZ	Connecticut, <i>Chair</i>
ANGELA ALEXANDER	Texas
STEPHEN C. CAWOOD	Kentucky
JAMES W. DODGE	Illinois
MARC FEINSTEIN	South Dakota
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BECKY HARRIS	Nevada
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HOWARD J. SWIBEL	Illinois
DAVID S. JENSEN	Idaho
CAM WARD	Alabama, <i>Division Chair</i>
CARL H. LISMAN	Vermont, <i>President</i>

**OTHER PARTICIPANTS**

JAMES C. SMITH	Georgia, <i>Reporter</i>
BARRY B. NEKRITZ	Illinois, <i>American Bar Association Advisor</i>
LOUISE M. NADEAU	Connecticut, <i>Style Liaison</i>
TIM SCHNABEL	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
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**AMENDMENTS TO ~~OR REVISE~~ THE UNIFORM COMMON INTEREST  
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AND THE UNIFORM CONDOMINIUM ACT**

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**AMENDMENTS TO ~~OR REVISE~~ THE UNIFORM COMMON INTEREST  
OWNERSHIP ACT  
~~AND THE UNIFORM CONDOMINIUM ACT~~**

**[ARTICLE] 1**

## GENERAL PROVISIONS

**[PART] 1**

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

\* \* \*

(17A) “Electronic” means relating to technology having electrical, digital, magnetic,  
wireless, optical, electromagnetic, or similar capabilities.

## Reporter's Note (1/29)

This proposed new definition is taken from the Uniform Electronic Wills Act (the E-Wills Act) § 2(1) (2019) and the Revised Uniform Law on Notarial Acts (RULONA) § 2(2) (2018), which use identical language. Existing UCIOA uses “electronic” in a number of provisions without definition. Adding a definition coordinates with proposed revisions to Section 3-108, *Meetings*, and Section 3-110, *Voting; Proxies; Ballots*, which facilitate electronic meetings and electronic voting, including use of the term “electronic ballot,” which is not presently defined.

(18) “Executive board” means the body, regardless of name, ~~designated in the declaration or bylaws to act~~ which acts designated in the declaration or bylaws to act on behalf of the association.

### Reporter's Note (4/2)

***Recommendation: No Change from Existing UCIOA.*** The February 2021 draft proposed the above revision to the definition of “executive board” to reflect the fact that the board might be created by a variety of documents, including articles of incorporation or articles of organization. Upon further review, the Reporter and Chair believe that an edit to the existing language is not necessary. The definition functions adequately for the executive board of a unit owners association. UCIOA does not require a designation of the executive board in the declaration, *see* UCIOA § 2-105, *Contents of Declaration*, but the association must have bylaws that “provide the number of members of the executive board . . . .”

UCIOA § 3-106(a)(1), *Bylaws*. In addition, the definition of “executive board” functions adequately for the executive board of a master association. A master association does not have a “declaration” as defined in the Act, but it is subject to the § 3-106(a)(1) requirement of bylaws stating the number of board members.

\* \* \*

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

(A) a unit owners association that serves more than one common interest community ~~or has entered into an arrangement described in Section 1-209(b); or~~

(B) an organization that holds a power ~~pursuant to a delegation described in Section 2-120(a) and is not delegated from~~ a unit owners association.

#### Reporter’s Note (4/26)

1. The prior drafts of the proposed revision to the definition of “Master Association” have two prongs in Paragraph (A) for unit owners associations that are at the same time “master associations” under the Act. This draft proposes to delete the second prong, a unit owners association that “has entered into an arrangement described in Section 1-209(b).” Section 1-209(b) provides: “An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community.” When this type of arrangement exists, it does not seem necessary for the protection of unit owners to make their unit owners association also a “master association” thereby importing the substantive rules of Section 2-120.

2. The new edit to Paragraph (b) simplifies the language and is not a change of substance. If we want to retain a cross reference to 2-120 with pinpoints, delegations are now allowed under 2-120(a)(2) (delegations in the declaration) and 2-120(b) (delegations from executive boards). The prong “and is not a unit owners association” is deleted on the ground of redundancy -- the phrase “a power delegated from a unit owners association” makes it clear that there are two parties to the delegation and the recipient is not a unit owners association.

#### Reporter’s Notes

1. The proposed new definition of “Master Association” moves some of

1 the language from existing Section 2-120(a) (below) and is designed to achieve  
2 consistency of usage throughout section 2-120. The proposed definition also seeks  
3 to draw a sharper definitional line between the unit owners association and a  
4 master association.

5  
6 2. Existing Section 2-120(a) defines a master association as the recipient  
7 of “powers described in Section 3-102 . . . or other powers.” The proposed new  
8 definition deletes the “other powers” prong because it is not necessary. Section 3-  
9 102 defines “powers” to include all possible powers. See 3-102(a)(15)-(17) (“any  
10 other powers conferred by the declaration or bylaws . . . all other powers that may  
11 be exercised in this state by organizations of the same type as the association . . .  
12 any other powers necessary and proper for the governance and operation of the  
13 association”).

14  
15 3. Existing Section 2-120(a) requires a master association to be “a profit or  
16 nonprofit corporation [or unincorporated association].” Yet UCIOA allows a unit  
17 owners association to be any type of organization authorized by state law. Section  
18 3-101 provides: “The association must be organized as a profit or nonprofit  
19 corporation, trust, limited liability company, partnership, [unincorporated  
20 association,] or any other form of organization authorized by the law of this  
21 state.” There does not appear to be a reason to impose greater limits to a master  
22 association’s choice of entity. The proposed new definition matches the substance  
23 of Section 3-101 simply by referring to “an organization.” The bracketed term in  
24 existing Section 2-120(a) and in Section 3-101– [or unincorporated association] –  
25 is not included. It is unnecessary because all states authorize unincorporated  
26 associations (“any other form of organization authorized by the law of this state”).

27  
28 4. The existing definition of “master association” by its reference to  
29 Section 3-101 allows a master association also to serve as a unit owners  
30 association. Part (A) of the proposed new definition preserves this ability. A  
31 master association may be a unit owners association when a common interest  
32 community is linked to a geographical area larger than its boundaries. For  
33 example, (1) a master association may serve two neighboring common interest  
34 communities, neither of which has a separate unit owners association of its own;  
35 or (2) a master association for a large retail center may serve as the only  
36 association for a neighboring common interest community. The Part (A) reference  
37 to Section 1-209(b) includes this latter type of arrangement. Section 1-209(b)  
38 refers to an “arrangement between an association and the owner of real estate that  
39 is not part of a common interest community to share the costs of real estate taxes,  
40 insurance premiums, services, maintenance or improvements of real estate, or  
41 other activities . . . .”

42  
43 ~~(22A) “Mortgage” means a consensual interest in real estate which secures payment or~~  
44 ~~performance of an obligation. The term does not include an association’s lien on a unit.~~

1 **Reporter's Note (4/2)**

2  
3 **Recommendation: No Change from Existing UCIOA.** The February 2021 draft  
4 included a new definition of "mortgage" that could be useful in connection with  
5 the revisions to the material dealing with special declarant rights, which uses the  
6 term "mortgage." The term is sufficiently understandable without a statutory  
7 definition.  
8

9 **Reporter's Note (1/29)**

10  
11 A definition of "mortgage" may be useful due to the revisions proposed by the  
12 subcommittee on special declarant rights, which treat all SDRs as real property.  
13 This act's definition of "security interest" below is not adequate for this purpose  
14 because it includes both mortgages and UCC Article 9 security interests on  
15 personal property. This addition uses the definition of "mortgage" from the  
16 Uniform Home Foreclosure Procedures Act, slightly modified to fit the language  
17 of this act.  
18

19 \* \* \*

20 (31) ~~"Rule"~~ "Association rule" "Rule" means a policy, guideline, restriction, procedure,  
21 or regulation of an association, however denominated, which is not set forth in the declaration or  
22 bylaws ~~and which governs the conduct of persons or the use or appearance of property.~~

23 **Reporter's Note (4/2)**

24  
25  
26 1. The Drafting Committee at its Feb. 12, 2021, meeting discussed the retitling of  
27 this definition proposed in the February draft and decided that it is not necessary.  
28 Accordingly, this draft reverses edits in the February draft throughout the act that  
29 changed "rule" to "association rule."  
30

31 2. The Committee also discussed David Ramsey's concern with the substance of  
32 the definition (see Reporter's Note 1/29 infra) and agreed upon the above edit.  
33 Deletion of the phrase "which governs the conduct of persons or the use or  
34 appearance of property" means that the definition no longer indicates the scope of  
35 what the association through its executive board may regulate by rulemaking.  
36 Other provisions of the act now determine that scope. See Section 3-120, *Rules*.  
37

38 **Reporter's Note (1/29)**

39  
40 1. This proposed retitling of this definition fixes a problem of usage in the  
41 existing UCIOA text and conforms to Style. ULC Drafting Rules 302(d) (2012)  
42 ("Do not use a defined term in the act in a sense that is inconsistent with the



definition.”). UCIOA uses the words “rule” and “rules” in many sections. Sometimes it is clear from context that the intent is to point to the defined term; sometimes it is clear from context that this cannot be intended (e.g., § 1-114: “consequential, special, or punitive damages may not be awarded except as specifically provided in this [act] or by other rule of law”); and sometimes there is ambiguity. The Comments also frequently use the words “rule” and “rules.”

2. David Ramsey writes:

Recently, I received an email concerning the difference between a “rule” and a negative covenant under UCIOA. It involves the following two sections:

(31) “Rule” means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

Section 2-117(f). An amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by unit owners of units having at least 80 percent of the votes of a specified group of units that would be affected by the amendment . An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

I think intuitively educated practitioners would say that the use of a unit is a matter that must be set forth in the declaration to be enforceable. But the definition of “rule” in UCIOA seems to define rule as something that a board could adopt that concerns the use of property. While it is clear that a rule in furtherance of a negative covenant (“no resident of a unit shall create noise that is an annoyance or nuisance to another owner”) by defining what that means (i.e. “no playing of musical instruments that can be heard in another unit between the hours of 10:00 p.m. and 8:00 a.m.”), but the language in the definition of “rule” is so broad that it could be argued that it includes new restrictions on the use of a unit.

I note that in the comments there is nothing about the definition of “rule,” so perhaps a comment is in order on this subject. As you know, though, not all states include the comments in the legislative history, so it’s not clear that the comments are sufficient to offset the plain language or the rule definition in terms of whether a board may actually adopt a rule that changes the permitted use or a unit (i.e. no person may smoke tobacco or other products in a unit”). . . .

1 The real issue is what does “use or appearance of property” mean? If we were  
2 talking about the appearance of a lot of the exterior of a home in the homeowners  
3 association context I think there would be general agreement that rules dealing  
4 with appearance of property are necessary to respond to architectural guidelines.  
5 But “use” of property should never have been in the definition unless it was the  
6 use of “common elements.” It’s a very easy fix, which would be something like  
7 the following:

8  
9 “Rule” means a policy, guideline, ~~restriction~~, procedure, or regulation of an  
10 association, ~~however denominated~~, which is not set forth in the declaration or  
11 bylaws and ~~which~~ ***that covers the conduct of persons on the common***  
12 ***elements, or that further clarifies or regulates restrictions in the declaration***  
13 ***or bylaws, or that*** ~~which governs the conduct of persons or the use or~~  
14 appearance of property.

15  
16 ~~(32) “Security interest” means an a consensual interest in real estate or personal property,~~  
17 ~~created by contract or conveyance, which secures payment or performance of an obligation or a~~  
18 ~~mortgage. The term includes a lien created by a mortgage, deed of trust, trust deed, security~~  
19 ~~deed, contract for deed, land sales contract, lease intended as security, assignment of lease or~~  
20 ~~rents intended as security, pledge of an ownership interest in an association, and any other~~  
21 ~~consensual lien or title retention contract intended as security for an obligation.~~

#### 22 Reporter’s Note (4/2)

23  
24 ***Recommendation: No Change from Existing UCIOA; the existing definition***  
25 ***remains in UCIOA with no edits.*** The February 2021 draft included a revision of  
26 the definition of “security interest” in connection with the work on special  
27 declarant rights. It is not necessary because it is not a change in substance.

#### 28 Reporter’s Note (1/29)

29  
30 This proposed revision conforms the “security interest” definition to the addition  
31 of the new definition of “mortgage” above and simplifies to follow the UCC  
32 Article 9 definition of security interest for personal property.  
33  
34

35 (33) “Special declarant rights” means rights appurtenant to real estate owned by the  
36 declarant and described in the declaration, which are reserved for the benefit of a declarant to:

#### 37 Reporter’s Note (4/26)

1 The above edit follows the recommendation of the Style Committee to move the  
2 above language from Section 3-104(b) on the ground that it is definitional.

3  
4 (A) complete improvements the declarant is not obligated to make that are  
5 indicated on plats and plans filed with the declaration or, ~~in a cooperative, to complete~~  
6 ~~improvements~~ described in the public offering statement ~~pursuant to Section 4-103(a)(2);~~

#### 7 **Reporter's Note (4/2)**

8  
9 The subcommittee recommends modifying paragraph (A) to limit this special  
10 declarant right to the completion of improvements that the declarant is not  
11 obligated to make but are shown on plats and plans or the public offering  
12 statement. Improvements that the declarant are obligated to make (See Section 4-  
13 119) are no longer covered by this special declarant right. The declarant has a  
14 statutory easement under Section 2-116, *Easement and Use Rights*, which is  
15 sufficient for obligatory improvements. The change in scope to this paragraph  
16 makes the cross reference to Section 4-103(a)(2) inappropriate; the declarant is  
17 generally obligated to make improvements described in the public offering  
18 statement; only if the public offering statement somewhere describes  
19 improvements that "NEED NOT BE BUILT" are they within the scope of this  
20 revised paragraph (A).

#### 21 **Reporter's Note (3/2)**

22  
23 The Drafting Committee at its Feb. 19 meeting discussed all 10 of the special  
24 declarant rights listed in the paragraphs to this definition. Regarding special  
25 declarant right (A), the right to complete improvements shown on plats and plans  
26 and the public offering statement, the committee decided that this is an **obligation**  
27 of the declarant, who should have easement rights to enter the common interest  
28 community to complete improvements in all cases, regardless of any reservation  
29 of a special declarant right to do so. This is provided for already in Section 2-116,  
30 *Easement and Use Rights* below. The proposed new content in paragraph (A)  
31 authorizes a declarant to make improvements in the common interest community  
32 it is not obligated to make by plats and plans or for other reasons. **Note:** The same  
33 issues as to when the declarant may make optional improvements is also raised by  
34 special declarant right [D] below, which grants easements "for the purpose of  
35 making improvements within the common interest community or within real  
36 estate which may be added to the common interest community."

#### 37 **Reporter's Note (1/29)**

38  
39 The proposed revisions to the definition of "special declarant rights" reflect the  
40 work of the subcommittee on special declarant rights. The proposed revision to  
41 paragraph (A) allows the declarant to complete improvements shown in the public  
42  
43

1 offering statement for all types of common interest communities. Section 4-  
2 103(a)(2) is not limited to cooperatives. It requires that the public offering  
3 statement contain “a general description of the common interest community,  
4 including to the extent possible, the types, number, and declarant’s schedule of  
5 commencement and completion of construction of buildings, and amenities that  
6 the declarant anticipates including in the common interest community.”  
7

8 (B) under Section 2-110, exercise any development right ~~pursuant to Section 2-~~  
9 ~~110~~;

10 (C) under Section 2-115, maintain sales sales offices, ~~management offices~~  
11 ~~management offices~~, models, and signs ~~advertising the common interest community, and models~~  
12 ~~advertising the common interest community, and models pursuant to Section 2-115~~;

13 **Reporter’s Note (4/2)**  
14

15 ***Recommendation: No Change from Existing UCIOA except addition of cross***  
16 ***reference.*** The February 2021 draft revised the wording of paragraph (C) to  
17 shorten and to conform to the sequence of words in Section 2-115. This draft  
18 returns to the existing text except for the cross reference, which is substantive.

19 ~~(D) use easements through the common elements for the purpose of making~~  
20 ~~improvements within the common interest community or within real estate which may be added~~  
21 ~~to the common interest community;~~

22 (D) use easements through the common elements for the purpose of making  
23 improvements within the common interest community or within real estate which may be added  
24 to the common interest community;

25 **Reporter’s Note (4/2)**  
26

27 ***Recommendation: No Change from Existing UCIOA.*** The February 2021 draft  
28 proposed deletion of paragraph (D) on the ground of redundancy with the SDR in  
29 paragraph (A) and the declarant’s statutory easement under Section 2-116,  
30 *Easement and Use Rights*. The subcommittee recommends retention of paragraph  
31 (D) with no change to the existing language. Although there may be overlap  
32 between the special declarants right to use easements through the common  
33 elements in paragraph (D) with the SDR to “complete improvements” set forth in  
34 original paragraph (A) above and the easement rights created by Section 2-116,  
35 *Easement and Use Rights* (below), the overlap should not cause a problem.

1 **Reporter's Note (1/29)**

2  
3 The declarant's right to easements through the common elements is created by  
4 Section 2-116, *Easement and Use Rights* (see below), whether or not the declarant  
5 reserves easement rights in the declaration. In contrast, special declarant rights  
6 exist only if they are described in the declaration. Section 2-105(a)(8), *Contents of*  
7 *Declaration*. This proposed deletion makes it clear that the declarant's easement  
8 rights arise by operation of law under Section 2-116 and do not depend on express  
9 language in the declaration.

10  
11 (E) under Section 2-120, make the common interest community subject to a  
12 master association ~~pursuant to Section 2-120;~~

13 (F) under Section 2-12, merge or consolidate a common interest community with  
14 ~~another common interest community of the same form of ownership~~ merge or consolidate a  
15 common interest community with another common interest community of the same form of  
16 ownership common interest communities pursuant to Section 2-121;

17 **Reporter's Note (4/2)**

18  
19 ***Recommendation: No Change from Existing UCIOA except addition of cross***  
20 ***reference.*** The February 2021 draft revised the wording of paragraph (F) to  
21 shorten. This draft returns to the existing text except for the cross reference,  
22 which is substantive.

23  
24 **Reporter's Note (1/29)**

25  
26 Discussion by the subcommittee on special declarant rights indicated that special  
27 declarant rights are intended as pointers to the relevant sections of the act that  
28 govern the subject matter. They are not freestanding rights independent of those  
29 sections. Accordingly, the proposed revisions add cross references where  
30 appropriate.

31  
32 The Reporter wonders whether this is sufficient, or whether in some cases  
33 (including this merger paragraph) ambiguity remains. Section 2-121 has nice  
34 rules, the thrust of which is to allow merger when the unit owners of each  
35 community being merged approve the merger by supermajority votes. Good  
36 enough. Nothing in Section 2-121 refers to the declarant(s), the content of the  
37 declaration(s), or any special declarant right. The 2-121 Comments don't add  
38 anything relevant. Consider two situations.

39  
40 *Situation 1.* The declarant has formed two neighboring communities and has not

1 reserved the SDR to merge the communities in the declarations. But the  
2 declarant still holds enough votes in both associations by raw number of unsold  
3 units. May the declarant hold votes in both associations and merge them under  
4 2-121, so that the declarant's failure to reserve the SDRs is irrelevant? The  
5 answer appears to be "yes." Or somehow is the declarant's failure to reserve the  
6 SDR supposed to disenfranchise the declarant from doing this when minority unit  
7 purchasers object?

8  
9 *Situation 2.* Same facts as Situation 1, but here the declarant reserves the SDR to  
10 merge communities in both declarations, using the words of this paragraph with  
11 no further explanation. Obviously, the declarant now has greater rights to merge  
12 the two communities than in Situation 1. If not, the SDR for merger adds nothing  
13 and is superfluous - completely meaningless. But what are those greater rights,  
14 and how can they operate without the prospect of causing unfairness for unit  
15 purchasers? Can the declarant use his SDR to merge the two communities,  
16 overriding the vote percentages in 2-121, when he has sold 80 percent of the units  
17 in Community 1 and 40 percent of the units in Community 2?

18  
19 (G) under Section 3-103(d), appoint or remove ~~any officer of the association or~~  
20 ~~any master association or any executive board member during any period of declarant control~~  
21 any officer of the association or any master association or any executive board member during  
22 any period of declarant control ~~officers and members of an executive board pursuant to Section~~  
23 3-103(d);

24 **Reporter's Note (4/2)**

25  
26 ***Recommendation: No Change from Existing UCIOA except addition of cross***  
27 ***reference.*** The February 2021 draft revised the wording of paragraph (G) to  
28 shorten. This draft returns to the existing text except for the cross reference,  
29 which is substantive.

30  
31 (H) under Section 3-120(c), control any construction, design review, or aesthetic  
32 standards committee or process ~~pursuant to Section 3-120(c);~~

33 **Reporter's Note (4/2)**

34  
35 The Drafting Committee at its Feb. 19 meeting discussed the entire list of special  
36 declarant rights regarding to consider which SDRs should expire when the  
37 declarant no longer owns units or an unexpired development right to add real  
38 estate to the community. The consensus was that all SDRs should expire, with the  
39 possible exception of the above right to control construction and design standards.

1 When the declarant has controlled these matters, unit owners might expect that  
2 control will continue after the declarant has exited. Section 3-120(c) allows the  
3 association to assume control by adopting rules only “if the declaration so  
4 provides.” Query whether a declarant SDR should automatically transfer to the  
5 association?  
6

7 (I) attend meetings of the unit owners and, except during an executive session, the  
8 executive board; and

9 (J) have access to the records of the association to the same extent as a unit  
10 owner.

11  
12 (34) “Time share” ~~means a right to occupy a unit or any of several units during [five] or~~  
13 ~~more separated time periods over a period of at least [five] years, including renewal options,~~  
14 ~~whether or not coupled with an estate or interest in a common interest community or a specified~~  
15 ~~portion thereof~~ [a “time share” defined has the meaning in [cite to definition of “time share” in  
16 appropriate state statute]] [means any ownership rights in or the right to use a unit for a period of  
17 time less than a full year during any given year, and, on a recurring basis for more than one year,  
18 but not necessarily for even if the years are not consecutive years].

19 *Legislative Note: A state that defines “time share” or a similar term such as “timeshare*  
20 *plan” or “time-share interest” in another statute should cross-reference the definition in the first*  
21 *bracketed option. A state that does not define the term should use the second bracketed option.*  
22

### 23 Reporter’s Note (1/29)

24  
25 Another way to do this, maybe cleaner, is to use the new definition with no  
26 brackets or choices in text, and add a legislative note or comment suggesting a  
27 cross reference as an alternative.  
28

29 The proposed amendment to the definition of “time share” responds to Jack  
30 Burton’s comment below and offers two choices. Forty-one states have enacted  
31 statutes that regulate time shares, sometimes as a freestanding act and sometimes  
32 as part of their brokerage act, deceptive trade practices act, or other act. Most  
33 states have designated a state agency that is responsible for time-share regulation.  
34 It is preferable that this Act and the state’s time-share statute define “time share”  
35 the same way. This definition of “time share” may incorporate the time-share

1 statute's definition by cross reference. Of the states that have adopted UCIOA,  
2 Nevada has the most time-shares. Its version of UCIOA exactly reproduces  
3 verbatim the definition contained in the Nevada time-share statute. Nev. Rev.  
4 Stat. Ann. §§ 116.091, 119A.140.

5  
6 For states that do not have a suitable statutory definition, the proposed  
7 amendment includes a definition that tracks closely the key elements of the  
8 current definitions of "time share" in the Florida and California statutes. Florida  
9 and California have more time shares than other states: 31% and 10% of the US  
10 total number of time-share units, respectively. The proposed amendment's  
11 definition also closely resembles the time-share definitions in Hawaii (7%) and  
12 Nevada (6%). The proposed definition also is compatible with the Bankruptcy  
13 Code's long and complicated definition of "timeshare plan." 11 U.S.C. §  
14 101(53D).

### 15 16 **Reporter's Note (10/23)**

17  
18 Jack Burton writes:

19  
20 1-103(43). The act defines time share by borrowing a definition of "time share  
21 estate" from the Model Real Estate Time-Share Act. This act was last revised  
22 almost 40 years ago, in 1982. According to the ULC Reference Book the model  
23 act has been adopted by only 5 states, Louisiana, Massachusetts, Michigan, Rhode  
24 Island, Wisconsin, and Wisconsin. According to the ULC website, the last  
25 enactments occurred in 1988. As far as I am aware the ULC does not keep track  
26 of how many of those states have retained the borrowed definition. The question  
27 is whether we can't find a more widely accepted, and more modern definition of  
28 time share to borrow for our act.

### 29 30 **Comment**

31 \* \* \*

32 26. Definition (35), "Unit," describes a tangible, physical part of the project rather than a  
33 right in, or claim to, a tangible physical part of the property. Therefore, for example, a ~~"time-~~  
34 ~~share"~~ arrangement in which a unit is sold to 12 different persons, each of whom has the right to  
35 ~~occupy the unit for one month~~ the sale of a unit to 5 persons as tenants in common does not  
36 create 12 5 new units – there are, rather, 12 5 owners of the unit. (Under the section on voting  
37 (Section 2-110 3-110), a majority of the ~~time-share owners of a unit~~ tenants in common are  
38 entitled to cast the vote assigned to that unit.)

39  
40 \* \* \*

41  
42 27. Definition (36), "Unit owner," contemplates that a seller under a land installment  
43 contract would remain the unit owner until the contract is fulfilled. As between the seller and the  
44 buyer, various rights and responsibilities must be assigned to the buyer by the contract itself, but



1 the association would continue to look to the seller (for payment of any arrears in common  
2 expense assessments, for example,) as long as the seller holds title.

3  
4 The definition makes it clear that a declarant, so long as he owns units in a common  
5 interest community, is the unit owner of any unit created by the declaration, and is therefore  
6 subject to all of the obligations imposed on other unit owners, including the obligation to pay  
7 common expense assessments. This provision is designed to resolve ambiguities on this point  
8 which have arisen under several existing state statutes.

9  
10 In the special case of a cooperative, the declarant is treated as the owner of a unit or  
11 “potential unit” to which allocated interests have been allocated, until that unit is conveyed to  
12 another.

13  
14 The definition includes the buyers of time shares only if they directly hold an estate or  
15 long-term leasehold in the unit. Then they own the unit as real property and are treated the same  
16 as other multiple owners of a single unit under the [act]. Time-share unit owners may exist in a  
17 condominium, a planned community, or in a cooperative.

18  
19 **Example 1:** A fee simple owner of a condominium unit records a time-share  
20 declaration for her unit and conveys fee simple time-share estates to 12 different persons,  
21 each receiving the right to occupy the unit for one month each year. The deeds of  
22 conveyance are recorded. The 12 owners have time shares “coupled with an estate” as  
23 defined in Section 1-103(34) and they are “unit owners” under Section 1-103(36).  
24 Collectively the 12 owners hold the single allocation of votes allocated to their unit.  
25 Section 2-107(a). A majority in interest of the 12 owners determines how to cast their  
26 unit’s vote unless the declaration for the condominium community or the time-share  
27 declaration expressly otherwise provides. Section 3-110(b)(2).

28  
29 **Example 2:** A cooperative has 10 members, each holding the right to possess one  
30 unit under a proprietary lease. The member of the association who owns Unit 6 records a  
31 time-share declaration for her unit. The member agrees to sell time-share leaseholds to 6  
32 different persons, each of whom will receive the right to occupy the unit for two months  
33 each year. The sales close, with the member turning in her proprietary lease to the  
34 association. The association then cancels this proprietary lease and issues 6 new  
35 proprietary leases to the time-share buyers. The 6 buyers have time shares coupled with a  
36 leasehold as defined in Section 1-103(34) and they are “unit owners” under Section 1-  
37 103(36).

38  
39 When a unit is devoted to time shares that are classified as personal property (e.g., a license, a  
40 membership, or contract rights), then the time-share owners are not unit owners. In this  
41 situation, someone else necessarily holds title to the unit. It may be the developer, a trustee, a  
42 corporation, an association, or another entity. That person is the unit owner, holding title for the  
43 benefit of the time-share owners, and its obligations and rights, including voting rights, are the  
44 same as an entity who owns a regular unit for the benefit of shareholders, members, or other  
45 individuals.

**SECTION 1-104. NO ~~VARIATION BY AGREEMENT~~ NO EVASION BY**

**DECLARANT.** ~~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.

**SECTION 1-104. NO VARIATION BY AGREEMENT.** 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.

## Reporter's Note (4/2)

***Recommendation: No Change from Existing UCIOA; the title and existing language of Section 1-104) should remain with no edits.*** The February 2021 draft revised Section 1-104 to coordinate its scope with a proposed new Section 1-204, *Mandatory and Default Rules*, infra.

**Reporter's Note (1/29 rev. 4/2)**

***[All or part of the following may go into the Comments]*** The second sentence of this section invalidates any device of a declarant that has the intent or effect of evading the limitations or prohibitions of this Act. ~~One example relates to new Section 2-120(i), which guarantees the right of unit owners to elect members of the executive board of a master association commensurate with their financial obligations to pay assessments made by the master association. The revision to the proposed comment *infra* conforms to the recommended revision to the definition of “master association” *supra* to delete the prong that creates a master association when a unit owners association has entered into a cost-sharing arrangement under Section 1-201(9).~~

**Example:** A declarant establishes a common interest community, retaining title to the road system providing access to the community from a nearby highway and to all of the units. The road system is not part of the common elements described in the declaration, and persons other than unit owners are allowed to use the road system. Instead, the declarant grants right-of-way easements to use the roads to the association and the unit owners. The easement instrument obligates the declarant or its assignee to repair and maintain the roads and obligates the unit

owners to pay substantial fees to use the roads that far exceed the declarant's reasonable and projected repair and maintenance costs. ~~See Section 1-209(b), dealing with contractual arrangements for cost sharing between an association and an owner of real estate located outside the common interest community's boundaries. The road system should be property of a master association because it is necessary for the unit owners' use and enjoyment of their residences and they are obligated to pay common expenses for repair and maintenance. This device is invalid because it evades the protections given by the Act to unit owners under Section 2-120(i). The declarant is acting as if it were a master association without formally creating that organization. This device is invalid because the road easements are in fact common elements, even though not described as such in the declaration. See Section 1-103(6), *Definition of common elements*, and Comment 6 (access easement that benefits common interest community "is and should be a common element").~~ In addition, the obligation to pay for use of the roads is in substance a maintenance contract that the association may terminate unilaterally after the period of declarant control ends.

#### Reporter's Note (4/2)

The Drafting Committee at its Feb. 12, 2021, meeting discussed a proposed new section on mandatory and rules, placed in the February 2021 draft of the amended act, in Section 1-204 (see below). That proposed new section stated the act's provisions generally are mandatory and listed 23 provisions (default rules) that the parties were allowed to change. The committee requested a revision of this approach to provide that the act's provisions generally are default (changeable) rules with a list of mandatory provisions. Below in new proposed Section 1-104A, *Mandatory and Default Rules*, is the Reporter's effort; note the list is much longer. UCIOA is more of a consumer protection statute than it is an enabling act that allows parties to do whatever they want, subject to disclosure duties. ***The Reporter and the Chair think this new section cannot possibly be a good idea. Our recommendation at this point in time is to make no change to existing UCIOA -- keep 1-104 supra as-is, despite its shortness and arguable shortcomings, and not attempt a better explanation of which UCIOA rules are mandatory and which ones are default rules.***

**SECTION 1-104A. DEFAULT AND MANDATORY RULES.** The declaration may not waive or vary the provisions of this [act] that give a right to a unit owner or impose an obligation or liability on a declarant, association, or executive board, and concern:

- (1) definitions of terms.
- (2) assessment and taxation of property under Section 1-105.
- (3) consequences of eminent domain under Section 1-107.

- 1        (4) unconscionability under Section 1-112.
- 2        (5) good faith under Section 1-113.
- 3        (6) applicability to common interest communities under part 2 of this article.
- 4        (7) recordation of the declaration under Section 2-101.
- 5        (8) contents of the declaration under Section 2-105.
- 6        (9) leases under Section 2-106.
- 7        (10) allocated interests under Section 2-107.
- 8        (11) limited common elements under Section 2-108.
- 9        (12) plats and plans under Section 2-109.
- 10       (13) development rights under Section 2-110.
- 11       (14) unit boundaries under Section 2-112.
- 12       (15) amendments to the declaration under Sections 2-113 and 2-117.
- 13       (16) building encroachments under Section 2-114.
- 14       (17) declarant's use of property under Section 2-115.
- 15       (18) termination of the common interest community under Section 2-118.
- 16       (19) master associations under Section 2-120.
- 17       (20) merger or consolidation under Section 2-121.
- 18       (21) addition of real estate under Section 2-122.
- 19       (22) master planned communities under Section 2-123.
- 20       (23) unit owners associations under Sections 3-101 and 3-102.
- 21       (24) executive boards under Section 3-103.
- 22       (25) special declarant rights under Sections 3-104.
- 23       (26) termination of contracts and leases under Section 3-105.

- 1       (27) contents of bylaws under Section 3-106.
- 2       (28) declarant's liability for expenses under Section 3-107.
- 3       (29) meetings under Section 3-108.
- 4       (30) voting under Section 3-110.
- 5       (31) liability under Section 3-111.
- 6       (32) conveyance and encumbrance of common elements under Section 3-112.
- 7       (33) insurance under Section 3-113.
- 8       (34) assessments under Section 3-115.
- 9       (35) liens under Sections 3-116 and 3-117.
- 10       (36) association records under Section 3-118.
- 11       (37) rules under Section 3-120.
- 12       (38) notice in Section 3-121.
- 13       (39) removal of officers and directors under Section 3-122.
- 14       (40) budgets and assessments under Section 3-123.
- 15       (41) public offering statements under Sections 4-102 through 4-108 and Section 4-120.
- 16       (42) resales of units under Section 4-109.
- 17       (43) escrow of deposits under Section 4-110.
- 18       (44) releases of liens under Section 4-111.
- 19       (45) conversion buildings under Section 4-112.
- 20       (46) warranties under Sections 4-113 through 4-116.
- 21       (47) declarant's obligation to complete improvements under Section 4-119.
- 22       [(48) obligations with respect to registration under [Article] 5.]

1 [PART] 2

2 APPLICABILITY

3 SECTION 1-201. GENERAL APPLICABILITY TO NEW COMMON  
4 INTEREST COMMUNITIES.

5 Reporter's Note (4/2)

6  
7 This draft drastically shortens Section 1-201 from its content in the Feb. 2021  
8 draft, which contained subsections (a) through (h), by moving all materials that  
9 are transitional to a new Part 3 for Article 1 infra, as well as materials from  
10 Sections 1-204, 1-205, and 1-206 infra that appear to be useful for transitional  
11 purposes. Many ULC acts, especially those approved recently, include a part or  
12 article titled "Transition." This approach shortens the scope sections, removes  
13 clutter, and makes this entire Part 2 cleaner and much easier to follow. Within a  
14 few years after enactment, the transition rules for this Act will have no impact on  
15 persons subject to the legislation. The transition provisions could go to a new  
16 Article 6 at the very end of this Act, but because the preceding Article 5 is  
17 denominated "Optional" and has not been adopted by any state, the location at the  
18 end of this Article 1 seems preferable.

19  
20 ~~(a)~~ Except as otherwise provided in this ~~[part]~~ article, this [act] applies to all common  
21 interest communities ~~created within this state~~ after ~~[the effective date of this act]~~ [act].

22 Reporter's Note (4/26)

23  
24 The Style Committee noted inconsistency throughout this Part and in the new Part  
25 3, *Transition*, as to where the phrase "created within this state" is used following  
26 the term "common interest communities" and "common interest community" and  
27 where this phrase is often omitted. Often the current text only says, "common  
28 interest community created before [date]" or "created after [date]" ***The Style***  
29 ***Committee requests consistency throughout***, unless a substantive difference is  
30 intended with respect where the words "created within this state" are present and  
31 where they are not. Note UCIOA's only application to out-of-state common  
32 interest communities is in Section 1-208, *Applicability to Out-of-State Common*  
33 *Interest Communities*, is to require a declarant to comply with the public offering  
34 statement provisions when a contract of sale is "signed in this state" by any party.  
35 The easiest solution is simply to delete the phrase "created in this state" in the 4  
36 places where it occurs (here and new 1-301, 1-304 and 1-305 infra); Section 1-  
37 208 as it presently stands fully handles the issue by itself.

38 Reporter's Note (1/29)

1 1. This redraft of Article 1, Part 2 of the act implements the decision made by the  
2 Drafting Committee at its November 2020 meeting to make the act generally  
3 applicable to all common interest communities in the State, including those  
4 created before the effective date of the act.

5  
6 2. With respect to state condominium acts, making UCIOA generally applicable  
7 to old condominium communities conforms the act to the practice of most states.  
8 Benjamin Orzeske, ULC Chief Counsel, had a student prepare a 50-state chart. I  
9 reviewed and made a few corrections to this highly useful product. There  
10 presently are 14 Uniform Condominium Act (UCA) states and 9 UCIOA states.  
11 Thus, 23 states have adopted the ULC product to govern condominiums. Of these  
12 23 states, 18 have followed the UCOIA/UCA scope approach, generally applying  
13 the act prospectively and grandfathering preexisting condominiums. Five of the  
14 23 states (Arizona, Louisiana, Minnesota, Nevada, and Virginia) have enacted  
15 non-uniform provisions that make apply their act to all condominiums, whenever  
16 created.

17  
18 The other 27 states with condominium acts that are not UCA or UCIOA are  
19 divided in their approach to scope. A large majority (23 states) apply their  
20 condominium act to all condominiums, regardless of the time of creation. A  
21 minority of 4 states (Georgia, Indiana, Michigan, Utah) have acts that apply  
22 prospectively, grandfathering old condominiums.

23  
24 Most of the states with the largest numbers of condominiums and condominium  
25 residents in the US have condominiums acts that apply to all condominiums,  
26 regardless of time of creation. E.g., Arizona, California, Florida, Hawaii, Illinois,  
27 New York, Nevada.

28  
29 ~~(b) The provisions of [insert reference to all present statutes expressly applicable to-~~  
30 ~~planned communities, condominiums, cooperatives, or horizontal property regimes] do not apply~~  
31 ~~to common interest communities created after [the effective date of this act] that are subject to-~~  
32 ~~this [act]]. Amendments to this [act] apply to all common interest communities created after [the~~  
33 ~~effective date of this act] [act]] or made subject to this [act] by amendment of the declaration of-~~  
34 ~~the common interest community, regardless of when the amendment to this [act] becomes-~~  
35 ~~effective. Amendments to this [act] apply to all common interest communities subject to this~~  
36 ~~[act], regardless of when the amendment becomes effective.~~

37 **Reporter's Note (4/2)**  
38

1 The Drafting Committee at its Feb. 12, 2021, meeting discussed the proposed  
2 deletion from existing UCIOA § 1-201 of the last sentence supra dealing with  
3 amendments. Instead of deletion, in this draft the sentence is edited to fit with the  
4 new scope provisions of this part. Its substance is the same as provisions  
5 sometimes included in other ULC acts to recognize that entities do not have  
6 contractual or vested rights in existing statutes, which inhibit amendment or  
7 repeal. E.g., Uniform Limited Cooperative Association Act § 114, *Reservation of*  
8 *Power to Amend or Repeal*, which provides: “The [legislature of this state] has the  
9 power to amend or repeal all or part of this [act] at any time, and all limited  
10 cooperative associations and foreign cooperatives subject to this [act] are  
11 governed by the amendment or repeal of this [act].”  
12

### 13 **Reporter’s Note (10/23)**

14  
15 At the September 2020 Zoom annual meeting first reading of the act, a concern  
16 from the floor was raised that the last sentence of this sentence may result in an  
17 old common interest community inadvertently becoming subject to UCIOA when  
18 it makes an amendment to its declaration.  
19

### 20 **SECTION 1-202. EXCEPTION FOR SMALL COOPERATIVES.** If a

21 cooperative contains no more than 12 units and is not subject to any development rights, it is  
22 subject only to Sections 1-106 (Applicability of Local Ordinances, Regulations, and Building  
23 Codes) and 1-107 (Eminent Domain) of this [act] unless the declaration provides that the entire  
24 [act] is applicable.

### 25 **SECTION 1-203. EXCEPTION FOR SMALL AND LIMITED EXPENSE**

### 26 **LIABILITY PLANNED COMMUNITIES.**

27 (a) Unless the declaration provides that this entire [act] is applicable, a planned  
28 community that is not subject to any development right is subject only to Sections 1-105, 1-106,  
29 and 1-107, if the community:

30 (1) contains no more than 12 units; or

31 (2) provides in its declaration that the annual average common expense liability  
32 of all units restricted to residential purposes, exclusive of optional user fees and any insurance  
33 premiums paid by the association, may not exceed \$300, as adjusted pursuant to Section 1-115.



(b) The exemption provided in subsection (a)(2) applies only if:

(1) the declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community; and

(2) the declaration provides that the assessment may not be increased above the limitation in subsection (a)(2) during the period of declarant control without the consent of all unit owners.

~~SECTION 1-204. APPLICABILITY TO PRE-EXISTING COMMON-INTEREST COMMUNITIES.~~ **SECTION 1-204. [RESERVED].**

*Section 1-204 is reinserted and is moved to the new Transition part as Section 1-304 infra.*

~~(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.~~

## Reporter's Note (1/29)

1. Section 1-204 of existing UCIOA becomes obsolete if UCIOA is amended to make the act generally applicable to all common interest communities, regardless of their date of formation. At the November 2020 meeting of the Drafting Committee, there was substantial support for replacing Section 1-204 with a new section that details which provisions of UCIOA are mandatory and which are permissive (default rules). New Section 1-204 below provides a list. This new section would overlap with, and supersede, an existing much shorter UCIOA provision in Article 1, Part 1, which states: “Section 1-104. *No Variation by Agreement*. 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.”

2. 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. The proposed new Section 1-204 below follows the

1 second way, which is consistent with UCIOA existing Section 1-207 and the  
2 drafting style generally used in existing ULC acts.

3  
4 **SECTION 1-204. MANDATORY AND DEFAULT RULES.**

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

8 ~~(b) The declaration [or bylaws] governing a common interest community may vary the~~  
9 ~~following provisions in the following listed sections:~~

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

12 ~~(2) Section 1-107(c), which deals with the allocation of proceeds from eminent domain~~  
13 ~~which are attributable to limited common elements.~~

14 ~~(3) Sections 1-202, 1-203, 1-205, 1-206, and 1-207 to the extent that they permit~~  
15 ~~declarants and unit owners to make elections with respect to applicability.~~

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

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

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

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

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

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

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

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

1 common elements:

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

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

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

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

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

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

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

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

17 (20) Section 3-112 (a), (b), and (g) to the extent they allow a change in the percentage of  
18 votes required to convey or encumber common elements.

19 (21) Section 3-113(k), which deals with insurance in non-residential common interest  
20 communities.

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

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

1        ~~SECTION 1-205. APPLICABILITY TO SMALL PREEXISTING~~  
2 ~~COOPERATIVES AND PLANNED COMMUNITIES.~~ SECTION 1-205. [RESERVED].

3        *Section 1-205 is reinserted and moved to the new Transition part as Section 1-*  
4 *305 infra.*

5  
6        ~~If a cooperative or planned community created within this state before [the effective date~~  
7 ~~of this act] contains no more than 12 units and is not subject to any development right, it is~~  
8 ~~subject only to Sections 1-105, 1-106, and 1-107 unless the declaration is amended in conformity~~  
9 ~~with applicable law and with the procedures and requirements of the declaration to take~~  
10 ~~advantage of Section 1-206, in which case, all the sections enumerated in Section 1-204(a) apply~~  
11 ~~to that cooperative or planned community.~~

12        ~~SECTION 1-206. AMENDMENTS TO GOVERNING INSTRUMENTS.~~  
13 SECTION 1-206. [RESERVED].

14        *Section 1-206 is reinserted and moved to the new Transition part as Section 1-306*  
15 *infra.*

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

19        ~~(b) Except as otherwise provided in Section 2-117(i) and (j), an amendment to the~~  
20 ~~declaration, bylaws, or plats and plans authorized by this section must be adopted in conformity~~  
21 ~~with any procedures and requirements for amending the instruments specified by those~~  
22 ~~instruments or, if there are none, in conformity with the amendment procedures of this [act]. If~~  
23 ~~an amendment grants to a person a right, power, or privilege permitted by this [act], any~~  
24 ~~correlative obligation, liability, or restriction in this [act] also applies to the person.~~

25                                      **Reporter's Note (1/29)**

1  
2 Section 1-206 becomes obsolete if UCIOA is amended to make the act generally  
3 applicable to all common interest communities, regardless of their date of  
4 formation. Note that certain common interest communities that are not otherwise  
5 made subject to UCIOA have opt-in rights under Section 1-202, *Exception for*  
6 *Small Cooperatives*; Section 1-203, *Exception for Small and Limited Expense*  
7 *Liability Planned Communities*; and Section 1-207, *Applicability to*  
8 *Nonresidential and Mixed-use Common Interest Communities*.  
9

10 **SECTION ~~1-207~~, ~~1-205~~, 1-207. APPLICABILITY TO NONRESIDENTIAL AND**  
11 **MIXED-USE COMMON INTEREST COMMUNITIES.**

12 (a) Except as otherwise provided in subsection (d), this section applies only to a  
13 common interest community in which all units are restricted exclusively to nonresidential  
14 purposes.

15 (b) A nonresidential common interest community is not subject to this [act] except to  
16 the extent the declaration provides that:

17 (1) this entire [act] applies to the community;

18 (2) [Articles] 1 and 2 apply to the community; or

19 (3) in the case of a planned community or a cooperative, only Sections 1-105, 1-  
20 106, and 1-107 apply to the community.

21 (c) If this entire [act] applies to a nonresidential common interest community, the  
22 declaration may also require, subject to Section 1-112, that:

23 (1) notwithstanding Section 3-105, any management, maintenance, operations,  
24 or employment contract, lease of recreational or parking areas or facilities, and any other contract  
25 or lease between the association and a declarant or an affiliate of a declarant continues in force  
26 after the declarant turns over control of the association; and

27 (2) notwithstanding Section 1-104, purchasers of units must execute proxies,  
28 powers of attorney, or similar devices in favor of the declarant regarding particular matters

enumerated in those instruments.

(d) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this [act] unless the units that may be used for residential purposes would comprise a common interest community that would be subject to this [act] in the absence of the nonresidential units or the declaration provides that this [act] applies as provided in subsection (b) or (c).

**SECTION ~~1-208.~~ 1-206. 1-208 APPLICABILITY TO OUT-OF-STATE COMMON INTEREST COMMUNITIES.** This [act] does not apply to a common interest community located outside this state, but Sections 4-102 and 4-103 and, to the extent applicable, Sections 4-104 through 4-106, apply to a contract for the disposition of a unit in that common interest community signed in this state by any party unless exempt under Section 4-101(b) [and the agency regulation provisions under [Article] 5 apply to any offering thereof in this state].

**SECTION ~~1-209.~~ 1-207 1-209 OTHER EXEMPT REAL ESTATE ARRANGEMENTS.**

(a) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be

1 included in the periodic budget for the common interest community, and the arrangement must  
2 be disclosed in all public offering statements and resale certificates required by this [act].

3 **SECTION ~~1-210. 1-208~~ 1-210 OTHER EXEMPT COVENANTS.** A covenant that  
4 requires the owners of separately owned parcels of real estate to share costs or other obligations  
5 associated with a party wall, driveway, well, or other similar use does not create a common  
6 interest community unless the owners otherwise agree.

7 **[PART] 3**

8 **TRANSITION**

9 **SECTION 1-301. EFFECTIVE DATE.**

10 (a) This [act] takes effect ...

11 (b) Before [all-inclusive date], this [act] governs only:

12 (1) a common interest community created on or after [the effective date of this  
13 [act]]; and

14 (2) a common interest community created before [the effective date of this [act]]  
15 ~~which that amends its declaration to elects~~ to be subject to this [act] ~~by amending its declaration.~~

16 ~~(b) (c) Except as otherwise provided in subsection (e), on~~ On and after [all-inclusive date]  
17 this [act] governs all common interest communities ~~created within this state.~~

18 **Legislative Note:** The “all-inclusive” date should be at least one year after the effective  
19 date of the act, but no more than three years. For a state that previously adopted UCIOA (2014)  
20 or an earlier version of UCIOA, the effective date in subsection (b) should be the effective date  
21 stated in the earlier adoption.

22  
23 **Reporter’s Note (1/29 rev. 4/2)**

24  
25 1. Subsections (a) and (b) provide effective-date rules using the technique of an  
26 “all-inclusive date” found in many ULC acts dealing with corporations and other  
27 business organizations. A legislature note should be added to offer advice on  
28 selection of the all-inclusive date. Probably it should be at least 2-years1 year and  
29 no more than 5-3 years after the effective date of the act. The length should



1 depend on how long it should take for people who are responsible for running the  
2 affairs of associations (e.g., executive boards and in many cases management  
3 companies) to become aware of and familiar with the new act.  
4

5 2. The Drafting Committee at its Feb. 12, 2021, meeting discussed subsection (b)  
6 dealing with the all-inclusive date with the consensus that the recommended range  
7 should be 1-3 years rather than 2-5 years.  
8

9 ~~(e) (1) The declaration of any common interest community created before [the effective-~~  
10 ~~date of this [act]] may be amended to provide that this [act] shall not apply to the common-~~  
11 ~~interest community. An amendment authorized by this subsection must be adopted in-~~  
12 ~~conformity with the requirements of this subsection, which supersede any provisions in the-~~  
13 ~~declaration or bylaws of the common interest community.~~  
14 ~~\_\_\_\_\_ (2) The executive board may in its discretion propose an amendment to the unit owners. \_\_\_\_\_~~  
15 ~~In this event, the board shall submit the proposed amendment for a vote by the unit owners under~~  
16 ~~Section 3-110. The amendment shall be deemed approved if approved by a vote of more than-~~  
17 ~~50 percent of the votes in the association.~~  
18 ~~\_\_\_\_\_ [Choice 1 for paragraph (3): (3) This [act] does not apply to a common interest~~  
19 ~~community that approves an amendment pursuant to this subsection before [all-inclusive date].]~~  
20 ~~\_\_\_\_\_ [Choice 2 for paragraph (3): (3) If a common interest community approves an~~  
21 ~~amendment pursuant to this subsection before [all-inclusive date], this [act] does not apply to a~~  
22 ~~common interest community until 20 years after [all-inclusive date]. On [all-inclusive date + 20~~  
23 ~~years], this [act] governs a common interest community that approves an amendment pursuant to~~  
24 ~~this subsection.]~~

#### 25 **Reporter's Note (4/2)**

26  
27 The Drafting Committee at its Feb. 12, 2021, meeting discussed the opt-out  
28 provision supra (shown as Section 1-201(e) in the Feb. draft) and agreed to delete  
29 it from the statute. Instead, a comment will offer proposed language for any state  
30 that decides an opt-out is desirable due to particular local circumstances.

1 **Reporter's Note (1/29)**

2  
3 Subsection (e) contains an opt-out provision for preexisting common interest  
4 communities. At the November 2020 meeting of the Drafting Committee, there  
5 appeared to be support for including an opt-out provision. At the meeting there  
6 also was brief discussion as to whether the opt-out ought to be perpetual or  
7 limited to a time period. The two choices shown for paragraph (3) of subsection  
8 (e) contain alternatives dealing with this issue of time.  
9

10 **Proposed new Comment**

11  
12 If a state decides that full applicability of the act to preexisting common interest  
13 communities is not appropriate, the state may decide to include an opt-out  
14 procedure in this section reading as follows: "This [act] does not apply to a  
15 common interest community created before [the effective date of this [act]] which  
16 approves an amendment under this subsection before [all-inclusive date]. An  
17 amendment authorized by this subsection must be adopted in conformity with the  
18 requirements of this subsection, which supersede any provisions in the declaration  
19 or bylaws of the common interest community. The executive board may in its  
20 discretion propose an amendment to the unit owners. In this event, the board shall  
21 submit the proposed amendment for a vote by the unit owners under Section 3-  
22 110. Approval requires a vote of more than 50 percent of the votes in the  
23 association."  
24

25 **SECTION 1-302. PRIOR STATUTES.**

26 The provisions of [insert reference to all present statutes expressly applicable to planned  
27 communities, condominiums, cooperatives, or horizontal property regimes]:

28 (1) do not apply to common interest communities ~~created after [the effective date of this~~  
29 ~~act]~~ that are subject to this [act].; and

30 (2) apply to common interest communities created before [the effective date of this [act]]  
31 until the community becomes subject to this [act].

32 **Legislative Note:** For a state that previously adopted UCIOA (2014) or an earlier  
33 version of UCIOA, the effective date in this section should be the effective date stated in the  
34 earlier adoption.  
35

36 **Reporter's Note (4/26)**

37  
38 This section moves the existing second sentence from Section 1-201 and keeps it  
39 without change as paragraph (1). The existing text in Section 1-201 does not

1 expressly address retention of the statutes for preexisting communities, although  
2 obviously that is implied. New paragraph (2) says this directly. A preexisting  
3 common interest community remains subject to the old statutes until the “all-  
4 inclusive date” or until it makes an election to adopt UCIOA under Section 1-202,  
5 1-203, or 1-301(a)(2).

6  
7 **Question:** Should we add a Legislative Note with advice about repeal (or not) of  
8 prior statutes? Under the new proposed scope provisions, all condominiums  
9 regardless of size will become subject to UCIOA no later than the all-inclusive  
10 date. Thus, repeal of present older condominium statutes seems justified.

11  
12 **SECTION 1-303. RETROACTIVE APPLICATION.**

13 ~~(a) (f) A common interest community created before [the effective date of this [act]]~~  
14 ~~which becomes subject to this [act] is not required to amend its declaration or bylaws to conform~~  
15 ~~to this [act]. This act does not invalidate existing provisions of the declaration and bylaws;~~  
16 ~~provided, existing provisions that do not comply with this [act] remain enforceable only to the~~  
17 ~~extent that Section 1-204 allows variation of the provisions of this [act].~~

18 ~~(a) Subject to subsection (b), a provision of a declaration or bylaws adopted before [the~~  
19 ~~effective date of this [act]] that is inconsistent with a mandatory provision of this [act] is invalid.~~  
20 ~~unless the provision is expressly permitted under Section 1-104 *for better to say “expressly*~~  
21 ~~*permitted under this [act]?].*~~

22 ~~(b) This [act] does not require a common interest community created before [the effective~~  
23 ~~date of this [act]] with a declaration that was valid when recorded to prepare or amend plats and~~  
24 ~~plans.~~

25 **Reporter’s Note (4/2)**

26  
27 1. The Drafting Committee at its Feb. 12, 2021, meeting discussed subsection (a)  
28 (shown as Section 1-201(f) in the Feb. draft) at its Feb. 12, 2021, meeting, with  
29 the consensus that (i) the text should not directly state that an amendment to the  
30 declaration or bylaws is not required and (ii) the text should expressly invalidate  
31 provisions that do not comply with UCIOA’s mandatory rules.

32  
33 2. Plats and plans are part of the declaration. The Drafting Committee also

1 decided that a pre-existing common interest community should not have to amend  
2 plats and plans that were valid when recorded.

3  
4 **Reporter's Note (1/29)**  
5

6 1. Subsection (f) deals with the declaration, including plats and plans, and bylaws  
7 of preexisting common interest communities. Many preexisting common interest  
8 communities that become subject to the act may want to study their governing  
9 documents and amend or restate them to comply with UCIOA, but the first  
10 sentence of subsection (f) makes this unnecessary.  
11

12 2. As subsection (f) states, any provisions of the declaration and bylaws that are  
13 rendered unenforceable by the act are – actually – unenforceable. This follows the  
14 pattern of obsolete statutes and regulations well-understood by lawyers. Often  
15 legislatures and agencies do not revise statutes and regulations to take account of  
16 legal developments, such as judicial decisions and other changes in law, that make  
17 certain provisions obsolete or unenforceable. Lawyers and other persons need to  
18 understand which provisions are still active and relevant, and which are not.  
19

20 3. The reference in subsection (f) to newly drafted Section 1-204, *Mandatory and*  
21 *Default Rules*, means that existing provisions of the declaration and bylaws that  
22 are inconsistent with the rules and procedures of UCIOA remain effective if  
23 UCIOA allows their variation by content in the declaration or bylaws. For  
24 example, if the preexisting declaration provides that termination of the common  
25 interest community requires the unanimous approval of unit owners, this  
26 provision supersedes the rule in Section 2-118 that authorizes termination by a  
27 vote of 80 percent of unit owners. The preexisting community does not have to  
28 amend its declaration to restate its unanimity provision.  
29

30 ~~(c) (g) This [act] does not invalidate actions an action validly taken, and/or transactions~~  
31 ~~validly entered into, before [the effective date of this [act]] takes effect.~~

32 ~~(h) This [act] shall not alter the rights and obligations of declarants of common interest~~  
33 ~~communities created before [the effective date of this [act]].~~

34 *Legislative Note: For a state that previously adopted UCIOA (2014) or an earlier*  
35 *version of UCIOA, the effective date in this section should be the effective date stated in the*  
36 *earlier adoption.*  
37

38 **Reporter's Note (4/2)**  
39

40 The Drafting Committee discussed subsection (h) at its Feb. 12, 2021, meeting,  
41 and decided that is not necessary.  
42

1           **SECTION 1-204 1-304. APPLICABILITY TO PRE-EXISTING COMMON**  
2 **INTEREST COMMUNITIES.**

3 ***note - this is existing 1-204 edited to make it apply only until the all-inclusive date***  
4

5                           **Reporter's Note (4/2)**  
6

7           The February 2021 draft deleted Section 1-204 in its entirety and substituted a  
8           new Section 1-204, *Mandatory and Default Rules*. The Drafting Committee  
9           discussed this change at its Feb. 12, 2021, meeting, with the consensus that  
10          Section 1-204 should be retained for the transitional purpose of preserving its  
11          rules for pre-existing common interest communities before they become fully  
12          subject to the Act at the all-inclusive date stated in Section 1-201. Below is the re-  
13          insertion of Section 1-204 with proposed edits.  
14

15          (a) Except for a cooperative or planned community described in Section ~~1-205~~1-305 or  
16          a nonresidential common interest community described in Section 1-207, the following sections  
17          apply until [all-inclusive date] to a common interest community created ~~in this state~~ before [the  
18          effective date of this [act]]:

19                   (1) Section 1-105;

20                   (2) Section 1-106;

21                   (3) Section 1-107;

22                   (4) Section 1-206;

23                   (5) Section 2-102;

24                   (6) Section 2-103;

25                   (7) Section 2-104;

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

27                   (9) Section 2-121;

28                   (10) Section 2-124;

29                   (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~~ listed in subsection (a):  
(1) apply only to events and circumstances occurring after [the effective date of  
this [act]]; and  
(2) before [insert all-inclusive date], do not invalidate existing provisions of the  
[declaration, bylaws, or plats or plans] of those common interest communities.

**SECTION 1-205 1-305. APPLICABILITY TO SMALL PREEXISTING  
COOPERATIVES AND PLANNED COMMUNITIES.**

*note - this is existing 1-205 edited to make it apply only until the all-inclusive date*

**Reporter's Note (4/2)**

The February 2021 draft deleted Section 1-205 in its entirety. The Drafting Committee discussed this change at its Feb. 12, 2021, meeting, with the consensus that Section 1-205 should be retained for the transitional purpose of preserving its rules for pre-existing common interest communities before they become fully subject to the Act at the all-inclusive date stated in Section 1-201. Below is the re-insertion of Section 1-205 with a proposed edit.

If a cooperative or planned community created ~~within this state~~ before [the effective date of this ~~act~~][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 until [all-inclusive date] unless the declaration

1 is amended in conformity with applicable law and with the procedures and requirements of the  
2 declaration to take advantage of Section ~~1-206~~ 1-306, in which case, all the sections enumerated  
3 in Section ~~1-204(a)~~ 1-304(a) apply to that cooperative or planned community.

4 **SECTION 1-206 1-306. AMENDMENTS TO GOVERNING INSTRUMENTS.**

5 ***note - this is existing 1-206 edited to make it apply only until the all-inclusive date***

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

10 (b) Except as otherwise provided in Section 2-117(i) and (j), an amendment to the  
11 declaration, bylaws, or plats and plans authorized by this section must be adopted in conformity  
12 with any procedures and requirements for amending the instruments specified by those  
13 instruments or, if there are none, in conformity with the amendment procedures of this [act]. If  
14 an amendment grants to a person a right, power, or privilege permitted by this [act], any  
15 correlative obligation, liability, or restriction in this [act] also applies to the person.

16 ***Legislative Note: For a state that previously adopted UCIOA (2014) or an earlier***  
17 ***version of UCIOA, the effective date in this section should be the effective date stated in the***  
18 ***earlier adoption.***

19  
20 **[ARTICLE] 2**

21 **CREATION, ALTERATION, AND**

22 **TERMINATION OF COMMON INTEREST COMMUNITIES**

23 \* \* \*

24 **SECTION 2-105. CONTENTS OF DECLARATION.**

25 (a) The declaration must contain:

1           \* \* \*

2                     ~~(6) (A) a description of any limited common elements and the unit or units to~~  
3 ~~which each limited common element is allocated, other than those specified in Sections 2-102(2)~~  
4 ~~and (4), as provided [and in Section 2-109(b)(10)];~~ and

5                     ~~(B) in a planned community, any real estate that is or must become common-~~  
6 ~~elements;~~

7                     (6) a description of any limited common elements, other than those specified in  
8 Section 2-102(2) and (4), as provided in Section 2-109(b)(10) and, in a planned community, any  
9 real estate that is or must become common elements;

10                                     **Reporter's Note (4/2)**

11  
12           ***Recommendation: No Change from Existing UCIOA; the existing language in***  
13 ***paragraph (6) remains in UCIOA with no edits.*** The February 2021 draft revised  
14 paragraph (6) to consolidate content from Section 2-108(a). The consensus of the  
15 Drafting Committee at its Feb. 12, 2021, meeting is that the change is not  
16 necessary.

17  
18                                     **Reporter's Note (1/29)**

19  
20           This proposed revision consolidates paragraph (6) with related content from the  
21 first sentence of Section 2-108(a), *Limited Common Elements*. Should we keep or  
22 delete the reference to Section 2-109(b)(10)? It's not clear to me how paragraph  
23 (6) and Section 2-109(b)(10) are intended to fit together. Section 2-109(b)(10)  
24 requires the plat to show "the approximate location and dimensions of any  
25 porches, decks, balconies, garages, or patios allocated as limited common  
26 elements, and show or contain a narrative description of any other limited  
27 common elements." Comment 9 to Section 2-109, *Plats and Plans*, states: "The  
28 1994 amendments to subsections (6), (7), and (10) seek to balance the need for  
29 disclosure and certainty in understanding what a unit owner 'owns,' with the  
30 practical limitations of the surveying profession. The balance struck in the 1994  
31 amendments to this section requires that the plat or survey – as a minimum –  
32 actually show only the kinds of limited common elements that most people would  
33 understand to be an important appurtenance to their units. All other kinds of  
34 limited common elements – parking spaces, window boxes, etc., – may be either  
35 shown on the survey or simply described in words." Note, the plat is part of the  
36 declaration. Section 2-109(a). If a limited common element is described in the  
37 plat, is another description in the text part of declaration required? May the



1 declarant choose to describe some limited common elements only in the text part  
2 of the declaration, and others only in the plat?

3  
4 \* \* \*

5 (8) a description of any ~~development right and other~~ development right and any other  
6 special declarant rights reserved by the declarant, ~~together with a legally sufficient description of~~  
7 ~~the real estate to which each of those rights applies, and~~ a time limit within which each of those  
8 rights must be exercised, and a legally sufficient description of the real estate to which each  
9 development right applies any other conditions or limitations under which the rights may be  
10 exercised or will lapse;

11  
12 **Reporter's Note (4/2)**  
13

14 The subcommittee recommends the proposed edit above, which changes a few  
15 words as possible while making the substantive change to require a legal  
16 description only for real estate subject to development rights. The final clause  
17 from the February 2021 draft, beginning with "and any other conditions", is not in  
18 original paragraph (8); these words were moved in the February 2021 draft from  
19 paragraph (10) infra.

20  
21 **Reporter's Note (3/2)**  
22

23 Existing paragraph (8) requires a legal description of a parcel to which each  
24 special declarant right is appurtenant, including the intangible rights to control  
25 architectural review committees and to appoint and remove officers and board  
26 members. Under revised Section 3-104(a) below, special declarant rights are  
27 automatically appurtenant to all real estate owned by the declarant in the common  
28 interest community. Accordingly, the proposed revision to this paragraph (8)  
29 deletes the requirement that the declaration describe parcels of real estate to which  
30 special declarant rights are connected. The Drafting Committee discussed the  
31 issue at its Feb. 2021 drafting committee meeting, with the consensus that a legal  
32 description should be required for any parcels that are subject to development  
33 rights.

34  
35 ~~(9) if any development right may be exercised with respect to different parcels of~~  
36 ~~real estate at different times, a statement to that effect together with:~~

1 ~~\_\_\_\_\_ (A) either a statement fixing the boundaries of those portions parcels and~~  
2 ~~regulating the order in which those portions parcels may be subjected to the exercise of each~~  
3 ~~development right or a statement that no assurances are made in those regards; and~~

4 ~~\_\_\_\_\_ (B) a statement as to whether, if any development right is exercised in any~~  
5 ~~portion of the real estate subject to that development right parcel, that development right must be~~  
6 ~~exercised in all or in any other portion of the remainder of that real estate parcels;~~

7 ~~\_\_\_\_\_ (10) any other conditions or limitations under which the rights described in~~  
8 ~~paragraph (8) may be exercised or will lapse;~~

9 \* \* \*

10 **Reporter's Note (4/2)**

11  
12 ***Recommendation: No Change from Existing UCIOA for paragraphs (9) and***  
13 ***(10).*** In paragraph (9) the words “portions” are not replaced with “parcel” to  
14 achieve consistency of usage, and the content from paragraph (10) is not moved to  
15 paragraph (8).  
16

17 **SECTION 2-108. LIMITED COMMON ELEMENTS.**

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

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

25 **Reporter's Note (4/2)**

26  
27 ***Recommendation: No Change from Existing UCIOA; the existing language in***  
28 ***subsection (a) remains in UCIOA with no edits.*** The February 2021 draft edited  
29 subsection (a) and moved some of its content to Section 2-105(a)(6). The

1 consensus of the Drafting Committee at its Feb. 12, 2021, meeting is that the  
2 change is not necessary.

3  
4 **Reporter's Note (1/29)**  
5

6 At the November 2020 Drafting Committee meeting, a revision was  
7 recommended to the first sentence of subsection (a) to indicate that the limited  
8 common element must be allocated to “fewer than all” the units. Instead of this  
9 change, this draft recommends deletion of the sentence. The sentence is redundant  
10 with (and possibly not fully consistent with) Section 2-105, *Contents of*  
11 *Declaration*, which states: “The declaration must contain: . . . (6) a description of  
12 any limited common elements, other than those specified in Section 2-102(2) and  
13 (4), as provided in Section 2-109(b)(10) and, in a planned community, any real  
14 estate that is or must become common elements.” A revision is also proposed to  
15 Section 2-105(a)(6) (see above) that combines and reconciles the two provisions.  
16

17 (b) ~~Except as the declaration otherwise provides, Unless the declaration provides~~  
18 ~~otherwise, all or part of a limited common element may be reallocated only by an amendment to~~  
19 ~~the declaration executed by the unit owners between or among whose units owners of the units~~  
20 ~~affected by the reallocation. is made. Except as the declaration otherwise provides, a limited~~  
21 ~~common element may be reallocated by an amendment to the declaration executed by the unit~~  
22 ~~owners between or among whose units the reallocation is made. The persons executing the~~  
23 ~~amendment shall provide a copy thereof to the association, which shall record it. The~~  
24 ~~amendment must be recorded in the names of the parties and the common interest community.~~

25 **Reporter's Note (4/2)**  
26

27 Style edits were made to the first sentence of subsection (b) in the 2020 annual  
28 meeting draft and by the Style Committee. The consensus of the Drafting  
29 Committee at its Feb. 12 meeting is to minimize Style edits to the draft. Thus, this  
30 draft restores the first sentence to its original. The content from the next 2  
31 sentences is moved to subsection (d) infra where with additional language it  
32 applies to amendments made under both this subsection (b) (reallocation of  
33 limited common element) and subsection (c) (change from common element to  
34 limited common element); this move avoids having to say the same thing twice.  
35

36 **Reporter's Note (1/29)**  
37

38 The subcommittee on limited common elements recommends that the Drafting

Committee consider 3 choices for subsection (c), which are laid out below:

1. Make no major change to this section and allow the declaration to establish a reasonable process. The declaration may provide a process for converting general common elements to limited common elements; if not, the general rules for amending the declaration apply.

2. Revise this section along the lines proposed in the November 2020 draft to make it easier to reallocate a common element as a limited common element. A unit owner requests that the executive board approve a reallocation. The board puts the request on its meeting agenda. Unit owners receive notice of all executive board meeting agendas. If the board approves the request, the reallocation is effective only after the board notifies all unit owners of its action. If a unit owner objects, the reallocation is effective only if the board submits the request to the unit owners for approval. Approval requires an affirmative vote of 67 percent with no quorum requirement.

3. This choice follows Choice 2 above but limits the process to less than all common elements. The subcommittee thinks the limitations or variables likely to work best are common elements that are: (a) contiguous to the unit of the requesting owner; (b) inside a building; and (c) of no practical use to other unit owners. Different combinations of the above and other variations are of course possible.

(c) 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 an amendment to the declaration. A

unit owner may request ~~that~~ the executive board ~~to~~ amend the declaration to allocate ~~all or part~~

~~or a common element~~ as a limited common element for the exclusive use of the owner's unit, ~~all~~

~~or part of a common element. The board shall put the request on the agenda of a board meeting.~~

~~In~~ The board may prescribe in the amendment ~~the executive board may prescribe conditions a~~

~~condition~~ or ~~obligations obligation~~, including ~~obligations an obligation~~ to maintain the new

limited common element ~~and or~~ to pay ~~fees or charges a fee or charge~~ to the association. If the

board approves the amendment, the board shall give notice ~~of its action~~ to the unit owners ~~of its~~

~~action and include a statement that unit owners may object in a record to the proposed~~

1 amendment not later than 30 days after delivery of the notice. The amendment ~~is-becomes~~  
2 effective if the board ~~receives no writtendoes not receive a timely~~ objection ~~to the proposed~~  
3 ~~amendment before the board meeting or no later than 30 days after delivery of notice. If an-a~~  
4 ~~timely~~ objection is received, the amendment ~~is-approved~~ becomes effective only if the unit  
5 owners vote under Section 3-110, whether or not a quorum is present, to approve the amendment  
6 by a vote of at least {67} percent of the votes cast, including ~~at least {67}~~ percent of the votes cast  
7 and allocated to units not owned by the declarant. ~~On approval of the amendment~~ If the  
8 ~~amendment becomes effective~~, the association and the owner of the benefitted unit shall execute  
9 the amendment.

#### Reporter's Note (4/2)

The Drafting Committee discussed subsection (c) at its Feb. 12, 2021, meeting and the 3 choices recommended for consideration by the subcommittee (see Reporter's Note 1/29 supra). The Drafting Committee decided that Choice 2 is preferable; the revision to subsection (c) selects Choice 2 with word edits.

(d) The association shall record an amendment to the declaration made under this section  
in the manner provided in Section 2-117(e). The amendment must be indexed in the names of the  
parties and the association as grantor or grantee, as appropriate. If ~~an~~ the amendment changes  
any information ~~in a plat or plan shown in plats or plans~~ concerning a limited common element  
~~described in Section 2-109(b)(10)~~ other than a common wall between units, the association shall  
prepare and record ~~a~~ revised plats or plans.

#### Reporter's Note (4/2)

1. At the Feb. 12, 2021, meeting of the Drafting Committee the suggestion was made to add a cross reference to Section 2-117(e), *Amendment of Declaration*, in subsection (d). Section 2-117(e) states: "Amendments to the declaration required by this [act] to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association." Is the cross reference necessary? Without it,

1 subsection (b) might be read to authorize an amendment signed only by the unit  
2 owners, with no signature by an officer.  
3

4 2. The cross reference to Section 2-109(b)(10) is deleted because it is not  
5 substantive. Section 2-109(b)(10) states that “each plat must show or project . . .  
6 the approximate location and dimensions of any porches, decks, balconies,  
7 garages, or patios allocated as limited common elements, and show or contain a  
8 narrative description of any other limited common elements.”  
9

### 10 **Reporter’s Note (1/29)**

11

12 The subcommittee on limited common elements recommends that the Drafting  
13 Committee consider 3 choices for subsection (c), which are laid out below:  
14

15 1. Make no major change to this section and allow the declaration to establish a  
16 reasonable process. The declaration may provide a process for converting general  
17 common elements to limited common elements; if not, the general rules for  
18 amending the declaration apply.  
19

20 2. Revise this section along the lines proposed in the November 2020 draft to  
21 make it easier to reallocate a common element as a limited common element. A  
22 unit owner requests that the executive board approve a reallocation. The board  
23 puts the request on its meeting agenda. Unit owners receive notice of all executive  
24 board meeting agendas. If the board approves the request, the reallocation is  
25 effective only after the board notifies all unit owners of its action. If a unit owner  
26 objects, the reallocation is effective only if the board submits the request to the  
27 unit owners for approval. Approval requires an affirmative vote of 67 percent  
28 with no quorum requirement.  
29

30 3. This choice follows Choice 2 above but limits the process to less than all  
31 common elements. The subcommittee thinks the limitations or variables likely to  
32 work best are common elements that are: (a) contiguous to the unit of the  
33 requesting owner; (b) inside a building; and (c) of no practical use to other unit  
34 owners. Different combinations of the above and other variations are of course  
35 possible.  
36

### 37 **Reporter’s Note (10/23)**

38

39 Observations from our August 2020 informal Zoom session on the act included:  
40

41 (1) Consider removing the size limitation. Is it necessary? If the space is not useful to  
42 anyone other than the requesting unit owner, why require a vote, whether or not the area  
43 exceeds 50 feet?

44 (2) The proposed amendment to this section borrows language from a similar provision,  
45 Section 2-112, which requires that the amendment to the declaration include “words of  
46 conveyance between the parties.” This requirement is not included in Section 2-108.

Should it be?

(3) All unit owners affected by conversions of space should get copies of an amendment to the declaration and other documents.

(4) In some states (e.g., Arizona, Colorado) associations commonly transfer rights to outside spaces, including yards, to individual unit owners who agree to undertake responsibility for maintenance, and watering. This saves the association money. Should the Drafting Committee permit such transfers?

At the September 2020 Zoom annual meeting first reading of the act, a concern was raised as to the 50-foot size limit – whether it was too small, and whether a size limit is necessary.

## **SECTION 2-112. RELOCATION OF UNIT BOUNDARIES.**

(a) ~~Subject to the provisions of the declaration and other provisions of law, the~~ The boundaries between adjoining units may be relocated only by an amendment to the declaration upon application to the ~~association~~ executive board by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. ~~Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the declaration~~ otherwise provides— ~~otherwise,~~ the association shall prepare an amendment that identifies the units involved and states the reallocations. unless the executive board determines, not later than 30 days after receipt of the application, that the reallocation is unreasonable.

Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations.

~~The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and [in the grantee's index] in the name of the association.~~

## Reporter's Note (4/2)

The proposed edits to subsection (a) in prior drafts were all Style edits, made before the 2020 annual meeting draft, with one exception. The proposed deletion of the introductory words “Subject to the provisions of the declaration and other provisions of law” is substantive. This issue is whether the rule of this section is a mandatory rule or a default rule. For discussion of the issues, see Reporter’s note 2 dated 7/31/2020 *infra*.

The consensus of the Drafting Committee at its Feb. 12, 2021, meeting is to minimize Style edits to the draft. Thus, this draft restores the original language of the first 3 sentences of subsection (a) and also proposes reinsertion of the introductory words “Subject to the provisions of the declaration and other provisions of law” on the ground that the change is not sufficiently important. The last sentence of this subsection dealing with preparation and recording of the amendment is moved to subsection (c) *infra* where it applies to amendments made under both this subsection (a) (relocation by agreement of unit owners) and subsection (b) (relocation by executive board); this move avoids having to say the same thing twice.

~~(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. 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. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them,~~



1 and on recordation be indexed in the name of the unit owner and the association as grantor or  
2 grantee, as appropriate.

3 (b) ~~The boundary of a unit may be relocated to incorporate all or part of a common~~  
4 ~~element within the unit only by an amendment to the declaration on application to the executive~~  
5 ~~board by the owner of the unit. A unit owner may request ~~that~~ the executive board to amend the~~  
6 ~~declaration to include ~~within the owner's unit~~ all or part of a common element ~~within the~~~~  
7 ~~owner's unit ~~[that is contiguous to the owner's unit] [and part of a building] [and of no~~~~  
8 ~~*practical use to a unit owner other than the unit owner requesting the allocation*].~~

9 **Reporter's Note (4/2)**

10  
11 The Drafting Committee discussed subsection (b) at its Feb. 12, 2021, meeting  
12 and decided not to add the restrictive language limiting what types of common  
13 elements may be added to an owner's unit. This is consistent with the policy  
14 change made for changing common elements to limited common elements in  
15 Section 2-108(c) supra.

16  
17 **Reporter's Note (1/29)**

18  
19 At the November 2020 meeting of the Drafting Committee, the question was  
20 raised whether this subsection (b) allows a unit boundary relocation to add space  
21 outside a building, such as a parking space. The new bracketed choices would  
22 limit the types of common elements eligible for the executive board process.  
23 They are the same as those presented for consideration in this draft for converting  
24 common elements to limited common elements under Section 2-108 above.

25  
26 The ~~executive~~ board may prescribe in the amendment ~~a fees~~ or charges payable by the unit  
27 owner to the association in connection with the relocation, ~~an increase in the allocated interest of~~  
28 ~~the unit pursuant to Section 2-107, or both. [Unless the declaration otherwise provides,] the~~  
29 ~~executive~~ board may approve the amendment only if the unit owners vote ~~under Section 3-110,~~  
30 ~~whether or not a quorum is present,~~ to approve the amendment by a vote ~~under Section 3-110,~~  
31 ~~whether or not a quorum is present,~~ of at least ~~[67]~~ percent of the votes cast, including ~~at least~~  
32 ~~[67]~~ percent of the votes cast and allocated to units not owned by the declarant. ~~On approval of~~

~~the amendment, the association and the owner of the benefitted unit shall execute the amendment.~~

### Reporter's Note (4/26)

1. The Drafting Committee at its Feb. 12, 2021, meeting discussed the proposed language authorizing the executive board to increase the allocated interest of the unit, with the consensus that an increase, which necessarily entails decreasing the allocated interests of other unit owners, presents complications. The consensus is not to add this provision, letting existing UCIOA provisions dealing with allocated interests including Section 2-107 determine when an increase in the allocated interest is allowed or desirable.

2. Note that existing subsection (b) allows unit owners "to agree to the action" without a meeting, but 67% of the votes in the association must agree. The revision requires a vote at a meeting if a unit owner objects, with no quorum requirement, and drops the alternative of unit owner agreement with no meeting.

3. The phrase "Unless the declaration provides otherwise" is highlighted and bracketed to flag it for discussion by the Drafting Committee. It is not contained in the parallel provision (Section 2-108(c)) supra that we are adding to allow the reallocation of a common element as a limited common element. The issue is whether we want a default rule, which the declaration may change by making it easier or harder to reallocate or relocate; or instead do we want a mandatory, uniform rule for all CICs?

(c) ~~An~~ The association and the owners of the units whose boundaries are relocated must execute an amendment made under this section to the declaration under this section. The amendment must contain words of conveyance between the parties. The association shall record an amendment made under this section in the manner provided in Section 2-117(e). The amendment must be indexed in the name of the parties and the association as grantor or grantee, as appropriate. The association (i) in In a condominium or planned community, the association shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers, and (ii) in In a cooperative, the association shall prepare and record amendments to the declaration, including any plans necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

1 **Reporter's Note (4/2)**

2  
3 At the Feb. 12, 2021, meeting of the Drafting Committee the suggestion was  
4 made to add a cross reference to Section 2-117(e), *Amendment of Declaration*, in  
5 subsection (c). Section 2-117(e) states: "Amendments to the declaration required  
6 by this [act] to be recorded by the association must be prepared, executed,  
7 recorded, and certified on behalf of the association by any officer of the  
8 association designated for that purpose or, in the absence of designation, by the  
9 president of the association." Is the cross reference necessary? Without it,  
10 subsection (c) might be read to authorize an amendment signed only by the unit  
11 owners, with no signature by an officer.  
12

13 **Reporter's Notes (7/31/2020)**

14  
15 1. The proposed revisions to this section are prompted by the Drafting  
16 Committee's work on a related provision, Section 2-108, dealing with allocations  
17 and reallocations of limited common elements (see Section 2-108 above). The  
18 Drafting Committee at its April 2020 meeting discussed the proposed addition to  
19 Section 2-108 above and its source, Section 2-112(b), and discerned possible  
20 ambiguity as to whether the executive board's approval of the unit owner's  
21 application is necessary. This proposed amendment resolves the ambiguity by  
22 requiring the executive board's approval, regardless of a vote of the unit owners.  
23 Other proposed amendments conform all subsections of this Section to the style  
24 and organization of Section 2-108.  
25

26 2. Existing subsections (a) and (b) of Section 2-112 both qualify the  
27 procedures for relocating boundaries with the introductory phrase "Subject to the  
28 provisions of the declaration and other provisions of law". The phrase raises  
29 several questions. (1) It seems odd to say that provisions of the declaration may  
30 prevent amending the declaration. But this is apparently the intent, according to  
31 existing Comment 1 (quoted below). Why shouldn't unit owners always be  
32 allowed to amend the declaration to get rid of any content they don't like?  
33 Suppose the declaration simply says, "Boundaries between units cannot be  
34 relocated." Why can't the unit owners just vote to amend the declaration under  
35 section 2-117 both to delete this sentence and simultaneously to relocate certain  
36 boundaries? (2) What "other provisions of law" limit use of these relocation  
37 procedures? Why shouldn't this section override other provisions of state law?  
38

39 The proposed revisions to this section replace the phrase "Subject to the  
40 provisions of the declaration and other provisions of law" with the phrase "Unless  
41 the declaration otherwise provides" (a phrase used more frequently in this act),  
42 inserted in places to indicate which of this section's rules are default rules capable  
43 of overriding in the declaration.  
44

45 **Comment**

1 1. This section changes the effect of most current declarations, under which the  
2 boundaries between units may not be altered without unanimous or nearly unanimous consent of  
3 the unit owners. As the section makes clear, ~~this result may be varied by~~ the relocation of  
4 boundaries is allowed notwithstanding restrictions in the declaration. The declaration, however,  
5 may specify different procedures for the association's approval of boundary relocations.

6  
7 \* \* \*

8  
9 **Alternative A**

10 ~~[SECTION 2-114. EASEMENT FOR ENCROACHMENTS. To the extent that any~~  
11 ~~unit or common element encroaches on any other unit or common element, a valid easement for~~  
12 ~~the encroachment exists. The easement does not relieve a unit owner of liability in case of his~~  
13 ~~willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to~~  
14 ~~any plats and plans or, in a cooperative, to any representation in the public offering statement.]~~

15 **Alternative B**

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

25 **End of Alternatives**

26 **SECTION 2-114. BUILDING ENCROACHMENTS.**

27 **Alternative A**

(a) Except as ~~otherwise~~ provided in subsection (b) or (c), if the construction, reconstruction, or alteration of a building or the vertical or lateral movement of a building results in an encroachment due to ~~the a~~ divergence between the existing physical boundaries of a unit and the boundaries described in the declaration ~~pursuant to under~~ Section 2-105(a)(5), an easement for the encroachment exists between adjacent units and between units and adjacent common areas.

### **Alternative B**

(a) Except as ~~otherwise~~ provided in subsection (b) ~~or (c)~~, if the construction, reconstruction, or alteration of a building or the vertical or lateral movement of a building results in an encroachment due to ~~the a~~ divergence between the existing physical boundaries of a unit and the boundaries described in the declaration ~~pursuant to under~~ Section 2-105(a)(5), the existing physical boundaries of the unit are its legal boundaries, rather than the boundaries described in the declaration.

### **End of Alternatives**

(b) Subsection (a) does not apply if the encroachment:

(1) extends beyond ~~{five}~~ feet as measured from any point on the common boundary along a line perpendicular to the boundary; or

(2) results from willful misconduct of the unit owner that claims a benefit under subsection (a).

(c) This section does not relieve a declarant of liability for failure to adhere to ~~any plat or plan-plats or plans or, in a cooperative, to any a~~ representation in the public offering statement.

***Legislative Note:** Two approaches are presented as alternatives because a number of states have previously adopted the “easement solution” of Alternative A or the “adjustment of boundary” solution of Alternative B. A state may choose to continue its existing law on the topic.*

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### Reporter's Note (4/2)

The revisions to Section 2-114 retain the basic idea from the existing text: Many encroachments are 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). There are six significant changes of substance:

1. The original scope covers all encroachments involving units and common areas. The revision limits the scope of this section to **building** encroachments; i.e. encroachments between adjoining units in a building and between the building part of a unit and an adjoining common element. These encroachments stem from the construction of and subsequent changes to buildings and their component parts. The section as revised does not address other encroachments and boundary problems, such as misplaced fences and misplaced monuments, which the original text apparently covers.
2. The original Alternative B applies only when a unit is constructed in “substantial accordance with the description” in the declaration. The revision replaces it with a five-foot limit and applies the limit to both Alternatives.
3. The original text preserves or creates liability for an owner’s willful misconduct or the failure of a declarant or another person to adhere to plats and plans. The revision limits the liability provision to the declarant’s conduct and handles the owner’s misconduct differently by preventing the owner from obtaining the benefit of this section.
4. The original text is possibly unclear as to whether a unit owner who gains space has to pay compensation to an owner who loses space. The revision makes it clearer that there is no payment requirement by narrowing of the scope of the “liability rule”.
5. The original Alternative B is not clear as to whether it matters if the encroachment is due to original construction or a subsequent change or a “reconstruction.” The revision applies the same rule to original construction and subsequent changes for both Alternatives.
6. The original Alternative A applies when any “common element encroaches on any other . . . common element.” The revision narrows the scope for both Alternatives, applying only when a unit encroaches on another unit or a common area.

### Reporter's Note (1/29)

When this section applies, an easement is created, or the boundary is relocated, by operation of law. There is no need for an amendment to a declaration or a deed or another type of conveyance.

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(a) ~~[Subject to the declaration, a]~~ A declarant has ~~an easement~~ easements through the  
 on elements as may be reasonably necessary for the purposes of discharging the  
 nt's obligations, ~~or exercising special declarant rights, whether arising under this act~~  
~~ed in the declaration or making improvements within the common interest community~~  
real estate that may be added to the common interest community.

The subcommittee recommends no changes to the existing text of Section 2-116(a), including retention of the introductory words “Subject to the declaration”.

***Recommendation: No Change from Existing UCIOA for subsection (a), except consider the first words reading “Subject to the declaration.” Should these words be deleted or modified?***

The Drafting Committee at its Feb. 19 meeting discussed the special declarant right set forth in Section 1-103(33)(A) above, which allows the declarant to complete improvements required by the plats and plans and public offering statement. The committee decided that the declarant should have the right to complete those improvements it is obligated to complete, regardless of the reservation of a special declarant right. The statutory easement in Section 2-116(a) appears adequate for the declarant to complete required improvements, with no amendment needed to add language from Section 1-103(33)(A) to refer to plats and plans and the public offering statement.

This proposed language incorporates language deleted from the definition of “special declarant rights” in Section 1-103(33)(D) (see above). The qualifier “subject to the declaration” is deleted because the declarant should not be allowed to expand its easement rights beyond those stated in this section. The unit owners own the common elements.

(b) Subject to Sections 3-102(a)(6) and 3-112, the unit owners have an easement in the common elements for access to their units.

(c) Subject to the declaration and rules, the unit owners have a right to use the common elements that are not limited common elements and all real estate that must become common elements for the purposes for which they were intended.

#### **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 ~~by agreement of unit owners of units to which~~ by agreement of unit owners of units to which if the unit owners vote under Section 3-110 to approve the termination by a vote of at least 80 percent of the votes in the association, ~~are allocated,~~ are allocated, ~~or any larger percentage the declaration specifies,~~ and with any other approvals required by the declaration including at least 80 percent of the votes allocated to units not owned by the declarant, and with any other approvals required by the declaration.

The declaration may require a larger percentage of total votes in the association for approval, but termination still requires approval by at least 80 percent of the votes allocated to units not owned by the declarant.

The declaration may specify a smaller percentage of total votes in the association only if all of the units are restricted exclusively to nonresidential uses. ~~The declaration may require approvals of persons other than unit owners for termination, which does not alter the percentage of unit owner votes required by this section.~~

#### **Reporter's Note (4/2)**

Most of the proposed edits to this subsection in prior drafts were Style edits. This draft reverses Style edits and returns to the original language that does not require a vote of unit owners. The owners may vote to terminate at a meeting, but without a meeting an agreement by owners holding at least 80 percent of the votes



1 suffices. The clause in the original allowing a larger percentage than 80 percent is  
2 moved to a separate sentence to make it completely clear that a higher percentage  
3 does not replace the new requirement of 80 percent of the non-declarant units  
4 (e.g., if the declaration requires 90 percent and the declarant has sold 10 percent  
5 and has retained 90 percent, termination requires approval of 8/10 of the sold  
6 units plus 90 percent overall).

7  
8 **Reporter's Note (10/23)**  
9

10 At our August 2020 informal Zoom session on the act, the comment was made  
11 that if we retain this sentence, we mean approvals by persons other than unit  
12 owners and changes to the required vote percentages are not allowed.

13  
14 (b) An agreement to terminate must be evidenced by the execution of a termination  
15 agreement, or ~~ratifications thereof~~ ratifications thereof ratification of the agreement, in the same  
16 manner as a deed, by the requisite number of unit owners. The termination agreement must  
17 specify a date after which the agreement is void unless it is recorded before that date. ~~A~~ A The  
18 termination agreement and ~~all ratifications thereof~~ all ratifications thereof any ratification of the  
19 agreement must be recorded in every [county] in which a portion of the common interest  
20 community is situated and is effective only ~~upon~~ upon on-recording.

21  
22 **Reporter's Note (4/2)**  
23

24 All of the proposed edits to subsection (b) in prior drafts were Style edits. This  
25 draft reverses Style edits and returns to the original language.

26  
27 **Reporter's Note (10/23)**  
28

29 At the September 2020 Zoom annual meeting first reading of the act, a concern  
30 was raised that subsection (b) requires recording in county offices, but Rhode  
31 Island and several other states have municipal recording offices. This is why  
32 "county" is in brackets.

33  
34 **Reporter's Note (1/29)**  
35

36 Proposed revisions below beginning with subsection (c) reflect the work of the  
37 subcommittee on partial terminations. Two choices are given with respect to the  
38 definition of "partial termination." Choice 1 allows partial termination for all  
39 types of common interest communities. Choice 2 limits it to condominiums.

1 Florida applies its partial termination rules only to condominiums, and it's  
2 possible that a statutory rule is not necessary, or should be markedly different, for  
3 planned communities or cooperatives. When a traditional planned community is  
4 fully built-out, the problem of economic obsolescence years after development  
5 may not need a "solution" by partial termination accomplished by a supermajority  
6 vote of owners. In addition, planned communities are not susceptible to the  
7 problem of certain condominium buildings becoming less valuable as owner-  
8 occupied units, with the prospect of creating market value by converting a  
9 building to rental real estate.

10  
11 (c) ~~[Choice 1 In this section, a "partial termination" means a termination of fewer than all~~  
12 ~~of the units in a common interest community. A termination agreement may provide for a partial~~  
13 ~~termination.] [Choice 2 In this section, a "partial termination" means a termination of fewer than~~  
14 ~~all of the units in a condominium. A termination agreement may provide for a partial~~  
15 ~~termination of a condominium, but not a planned community or cooperative.] In the case of a~~  
16 ~~condominium or planned community containing only units having horizontal boundaries~~  
17 ~~described in the declaration, a~~ A termination agreement may provide that for the sale of some or  
18 ~~all of the~~ all of the for the sale of common elements and units ~~of the common interest community~~  
19 ~~must be sold~~ of the common interest community following termination. If, pursuant to the  
20 agreement, any real estate ~~in the common interest community~~ in the common interest community  
21 is to be sold following termination, the termination agreement must set forth the minimum terms  
22 of the sale.

#### 23 Reporter's Note (4/26)

24  
25 Some of the edits to subsection (c) in prior drafts were Style edits. This draft  
26 reverses some Style edits to return to the original language. The new definition of  
27 partial termination in the February 2021 draft is moved to subsection (m) infra  
28 where the substantive partial-termination rules are located. The substantive  
29 changes to subsection (c) are:

- 30 1. Expanding its scope to include cooperatives (see discussion of material in
- 31 existing Comments in Reporter's Note infra).
- 32 2. Removing the limitation of the rule to communities with "only units having
- 33 horizontal boundaries" and consolidating its content with original subsection
- 34 (d) infra.

1 3. Allowing for the sale of some but not all common elements and units.  
2  
3

4 **Reporter's Note (10/23)**  
5

6 At the September 2020 Zoom annual meeting first reading of the act, Howard  
7 Swibel suggested changing “must be sold” to “is to be sold” in the first sentence  
8 of this subsection.  
9

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

15 [(d) Reserved.]

16 (e) ~~(d)~~ (e) The association, on behalf of the unit owners, may contract for the sale of real  
17 estate in a common interest community, but the contract is not binding on the unit owners until  
18 approved ~~pursuant to~~ under subsections (a) and (b). If any real estate is to be sold following  
19 termination, title to ~~that~~ the that real estate not already owned by the association, ~~upon~~  
20 ~~termination,~~ upon termination, ~~vests in the association to be sold and not already owned by the~~  
21 ~~association vests on termination in the association~~ as trustee for the holders of all interests in the  
22 units being terminated.

23 **Reporter's Note (4/2)**  
24

25 Some of the edits in prior drafts were Style edits. This draft reverses Style edits  
26 and returns to the original language. The changes of substance limit the “vesting”  
27 to real estate not already owned by the association (a point raised by the Study  
28 Committee) and recognize that some but not all of the real estate may be sold.  
29

30 ~~(e) Thereafter, the~~ Thereafter, the ~~The~~ association has all powers necessary and  
31 appropriate to effect ~~the~~ a ~~the~~ sale ~~approved under subsections (a) and (b).~~ Until the sale has

1 ~~been~~ is has been concluded and the proceeds ~~thereof~~ thereof distributed, the association  
2 continues in existence with all powers it had before termination. Proceeds of the sale must be  
3 distributed to unit owners and lien holders as their interests may appear, in accordance with  
4 subsections (h), (i), ~~and (j), and (m).~~ Unless otherwise specified in the termination agreement,  
5 as long as the association holds title to the real estate, each unit owner and the unit owner's  
6 successors in interest have an exclusive right to occupancy of the portion of the real estate that  
7 formerly constituted the unit. During the period of ~~that~~ that occupancy, each unit owner and the  
8 unit owner's successors in interest remain liable for all assessments and other obligations  
9 imposed on unit owners by this [act] or the declaration.

#### 10 **Reporter's Note (4/2)**

11  
12 The edits in prior drafts were Style edits, except for the added cross reference to  
13 the new partial termination subsection. This draft reverses Style edits and returns  
14 to the original language and also combines the content with the previous  
15 subsection to preserve the subsection numbering in original UCIOA.  
16

17 (f) ~~In a condominium or planned community, Except in a partial termination, if the real-~~  
18 ~~estate constituting the common interest in a condominium or planned community is not to be-~~  
19 ~~sold following termination, title to the common elements and, in a common interest community-~~  
20 ~~containing only units having horizontal boundaries described in the declaration, title to all the-~~  
21 ~~real estate in the common interest community, vests in the unit owners upon on termination as-~~  
22 ~~tenants in common in proportion to their respective interests as provided in under subsection (j),~~  
23 ~~and liens on the units shift accordingly. Unit owners continue to hold individual titles to their~~  
24 ~~respective units. The arrangement is not a new common interest community under this [act] if~~  
25 ~~the real estate not to be sold is not a common interest community as defined in Section 1-103(9).~~  
26 ~~While the tenancy in common exists, each unit owner and the unit owner's successors in interest-~~  
27 ~~have an exclusive right to occupancy of the portion of the real estate that formerly constituted the~~

~~unit.~~ Termination does not change title to a unit or common element not sold following termination unless the termination agreement otherwise provides.

**Reporter's Note (4/2)**

Existing subsection (f) handles title to real estate not being sold under the termination agreement. The existing text shifts title to all common elements to the unit owners in tenancy in common (note in the condominium the unit owners already hold title in this form). Under the existing text, title to the units shifts to a tenancy in common in communities having only horizontal-boundary units, with no shifting for communities having other units. A major change to this subsection is necessary because the revision to this Section is eliminating the distinction between horizontal-boundary units and non-horizontal boundary units. Existing subsection (f) appears to be a mandatory rule.

The proposed revision to subsection (f) defers to the termination agreement. Title to real estate that is not to be sold remains in place, but the unit owners may provide for a different outcome, including a conversion of some or all of their real estate to tenancy in common, in their termination agreement.

**Reporter's Note (1/29)**

The Drafting Committee at its November 2020 recognized that unsold real estate would become a new common interest community under the act if unit owners remain obligated to pay taxes or other expenses related to the units or other real estate. See the definition of "common interest community," Section 1-103(9). The new sentence added at the end of subsection (f) responds to this concern. If unit owners remain obligated to pay common expenses, a new CIC is formed. This prevent use of the termination procedure as a loophole — otherwise a community that wants to opt out of UCIOA can just terminate under 2-118 without selling. If owners do not remain obligated for common expenses, law other than this act, including the law of tenancy in common, determines the unit owners' rights and obligations.

**Reporter's Note (10/23)**

At the September 2020 Zoom annual meeting first reading of the act, Howard Swibel suggested changing "is not to be sold" to "is not sold" in the first sentence of this subsection.

(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, and any other creditor~~ All other creditors of the association ~~is~~ are-is to be treated as if ~~the creditor~~ they the creditor had perfected ~~a lien against the cooperative~~ liens on the cooperative a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

#### **Reporter's Note (4/2)**

The edits in prior drafts were Style edits. This draft reverses Style edits and returns to the original language.

(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~~ following rules apply to  
respective interests of unit owners referred to in subsections (e), (f), (g), (h), ~~and (i), and (m) are~~  
~~as follows~~ are as follows:

#### Reporter's Note (4/2)

The edits in prior drafts were Style edits, except for the added cross reference to the new partial termination subsection. This draft reverses Style edits and returns to the original language.

(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~~ appraisal. The association shall select one or more  
independent appraisers and send the appraisal to the unit owners. The appraisal is 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:

(i) (A) disapproved ~~within not later than~~ 30 days after distribution by unit owners of units to which at least 25 percent of the votes in the association are allocated; or

~~(ii) (B) one or more unit owners file written objection~~ a unit owner objects in a record to the appraisal not later than 20 days after receipt of the appraisal.

A unit owner that objects may designate select an appraiser to represent the owner and make an appraisal of the owner's unit. If the association's appraisal and the unit owner's appraisal differ as to the fair market value of the owner's interest, ~~the appraisers mutually shall designate a third appraiser. A~~ a panel consisting of an appraiser selected by the association, the unit owner's appraiser, and ~~the designated a third appraiser mutually selected by the first two appraisers~~ shall determine, by majority vote, the value of the unit owner's interest. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the appraised fair market value of that unit owner's ~~unit and its allocated interests~~ interest unit and its allocated interests by the total appraised fair market values of all ~~the units and their allocated~~ unit owners' the units and their allocated interests.

#### **Reporter's Note (4/2)**

Some of the edits in prior drafts for paragraph (1) were Style edits. This draft reverses Style edits and returns to the original language.

(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



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

3 (k) In a condominium or planned community, except as otherwise provided in  
4 subsection ~~(H)~~ (l), foreclosure or enforcement of a lien or encumbrance against the entire common  
5 interest community does not terminate, of itself, the common interest community, and  
6 foreclosure or enforcement of a lien or encumbrance against a portion of the common interest  
7 community, other than withdrawable real estate, does not withdraw that portion from the  
8 common interest community. Foreclosure or enforcement of a lien or encumbrance against  
9 withdrawable real estate, or against common elements that have been subjected to a security  
10 interest by the association under Section 3-112, does not withdraw, of itself, that real estate from  
11 the common interest community, but the person taking title thereto may require from the  
12 association, upon request, an amendment excluding the real estate from the common interest  
13 community.

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

19 **Reporter's Note (10/23)**  
20

21 1. At our August 2020 informal Zoom session on the act, the suggestion  
22 was made that the Drafting Committee might consider adding language to  
23 authorize partial terminations of communities and that Florida's condominium act  
24 might provide a useful starting point. Fla. Stat. § 718.117. After this Note are  
25 provisions based on the Florida act, modified to take account of the scope and  
26 terminology of UCIOA. If we add a partial termination provision, some of the  
27 existing subsections (a)-(l) above may require modification; but for the sake of  
28 our initial discussion, none are included in this draft.

1  
2 2. Section 718.117 of the Florida condominium act, like UCIOA § 2-118,  
3 originally addressed only total (regular) terminations. In 2011, the Florida  
4 legislature amended § 718.117 to add partial termination provisions, which were  
5 further amended in 2015. Florida applies the same voting and approval rules to  
6 total and partial terminations; unit owners have the same voting rights whether  
7 their unit is designated for termination or continuation. For useful background,  
8 see Peter M. Dunbar, et al., *Partial Termination, Good Things Can Happen to*  
9 *Bad Projects*, 87 Fla. B.J. 47 (2013).

10  
11 (m) A termination agreement complying with this section may provide for a termination  
12 of fewer than all of the units in a common interest community A partial termination is subject to  
13 the following requirements:

14 (1) The termination agreement ~~requires the approval of~~ must be approved by at  
15 least 80 percent of the votes allocated to the units being terminated, ~~in addition to the~~  
16 ~~other requirements of subsections (a) and (b).~~

17 (2) The termination agreement ~~described in subsection (b)~~ must identify the units  
18 and common elements that survive the partial termination, ~~and~~ provide that ~~such the~~  
19 ~~surviving~~ units and common elements remain in the common interest community, ~~and~~  
20 ~~reallocate the allocated interests for the surviving units under Section 2-107.~~

21 [(3) Title to the surviving units and common elements ~~that remain part of the~~  
22 ~~common interest community specified in the termination agreement must~~ remain vested  
23 ~~in the ownership shown in the public records and do does not vest in the association.]~~

#### 24 Reporter's Note (4/2)

25  
26 Paragraph (3) may be unnecessary. Subsection (f) supra governs what happens to  
27 title for real estate not to be sold after termination. The proposed edits in this draft  
28 to subsection (f) do not shift title to units or common elements. If the Committee  
29 follows this approach for subsection (f), then we can delete paragraph (3).

30  
31 (4) ~~The termination agreement may require separate appraisal for the common-~~  
32 ~~elements. In the absence of separate appraisal, it is presumed that the common elements-~~

1 ~~have no independent value but rather that their value is incorporated into the appraisal of~~  
2 ~~the units, including their allocated interests.~~ The aggregate values of the units and  
3 common elements ~~that are~~ being terminated must be ~~separately determined under~~  
4 ~~subsection (j).~~ ~~and the~~ The termination agreement must specify the allocation of the  
5 proceeds of sale for the units and common elements being terminated ~~and sold.~~

6 (5) ~~Liens~~ Security interests and liens on surviving units and surviving common  
7 elements continue, and ~~security interests and~~ liens on units being terminated no longer  
8 extend to any surviving common elements.

9 (6) The unit owners association ~~may continue~~ continues as the association for the  
10 surviving units ~~that remain subject to the declaration.~~

11 (7) ~~An~~ The association shall record an amendment to the declaration or an  
12 amended and restated declaration ~~must be recorded simultaneously with the recordation~~  
13 ~~of with~~ the termination agreement under subsection (b). ~~Approval of the amendment~~  
14 ~~under Section 2-117 is not required if the ownership share of the common elements of~~  
15 ~~each surviving unit in the common interest community remains in the same proportion to~~  
16 ~~the surviving units as it was before the partial termination.~~

#### 17 Reporter's Note (4/2)

18  
19 The last sentence of paragraph (7), which states a rule from the Florida partial-  
20 termination provision, is deleted on the ground that it is unnecessary. Section 2-  
21 117(d) requires the unanimous consent of unit owners to change the allocated  
22 interests of units. Paragraph (2) supra as edited requires the termination agreement  
23 to reallocate the allocated interests. Usually a partial termination may simply  
24 reallocate "in the same proportion" among the surviving units "as it was before  
25 the partial termination." But if the termination agreement changes the formula or  
26 method of allocation, conforming to the substantive rules of Section 2-107,  
27 unanimous consent should not be required.  
28

29 (n) The termination of a common interest community does not bar the creation of another

1 common interest community by the execution of a new declaration covering ~~the terminated~~ all or  
2 part of the real estate ~~or any portion thereof being terminated~~. A termination in which real estate  
3 is not sold following termination is a new common interest community under this [act] only if  
4 the unit owners have agreed to pay shares of expenses so that the unsold real estate is a common  
5 interest community under Section 1-103(9).

6 **Reporter's Note (4/2)**

7  
8 The Drafting Committee at its Feb. 12, 2021, Drafting Committee discussed the  
9 first sentence of subsection (n) with the consensus that it is accurate but may not  
10 be necessary because the point is obvious. The sentence is retained in this draft  
11 for the purpose of discussion, placed alongside the second sentence, which with  
12 an edit is moved from subsection (f) in the Feb. draft. Either or both sentences  
13 might go into a Comment rather than into statutory text.

14  
15 **Reporter's Note (1/29)**

16  
17 The new proposed subsection (n) makes it clear that termination under this  
18 Section does not bar the creation of a new common interest community, either  
19 under the plan of termination or otherwise, and supplements the new sentence  
20 added to subsection (f), which states that real estate that is not sold after  
21 termination does not automatically become a new common interest community.  
22 This proposed subsection (n) is based on Fla. Stat. § 718.117(19), which provides:  
23 “*Creation of another condominium.* The termination or partial termination of a  
24 condominium does not bar the filing of a new declaration of condominium by the  
25 termination trustee, or the trustee's successor in interest, for the terminated  
26 property or any portion thereof. The partial termination of a condominium may  
27 provide for the simultaneous filing of an amendment to the declaration of  
28 condominium or an amended and restated declaration of condominium by the  
29 condominium association for any portion of the property not terminated from the  
30 condominium form of ownership.”

31  
32 **Reporter's Note (10/23)**

33  
34 1. At our August 2020 informal Zoom session on the act, a question from  
35 the floor asked whether any of this section applies or should apply to a  
36 governmental condemnation of a common interest community.

37 2. UCIOA § 1-107, *Eminent Domain*, provides some rules, but appears to focus  
38 only on the taking of a single unit or part of a unit. Possibly § 1-107 does not apply to a  
39 taking of all or substantially all of a community.

*Proposed new Comment*

10. The 2021 amendments to this section authorize a partial termination of the common interest community. A partial termination may serve the best interests of a community in a number of different circumstances. A natural disaster or other casualty may destroy one building while leaving other buildings intact. A partial termination of the destroyed building and its adjacent real estate may be preferable to reconstruction. A developer may declare multiple phases, construct buildings for only the first one, and when a subsequent unbuilt phase becomes infeasible, a partial termination may remove the unbuilt developer-owned units. Changes in the neighborhood may make one part of a community unsuitable for continued residential use; for example, the government may replace a two-lane road adjoining the community with a high-speed six-lane highway. In most states, partial terminations of common interest communities take place from time to time without the aid of a statutory mechanism. Florida added a partial-termination provision to its condominium act in 2011. Fla. Stat. § 718.117. This section sets forth procedures and furnishes guidance for partial termination. It authorizes partial termination with a vote of 80 percent of the unit owners, including 80 percent of the owners of units being terminated. Partial termination is the same concept as the withdrawal of real estate from the common interest community when the withdrawn real estate includes declared units. Partial termination under this act may be accomplished only under this section or by a development right of a declarant to withdraw real estate. See Section 2-110(d). A mere amendment to the declaration to reduce the size of the community by withdrawing units is not effective. See Section 2-117(d).

**Comment**

\* \* \*

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

~~Subsections (b) and (g), the parallel provisions to Section 2-117(b) and (d) of MRECA, contemplate the same possibility in the case of cooperatives. Termination without sale is not likely to be the usual case, but might occur if the unit owners plan conversion to another form of a new common interest community, for example, conversion from a cooperative to a condominium. In the case of a cooperative, title to the real estate upon termination would remain in the name of the association as trustee for the unit owners; see subsection (g). 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; see subsection (f), but until a sale occurs vests in the association if the real estate is to be sold; see subsection (e). 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. (See subsection (f).) In the remaining case, i.e., the case where there are some units with horizontal boundaries and some without horizontal boundaries, the Act provides, in subsection (f), that unit owners become tenants in common of~~

1 ~~the common elements, but~~ The unit owners continue to hold individual titles to their units.  
2 Therefore, in a condominium or planned community with units located in ~~both a high rise in a~~  
3 ~~high-rise building, and in single story structures, the unit owners in the high rise building will~~  
4 ~~hold individual title to their unit upon termination, and~~ either the declaration or the termination  
5 agreement should address the needs for easements of support and access for the ~~high rise~~ high-  
6 rise units over the real estate which all the unit owners will own as tenants in common.  
7 Undoubtedly, the unit owners will immediately reconstitute themselves as some form of  
8 common interest community.  
9

10 9. Subsection (f) does not cover the possibility that a cooperative might be terminated but  
11 the real estate not sold. While this is not likely to be the usual case, termination without sale  
12 might occur if the cooperative unit owners plan conversion to another form of common interest  
13 community, such as a condominium. Since, after termination of a cooperative title to the real  
14 estate remains in the association, it could record a new declaration corresponding to the new  
15 form of common interest community adopted, convey the units to the former unit holders, and  
16 then itself continue as the new common interest community's association.  
17

## 18 **SECTION 2-120. MASTER ASSOCIATIONS.**

19 (a) ~~If the declaration provides that any of the powers described in Section 3-102 are to~~  
20 ~~be exercised by or may be delegated to a profit or nonprofit corporation [or unincorporated~~  
21 ~~association] that exercises those or other powers on behalf of one or more common interest~~  
22 ~~communities or for the benefit of the unit owners of one or more common interest communities,~~  
23 ~~all~~ The A declaration may:

24 (1) delegate ~~any a~~ power described in Section 3-102(a) from the unit owners  
25 association to a master association;

26 (2) provide for the exercise of the powers described in Section 3-102(a) by a  
27 master association that also serves as the unit owners association for the common interest  
28 community; or

29 (3) reserve a special declarant right to make the common interest community  
30 subject to a master association.

31 Unless the declaration provides otherwise, the executive board of a unit owners  
32 association may delegate any additional power described in Section 3-102 to a master

1 ~~association. *[Choice 1: A delegation of the board is subject to approval by the unit owners.*~~

2 ~~The board shall make approval of the delegation an item on the agenda at the first meeting of the~~

3 ~~unit owners association after the delegation. A delegation of powers to a master association is~~

4 ~~not effective before acceptance by the board of the master association.] *[Choice 2, replace these*~~

5 ~~3 sentences with: A delegation of the board is effective when approved by the unit owners and~~

6 ~~accepted by the board of the master association.]~~

7 *[(b)?]* All provisions of this [act] applicable to a unit owners<sup>2</sup> associations apply to ~~any such~~

8 ~~corporation [or unincorporated a master association]~~, except as modified by this section.

#### 9 **Reporter's Note (4/28)**

10

11 1. The proposed revisions to subsection (a) recognize that the declaration may

12 provide for a master association serving multiple common interest communities to

13 serve as the unit owners association for the common interest community, tracking

14 the language of the existing UCIOA language that treats this as an "exercise" of

15 powers rather than a "delegation." This section uses the term "delegation" only

16 when there are two entities: a unit owners association and a separate master

17 association that holds one or more powers. See the definition of "master

18 association" that describes both types of master associations. UCIOA Section 1-

19 103(22). The revision also recognizes the special declarant right to make the

20 common interest community subject to a master association.

21

22 2. This draft moves the content from subsection (a) dealing with a delegation by

23 the executive board to subsection (b) infra.

24

25 3. The organization of this section might be improved by putting the final

26 sentence into a subsection of its own ("All provisions of this [act] applicable to a

27 unit owners association apply to a master association, except as modified by this

28 section."). The Style Committee discussed this question at its April 2021 meeting

29 without reaching a conclusion.

#### 30 **Reporter's Note (3/2)**

31

32

33 The subcommittee needs to consider the last clause of subsection (a). The

34 Drafting Committee at its Feb. 19, 2021, meeting had an extensive discussion of

35 this clause with the consensus that we should attempt to make a revision to

36 provide guidance as to the intended meaning. The primary focus was on the notice

37 provisions of the act, the thinking being that if we solve notice (to whom must the

38 master association give notice before acting?) the other duties and rights would

1 follow. The committee thought that we might have a default rule that notices must  
2 go to the sub-associations that are subject to the master association or their  
3 executive boards. The governing instruments for the master association may  
4 change the default rule. Under the default rule, individual unit owners of the sub-  
5 associations get notices only if they are members of the master association. Also,  
6 the subcommittee needs to consider the fit between this clause and subsection (h)  
7 below; perhaps this clause and subsection (h) may be combined.

#### 8 9 **Reporter's Note (1/29)**

10  
11 During its January 2021 meeting the subcommittee on master associations  
12 discussed the last sentence of subsection (a), which on its face imposes limits  
13 what master associations are allowed to do and imposes many obligations on  
14 master associations and their executive boards. Section 2-120 Comment 3  
15 explains: "Subsection (a) makes it clear that, if any of the powers of the unit  
16 owners' association may be exercised by, or delegated to, a master association, all  
17 other provisions of this Act, which apply to a unit owners' association apply to  
18 that master association except as modified by this section. Accordingly,  
19 provisions on notice, voting, quorums, records, meetings, and other matters which  
20 apply to the unit owners' association would apply with equal validity to such a  
21 master association." *Query whether further guidance should be given, either in*  
22 *statutory text or the Comments.*

23  
24 **Example.** Consider, for example, how this sentence and the Comment apply to  
25 the budget process regulated by Section 3-123, *Adoption of Budgets; Special*  
26 *Assessments*. I think the master association (before and after the period of  
27 declarant control ends) must send its proposed budget to the unit owners of all  
28 common interest communities subject to the master association, and then schedule  
29 a meeting for its consideration, etc. Is this right? If there is ambiguity, the  
30 problem may be that for a regular unit owners association, all unit owners are  
31 members of the association; but for a master association, the unit owners seldom  
32 will be members or shareholders in the master association. Our act says nothing  
33 about who are or may be members or shareholders in a master association.

34  
35 (b) A unit owners association may delegate a power described in Section 3-102(a) to a  
36 master association without amending the declaration. The executive board of the unit owners  
37 association shall give notice to the unit owners of a proposed delegation and include a statement  
38 that unit owners may object in a record to the delegation not later than 30 days after delivery of  
39 the notice. The delegation becomes effective if the board does not receive a timely objection. If  
40 the board receives a timely objection, the delegation becomes effective only if the unit owners



1 vote under Section 3-110, whether or not a quorum is present, to approve the delegation by a  
2 majority vote. The delegation is not effective until the board of the master association accepts the  
3 delegation.

#### 4 **Reporter's Note (4/2)**

5  
6 The Drafting Committee at its Feb. 19, 2021, meeting discussed an issue that it  
7 has also come up in prior meetings: whether an executive board's delegation of  
8 powers to a master association should be effective immediately, subject to  
9 revocation by the unit owners; or (2) whether a board's decision to delegate  
10 should require unit owner approval before it becomes effective. See Choices 1  
11 and 2 supra. The Committee decided to import the objection procedure being  
12 added to Section 2-108, *Limited Common Elements*, which allows the board to  
13 approve the reallocation of a common element to a limited common element if no  
14 unit owner objects.

15  
16 ~~(b)~~ (c) Revocation of a delegation set forth in the declaration may be made only by an  
17 amendment to the declaration. At ~~any~~ a meeting of the unit owners for which the subject of  
18 delegation of powers ~~from the executive board~~ to a master association is listed in the notice of  
19 the meeting, the unit owners ~~may approve, disapprove, or revoke any delegation of powers to a~~  
20 ~~master association~~ by a majority of the votes cast at the meeting ~~may revoke the delegation.~~  
21 ~~Other law determines the~~The effect of revocation on the rights and obligations of parties under  
22 ~~an existing a~~ contract between a unit owners association and a master association ~~is determined~~  
23 by law of this state other than this [act].

#### 24 **Reporter's Note (4/2)**

25  
26 The Drafting Committee at its Feb. 19, 2021, meeting discussed the unit owners'  
27 right to revoke delegations to the master association, a topic also previously  
28 discussed. This draft edits subsection (c) supra to make it apply only to  
29 revocation. For delegations made by the executive board (i.e., not in the  
30 declaration), unit owner approval or disapproval is handled only by the  
31 "objection" procedure in subsection (b), not under subsection (c). The committee  
32 discussed, without reaching a decision, whether revocation by the unit owners  
33 should proceed differently when the delegation is in the declaration rather than  
34 merely from the board. Subsection (e) allows revocation of a delegations made by  
35 the board by a majority vote of unit owners and defers to the normal procedures

1 for amending the declaration for delegations contained in the declaration. See  
2 Section 2-117, *Amendment of Declaration*.

3  
4 ~~(b) (e) (d)~~ Unless it is acting in the capacity of ~~an~~ a unit owners association ~~described in~~  
5 ~~Section 3-101~~, a master association may exercise the powers set forth in Section 3-102(a)(2) only  
6 to the extent expressly permitted in the declarations of common interest communities which are  
7 part of the master association or expressly described in the delegations of power from those  
8 common interest communities to the master association.

9 ~~(c) (d) If the declaration of any common interest community provides that the executive~~  
10 ~~board may delegate certain powers to a master association, the~~ The members of the executive  
11 ~~board of a unit owners association have no liability for the acts or omissions of the a master~~  
12 ~~association with respect to those powers following delegation a power delegated to the master~~  
13 ~~association.~~

14 (e) After a unit owners association delegates a power to a master association, the unit  
15 owners association and its executive board members and its officers have no liability for an act  
16 or omission of the master association with respect to the delegated power.

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

### 22 **Reporter's Note (3/2)**

23  
24 The subcommittee needs to consider subsection (h) (subsection (d) of existing  
25 UCIOA). The Drafting Committee at its Feb. 19 meeting recognized that this  
26 subsection may not be consistent with possible modifications to the last clause of  
27 subsection (a) above, which generally applies provisions of the Act governing unit  
28 owners associations to master associations. The Sections referenced in subsection

(h) deal with:

Section 3-103 – executive board members and officers

Section 3-108 – meetings

Section 3-109 – quorum

Section 3-110 – voting at meetings

Section 3-112 – conveyance or encumbrance of common elements.

Subsection (h) is also impacted by the proposed changes to the rules for electing the board of a master association in subsection (i) below. Perhaps subsection (h) should be deleted with part of its content, if appropriate, integrated with subsection (a) above and subsection (i) below.

(e) ~~(f) (g)~~ Even if a master association is also an association described in Section 3-101, 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 All of the votes in the master association must be held by common interest communities that are subject to the master association, unless the master association serves real estate not located within a common interest community. Each common interest community subject to the master association must hold an equitable portion of the votes in the master association. The Not later than [60] days [Drafting Committee should discuss this time period] after termination of a period of declarant control of the master association, the instruments governing the master association must provide for the election of the executive board of the master association ~~must be elected~~ after the period of declarant control in any one of the following ways:

(1) All unit owners associations of all common interest communities subject to the master association ~~may~~ shall 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) (2) All If the instruments governing the master association equitably apportion~~

1 ~~the seats on the board to each common interest community [as a separate voting class], all~~ All  
2 unit owners ~~associations in, or the executive board~~ of, each common interest community subject  
3 to the master association ~~may elect specified~~ shall elect one or more members of the master  
4 association's executive board if the instruments equitably apportion the seats on the board to  
5 each common interest community.

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

9 (h) A period of declarant control of the master association under subsection (g)  
10 terminates no later than the earlier of:

11 (1) the termination under Section 3-103 of all periods of declarant control of all  
12 common interest communities subject to the master association under Section 3-103; or

13 (2) [60] days after conveyance to unit owners other than a declarant of [three-  
14 fourths] of the units that may be created in all common interest communities subject to the  
15 master association.

#### Reporter's Note (4/2)

19 The proposed revisions to subsection (g) (originally subsection (e)) from the  
20 February 2021 draft include: (1) limiting the scope of the subsection to the  
21 election of the executive board of the master association; it no longer addresses  
22 actions taken by other means, e.g., votes by members or shareholders of the  
23 master association; (2) dropping the requirement that each common interest  
24 community hold "an equitable portion of the votes in the master association"; and  
25 (3) defining the period of declarant control for a master association. The Drafting  
26 Committee should consider whether the language works well both when (i) there  
27 are multiple common interest communities served by one master association and  
28 (ii) when a single common interest community has delegated powers to a master  
29 association.

#### Reporter's Note (1/29)

1  
2 1. The proposed revision to subsection (f) and the new subsection (g) below  
3 reflect the work of the subcommittee on master associations. The revision  
4 shortens and simplifies this subsection but makes several important changes:  
5

6 First, the revision requires an equitable allocation of the votes in the master  
7 association among all the common interest communities served by the master  
8 association. The allocation should be contained in the articles of organization or  
9 other governing documents of the master association.  
10

11 Second, the revision provides mandatory rules designed to ensure that all unit  
12 owners through their individual sub-associations have the ability to elect a fair  
13 number of the members of the master association's executive board. The existing  
14 statutory language authorizes four "ways" to elect the executive board, apparently  
15 allowing other methods of election. New subsection (f) requires that the  
16 governing instruments of the master association select alternative (1) or (2).  
17

18 Third, new subsection (f) preserves the existing flexibility in this provision by  
19 allowing an "at-large" election of the master board or the designation of particular  
20 seats on the board to each common interest community, as explained in Comment  
21 7 to this section. The "four ways" of the old subsection are collapsed into two  
22 ways. New subparagraph (1) provides for at-large seats, and new subparagraph  
23 (2) provides for designated (i.e., "district") seats.  
24

25 The new subsection still allows voting either by unit owners or their boards. The  
26 governing documents for each individual common interest community will  
27 determine whether the owners or their board cast the master-association votes  
28 allocated to their community.  
29

30 **Example:** A master association serves two condominium communities, which  
31 each has their own sub-association. Community A has 20 units and a 5-member  
32 board. Community B has 40 units and a 3-member board. Under new subsection  
33 (f), the master association may have a 6-member board with at-large seats,  
34 allocating 20 master-association votes to Community A and 40 master-association  
35 votes to Community B. Alternatively, each community may be a separate voting  
36 class, with Community A having 2 seats and Community B having 4 seats. Under  
37 the existing subsection, the size of the sub-association boards determines how  
38 many votes each sub-association holds under paragraphs ("ways") (2) and (4).  
39 The new subsection makes size of the sub-association boards irrelevant – in this  
40 example, it should not matter that smaller Community A has a bigger board than  
41 Community B. Also note, Community A may exercise its master-association  
42 votes by all its members voting individually at a sub-association meeting, while  
43 Community B may exercise its master-association votes by the vote of its  
44 executive board.  
45

46 2. Existing subsection (f) specifies voting rules only "after the period of declarant

control” without explaining what this means. Section 3-103(d) defines declarant control, when the declarant may appoint and remove board officers and members of sub-associations, with no express reference to master associations. Two choices are (1) develop the concept of “period of declarant control” of the master association or (2) drop the declarant-control condition, i.e, make the voting rules apply at the outset. The condition seems unnecessary to protect a declarant’s legitimate interests because the declarant will have de facto control under the subsection (f) voting rules when it still controls all or a majority of the CICs that are subject to the master association. In effect, declarant control of the sub-associations gives it automatic control over electing the master association board. In case the committee prefers the first choice, here is a new subsection that deals with the period of declarant control over a master association and generally parallels Section 3-103(d):

(g) A period of declarant control of the master association terminates no later than the earliest of:

- (1) [60] days after conveyance of [three-fourths] of the units all common interest communities subject to the master association that may be created to unit owners other than a declarant;
- (2) two years after all declarants have ceased to offer units for sale in the ordinary course of business;
- (3) two years after any right to add new units was last exercised; or
- (4) the day any declarant [all declarants], after giving notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the master association.

## **SECTION 2-121. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES.**

### **Reporter’s Note (4/2)**

The subcommittee recommends a revision to Section 2-121 infra to provide a procedure for the exercise of a special declarant right to merge or consolidate common interest communities. An agreement of unit owners is not required when the declarant has a special declarant right. When two communities are merged, the same declarant may have a special declarant right in both communities, but this is not necessary.

### **Reporter’s Note (3/2)**

This section is included for consideration of what it means to reserve a special declarant right to merge common interest communities. See Reporter’s Note (1/29) at Section 1-103(33)(F) supra. To assist in starting discussion by the subcommittee, inserted below are 2 choices of language that might be added: (i)

1 language in subsections (a) and (b) allowing the declarant to execute a merger  
2 agreement without unit-owner approval, or (ii) new subsection (d) allowing the  
3 declarant to reduce the percentage of unit-owner votes required for approval.  
4

5 (a) Any two or more common interest communities of the same form of ownership, by  
6 agreement of the unit owners ~~as provided in~~ under subsection (b) or by the exercise of a special  
7 declarant right reserved in the declaration, may be merged or consolidated into a single common  
8 interest community. In the event of a merger or consolidation, unless the agreement otherwise  
9 provides, the resultant common interest community is the legal successor, for all purposes, of all  
10 of the pre-existing common interest communities, and the operations and activities of all  
11 associations of the pre-existing common interest communities are merged or consolidated into a  
12 single association that holds all powers, rights, obligations, assets, and liabilities of all pre-  
13 existing associations.

14 (b) An agreement of two or more common interest communities to merge or consolidate  
15 pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and  
16 certified by the president of the association of each of the pre-existing common interest  
17 communities following approval by owners of units to which are allocated the percentage of  
18 votes in each common interest community required to terminate that common interest  
19 community. Approval by unit owners in a common interest community is not required if a  
20 special declarant right is exercised, and the declarant shall execute the agreement on behalf of the  
21 common interest community. The agreement must be recorded in every [county] in which a  
22 portion of the common interest community is located and is not effective until recorded.

23 (c) Every merger or consolidation agreement must provide for the reallocation of the  
24 allocated interests in the new association among the units of the resultant common interest  
25 community either (i) by stating the reallocations or the formulas upon which they are based or

(ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the pre-existing common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing common interest community.

[(d) A special declarant right may reduce the percentage of votes of unit owners required for approval of the merger or consolidation agreement but may not change other requirements of this section.]

#### **SECTION 2-125. ADVERSE POSSESSION; ~~AND~~ PRESCRIPTIVE**

**EASEMENTS.** A unit owner or ~~a~~ person claiming through a unit owner may not acquire title by adverse possession ~~to,~~ or an easement by prescription ~~to in,~~ a common element in derogation of the title of ~~any other another~~ unit owner or the association.

#### **Reporter's Note (10/23)**

At the August 2020 informal Zoom session and the September 2020 Zoom annual meeting first reading of the act, questions were raised as to whether we need the “in derogation of the title of any other unit owner or the association” qualification; and if so, whether other language might be better? At the August meeting, an observation was made that this section may propose a good rule, but it is not highly important because unit owners who raise adverse possession claims to common elements rarely win their cases.

#### **Reporter's 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



1 voted in favor of Approach 2, which immunizes common elements from loss by  
2 adverse possession by claims of unit owners. The Committee also agreed that the  
3 immunity should extend to prescriptive easements.  
4

5 The Drafting Committee at its April 2020 meeting discussed this new  
6 section and decided to add the phrase “or a person claiming through a unit owner”  
7 to protect common elements from claims made by tenants of unit owners or  
8 similar persons.  
9

10 2. The proposed new Section 2-125 protects all the common elements  
11 from loss of title by claims of adverse possession or prescription by a limited  
12 immunity. This immunity is limited to real estate defined as “common elements”  
13 in UCOIA. This Section precludes only a claim made by a unit owner. When the  
14 unit owners own the common elements in tenancy in common, this provision  
15 modifies existing law by not allowing a unit owner to acquire adverse possession  
16 by proving an “ouster” of the other cotenants. When the association owns the  
17 common elements, this provision modifies existing law, which in most states  
18 lacks reported law clearly delineating the requirements for a person to acquire  
19 adverse possession title to property owned by an association of which the person  
20 is a member.  
21

22 This section adopts Approach 2 described in the Reporter’s Memorandum  
23 on Adverse Possession (Jan. 24, 2020). This section provides a more limited  
24 immunity than Approach 1 described in the Reporter’s Memorandum, which  
25 would have provided immunity from claims against the common elements made  
26 by any person, including unit owners and neighboring property owners.  
27

28 3. The new section leaves intact the enacting State’s substantive law of  
29 adverse possession to govern claims made by the association or the unit owners  
30 collectively as tenants in common. Claims of this type may be asserted when the  
31 common elements are subject to a title defect: a person other than association or  
32 the unit owners owns or has a potential claim to a common element. An adverse  
33 possession claim of this type protects the unit owners’ interest in the common  
34 elements, rather than jeopardizing the unit owners’ expectations of ownership and  
35 use of the common elements.  
36

37 4. The language in this section is based on Minn. Stat. § 508.02, which  
38 provides: “No title to registered land in derogation of that of the registered owner  
39 shall be acquired by prescription or by adverse possession, but the common law  
40 doctrine of practical location of boundaries applies to registered land whenever  
41 registered.” Like the Minnesota statute, this section refers to both “adverse  
42 possession” and “prescription.” A Minnesota court has interpreted the statutory  
43 reference to “prescription” to preclude the creation of a prescriptive easement  
44 against registered land. *Moore v. Henricksen*, 165 N.W.2d 209 (Minn. 1968).  
45 Accordingly, this provision is drafted to immunize the common elements from  
46 claims of prescriptive easements made by unit owners.

1  
2 5. The last phrase in this section, “in derogation of the title of the other  
3 unit owners or the association,” limits the scope of immunity to claims that impair  
4 the community’s title to and use of the common elements. The state’s normal  
5 rules of adverse possession determine when the unit owners may use the doctrine  
6 of adverse possession to obtain or perfect title to a common element.  
7

8 **Example 1:** A condominium community has a recreational field (a common  
9 element) situated between a building with units and the northern boundary of the  
10 community’s real estate. A unit owner on the ground floor extends her patio by eight feet  
11 into the recreational field. The state has a ten-year statute of limitations for the recovery  
12 of possession of real property. Even if the unit owner maintains her extended patio in  
13 place for more than 10 years and satisfies all the other elements of adverse possession  
14 (actual possession that is open, notorious, continuous, and exclusive), this section  
15 prevents her from acquiring title by adverse possession to the area occupied by the patio  
16 encroachment. Her acquisition would be “in derogation of the title of the other unit  
17 owners,” who (along with her) own the area as tenants in common.  
18

19 **Example 2:** A condominium community has a recreational field (a common  
20 element) situated between a building with units and the northern boundary of the  
21 community’s real estate. Due to a surveying error, the description of the northern  
22 boundary contained in the original declaration under section 2-105(a)(3) lies 10 feet too  
23 far to the north. The entire recreational field, including the 10-foot strip, is a common  
24 element. The neighbor who owns the adjacent parcel to the north has paramount title to  
25 the 10-foot strip. The state has a ten-year statute of limitations for the recovery of  
26 possession of real property. More than ten years after installation of the recreational field,  
27 the neighbor brings a cause of action against the association to recover possession of the  
28 10-foot strip. The answer to the litigation filed by the association raises the affirmative  
29 defense that the unit owners (and the association as their agent) have acquired title to the  
30 strip by adverse possession. This section does not apply because their claim is not “in  
31 derogation of the title of the other unit owners or the association.” It is in derogation of  
32 the neighbor’s title. Thus, the state’s normal rules of adverse possession will determine  
33 whether the neighbor or the unit owners prevail.  
34

### 35 [ARTICLE] 3

## 36 MANAGEMENT OF THE COMMON INTEREST COMMUNITY

37 \* \* \*

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

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

(1) shall adopt and may amend bylaws and may adopt and amend ~~association-~~ rules;

(2) shall adopt and may amend budgets under Section 3-123, may collect assessments for common expenses from unit owners, and may invest funds of the association;

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

(4) may institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community, subject to Section 3-124;

(5) may make contracts and incur liabilities;

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

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

(8) may acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but:

(A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to Section 3-112; and

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

(9) may grant ~~easements, leases, licenses, and concessions~~ an easement, lease, license, or concession easements, leases, licenses, and concessions through or over the common elements, except that the association may not make a grant under this paragraph but a grant to a

1 unit owner that benefits ~~only~~ the owner's unit ~~of the owner~~ is allowed only by reallocation of the  
2 common element to a limited common element pursuant to Section 2-108;

3 **Reporter's Note (4/2)**

4  
5 The Drafting Committee at its Feb. 19, 2021, meeting discussed the proposed  
6 change to paragraph (9), a topic that has triggered discussion and different points  
7 of view at all committee meetings since April 2020. The suggestion was made  
8 that the limitation might be better expressed by a cross reference to Section 2-108,  
9 which contains the new procedure for reallocation of a common element as a  
10 limited common element. A grant to a unit owner that benefits the owner  
11 personally (i.e., not in connection with ownership of the unit) is allowed under  
12 paragraph (9). The edit in the first line of this paragraph, changing singular to  
13 plural nouns, reverses an earlier Style edit.

14  
15 **Reporter's Note (10/23)**

16  
17 Style rewrote this section, which previously stated: "(9) may grant easements,  
18 leases, licenses, and concessions through or over the common elements; *provided,*  
19 *the association shall not grant an easement, lease, license, or concession to a unit*  
20 *owner for the benefit of the unit owner's unit;*".

21  
22 Concerning this paragraph as revised by Style, David Biklen writes:

23  
24 New 3-102(a)(9)

25 "(9) may grant an easement, lease, license, or concession through or over the  
26 common elements, [unless the grant is to a unit owner for the benefit of the  
27 owner's unit] **except that the board may not make a grant under this**  
28 **paragraph to a unit owner that benefits only the unit of the owner.**

29  
30 It seems to me the proposed rewrite by the drafting committee - in brackets -  
31 might not clearly say that the board cannot do this. "unless" what then? Why not  
32 simply prohibit it? How about something like the new [bold] language above?

33  
34 (10) may impose and receive any payments, fees, or charges for:

35 (A) the use, rental, or operation of the common elements, other than  
36 limited common elements described in Section 2-102(2) and (4); and

37 (B) services provided to unit owners;

38 (11) may impose charges for late payment of assessments and, after notice and  
39 an opportunity to be heard, may impose reasonable fines for violations of the declaration,

1 bylaws, and ~~association~~ rules of the association of the association;

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

5 (13) may provide for the indemnification of its officers and executive board and  
6 maintain directors and officers liability insurance;

7 (14) except to the extent limited by the declaration, may assign its right to future  
8 income, including the right to receive assessments;

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

10 (16) may exercise all other powers that may be exercised in this state by  
11 organizations of the same type as the association;

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

14 (18) may require that disputes between the association and unit owners or  
15 between two or more unit owners regarding the common interest community be submitted to  
16 nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial  
17 proceeding; and

18 (19) may suspend any right or privilege of a unit owner that fails to pay an  
19 assessment, but may not:

20 (A) deny a unit owner or other occupant access to the owner's unit;

21 (B) suspend a unit owner's right to vote;

22 (C) prevent a unit owner from seeking election as a director or officer of  
23 the association; or

(D) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person.

(b) The declaration may not limit the power of the association beyond the limit authorized in subsection (a)(18) to:

(1) deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons; or

(2) institute litigation or an arbitration, mediation, or administrative proceeding against any person, subject to the following:

(A) the association shall comply with Section 3-124, if applicable, before instituting any proceeding described in Section 3-124 (a) in connection with construction defects; and

(B) the executive board promptly shall provide notice to the unit owners of any legal proceeding in which the association is a party other than proceedings involving enforcement of association rules or to recover unpaid assessments or other sums due the association.

(c) If a tenant of a unit owner violates the declaration, bylaws, or association rules of ~~the association~~ of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) exercise directly against the tenant the powers described in subsection (a)(11);

(2) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and

(3) enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

(d) The rights referred to in subsection (c)(3) may be exercised only if the tenant or unit owner fails to cure the violation within 10 days after the association notifies the tenant and unit owner of that violation.

(e) Unless a lease otherwise provides, this section does not:

(1) affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or association-rules.

(f) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and association-rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) the association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or association-rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

1 (4) it is not in the association's best interests to pursue an enforcement action.

2 (g) The executive board's decision under subsection (f) not to pursue enforcement under  
3 one set of circumstances does not prevent the executive board from taking enforcement action  
4 under another set of circumstances, but the executive board may not be arbitrary or capricious in  
5 taking enforcement action.

6 (h) The executive board shall establish a reasonable method for unit owners to  
7 communicate among themselves and with the executive board on matters concerning the  
8 association.

9 **Reporter's Note (10/23)**

10 Observations from our August 2020 informal Zoom session on the act included:

11 (1) Does the restriction of grants to unit owners in 3-102(a)(9) extend (and should it  
12 extend) to temporary construction easements?

13 (2) Should this restriction prevent the existing practice in some states to transfer outside  
14 spaces to unit owners who agree to undertake maintenance of the areas, described in the  
15 Reporter's Note to 2-108?  
16  
17  
18

19 **Comment**

20 \* \* \*

21 4. Paragraph (8) refers to the power granted by Section 3-112, upon a vote of the  
22 requisite number of unit owners, to sell or encumber common elements in a  
23 condominium or planned community or to sell part or encumber all or part of a  
24 cooperative without a termination of the common interest community. Paragraph  
25 (9) permits the association to grant easements, leases, licenses, and concessions  
26 with respect to the common elements without a vote of the unit owners. Paragraph  
27 (9) allows the executive board to grant rights to use common elements only for  
28 transactions that do not have a significant impact on the unit owners' rights to use  
29 and enjoy the common elements. Examples include a license for a non-profit  
30 organization to use a lawn or clubhouse for one or several days, a one-year lease  
31 of building space to an entity that provides services expected to be of value to  
32 residents, and a non-exclusive revocable easement allowing a neighboring  
33 community to use a roadway or trail. Most grants under Paragraph (9) are  
34 temporary or revocable by the association, do not grant exclusive rights to the  
35 holder, and are donative in nature or granted for a small fee paid by the holder.  
36 The board may not use Paragraph (9) as an alternative to a conveyance of



1 common elements, which requires a vote of the unit owners under Paragraph (8)  
2 and Section 3-112. Examples of transactions not authorized under Paragraph (9)  
3 include the grant of a ten-year lease of a significant part of the common elements  
4 or a long-term parking easement that allows the holder to install and use parking  
5 spaces. The prohibition in Paragraph (9) applies only when the grant to a unit  
6 owner “benefits only the unit of the owner.” If the grant benefits the owner for a  
7 different reason, the prohibition does not apply. For example, a unit owner who  
8 operates a restaurant or who does landscaping may properly obtain a grant that  
9 allows the owner to sell food or perform landscaping work on the common  
10 elements.

11  
12 **SECTION 3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS.**

13 (a) Except as otherwise provided in the declaration, the bylaws, subsection (b), or other  
14 provisions of this [act], the executive board acts on behalf of the association. In the  
15 performance of their duties, officers and members of the executive board appointed by the  
16 declarant shall exercise the degree of care and loyalty to the association required of a trustee.  
17 Officers and members of the executive board not appointed by the declarant shall exercise the  
18 degree of care and loyalty to the association required of an officer or director of a corporation  
19 organized, and are subject to the conflict of interest rules governing directors and officers, under  
20 [insert reference to state nonprofit corporation law]. The standards of care and loyalty described  
21 in this section apply regardless of the form in which the association is organized.

22 (b) The executive board may not:

- 23 (1) amend the declaration except as provided in Section 2-117;  
24 (2) amend the bylaws;  
25 (3) terminate the common interest community;  
26 (4) elect members of the executive board but may fill vacancies in its  
27 membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled  
28 election of executive board members; or  
29 (5) determine the qualifications, powers, duties, or terms of office of executive

board members.

(c) The executive board shall adopt budgets as provided in Section 3-123.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before the period ends. In that event, the declarant may require during the remainder of the period that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, and except as provided in Section 2-123(g), a period of declarant control terminates no later than the earliest of:

(1) [60] days after conveyance of [three-fourths] of the units that may be created to unit owners other than a declarant;

(2) two years after all declarants have ceased to offer units for sale in the ordinary course of business;

(3) two years after any right to add new units was last exercised; or

(4) the day the declarant, after giving notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

(e) Not later than 60 days after conveyance of [one-fourth] of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of [one-half] of the units that may be created to unit owners other than a declarant, not less than [one-third] of the members of the executive board

1 must be elected by unit owners other than the declarant.

2 (f) ~~[Except as otherwise provided in Section 2-120(e)~~ 2-120(g),] not later than the  
3 termination of any period of declarant control, the unit owners shall elect an executive board of  
4 at least three members, at least a majority of whom must be unit owners. Unless the declaration  
5 provides for the election of officers by the unit owners, the executive board shall elect the  
6 officers. The executive board members and officers shall take office upon election or  
7 appointment.

#### 8 **Reporter's Note (4/2)**

9  
10 A revision is needed to subsection (f) either to update the cross reference to point  
11 to 2-120(g) or to delete the "exception" clause. Section 2-120(g) (renumbered  
12 from existing 2-120(e)) deals with election of the executive board of a master  
13 association. The "exception" clause might not be useful because Section 2-120(f)  
14 (with no change in language from existing Section 2-120(d)) states: "The rights  
15 and responsibilities of unit owners with respect to the unit owners' association set  
16 forth in Sections 3-103, 3-108, 3-109, 3-110, and 3-112 apply in the conduct of  
17 the affairs of a master association only to persons who elect the board of a master  
18 association, whether or not those persons are otherwise unit owners within the  
19 meaning of this [act]." This latter provision may provide a better explanation of  
20 how the provisions fit together than retaining the "exception" clause here.  
21

22 (g) A declaration may provide for the appointment of specified positions on the  
23 executive board by persons other than the declarant during or after the period of declarant  
24 control. It also may provide a method for filling vacancies in those positions, other than by  
25 election by the unit owners. However, after the period of declarant control, appointed members:

26 (1) may not comprise more than [one third] of the board; and

27 (2) have no greater authority than any other member of the board.

#### 28 **Comment**

29 1. Subsection (a) makes officers and members of the executive board appointed by the  
30 declarant liable as trustees of the unit owners with respect to their actions or omissions as  
31 members of the board. This provision imposes a very high standard of duty because the board is

1 vested with great power over the property interests of unit owners, and because there is a great  
2 potential for conflicts of interest between the unit owners and the declarant. The 1994  
3 amendment to subsection (a) added precision by changing the standard of care for declarant-  
4 appointed officers and members from “fiduciary” to “trustee.” The law contemplates many forms  
5 of fiduciary relationships; among them, the trustee’s duty is the highest.

6  
7 Originally subsection (a) specified that officers and members elected by the unit owners  
8 have a duty of “ordinary and reasonable care.” The 1994 amendment conforms the Act to  
9 expectations of owners, officers, members of executive boards, and courts. The duties owed by  
10 an elected officer or board member ought to parallel the standards imposed on persons holding  
11 equivalent positions in non-profit corporations in the state where the common interest  
12 community is located.

13  
14 For both declarant-appointed and elected officers and members, subsection (a) looks to  
15 other state law to measure the standard of care and the basis of liability. For declarant-appointed  
16 persons, the law of trusts determines the precise content of the fiduciary duties, as well as other  
17 duties including conflict-of-interest rules, owed to the unit owners. For elected officers and  
18 members, the standards of conduct and the standards of liability are determined by the content of  
19 the state nonprofit corporation statute. This applies regardless of the organizational type of the  
20 association. Thus, if an association is a limited liability company (LLC), the standards for its  
21 officers and board members are not affected by the content to of the state LLC statute.

22  
23 A majority of states have adopted a version of the ABA's Model Nonprofit Corporation  
24 Act (MNCA) (3d ed. 1987; the ABA is presently working on a 4th edition). MNCA Section 8.30  
25 sets forth standards of conduct, and section 8.31 sets forth standards of liability for directors.  
26 Executive board members are treated as “directors” whether or not they have the formal title of  
27 “director” as a member of the association’s governing board. MNCA Section 8.42 prescribes  
28 standards of conduct for officers; they include a duty to act with the care of “an ordinarily  
29 prudent person.” States without the model act may apply different rules for director conduct,  
30 such as a trust rule or the rules applicable to directors of standard, for-profit corporations, as well  
31 as different rules for officers.

32  
33 2. Executive board members frequently will obtain the benefits of the business judgment  
34 rule under subsection (a). The business judgment rule is a standard of liability, not a standard of  
35 conduct. The rule curtails judicial review of board decisions by creating a presumption of sound  
36 business judgment. As long as the board decision might serve a rational business purpose, courts  
37 do not interfere by substituting their own ideas of what is or is not a correct or reasonable  
38 decision. The rule also presumes that the directors act in good faith, on an informed basis, and  
39 with the honest belief that their action furthers the best interests of the corporation. The business  
40 judgment rule began as common-law rule for evaluating the conduct of directors of for-profit  
41 corporations. Now many courts apply the rule in the non-profit context generally and as the  
42 basis for evaluating the activities of boards of unit owners associations. See, e.g., Reiner v.  
43 Ehrlich, 66 A.3d 1132 (Md. Ct. Spec. App. 2013); Committee for a Better Twin Rivers v. Twin  
44 Rivers Homeowners Association, 929 A.2d 1060 (N.J. 2007); 40 West 67th Street v. Pullman,  
45 790 N.WE.2d 1174 (N.Y. 2003).

1        Subsection (a) does not codify the business judgment rule. Its application to executive  
2 boards depends on judicial adoption and on other state statutes. Nor does MNCA Section 8.31  
3 codify the business judgment rule, but it has several components, one of which reflects some of  
4 the principal elements of the common-law business judgment rule.

5  
6        [RENUMBER SUBSEQUENT COMMENTS 3 and 4]

7  
8        \* \* \*

9        ~~5. The 1994 amendment to subsection (a) is intended to conform the Act to expectations~~  
10 ~~of owners, members of executive boards, and courts. The duty owed by an elected member of an~~  
11 ~~executive board ought to parallel the standard imposed on directors of non-profit corporations.~~  
12 ~~The original text set out a lesser standard. By making reference to the non-profit corporate~~  
13 ~~model, members will also obtain the benefits of the business judgment rule, now commonly~~  
14 ~~applied by courts in the non-profit context; see, for example, Levandusky v. One Fifth Avenue~~  
15 ~~Apartment Corp., 75 N.Y.2d 530 (1990).~~

16  
17        ~~Comment 5 was expanded in 2008, because of the importance of this issue. The Act~~  
18 ~~continues to rely on the Business Judgment Rule as the basis for evaluating the actions of the~~  
19 ~~Board. “As long as directors of a corporation decide matters rationally, honestly, and without a~~  
20 ~~disabling conflict of interest, the decision will not be reviewed by the courts.” Atkins v. Hibernia~~  
21 ~~Corp., 182 F3d 320, 324, (5 th cir. 1999) quoted in Block, Barton & Radin, The Business~~  
22 ~~Judgment Rule, (5th ed. 1998) in 2002 Supp. Page 6.~~

23  
24        ~~The business judgment rule is a tool of judicial review, not a standard of conduct.~~  
25 ~~The rule (1) shields directors from liability and protects decisions made by directors~~  
26 ~~when—The rule’s elements—a business decision, disinterestedness, and independence,~~  
27 ~~due care, good faith and no abuse of discretion—are present and a challenged decision~~  
28 ~~does not constitute fraud, illegality, ultra vires conduct or waste, and (2) creates a~~  
29 ~~presumption that directors have acted in accordance with each of the elements of the rule.~~

30  
31        ~~[Block et al at page 110.] In its 2007 decision, the Supreme Court of New Jersey~~  
32 ~~confirmed the continuing vitality of the business judgment rule as the basis for evaluating the~~  
33 ~~activities of the executive board of a unit owners association. See Committee for a Better Twin~~  
34 ~~Rivers v. Twin Rivers Homeowners Association, 192 N.J. 344; 929 A.2d 1060 (2007); the~~  
35 ~~decision is expected to be widely followed.~~

36        ~~The change from “fiduciary” to “trustee” as the standard of care for declarant appointed~~  
37 ~~directors makes the standard of care more precise. The law contemplates many forms of~~  
38 ~~fiduciary relationships; among them, the trustee’s duty is the highest.~~

39  
40        \* \* \*

1           **SECTION 3-104. ~~TRANSFER OF SPECIAL DECLARANT RIGHTS.~~**

2                                   **Reporter's Note (4/2)**

3  
4           Beginning early in 2020, drafts reorganized existing Section 3-104 into a series of  
5           related sections in an effort to delineate the various topics. The February 2021  
6           draft contained 3 sections: Section 3-104, Section 3-104A, and Section 3-104B.  
7           Following a suggestion made by the subcommittee, this draft recombines the  
8           revised material into a single section. How does this look? The advantage is  
9           avoiding the introduction of new sections in the Act; the cost is having one long,  
10          complicated section.

11  
12                                   **Reporter's Note (1/29)**

13  
14          The proposed revisions in this Section and in Sections 3-104A and 3-104B reflect  
15          the work of the subcommittee on special declarant rights. At the November 2020  
16          meeting of the Drafting Committee, a consensus emerged to define all special  
17          declarant rights as real property while implementing the simplicity and flexibility  
18          of Alternative 1, which drops many of the restrictions on transfer in existing  
19          Section 3-104.

20  
21          (a) In this section:

22                   (1) "Involuntary transfer" means a transfer of real estate owned by a declarant  
23                   pursuant to a foreclosure of a mortgage, deed in lieu of foreclosure, tax sale, judicial sale, or sale  
24                   in a bankruptcy or receivership proceeding.

25                   (2) "Non-affiliate successor" means a person that succeeds to a special declarant  
26                   right and is not an affiliate of the declarant that transferred the special declarant right to the  
27                   person.

28                   (a) A special declarant right is a servitude appurtenant to all real estate owned by the  
29                   declarant in the common interest community, including real estate added to the common interest  
30                   community.

31                                   **Reporter's Note (4/26)**

32  
33          The subcommittee recommends the phrase "described in the declaration" to handle  
34          both real estate presently within the common interest community and real estate  
35          that may be added later pursuant to a development right. A development right

1 reserved in the declaration must include a legal description for real estate to be  
2 added to the community. Per an instruction from the Style Committee, the  
3 substance of this sentence is moved to the definition of “Special Declarant  
4 Rights” in Section 1-103(33). With this move, we may change the title of this  
5 section from “Special Declarant Rights” back to its existing title, “Transfer of  
6 Special Declarant Rights.”  
7

### 8 **Reporter’s Note (3/2)**

9

10 The Drafting Committee at its Feb. 19, 2021, meeting preferred to replace the  
11 word “servitude” with something else; “real estate” works because Section  
12 1-103(28) defines the term broadly to mean “any leasehold or other estate or  
13 interest in, over, or under land . . .” The subcommittee should consider whether  
14 SDRs should be appurtenant to all declarant-owned real estate or to “units” owned  
15 by the declarant. The distinction might not be very important. A declarant will  
16 usually not own or have title to any common elements when it no longer owns  
17 any units or has a right to add units.  
18

### 19 **Reporter’s Note (1/29)**

20

21 Proposed new subsection (a) makes all special declarant rights interests in real  
22 property and automatically makes every special declarant right appurtenant to all  
23 real estate owned by the declarant in the common interest community. Except for  
24 mortgages, a declarant’s voluntary transfer of real estate in a common interest  
25 community does not transfer any interest in a special declarant right unless an  
26 instrument describes the special declarant right as a subject of the transfer. In  
27 effect, a special declarant right is a “floating” servitude; it is appurtenant to the  
28 declarant’s real estate in the common interest community as it changes over time  
29 – reduced when the declarant sells units and makes other transfers and increased  
30 when the declarant adds real estate to the common interest community. A related  
31 revision to Section UCIOA § 2-105, *Contents of Declaration* (above), drops the  
32 requirement that the declaration sufficiently describe “the real estate to which  
33 each [special declarant right] applies.”  
34

35 (b) A declarant that no longer owns real estate ~~described in the declaration other than a~~  
36 ~~special declarant right in the common interest community~~ ceases to have any special declarant  
37 rights.

### 38 **Reporter’s Note (4/2)**

39

40 The objective of subsection (b) is to terminate special declarant rights when the  
41 declarant owns no real estate in the common interest community other than  
42 special declarant rights. The Drafting Committee at its Feb. 19, 2021, meeting  
43 decided that a declarant who has sold all of its units should retain special

1 development rights when the declarant has an unexercised development right to  
2 add units. As in subsection (a), an issue is whether the trigger should be not  
3 owning “real estate,” or not owning “units.”  
4

5 ~~(a) A special declarant right (Section 1-103(29)) created or reserved under this [act] may~~  
6 ~~be transferred only by an instrument evidencing the transfer recorded in every [county] in which~~  
7 ~~any portion of the common interest community is located. The instrument is not effective unless~~  
8 ~~executed by the transferee.~~

9 (c) A ~~special declarant right is transferable and divisible. Except for a mortgage, a~~  
10 declarant may ~~make a voluntary~~ voluntarily transfer ~~of~~ part or all of a special declarant right only  
11 ~~to a person that owns real estate in the common interest community~~ by an instrument that  
12 describes the special declarant right being transferred. The transfer becomes effective when  
13 recorded in every [county] in which any portion of the common interest community is located.

#### 14 Reporter’s Note (4/2)

15  
16 1. The first sentence to new subsection (c) (combined in this draft with preceding  
17 material) is deleted as unnecessary. This subsection allows all types of voluntary  
18 transfers, and because a transfer of “part or all of a special declarant right” is  
19 allowed, a special declarant right is divisible. A declarant may transfer a special  
20 declarant right on an exclusive or non-exclusive basis. This subsection states no  
21 rules for involuntary transfers of special declarant rights (e.g., sales to satisfy  
22 judgment liens, tax sales) but they are allowed; the law generally recognizes that  
23 rights that may be voluntarily transferred are transferable involuntarily.  
24

25 2. The second sentence deletes the phrase from the Feb. 2021 draft “to a person  
26 that owns real estate in the common interest community” on the ground that  
27 subsection (b) covers the point. A deed purporting to transfer an SDR to someone  
28 who owns no other real estate in the community is not valid unless the SDR is a  
29 development right to add real estate. See subsection (b) supra.  
30

31 3. The Drafting Committee at its Feb. 19, 2021, meeting thought this subsection  
32 does not need an exception for mortgages, so the phrase excepting a mortgage is  
33 deleted. This subsection states no special rule for transfers by mortgage. Because  
34 a mortgage is a voluntary transfer, this subsection requires that the mortgage  
35 instrument describe the special declarant rights being mortgaged.  
36

37 4. The last sentence of existing UCIOA Section 3-104(a) states: “The instrument



1 is not effective unless executed by the transferee.” See supra. This sentence is not  
2 retained in this revised section, and it is a change of substance. Most deeds and  
3 mortgages are signed only by the grantor, not by the “transferee.” A grantee’s  
4 acceptance of the instrument is considered agreement to its contents. Requiring  
5 execution by the transferee might result in inadvertent failures to transfer SDRs  
6 for parties who fail to study the Act carefully.

7  
8  
9 **SECTION 3-104A. LIABILITY AFTER TRANSFER OF SPECIAL DECLARANT**

10 **RIGHTS:**

11 ~~(a) In this section, “non-affiliate successor” means a person that succeeds to a special-~~  
12 ~~declarant right and is not an affiliate of the declarant that transferred the special declarant right to~~  
13 ~~the person.~~

14 ~~(b) (d) Except as otherwise provided in this section and in Section 3-104B(e), a successor~~  
15 ~~to a special declarant right is subject to all obligations and liabilities imposed on the transferor by~~  
16 ~~this [act] or by the declaration.~~

17 **Reporter’s Note (1/29)**

18  
19 This subsection (b) is moved up from subsection (d) in the last draft with no  
20 change in language except insertion of the reference to Section 3-104B(e). This  
21 subsection states the most basic rule of this section and seems better positioned  
22 here.

23  
24 ~~(b) Upon transfer of any special declarant right, the liability of a transferor declarant is-~~  
25 ~~as follows:~~

26 ~~(1) A transferor is not relieved of any obligation or liability arising before the-~~  
27 ~~transfer and remains liable for warranty obligations imposed upon him~~

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

1 or liability of the transferor or transferee successor.

2 (2) ~~If a successor to any special declarant right is an affiliate of a declarant~~  
3 ~~(Section 1-103(1)), the transferor is jointly and severally liable with the successor for any~~  
4 ~~obligations or liabilities of the successor relating to the common interest community.~~

5 (3) ~~If a transferor retains any special declarant rights, but transfers other special~~  
6 ~~declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for~~  
7 ~~any obligations or liabilities imposed on a declarant by this [act] or by the declaration relating to~~  
8 ~~the retained special declarant rights and arising after the transfer.~~

9 (4) ~~A transferor has no liability for any act or omission or any breach of a~~  
10 ~~contractual or warranty obligation arising from the exercise of a special declarant right by a~~  
11 ~~successor declarant who is not an affiliate of the transferor.~~

12 (d) (f) If a A declarant that transfers a special declarant right to a non-affiliate successor,  
13 the transferor remains liable for any obligation or liability arising before the transfer imposed by  
14 this [act] or the declaration, including a warranty obligation imposed on the transferor by this  
15 [act]. The transferor is not liable for any an obligation or liability arising after the transfer  
16 which is imposed on the successor by this [act] or the declaration relating to the transferred  
17 special declarant right.

18 (e) ~~Unless otherwise provided in a mortgage instrument, deed of trust, or other~~  
19 ~~agreement creating a security interest, in case of foreclosure of a security interest, sale by a~~  
20 ~~trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under~~  
21 ~~Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in~~  
22 ~~a common interest community subject to development rights, a person acquiring title to all the~~  
23 ~~property being foreclosed or sold, but only upon his request, succeeds to all special declarant~~

1 rights related to that property held by that declarant, or only to any rights reserved in the  
2 declaration pursuant to Section 2-115 and held by that declarant to maintain models, sales  
3 offices, and signs. The judgment or instrument conveying title must provide for transfer of only  
4 the special declarant rights requested.

5 (d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating  
6 a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership  
7 proceedings, of all interests in a common interest community owned by a declarant:

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

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

12 (e) (g) A non-affiliate successor that ~~acquires-succeeds to~~ fewer than all special declarant  
13 rights held by the transferor is not subject to an obligation or liability that relates to a special  
14 declarant rights not transferred to the successor.

15 (e) The liabilities and obligations of a person who succeeds to special declarant rights are  
16 as follows:

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

20 (2) A successor to any special declarant right, other than a successor described in  
21 paragraph (3) or (4) or a successor who is an affiliate of a declarant, is subject to the obligations  
22 and liabilities imposed by this [act] or the declaration:

23 (i) on a declarant which relate to the successor's exercise or nonexercise

1 of special declarant rights; or

2 (ii) ~~on his transferor, other than:~~

3 ~~(h)~~ (h) A non-affiliate successor is not subject to an obligation or liability imposed by this  
4 [act] or the declaration that relates to:

5 ~~(A)~~ (1) a misrepresentations by any a previous declarant;

6 ~~(B)~~ (2) a warranty obligations on an improvements made by any a previous  
7 declarant; or made before the common interest community was created;

8 ~~(C)~~ (3) breach of any a fiduciary obligation by any a previous declarant or his the  
9 previous declarant's appointees to the executive board; or

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

#### 12 **Reporter's Note (4/2)**

13  
14 The Drafting Committee at its Feb. 19, 2021, meeting agreed to reinsert the words  
15 "imposed by this [act] or the declaration," which appear in existing Section 3-  
16 104(e)(2), into subsection (g) to make it clear that a successor who uses  
17 improvements made by a previous declarant in the successor's project is not  
18 necessarily relieved of an obligation to repair defects or make upgrades to the  
19 improvements. Other law, including contract and tort principles, will determine  
20 whether the successor who uses the transferor's old improvements undertakes an  
21 obligation or liability.

22  
23 ~~(3) A successor to only a right reserved in the declaration to maintain models, sales-~~  
24 ~~offices, and signs (Section 2-115), may not exercise any other special declarant right, and is not-~~  
25 ~~subject to any liability or obligation as a declarant, except the obligation to provide a public-~~  
26 ~~offering statement [,] and any liability arising as a result thereof [, and obligations under [Article]~~  
27 ~~5].~~

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~~(a) In this section, “foreclosure sale” means a real estate owned by a declarant pursuant to foreclosure of a mortgage, deed in lieu of foreclosure, tax sale, judicial sale, or sale in a receivership or receivership proceeding.~~

## Reporter's Note (4/2)

The subcommittee recommends “involuntary transfer” to replace “foreclosure sale” as for the title of Section 3-104B and operative term for this section.

### Reporter's Note (3/2)

Is “involuntary transfer” or “involuntary sale” a better title for this section and the defined term in subsection (a)? Foreclosure refers to the main purpose of this section - providing rules for mortgage lenders and mortgage foreclosures - but it fails to capture some of the transfers within the scope. Tax sales are foreclosures; some but not all judicial sales are foreclosures; sales in bankruptcy and receivership are not foreclosures. On the other hand, the scope includes some transfers that are not “involuntary”- deeds in lieu of foreclosure, and some bankruptcy and receivership sales are consented to by debtors and property owners. And a definition can be anything a statute says it is, regardless of standard usage. E.g., UCIOA’s definition of “real estate.”

(b) (i) If a foreclosure sale of real estate an involuntary transfer includes a special declarant right, the purchaser transferee may elect to acquire or reject the special declarant right. A transferee that elects to acquire to a special declarant right is a successor declarant. The judgment or instrument conveying title must provide for transfer of ~~only~~ the special declarant rights ~~acquired~~ elected by the transferee.

(4) ~~(e) (i)~~ A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (e), A purchaser of successor to a special declarant right ~~at a foreclosure sale by an involuntary transfer is a successor declarant~~ that may declare its intention in a recorded instrument ~~the intention~~ to hold those rights solely for

1 transfer to another person. ~~Thereafter, until transferring all special declarant rights to any~~  
2 ~~person acquiring title to any unit or real estate subject to development rights owned by the~~  
3 ~~successor, or until recording an instrument permitting exercise of all those rights, that successor~~  
4 ~~may not exercise any of those rights~~ After recording the instrument, the successor declarant may  
5 not exercise a special declarant right, other than any a right held by his the transferor to control  
6 the executive board ~~in accordance with~~ under Section 3-103(d) for the duration of any period of  
7 declarant control, and ~~any attempted~~ an attempt to exercise of those rights a special declarant  
8 right in violation of this section is void. ~~The successor declarant may transfer some or all its~~  
9 ~~special declarant rights pursuant to Section 3-104.]~~

10 **Reporter's Note (4/26)**

11  
12 The immediately previous sentence is deleted because it is not necessary. Section  
13 3-104(c) supra authorizes voluntary transfers of special declarant rights.

14  
15 ~~(e) So~~ As long as a successor ~~declarant may not exercise special declarant rights under~~  
16 ~~this subsection~~ described in subsection (d) complies with this section, the successor ~~declarant~~ is  
17 not subject to ~~any~~ an obligation or liability or obligation as a declarant under this [act] other than  
18 liability for ~~his~~ its acts and omissions under Section 3-103(d).

19 ~~(f) Nothing in this section subjects any successor to a special declarant right to any~~  
20 ~~claims against or other obligations of a transferor declarant, other than claims and obligations~~  
21 ~~arising under this [act] or the declaration.~~

22 **Reporter's Note (4/26)**

23  
24 The subcommittee recommends retention of existing subsection (f) (renumbered  
25 as subsection (k) infra) to minimize changes to existing UCIOA.

26 **Reporter's Note (3/2)**

27  
28 Subsection (f) immediately above is the final subsection to existing UCIOA  
29 Section 3-104, which contains all the content now in proposed Sections 3-104, 3-  
30

1 104A, and 3-104B. Its proposed deletion as a separate subsection in the  
2 amendments is not a change in substance. The provisions of Sections 3-104A and  
3 3-104B dealing with successors make it clear that successor liability under these  
4 sections only extends to obligations and liabilities arising under this act or the  
5 declaration. If the transferor declarant has obligations and liabilities arising  
6 outside of the act or the declaration, other law determines whether they transfer to  
7 a successor. This subsection is a long-winded way of saying, "This section does  
8 not cover what it does not cover."  
9

10 ~~(f)~~ (k) Nothing in this section subjects any successor to a special declarant right to any  
11 claims against or other obligations of a transferor declarant, other than claims and obligations  
12 arising under this [act] or the declaration.  
13

#### 14 **SECTION 3-108. MEETINGS.**

15 (a) The following ~~requirements~~ apply to unit owner meetings:

16 (1) An association shall hold a meeting of unit owners annually at a time, date,  
17 and place stated in or fixed in accordance with the bylaws.

18 (2) An association shall hold a special meeting of unit owners to address any  
19 matter affecting the common interest community or the association if its president, a majority of  
20 the executive board, or unit owners having at least 20 percent, or any lower percentage specified  
21 in the bylaws, of the votes in the association request that the secretary call the meeting. If the  
22 association does not notify unit owners of a special meeting within 30 days after the requisite  
23 number or percentage of unit owners request the secretary to do so, the requesting members may  
24 directly notify all the unit owners of the meeting. ~~Only matters described in the meeting notice~~  
25 ~~required by paragraph (3) may be considered at a special meeting.~~

26 (3) An association shall notify unit owners of the time, date, and place of each  
27 annual and special unit owners meeting not less than 10 days or more than 60 days before the  
28 meeting date. Notice may be by any means described in Section 3-121. The notice of any

meeting must state the time, date and place of the meeting and the items on the agenda, including  
a description of all matters on which a vote of the unit owners is required for action to be taken:

~~(A) a statement of the general nature of any proposed amendment to the  
declaration or bylaws;~~

~~(B) any budget changes; and~~

~~(C) any proposal to remove an officer or member of the executive board.~~

(A) a statement of the general nature of any proposed amendment to the  
declaration or bylaws;

(B) any budget changes;

(C) any proposal to remove an officer or member of the executive board; and

(D) all other matters on which a vote of the unit owners is required for action to  
be taken.

(4) The unit owners may discuss ~~other~~ at a meeting matters not described in the  
notice ~~at a meeting under paragraph (3)~~, but may not ~~vote to implement take~~ action on ~~other~~  
~~matters unless the matter not described in the notice without the consent of all unit owners waive~~  
~~notice of the meeting before or during the meeting.~~

#### Reporter's Note (4/2)

At the Feb. 19, 2021, meeting of the Drafting Committee, the point was made that if all unit owners appear at a meeting, they should be able to take action regardless of the contents of the notice and agenda for the meeting. The proposed edit to the final sentence of this subsection allows this outcome with the requirement of consent of all owners. Some acts accomplish this using waiver rules, which is one type of consent. Compare the Uniform Limited Cooperative Association Act (2014), which provides in Section 509, *Waiver of Members Meeting Notice*: “(a) A member may waive notice of a members meeting before, during, or after the meeting. (b) A member’s participation in a members meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member’s arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.”



1  
2 **Reporter's Note (1/29)**  
3

4 At the November 2020 meeting, the Drafting Committee had a long discussion of  
5 paragraphs (3) and (4). The consensus was that unit owners should not be allowed to vote  
6 to take action on any matters that are not disclosed to the unit owners in the notice sent  
7 out before the meeting, whether a regular or special meeting. An agenda item that says  
8 only "New Business" is not a sufficient description to allow a vote on a new subject  
9 brought up for the first time. This limitation follows the general practice in the corporate  
10 world. For meetings of community associations, many unit owners decided not to attend  
11 meetings personally if the notice discloses no issue that they consider to be important to  
12 them. The proposed revision to paragraphs (3) and (4) responds to the Drafting  
13 Committee's discussion. The proposed revision replaces the list of three subjects in  
14 subparagraphs (A), (B), and (C) that the notice "must state" with the generic phrase "all  
15 matters on which a vote of the unit owners is required for action to be taken." The list of  
16 three subjects probably is not be complete under existing UCIOA, and particular  
17 associations may expand the list with special provisions in their governing documents.  
18 The last sentence of the proposed revision responds to a concern expressed that the term  
19 in paragraph 2 "may be considered" is ambiguous. At any meeting, subject to the normal  
20 rules governing meeting, unit owners should be allowed to raise and discuss any issues of  
21 their choosing, including the taking of nonbinding (straw) votes, which do not take or  
22 implement action.  
23

24 ~~(4) The minimum time to give notice required by paragraph (3) may be reduced~~  
25 ~~or waived for a meeting called to deal with an emergency.~~

26 **Reporter's Note (4/2)**  
27

28 Paragraph (4) is deleted because the subject is now addressed by new proposed  
29 Section 3-125(c), *Emergency Powers*, infra, which applies notwithstanding other  
30 sections of the act.  
31

32 (5) Unit owners must be given a reasonable opportunity at any meeting to  
33 comment regarding any matter affecting the common interest community or the association.

34 (6) ~~The declaration or bylaws may allow for meetings of unit owners to be~~  
35 ~~conducted by telephonic, video, or other conferencing process, if the alternative process is~~  
36 ~~consistent with subsection (b)(7). Unless prohibited by the declaration or bylaws, a A meeting of~~  
37 ~~unit owners is not required to be held at a geographic physical location if the meeting:~~

38 (A) is conducted by a means of communication that enables owners to in different

1 locations to communicate in real time to the same extent as if they were physically present in the  
2 same location; and

3 (B) is not prohibited by the declaration or bylaws.

4 **Reporter's Note (1/29)**

5  
6 Two revisions to this paragraph (6) come from discussion at the November 2020  
7 meeting of the Drafting Committee. First, the declaration or bylaws do not have to  
8 authorize electronic meetings. They are allowed unless prohibited by the  
9 declaration or bylaws. This allows the executive board to decide whether live or  
10 electronic meetings are preferable. Second, this revision follows the language of  
11 the Uniform Electronic Wills Act (E-Wills Act) (2019), approved by the ULC in  
12 2019, which defines "Electronic presence" as "the relationship of two or more  
13 individuals in different locations communicating in real time to the same extent as  
14 if the individuals were physically present in the same location." Id. § 2(2). As the  
15 Comment to the E-Wills Act notes, the "to the same extent" phrase  
16 accommodates access for persons with disabilities. See also Revised Uniform  
17 Law on Notarial Acts (RULONA) § 14A(a)(1) (2018), which defines  
18 "communication technology" as "an electronic device or process that: (A) allows  
19 a notary public and a remotely located individual to communicate with each other  
20 simultaneously by sight and sound; and (B) when necessary and consistent with  
21 other applicable law, facilitates communication with a remotely located individual  
22 who has a vision, hearing, or speech impairment."  
23

24 (7) The In the notice for a meeting held at a physical location, the executive board  
25 may allow notify all unit owners to that they may participate remotely in a the meeting held at a-  
26 geographic location by a means of communication that is consistent with paragraph (6).

27 **Reporter's Note (4/26)**

28  
29 Paragraph (7) is edited from the version in prior drafts to make clear that the  
30 executive board may not authorize one or several unit owners to participate  
31 remotely on an ad hoc basis. It must notify all owners of the opportunity in the  
32 notice of the meeting given under paragraph (3). Note that this paragraph as  
33 presently drafted allows remote participation, when authorized by the board,  
34 without the need for authority in the declaration or the bylaws, and regardless of  
35 the content of those documents. *It is not, however, mandatory*; owners have no  
36 right to remote participation. Given practices regarding meetings since the  
37 beginning of the pandemic in 2020, this is an important issue of policy that the  
38 Drafting Committee may want to consider.

39  
40 (7) ~~(8) Except as otherwise provided in the bylaws or this [act], meetings of the~~

~~association must be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.~~

**Reporter's Note (4/2)**

Paragraph (7) as numbered in existing UCIOA is deleted because the Drafting Committee decided at its Feb. 19, 2021, meeting that it is not useful for the act to specify that meetings must be conducted in accordance with Roberts' Rules of Order.

(b) The following ~~requirements~~ apply to meetings of the executive board and committees of the association authorized to act for the association:

(1) Meetings must be open to the unit owners except during executive sessions.

The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

(A) consult with the association's attorney concerning legal matters;

(B) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(C) discuss labor or personnel matters;

(D) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(E) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

(2) For purposes of this section, a gathering of board members at which the

1 board members do not conduct association business is not a meeting of the executive board. The  
2 executive board and its members may not use incidental or social gatherings of board members  
3 or any other method to evade the open meeting requirements of this section.

4 (3) During the period of declarant control, the executive board shall meet at least  
5 four times a year. At least one of those meetings must be held at the common interest community  
6 or at a place convenient to the community. After termination of the period of declarant control,  
7 all executive board meetings must be at the common interest community or at a place convenient  
8 to the community unless the unit owners amend the bylaws to vary the location of those  
9 meetings.

10 (4) At each executive board meeting, the executive board shall provide a  
11 reasonable opportunity for unit owners to comment regarding any matter affecting the common  
12 interest community and the association.

13 (5) Unless the meeting is included in a schedule given to the unit owners ~~or the~~  
14 ~~meeting is called to deal with an emergency~~, the secretary or other officer specified in the bylaws  
15 shall give notice of each executive board meeting to each board member and to the unit owners.  
16 The notice must be given at least 10 days before the meeting and must state the time, date, place,  
17 and agenda of the meeting.

18 **Reporter's Note (4/2)**  
19

20 Paragraph (5) is edited because the subject of notice for emergency meetings is  
21 now addressed by new proposed Section 3-125(c), *Emergency Powers*, infra,  
22 which applies notwithstanding other sections of the act.  
23

24 (6) If any materials are distributed to the executive board before the meeting, the  
25 executive board at the same time shall make copies of those materials reasonably available to  
26 unit owners, except that the board need not make available copies of unapproved minutes or

1 materials that are to be considered in executive session.

2 (7) Unless the declaration or bylaws otherwise provide, the executive board may  
3 meet by telephonic, video, or other conferencing process if:

4 (A) the meeting notice states the conferencing process to be used and  
5 provides information explaining how unit owners may participate in the conference directly or  
6 by meeting at a central location or conference connection; and

7 (B) the process provides all unit owners the opportunity to hear or  
8 perceive the discussion and to comment as provided in paragraph (4).

9 (8) After termination of the period of declarant control, unit owners may amend  
10 the bylaws to vary the procedures for meetings described in paragraph (7).

11 (9) ~~Instead of meeting, during~~ During the period of declarant control, the  
12 executive board, instead of meeting, may act by unanimous consent as documented in a record  
13 authenticated by all its members. The secretary promptly shall give notice to all unit owners of  
14 any action taken by unanimous consent. After termination of the period of declarant control, the  
15 executive board may act by unanimous consent only to undertake ministerial actions or to  
16 implement actions previously taken at a meeting of the executive board.

17 **Reporter's Note (1/29 rev. 4/2)**

18  
19 The Drafting Committee discussed paragraph (9) at its November 2020 meeting.  
20 The primary concern is transparency, with frequent reforms in some areas of law  
21 that prefer that decision-making occurs in "open meetings," which interested  
22 persons may attend. The counterargument is that declarant-controlled boards are  
23 able to enact measures without the consent of unit owners, and it's efficient to do  
24 so by unanimous consent without a live meeting. The Committee looked at this  
25 provision during its February 19, 2021 meeting and did not recommend a change.  
26 The proposed edit to the first sentence is a clarification, not a change to how the  
27 original text should be interpreted.

28  
29 **Reporter's Note (10/23)**

David Biklen writes:

I believe this says that the board may take any action it wishes without notice and an open meeting so long as the board decision is unanimous. Do we really mean that? And if so, how is that good policy? It completely guts the open meeting rules of the act.

(10) ~~Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court.~~ Even if an action by the executive board is not in compliance with this section, it is valid unless set aside by a court. ~~A challenge to the validity of an action of the executive board for failure~~ An action seeking relief for the failure of the executive board to comply with this section may not not be brought more more not later than [60] days after the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later. the minutes of the executive board of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later. the latter to occur of:

(A) approval of the minutes of the meeting with respect to which the alleged noncompliance relates; or

(B) distribution to the unit owners of a record describing the board's conduct that is alleged not to comply with this section.

#### Reporter's Note (4/2)

The Drafting Committee briefly discussed the proposed revisions to paragraph (10) at its February 19, 2021, meeting and concurred that the new language makes useful clarification to the intended meaning of the paragraph. The first sentence, deleted in the Feb. draft, is reinserted to minimize changes from the original text; and Style changes to the last part of the subsection are reversed to return to the original text.

#### Reporter's Note (1/29)

At its November 2020 meeting, the Drafting Committee concluded that the first sentence of paragraph (10) is redundant and merits deletion. The Committee also

1 thought the key terms in the second sentence – challenge, validity, and action –  
2 would benefit from more precision. There may be further questions remaining  
3 with respect to the scope of paragraph (10), both under the existing version and  
4 the proposed revision. E.g.:

5  
6 (1) Does the 60-day limit apply only to conduct taken by the executive board  
7 without a unit owners’ meeting, or does it include board misconduct in calling or  
8 holding a unit owner’s meeting (e.g., failure to give at least 10 days’ notice of the  
9 meeting under paragraph (3))?

10  
11 (2) Does the 60-day limit apply if the plaintiff names the *association* as defendant  
12 rather than the executive board (the executive board always acts on behalf of the  
13 association, whether or not the board’s conduct is rightful, so a court could grant  
14 relief against the association for the improper conduct of its board).

15  
16 (3) How does the 60-day time limit work if the board conduct complained of does  
17 not involve a meeting (e.g., improper action taken by unanimous consent under  
18 paragraph (9))? There will be no minutes, only a record of the unanimous consent.  
19 Apparently the 60-day limit never expires due to the phrase “latter to occur” (or  
20 “whichever is later”).

## 21 22 **Reporter’s Note (10/23)**

23  
24 1. Observations from our August 2020 informal Zoom session on the act  
25 included:

26  
27 (1) The section should use the defined term “record” in appropriate places so as to  
28 include electronic documents and electronic communications.

29 (2) We should make sure that the statutory language works correctly for hybrid meetings,  
30 when some owners are present in person and some participate remotely.

31 (3) Consider expanding Section 3-108(a)(6) to allow remote attendees to make motions  
32 and amend motions.

33 (4) Consider changing Section 3-108(b)(6), which allows the executive board to withhold  
34 “unapproved minutes” from the unit owners. Discussion included the following points:

- 35  
36 (i) unapproved minutes frequently contain inaccuracies;  
37 (ii) owners should be informed about actions taken at board meetings within a  
38 reasonable period of time after the meeting;  
39 (iii) board actions are effective when taken, regardless of whether or when minutes  
40 are prepared and approved; and  
41 (iv) the Act has no express time limit on how long the board may take before  
42 approving minutes from a prior meeting.  
43

44 2. At the September 2020 Zoom annual meeting first reading of the act, a floor  
45 comment suggested that we make sure that the rules in this section on how many  
46 days before meetings notices must be sent work with electronic communications

1 and with the voting procedures in § 3-110: Note: § 3-121 provides rules for  
2 notices and authorizes e-mail notices, but does not indicate whether notices are  
3 effective when sent or when received for any of the types of notices (i.e., does a  
4 mailbox rule apply?).  
5

6 3. David Biklen has concerns about Unit Owner Communication with Other  
7 Unit Owners, which relates to meetings and voting but extends further. David  
8 writes:  
9

10 My condo board says they can communicate with other unit owners by email, but  
11 I must deliver by hand or by US mail. The board will not share email addresses. It  
12 seems to me the proper rule ought to be that a unit owner may communicate with  
13 other unit owners in the same means as does the board or management company.  
14

15 The situation. My condo complex has three brick towers with 20 units in each.  
16 Two years ago, a nighttime fire in the unit below mine destroyed the unit and  
17 drove most residents of the other 19 units from the building - some actually never  
18 woke up or left the building. My unit was too dangerous to return to until  
19 firefighters removed the dangerous levels of carbon monoxide.  
20

21 The board and management company did not notify all 60 association members of  
22 the fire (many had slept thru it or were away) and, despite my request, did not call  
23 an emergency board meeting - even tho the fire had started in an electric  
24 baseboard unit common to all units. (Why scare residents was the statement -  
25 much like T's recent statement re covid.)  
26

27 I then hand delivered a memo to all unit owners describing the fire and asking for  
28 an emergency board meeting- which was then held - to address the fire damage  
29 and find and remediate the cause.  
30

31 The board then emailed a memo to all unit owners criticizing my "alarmist"  
32 memo and calling into question its accuracy. I prepared a brief response to the  
33 board memo because my veracity had been called into question. I asked the board  
34 to distribute my memo in the same manner that the board distributed its memo -  
35 by email. The board refused to distribute my memo by email even tho it related to  
36 the board's email that criticized me.  
37

38 That ought not be the case. It would be great if the drafting committee could  
39 devise a way to avoid this result.  
40

#### 41 **SECTION 3-109. QUORUM.**

42 (a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of  
43 the unit owners if at the beginning of the meeting persons entitled to cast [20] percent of the



1 votes in the association:

2 (1) ~~are present~~ participate in person, ~~or by proxy, or by a means of communication under~~  
3 Section 3-108(a)(6) or (7) at the beginning of the meeting;

4 (2) ~~have cast absentee ballots solicited in accordance with Section 3-110 (c)(4) which~~  
5 ~~have been delivered to the secretary in a timely manner; or~~

6 (3) ~~are present by any combination of paragraphs (1) and (2).~~

7 **Reporter's Note (4/2)**

8  
9 The proposed revision to subsection (a) is not a change of substance. It reflects  
10 the proposed revisions to Section 3-110 that (i) eliminate the use of the term  
11 "absentee ballot" for votes cast at meetings by unit owners who are not present  
12 (they vote only by proxy) and (ii) allow unit owners to participate in meetings  
13 remotely by electronic means.

14  
15 (b) Unless the bylaws specify a larger number, a quorum of the executive board is present  
16 for purposes of determining the validity of any action taken at a meeting of the executive board  
17 only if individuals entitled to cast a majority of the votes on that board are present at the time a  
18 vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative  
19 vote of a majority of the board members present is the act of the executive board unless a greater  
20 vote is required by the declaration or bylaws.

21 ~~(c) Except as otherwise provided in the bylaws, meetings of the association must be~~  
22 ~~conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.~~

23 **Reporter's Note (4/2)**

24  
25 Subsection (c) is deleted because the Drafting Committee decided at its Feb. 19,  
26 2021, meeting that it is not useful for the act to specify that meetings must be  
27 conducted in accordance with Roberts' Rules of Order.

28  
29 **SECTION 3-110. VOTING; PROXIES; BALLOTS.**

30 **Reporter's Note (1/29)**

1 At its November 2020 meeting, the Drafting Committee extensively discussed  
2 Section 3-110, requesting a number of revisions and leaving a number of points  
3 open for further work. The Reporter has reorganized this section extensively,  
4 including moving some paragraphs to places where they seem a better fit.

5  
6 ~~(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a~~  
7 ~~meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to~~  
8 ~~subsection (c) or, when a vote is conducted without a meeting, by electronic or paper ballot~~  
9 ~~pursuant to subsection (d).~~

10 (a) Unit owners may vote at a meeting under subsection (b) or (c) or, when a vote is  
11 conducted without a meeting, by ballot under subsection (d).

#### 12 **Reporter's Note (4/2)**

13  
14 Subsection (a) of the original text serves as a roadmap for the remainder of this  
15 Section. The Feb. 2021 draft deleted subsection (a) on the ground that a roadmap  
16 is not necessary. The Style Committee at its April 2021 meeting expressed a  
17 strong preference for drafting so as not to renumber existing subsections. If  
18 deletion of a subsection cannot be avoided, the deletion should be shown as: “[a]  
19 Reserved.] Accordingly, this draft reinserts subsection (a) as a roadmap with  
20 edits.

21  
22 ~~(b)~~ (a) (b) At a meeting of unit owners the following requirements for voting apply:

23 (1) ~~Unit owners who are present in person~~ Unless the declaration or bylaws  
24 otherwise provide, unit owners may vote by voice vote, show of hands, standing, or any other  
25 method for determining the votes of unit owners, as ~~ordered by the assembly or designated by~~  
26 ~~the person presiding~~ authorized at the meeting.

#### 27 **Reporter's Note (4/2)**

28  
29 At its Feb. 19, 2021, meeting, the Drafting Committee discussed paragraph (a)(1)  
30 with different points of view expressed. The consensus is that unit owners may  
31 select the method of voting, subject to the declaration or bylaws, by using normal  
32 parliamentary procedures, regardless of the preference of the person presiding at  
33 the meeting. The revised language “authorized at the meeting” allows this  
34 outcome by removing the reference to the presiding officer. The phrase “present  
35 in person” is deleted because it may lead to confusion when some or all unit

1 owners participate remotely.

2  
3 ***\*Note - this is where Drafting Committee stopped its review at its Feb. 19 meeting to***

4 ***move on to discussion of Section 3-115, Assessments.***

5  
6 **Reporter's Note (1/29)**

7  
8 Discussion at the November 2020 Drafting Committee meeting included the  
9 question whether this paragraph works for election of the board by acclamation.  
10 *Robert's Rules of Order* uses the term "voice vote" and indicates it is the same as  
11 acclamation. The addition of "ordered by the assembly" conforms this paragraph  
12 to *Robert's Rules*. Query whether "designated by the person presiding at the  
13 meeting" should be retained. The intent of the proposed revision is that an order  
14 of the assembly overrides the person presiding at the meeting (e.g. if the chair  
15 calls for a voice vote and a motion for a secret ballot passes, the motion prevails).

16  
17 (2) ~~Unit owners that participate~~ If unit owners participate in the meeting by a  
18 means of communication under Section 3-108(a)(6) or (7) ~~may vote at the meeting, whether or~~  
19 ~~not held at a geographic location, if the association has implemented must implement~~ reasonable  
20 measures to verify the identity ~~as a unit owner~~ of each person participating remotely ~~as a unit~~  
21 ~~owner.~~

22 (2) (3) ~~If only one of several owners of a unit is present, that owner is entitled to~~  
23 ~~cast all the votes allocated to that unit. If more than one of the owners are present, the votes~~  
24 ~~allocated to that unit may be cast only in accordance with the agreement of a majority in interest~~  
25 ~~of the owners, unless the declaration expressly provides otherwise. There is majority agreement~~  
26 ~~if any one of the owners casts the votes allocated to the unit without protest being made promptly~~  
27 ~~to the person presiding over the meeting by any of the other owners of the unit.~~

28 **Reporter's Note (1/29 rev. 4/2)**

29  
30 At its November 2020 meeting, the Drafting Committee recommended that  
31 paragraph (3) above and paragraph (c)(2) below, dealing with voting, when a unit  
32 has multiple owners, at live meetings and by proxies, respectively, should be  
33 combined and integrated into a single provision. See new subsection (d) below.

1  
2 **Reporter's Note (10/23)**  
3

4 At the September 2020 Zoom annual meeting first reading of the act, a floor  
5 comment suggested that this paragraph (3) may not work when owners are voting  
6 by electronic ballots.  
7

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

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

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

17 **Reporter's Note (1/29)**  
18

19 Existing Section 3-110 uses the term "absentee ballot" to describe how a unit  
20 owner votes at a meeting without being physically present and uses the terms  
21 "paper ballot" and "electronic ballot" to describe the mechanism for voting  
22 without a meeting. Following suggestions made at the November 2020 Drafting  
23 Committee meeting, this redraft uses "ballot" only for a vote without a meeting  
24 and allows an absent unit owner to vote at a meeting only by using a proxy. This  
25 better conforms to how the terms are generally used in corporate practice. Note,  
26 however, *Robert's Rules of Order* 45:17 & 45:18 allows voting by ballot at  
27 meetings "when expressly ordered by the assembly or prescribed by its rules."  
28 *Robert's Rules* does not discuss the subject of voting or other decision making by  
29 an organization without holding a meeting.  
30

31 ~~(e) (c) (3)~~ Except as otherwise provided in the declaration or bylaws, the unit owners  
32 may vote by proxy subject to following requirements apply with respect to proxy voting:

33 (1) ~~(A)~~ The association promptly shall deliver a proxy form to an owner that  
34 requests it if the request is made at least [three] days before the scheduled meeting.

(2) ~~(B)~~ When a unit owner votes by proxy, the association must be able to verify that the proxy is cast by the unit owner having the right to do so the identity of the proxy holder and the unit owner giving the proxy.

## Reporter's Note (4/26)

2. Subparagraph (A) in the Feb. 2021 draft (renumbered here as (1)) takes the language in the existing act applicable to absentee ballots cast at a meeting, 3-110(b)(4) *supra*, edited to refer to “proxy” instead of absentee ballot. Existing UCIOA requires that the association provide absentee ballots to a unit owner who requests one, but says nothing about the form for a proxy and who produces it. Query whether this subsection should say another about *electronic proxies*, a topic not addressed by existing UCIOA.

2. Subparagraph (B) in the Feb. 2021 draft (renumbered here as (2)) takes the language in the existing act applicable to absentee ballots cast at a meeting, 3-110(b)(5) *supra*, edited to refer to “proxy” instead of absentee ballot. Existing UCIOA does not expressly address whether the association must “verify” anything about a proxy. The new edit to this paragraph requires verification both for the unit owner (proxy giver) and the proxy holder.

(1) ~~(3) (C)~~ Votes allocated to a unit may be cast pursuant to a directed or undirected proxy 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) ~~(4) (D)~~ A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding at a meeting.

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

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

~~(6)~~ **(7) (G)** A person may not cast undirected proxies representing more than [15]

1 percent of the votes in the association.

2 ~~(d)~~ ~~(b)~~ (d) Unless prohibited or limited by the declaration or bylaws, an association may  
3 conduct a vote without a meeting. ~~In that event,~~ subject to. In that event, the following  
4 requirements ~~apply~~ apply:

5 **Reporter's Note (4/26)**

6  
7 Some of the edits in subsection (d) on voting without a meeting were only  
8 reorganization and Style. This draft reverses Style edits for subsection (d). The  
9 changes of substance are new procedures for electronic voting and allowing a unit  
10 owner to revoke a ballot.

11  
12 (1) The association shall notify the unit owners that the vote will be taken by  
13 ballot. ~~;~~ [or should we say absentee ballot?], and the notice shall also:

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

16 (2) With the notice the association shall deliver:

17 (A) a paper ballot to every unit owner entitled to vote on the matter; or

18 (B) if, the association allows electronic voting, instructions for casting an  
19 electronic ballot to a unit owner that consents in a record to electronic voting.

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

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

24 (4) In the notice the association shall:

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

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

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

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

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

8 ~~(2) A unit owner may vote by:~~

9 ~~(A) paper ballot; or~~

10 ~~(B) if the association allows electronic voting and a unit owner consents~~  
11 ~~in a record to electronic voting, by electronic ballot.~~

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

14 ~~(4) A ballot for a vote at a meeting may be cast only at the scheduled meeting~~  
15 ~~and any recessed session of the meeting. A ballot for a vote without a meeting must state an~~  
16 ~~expiration date after which the ballot may not be cast.~~

17 (5) A unit owner may revoke a ballot before ~~a deadline established by the~~  
18 ~~association, which for a meeting may not be more than five days before the scheduled date for~~  
19 ~~the meeting~~ the time and date by which the ballot must be delivered to the association under  
20 paragraph (4). Except as otherwise provided in the declaration or bylaws, a ballot is not  
21 revoked by death or disability after delivery to the association ~~by death or disability or attempted~~  
22 ~~revocation by the person that cast that vote.~~

23 ~~(6) Approval by ballot pursuant to this subsection is valid only if the number of~~

1 ~~votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing~~  
2 ~~the action.~~

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

6 (7) The association shall verify that each paper and electronic ballot is cast by the  
7 unit owner having ~~the a~~ right to do so.

8 (8) ~~For If the association allows~~ electronic ballots, the association shall create a  
9 record of electronic votes that is capable of retention, retrieval, and review.

#### 10 **Reporter's Note (4/26)**

11  
12 Consider how paragraph (8) fits with Section 3-118(a)(11), which states, "An  
13 association must retain . . . ballots, proxies, and other records related to voting by  
14 unit owners for one year after the election, action, or vote to which they relate."  
15

#### 16 **Reporter's Note (1/29)**

17  
18 This section does not limit the ways in which "electronic voting" may take place  
19 at a meeting or under this subsection (b) for voting without a meeting. See the  
20 proposed new definition of "electronic" above in Section 1-103(17A). Under  
21 paragraph (8), however, "electronic ballots" require the creation of a record. The  
22 association may prepare a written form or content for electronic ballots and  
23 distribute the form or content to unit owners; or the electronic ballots could be as  
24 simple as the unit owners communicating "yes" or "no" by e-mail, text message,  
25 or voice mail in response to the association's notice that explains what issue is to  
26 be decided. Existing UCIOA § 3-110(d)(2) requires the association to "deliver a  
27 paper or electronic ballot to every unit owner entitled to vote on the matter,"  
28 which may imply that the association must distribute something other than just  
29 telling the unit owner to respond by email. The proposed revision to this  
30 subsection drops the "delivery" requirement.  
31

32 ~~(e)~~ (h) Unless a different number or fraction of the votes in ~~the an~~ association is required  
33 by this [act] or the declaration, a majority of the votes cast determines the outcome of any vote  
34 taken at a meeting or without a meeting.



1 **Reporter's Note (4/26)**

2  
3 New subsection (c) moves existing 3-110(b)(3), which is deleted supra, with some  
4 changes in its language including extending its scope from voting at meetings to  
5 votes taken without a meeting. *This draft proposes moving this subsection, along*  
6 *with the next subsection immediately below, to the end of this subsection to*  
7 *preserve the original subsection numbering of the next two subsections.*  
8

9 ~~(d)~~ (i) If a unit is owned by more than one person and:

10 (1) ~~If if~~ only one of the owners casts a vote, that owner ~~is entitled to~~ may cast all  
11 the votes allocated to that unit; and

12 (2) ~~If if~~ more than one of the owners casts a vote, unless the declaration provides  
13 otherwise, the votes allocated to that unit may be cast only in accordance with the agreement of a  
14 majority in interest of the owners.

15 **Reporter's Note (1/29)**

16  
17 This new subsection (d) integrates existing Section 3-110 paragraphs (b)(2) and  
18 (c)(2) above and makes a few minor changes of substance:

19  
20 (1) New subsection (d) retains the “majority in interest” rule of paragraph (b)(2)  
21 for live meetings and expands it to proxies and all other types of voting.  
22

23 (2) New subsection (d) deletes the “protest” language from both existing  
24 paragraphs (b)(2) and (c)(2) on the ground that it is unnecessary. If one owner  
25 votes and another owner casts a contradictory vote or protests, the “majority in  
26 interest” rule should resolve the issue.  
27

28 (3) New subsection (d) preserves the language of existing paragraphs (b)(2) and  
29 (c)(2), which allows the declaration to override the “majority in interest” rule, but  
30 not the other rules stated therein. Query whether this is best. Perhaps this entire  
31 subsection should be a mandatory rule, or a default rule subject to change by the  
32 declaration.  
33

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

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

37 (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-~~;~~ and

~~(f)~~ (f) ~~(4)~~ Unit unit Unit owners are entitled to notice of all meetings at which lessees are entitled to vote.

#### Reporter's Note (4/2)

The above edit moved subsection (f) to the final paragraph of subsection (e) to put all rules dealing with voting by lessees in the same subsection. This is a Style edit. This draft reverses the edit and returns to the original language, despite the inexplicable (to the Reporter) oddity of putting the final requirement for lessee voting in a separate subsection (f) all by itself.

~~(g)~~ (f) (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.

#### Reporter's Note (10/23)

Observations from the August 2020 informal Zoom session on the act included:

(1) The section should use the defined term "record" in appropriate places so as to include electronic documents and electronic communications.

(2) We should consider authorizing or facilitating secret ballots for electronic voting and for remote attendees at meetings. There appears to be technology currently being used that allows secret ballots to be cast electronically and securely, with the recipients who count votes not able to identify the voters.

#### SECTION 3-115. ASSESSMENTS.

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

1 **Reporter's Note (4/2)**

2  
3 The edit to subsection (a) clarifies that the association's obligation to make  
4 regular assessments begins after the first assessment and uses the term "periodic  
5 common expenses assessments" to use the same phrase that appears in the  
6 original text of the Sections that require disclosure in the public offering statement  
7 and the resale certificate.  
8

9 (b) Except for assessments under subsections (c), ~~(d), and (e)~~ through (g), or as  
10 otherwise provided in this [act], all common expenses must be assessed against all the units in  
11 accordance with the allocations set forth in the declaration pursuant to Section 2-107(a) and (b).  
12 The association may charge interest on any past due assessment or portion thereof at the rate  
13 established by the association, not exceeding [18] percent per year.

14 (c) ~~To the extent required by the~~ The declaration may provide for that:  
15 ~~(1) a~~ (1) a ~~the assessment of~~ common expenses ~~s~~ associated with the maintenance,  
16 repair, or replacement of a limited common element ~~must be assessed~~ must be assessed against  
17 the units to which ~~that~~ the that limited common element is assigned~~;~~. ~~The declaration may~~  
18 ~~provide that the assessment be made~~ equally, against the units or in any other proportion ~~the~~  
19 ~~declaration provides;~~ the declaration provides;

20 **Reporter's Note (4/2)**

21  
22 Most of the prior edits to subsection (c)(1) are Style edits, which are reversed in  
23 this draft. The deletion of the phrase "to the extent required" is substantive; the  
24 phrase is ambiguous and may allow the declaration to confer discretion on the  
25 executive board with respect to making an assessment -- a result this draft intends  
26 to prohibit.  
27

28 ~~(2) (d) a~~ To the extent provided by the declaration, the association must assess a  
29 common expenses ~~benefiting~~ benefitting fewer than all of the units or their owners ~~may be~~  
30 ~~assessed exclusively~~ must be assessed exclusively against the units ~~or unit owners~~ or unit owners  
31 ~~benefitted, or unit owns benefitted; and.~~ [Choice 1—declaration must give category or list the

~~common expense~~ If the but if the common expense is for the maintenance, repair, or replacement of a common elements other than a limited common elements, an exclusive assessment against benefitted units is allowed and required the expense may be assessed exclusively against them only if the declaration reasonably identifies the common expense by specific listing or category.

~~[Choice 2—restrict benefit rule to statutory list of categories] If the common expense is for the maintenance, repair, or replacement of common elements other than limited common elements, an exclusive assessment against benefitted units is allowed and required only if the declaration reasonably identifies the common expense and the common expense is for the maintenance, repair, or replacement of utility installations, equipment, windows, or doors serving only the owner's unit [or serving fewer than 10 units].~~

#### Reporter's Note (4/2)

The Drafting Committee discussed subsection (c) at its Feb. 19, 2021, meeting, with different points of view expressed as to the merits of Choice 1 and 2 and other approaches, and the committee decided to select Choice 1. In addition, the committee agreed that the permissive language presently in the “benefit” rule (“may be assessed”) should be replaced with mandatory language (“must be assessed”).

#### Reporter's Note (1/29)

1. Proposed revisions in subsections (c) above and (g) below reflect the work of the subcommittee on common expenses. Two choices are given with respect to the scope of the benefit rule in subsection (c). Choice 1 borrows some of the language from UCC Article 9. UCC § 9-108(b), *Sufficiency of Description*, provides: “. . . a description of collateral reasonably identifies the collateral if it identifies the collateral by: (1) specific listing; (2) category; . . .” The UCC rules for describing collateral in security agreements and financing statements have proven to be generally successful in striking a balance between flexibility and notice to debtors and third parties. Categories include heating and air conditioning equipment, elevators, and recreational facilities.

Choice 2 is more restrictive, limiting exclusive assessments to a statutory list of categories. This prevents drafting the declaration with a long list of “categories”

1 that may include everything imaginable. For Choice 2, we could expand the  
2 statutory list of permitted exclusive-benefit categories, but if the list gets too long  
3 or ends with a catch-all phrase, the list would become meaningless. This provision  
4 is partly based on some of the language in the Texas condominium act. Texas  
5 adopted the Uniform Condominium Act (UCA), but has a non-uniform provision,  
6 Tex. Property Code § 82.107, which states:

7  
8 (b) Except as provided by the declaration, each unit owner is responsible for  
9 the cost of maintenance, repair, and replacement of any utility installation or  
10 equipment serving only the owner's unit, without regard to whether the  
11 installation or equipment is located wholly or partially outside the designated  
12 boundaries of the unit. For purposes of this subsection, utility installations and  
13 equipment include electricity, water, sewage, gas, water heaters, heating and  
14 air conditioning equipment, and television antennas.

15  
16 (c) Except as provided by the declaration, each unit owner is responsible for  
17 the cost of maintenance, repair, and replacement of windows and doors serving  
18 only the owner's unit.

19  
20 2. Another issue the committee may consider is whether we want a different  
21 default rule. For the items in all 3 paragraphs of existing UCIOA Section 3-  
22 115(c), all common expenses must be assessed to all owners, no matter their  
23 nature, unless the declaration provides for exclusive assessments. For example,  
24 should the default rule apply to expenses for special services provided by the  
25 association to particular owners who request them (snow removal, etc.)? Note, the  
26 Texas act (quoted above) has a default rule that if the declaration is silent, the  
27 association must exclusively assess for maintenance, repair, and replacement of  
28 utility installations and equipment that serve only the owner's unit. Also, what  
29 should be the default rule for maintenance, repair, and replacement of limited  
30 common elements? Section 3-115(c) makes all unit owners pay unless the  
31 declaration requires assessing only the owners to whom the limited common  
32 element is allocated.

#### 33 34 **Reporter's Note (10/23)**

35 Barry Hawkins writes:

36  
37 After considerable thought and re-reading of subsection (d) I have come to like it  
38 better and better and do not think it needs any major surgery. As I now read it it  
39 would appear to apply primarily to ongoing maintenance and repairs or  
40 replacements. As long as there are no big surprises for the unit owner I think it  
41 makes sense to allocate financial responsibility to those unit owners whose units  
42 include features different in kind from that of other owners. Everybody would be  
43 on an even playing field since the features triggering different allocations from the  
44 standard (whether based upon value, square footage or any other measuring tool)  
45 would be disclosed specifically and the buyer could choose to buy or not buy  
46 depending upon that factor among others. I think that works well in ongoing

1 maintenance and perhaps less well in the event of allocating cost of repairing or  
2 replacing features harmed by some loss event because of the interplay of  
3 insurance and causation and the difficulty of advance disclosure of the many  
4 unexpected events which could have been allocated differently with perfect  
5 foresight. None the less and subject to my subsequent comments on subsection (g)  
6 I think it works and is an elegant solution to a difficult problem.  
7

8 (3) ~~(3)(e) To the extent required by the declaration,~~ the costs of insurance must be  
9 assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage  
10 whether metered or reasonably estimated.

### 11 Reporter's Note (1/29)

12  
13 The subcommittee on common expenses raised the question whether the  
14 requirement in subsection (e) of assessing utilities "in proportion to usage" works,  
15 given that some utilities may not be separately metered (e.g. water) and some may  
16 not be capable of metering (e.g., cable television).  
17

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

21 ~~(e) (g) (e) If damage to a unit or other part of the common interest community, or if any~~  
22 ~~other common expense is caused by the willful misconduct or gross negligence of any unit~~  
23 ~~owner or a guest or invitee of a unit owner, the association may assess that expense exclusively~~  
24 ~~against that owner's unit, even if the association maintains insurance with respect to that damage~~  
25 ~~or common expense. The association may assess the following common expenses, including~~  
26 expenses ~~related~~ relating to damage to or loss of property, exclusively against an owner's unit:

27 (1) ~~Expense expense~~ caused by the willful misconduct of the unit owner or a guest  
28 or invitee of the unit owner; ~~or~~ and

29 (2) ~~Expense expense~~ caused by the unit owner's failure to comply with ~~an~~  
30 ~~association rule prescribing~~ a maintenance standard ~~prescribed by the declaration or a~~

1 ~~rule, which if that standard association rule~~ contains a statement that ~~an owners~~ may be  
2 liable for damage or loss caused by ~~their~~ failure to comply with the ~~maintenance-~~  
3 ~~standards.~~

4 ~~(f) Before the association makes an assessment under subsection (e), the association shall~~  
5 ~~give notice Notice~~ to the unit owner and an opportunity for a hearing ~~is required before the-~~  
6 ~~association makes the assessment.~~ The assessment ~~is limited to~~ may not exceed the portion of the  
7 common expense in excess of any insurance proceeds received by the association ~~under its-~~  
8 ~~insurance policy,~~ whether ~~that the~~ portion results from the application of a deductible or  
9 ~~otherwise.~~

#### 10 **Reporter's Note (4/2)**

11  
12 The Drafting Committee discussed subsection (g) at its Feb. 19, 2021, meeting.  
13 Discussion included the fit between the association's master insurance policy,  
14 which is addressed in this subsection, and the owner's individual insurance  
15 policy. No change was recommended from the subsection as drafted, which  
16 makes the owner liable only to the extent the loss is not covered by the master  
17 policy. The owner can usually request coverage under the master policy even if  
18 the association has not made a claim. The master policy often has a high  
19 deductible, which provides some incentive for proper behavior by owners.

#### 20 **Reporter's Note (1/29)**

21  
22  
23 This proposed revision to the "bad behavior" rule of subsection (g) follows Barry  
24 Hawkins's recommendation (see below) to look to Connecticut's modification to  
25 this provision, which reads:

26  
27 If any common expense is caused by the willful misconduct, failure to comply  
28 with a written maintenance standard promulgated by the association or gross  
29 negligence of any unit owner or tenant or a guest or invitee of a unit owner or  
30 tenant, the association may, after notice and hearing, assess the portion of that  
31 common expense in excess of any insurance proceeds received by the  
32 association under its insurance policy, whether that portion results from the  
33 application of a deductible or otherwise, exclusively against that owner's unit.

34  
35 Conn. Gen. Stat. Ann. § 47-257(e). The proposed revision deletes the "gross  
36 negligence" prong on the ground that it is too difficult for executive boards and  
37 other persons to distinguish gross negligence from ordinary negligence.

1  
2 The revision allows the association to charge unit owners when their failure to  
3 meet maintenance standards for equipment for which they are responsible causes  
4 damage outside their unit. For example, the rule may require replacement of hot  
5 water heaters every 10 years. The rule should warn owners of the possible  
6 consequence of failure to follow the standard – liability for property damage  
7 caused to other persons.  
8

9  
10 **Reporter's Note (10/23)**

11 Barry Hawkins writes:  
12

13 Now I turn to subsection (g) and that is a horse of different color. I think we got it  
14 wrong in 2008 and now it needs to be corrected. As I will elaborate on later, I  
15 think we saw the problem in our 2010 deliberations in Connecticut and modified  
16 what was then 3-115(e) to its present format in Conn. Gen Statutes Section 47-  
17 257. I propose that (g) be discussed as part of your committee's agenda and have  
18 concluded that it be substantially re-written to more closely track 47-257. In  
19 hindsight I think we came closer to the solution in 2010 and now regret that we  
20 did not then tackle amending CIOA to implement that fix.  
21

22 Subsection (e) as it was identified in 1982 CIOA was maintained in the original  
23 formulation from 1982 through the substantial amendments in 1994. It was  
24 apparently modified in 2008 and that is where I think we went wrong. The  
25 original formula allowed the association to directly surcharge the unit owner for  
26 misconduct resulting in a loss. The language did not deal with the issue of  
27 whether or not there was insurance coverage for the loss and the formula has no  
28 explanatory commentary.  
29

30 I submit that the formulation and absence of commentary result from the fact that  
31 almost all property insurance policies exclude from coverage damages resulting  
32 from the intentional bad acts of the insured. This limitation of liability is identical  
33 between master policies covering multiple units and standalone single homes. It  
34 would not be a surprise or unfair for a unit owner to find that their policy would  
35 not pay for intentional bad acts (read "misconduct").  
36

37 In a common interest community of course there is a need to reconcile the fact  
38 that unit owners are insured but they are also not individually responsible for  
39 purchasing and paying for the policy premium. To avoid an unfair result in such a  
40 community we also provided for mandatory insurance Waiver of subrogation  
41 rights to make sure that a unit owners misconduct would not defeat the claims  
42 of other unit owners for damages To their units and the association on behalf of  
43 all owners to achieve the same result for damages to common elements resulting  
44 from misconduct of a unit owner. Section 3-113 sets forth the provisions needed  
45 to reflect the unique needs of unit owners in a multi-family ownership situation  
46 and it did it quite nicely in a manner which was consistent with 3-115. These two



1 subsections worked reasonably well from 1983-2008 when I think we left the  
2 tracks inadvertently but with good intentions.  
3

4 In 2008 section 3-115(e) was amended to add the word willful as a modifier to  
5 misconduct (a change of no substance I think since willful is inherently an  
6 implied feature of misconduct and this changes the standard not at all) and much  
7 more importantly added the troubling standard of gross negligence to the conduct  
8 that would allow the association to visit the entire cost of repairing damages upon  
9 the errant unit owner and even worse added the concept that this would be done  
10 whether or not there was any insurance coverage for the conduct and the resulting  
11 damages.  
12

13 The origin of these unfortunate changes was probably based upon the factors  
14 discussed in the commentary to section 3-113 of the 2008 CIOA text. The  
15 changes made to 3-115(e) are described in the accompanying commentary as  
16 being made at least in part to resolve the issues described in the 2008 commentary  
17 to 3-113 as needing solution. Unfortunately they do not directly nor adequately  
18 address the very real problems of high deductibles, lack of incentives for unit  
19 owners to act carefully with respect to maintaining common elements, and lack of  
20 incentives for unit owners not to file numerous small claims against the master  
21 policy thus raising the costs of premiums for all as well as leading to higher  
22 deductible amounts resulting in associations effectively having to self insure  
23 many such smaller claims. The raising of insurance premium cost and higher  
24 deductibles results of course in all unit owners paying the resulting cost of such  
25 lack of incentives.  
26

27 Although the 2008 commentary acknowledges the difficulty of selecting fair and  
28 adequate alternatives it appears to have been mesmerized by the prospect of  
29 passing on the costs of many tort claims by expanding upon the concept of  
30 assigning fault to unit owners having tort claims and blithely passing it on to the  
31 unit owners individual property owners insurance carriers to pay for the repair or  
32 replacement of damages which had formerly been the responsibility of the master  
33 policy Carrier.  
34

35 Accordingly, 3-115(e) was modified to allow the association to decide whether  
36 the damages resulted from ordinary or gross negligence and if the latter, to  
37 allocate the total cost of repair or replacement to the unit owner. Presumably the  
38 association would not receive much resistance since that owner could then submit  
39 the claim to his unit insurance carrier paying only the much more modest  
40 deductible charged by that unit carrier. In effect and despite the existence of  
41 provisions in 3-113 making it clear that the master policy was to provide primary  
42 insurance and the unit policy only secondary, this flim flam game depended upon  
43 the unit policy carrier accepting the decision of the association that the tort was  
44 one of gross negligence and therefor the tort was not an insured event under the  
45 master policy.  
46

1 It did not take unit policy insurers long to realize that this was actually a three  
2 card Monte scheme with unit owner responsibility for negligence being cleverly  
3 passed on to the unit carrier. The unit carriers have of course pushed back with  
4 higher premium costs, larger deductibles and sometimes complex litigation  
5 claims. Many association lawyers, including me, have advised their clients to  
6 encourage unit owners to obtain unit property damage insurance coverage from  
7 the same carrier that writes the master policy, making the carrier agnostic as to the  
8 characterization of the tort as gross or simple negligence. Either way the carrier  
9 must pay and there is in reality no change in the incentives to be given to change  
10 unit owner conduct. I would submit that a scheme of coverage based upon an  
11 absence of incentives and a pull the wool over the carriers eyes is not a sound  
12 policy to be promoted by the ULC.

13  
14 Even in the absence of a “hiding the ball “scheme of passing liability for payment  
15 on to the unit policy insurer there are a number of sound policy reasons not to add  
16 “fault” to decide whether a unit owner should pay for the cost of repair or  
17 replacement resulting from an accident. First, ordinary insurance policies on  
18 single family homes cover accident damage claims so that is the ordinary  
19 expectation of the property owner. In order to vary that expected and normal  
20 result there should be a sound rationale based upon some unique circumstance of  
21 common ownership that justifies a difference in result.

22  
23 There are some differences of course such as the association pays the premium  
24 based upon mandatory payments from all owners and the policy prohibits any  
25 subrogation claims against the unit owners based upon their status as  
26 owners. This payment difference does lessen the incentive of an owner not to file  
27 meritless or numerous small claims since that conduct would raise the cost of  
28 premiums for all owners and no individual owner is likely to risk having their  
29 coverage threatened by non renewal or premium surcharge levied only against  
30 them. If the conduct of claims is poorly managed by one or more unit owners all  
31 owners will bear that risk jointly.

32  
33 Secondly the distinctions between simple and gross negligence have been  
34 perplexing and difficult for jurists and juries alike for many decades. Saddling this  
35 distinction on multi family structures only as opposed to single family homes is a  
36 real step backwards and likely to be favored only by litigators who are paid to  
37 explore the often subtle differences.

38  
39 Third , since the initial decision about whether to submit a claim to the master  
40 insurance policy or not to do so will fall to the associations board (which has a  
41 strong incentive to avoid raising the expenses of all owners either because of high  
42 deductible or future premium increases or both) the unhappy owner may or may  
43 not be able to rely upon a unit policy carrier (and least have to pay that deductible  
44 alone) or to sue the Board for using gross negligence as a reason for non  
45 submission. If the latter the unit owner would then have the burden of proving  
46 that he or she was not grossly negligent as difficult and expensive as that may be.

1  
2 Finally, the incentives arguably justifying this unfair choice of not seeking  
3 payment under already available insurance coverage paid for by all owners are not  
4 the least expensive and most efficient way to provide proper incentives.  
5

6 The problem of multiple small or frivolous claims can be met by applying a de  
7 minimus standard to all claims below a reasonable minimum at which if  
8 meritorious the association would self insure by paying to repair the damage with  
9 funds of all owners through the common charges. Claims could be denied as not  
10 being meritorious by the Board But only after notice and opportunity for the unit  
11 owner to be heard.  
12

13 In addition to misconduct as a trigger for unit owner liability the same high  
14 standard could also be applied to a unit owner who has violated a duly publicized  
15 written standard of maintenance such as maintaining heat in temporarily  
16 unoccupied units to prevent frozen pipe damage, not exchanging water heaters or  
17 laundry hoses beyond x years. Again, after notice and hearing such conduct would  
18 be deemed equal to misconduct triggering individual liability.  
19

20 Finally, the desirable standard should probably articulate whether the Prohibited  
21 conduct of a unit owner warrants individual responsibility for all damages  
22 including deductibles or whether the standard should be all such expenditure  
23 (including deductible) after payment of all insurance proceeds. That decision may  
24 have to be made also in contemplation of the fact that damages to other units or  
25 common areas resulting from such conduct may be beyond the resources of a  
26 single unit owner and you may not want to deprive the association from access to  
27 the insurer's presumably deeper pockets.  
28

29 As noted above the choices made in 2010 by the Connecticut council reviewing  
30 the 2008 act, as reflected in Section 47-257 of the Conn Gen Statutes would serve  
31 as a useful starting point in improving the policy decisions still reflected in what  
32 is now Section 3-115(g) of the Act being drafted. It is now time to correct our  
33 earlier error.  
34

35 ~~(h) The association may adopt a policy that allows all unit owners to prepay assessments~~  
36 ~~at a reasonable discount specified in the policy. [(h) is moved to end of section to preserve~~  
37 ~~original subsection numbering for next subsection]~~

38 ~~(f) (i) (f) If common expense liabilities are reallocated pursuant to Section 1-107, 2-~~  
39 ~~106(d), 2-110, or 2-113(b), common expense assessments and any instalment thereof installment~~  
40 ~~of the assessment instalment thereof~~ not yet due must be recalculated in accordance with the

1 reallocated common expense liabilities.

2 **Reporter's Note (4/2)**

3  
4 The prior edits to subsection (f) are Style edits, which are reversed in this draft.  
5 Comment 4 to this section explains this subsection and lists these 4 cross  
6 references, so including the cross references in that statutory text is not necessary.  
7

8 (g) The association may adopt a policy that allows all unit owners to prepay assessments  
9 at a reasonable discount specified in the policy.

10  
11 **Comment**

12 1. This section contemplates that a declarant might find it advantageous, particularly in  
13 the early stages of project development, to pay all of the expenses of the common interest  
14 community himself rather than assessing each unit individually. Such a situation might arise, for  
15 example, where a declarant owns most of the units in the project and wishes to avoid ~~building~~  
16 billing the costs of each unit separately and crediting payment to each unit. It might also arise in  
17 the case of a declarant who, although willing to assume all expenses of the common interest  
18 community, is unwilling to make payments for replacement reserves or for other expenses which  
19 he expects will ultimately be part of the association's budget. Subsection (a) grants the declarant  
20 such flexibility while at the same time providing that once an assessment is made against any  
21 unit, all units, including those owned by the declarant, must be assessed for their full portion of  
22 the common expense liability.  
23

24 2. Common expenses are by their nature recurring, and the association must collect what  
25 the act calls the "periodic common expense assessment." Subsection (a) requires assessment "at  
26 least annually" and allows any shorter period. Monthly assessments are most commonly used.  
27 The association may choose to change its periodic common expense assessment if it determines a  
28 shorter or longer period is appropriate.  
29

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

31 (a) The executive board, at least annually, shall adopt a proposed budget for the  
32 common interest community for consideration by the unit owners. Not later than [30] days after  
33 adoption of a proposed budget, the executive board shall provide to all the unit owners a  
34 summary of the budget, including any reserves, and a statement of the basis on which any  
35 reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10

1 days or more than 60 days after providing the summary for a meeting of the unit owners to  
2 consider ratification of the budget. Unless at that meeting a majority of all unit owners or any  
3 larger number specified in the declaration reject the budget, the budget is ratified, whether or not  
4 a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners  
5 continues until unit owners ratify a subsequent budget.

6 (b) The executive board, at any time, may propose a special assessment. ~~Except as~~  
7 ~~otherwise provided in subsection (c), the~~ The assessment is effective only if the executive board  
8 follows the procedures for ratification of a budget described in subsection (a) and the unit owners  
9 do not reject the proposed assessment.

10 ~~(c) If the executive board determines by a two-thirds vote that a special assessment is~~  
11 ~~necessary to respond to an emergency:~~

12 ~~(1) the special assessment becomes effective immediately in accordance with the~~  
13 ~~terms of the vote;~~

14 ~~(2) notice of the emergency assessment must be provided promptly to all unit~~  
15 ~~owners; and~~

16 ~~(3) the executive board may spend the funds paid on account of the emergency~~  
17 ~~assessment only for the purposes described in the vote.~~

#### 18 **Reporter's Note (4/2)**

19  
20 Subsection (c), the final subsection of this section, is deleted because the subject  
21 is now addressed by new proposed Section 3-125(e), *Emergency Powers*, infra.  
22

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3. . . .

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

(a) [Emergency defined.] In this section, “emergency” means:

(2) an event or condition that constitutes an imminent threat to public health or safety, health or safety of residents of the common interest community, the habitability of units, or substantial economic loss to the association.

(c) [Emergency meetings of unit owners.] The executive board may reduce the minimum time for notice to unit owners of a unit owners meeting called to deal with an emergency. [note - present UCIOA content is in Section 3-108(a)(3)].

(d) *[Emergency meetings of executive board; action without a meeting.]* The executive board may call a board meeting to deal with an emergency by giving notice only to the unit owners and board members whom it is practicable to reach. The notice shall be given in any

1 practicable manner. No quorum is required for a meeting under this subsection. Instead of  
2 meeting, after giving notice under this subsection, the board may take action by vote without a  
3 meeting. *[note - present UCIOA content is in Section 3-108(b)(5)].*

4 (e) *[Emergency actions taken by executive board.]* In an emergency, the executive board  
5 may take action it considers necessary to protect the interests of the unit owners and other  
6 persons holding interests in the common interest community, acting in a manner reasonable  
7 under the circumstances and without consideration of any limitations contained in the  
8 declaration, bylaws, or rules.

9 (f) *[Expenses and assessments]* The executive board may use funds of the association,  
10 including reserves to pay the reasonable costs of an action under subsection (e) and may propose  
11 to the unit owners any special assessment or increase in common expenses necessary to pay the  
12 costs or to restore reserves. If the board determines by a two-thirds vote that an immediate  
13 special assessment is necessary to respond to an emergency:

14 (1) the special assessment becomes effective immediately in accordance with the terms of  
15 the vote; and

16 (2) the board may spend funds paid on account of the emergency assessment only for the  
17 purposes described in the vote. *[note - present UCIOA content is in Section 3-123(c)].*

18 (g) *[Notice to unit owners after board action.]* After taking an action under this section,  
19 the executive board promptly shall notify the unit owners of the action in any practicable  
20 manner.

1 [ARTICLE] 4

2 PROTECTION OF PURCHASERS

3 \* \* \*

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

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

8 (1) the name and principal address of the declarant and of the common interest  
9 community, and a statement that the common interest community is a condominium,  
10 cooperative, or planned community;

11 (2) a general description of the common interest community, including to the  
12 extent possible, the types, number, and declarant's schedule of commencement and completion  
13 of construction of buildings, and amenities that the declarant anticipates including in the  
14 common interest community;

15 (3) the number of units in the common interest community;

16 (4) copies and a brief narrative description of the significant features of the  
17 declaration, other than any plats and plans, and any other recorded covenants, conditions,  
18 restrictions, and reservations affecting the common interest community; the bylaws and any rules  
19 of the association; copies of any contracts and leases to be signed by purchasers at closing; and a  
20 brief narrative description of any contracts or leases that will or may be subject to cancellation by  
21 the association under Section 3-105;

22 (5) the financial information required by subsection (b);

23 (6) any services not reflected in the budget that the declarant provides, or



1 expenses that the declarant pays and which the declarant expects may become at any subsequent  
2 time a common expense of the association and the projected common expense assessment  
3 attributable to each of those services or expenses for the association and for each type of unit;

4 (7) any initial or special fee due from the purchaser or seller at the time of sale,  
5 together with a description of the purpose and method of calculating the fee;

6 (8) a description of any liens, defects, or encumbrances on or affecting the title  
7 to the common interest community;

8 (9) a description of any financing offered or arranged by the declarant;

9 (10) the terms and significant limitations of any warranties provided by the  
10 declarant, including statutory warranties and limitations on the enforcement thereof or on  
11 damages;

12 (11) a statement that:

13 (A) within 15 days after receipt of a public offering statement a  
14 purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

15 (B) if a declarant fails to provide a public offering statement to a  
16 purchaser before conveying a unit, that purchaser may recover from the declarant [10] percent of  
17 the sales price of the unit plus [10] percent of the share, proportionate to the purchaser's common  
18 expense liability, of any indebtedness of the association secured by security interests  
19 encumbering the common interest community; and

20 (C) if a purchaser receives the public offering statement more than 15  
21 days before signing a contract, the purchaser may not cancel the contract;

22 (12) a statement of any unsatisfied judgment or pending action against the  
23 association, and the status of any pending action material to the common interest community of

1 which a declarant has actual knowledge;

2 (13) a statement that any deposit made in connection with the purchase of a unit  
3 will be held in an escrow account until closing and will be returned to the purchaser if the  
4 purchaser cancels the contract pursuant to Section 4-108, together with the name and address of  
5 the escrow agent;

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

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

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

12 (15) a description of the insurance coverage provided for the benefit of unit  
13 owners;

14 (16) any current or expected fees or charges to be paid by unit owners for the use  
15 of the common elements and other facilities related to the common interest community;

16 (17) the extent to which financial arrangements have been provided for  
17 completion of all improvements that the declarant is obligated to build pursuant to Section 4-119;

18 (18) a brief narrative description of any zoning and other land use requirements  
19 affecting the common interest community;

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

22 (20) in a cooperative, a statement whether the unit owners will be entitled, for  
23 federal, state, and local income tax purposes, to a pass-through of deductions for payments made

1 by the association for real estate taxes and interest paid the holder of a security interest  
2 encumbering the cooperative and a statement as to the effect on every unit owner if the  
3 association fails to pay real estate taxes or payments due the holder of a security interest  
4 encumbering the cooperative; ~~and~~

5 (21) a description of any arrangement described in Section 1-209 binding the  
6 association; and

7 (22) in a condominium or planned community containing a unit not having  
8 horizontal boundaries described in the declaration, a statement whether the unit may be sold  
9 following termination of the common interest community under Section 2-118 without the  
10 consent of all the unit owners after termination under Section 2-118 of the common interest  
11 community.

#### 12 **Reporter's Note (4/2)**

13  
14 Paragraph (22) is added because the proposed revision to Section 2-118,  
15 *Termination of Common Interest Community*, changes existing law that requires  
16 the unanimous consent of unit owners to terminate a community that has  
17 unstacked units (units without horizontal boundaries). This is a significant change  
18 in rights of owners.  
19

20 (b) The public offering statement must contain any current balance sheet and a projected  
21 budget for the association, either within or as an exhibit to the public offering statement, for  
22 [one] year after the date of the first conveyance to a purchaser, and thereafter the current budget  
23 of the association, a statement of who prepared the budget, and a statement of the budget's  
24 assumptions concerning occupancy and inflation factors. The budget must include:

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

27 (B) a statement of any other reserves;

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

3 (D) the projected ~~monthly~~ periodic common expense assessment for each type of  
4 unit.

5 (c) If a common interest community composed of not more than 12 units is not subject  
6 to any development right and no power is reserved to a declarant to make the common interest  
7 community part of a larger common interest community, group of common interest communities,  
8 or other real estate, a public offering statement may include the information otherwise required  
9 by subsection (a) (9), (10), (15), (16), (17), (18), and (19) and the narrative descriptions of  
10 documents required by subsection (a)(4).

11 (d) A declarant promptly shall amend the public offering statement to report any  
12 material change in the information required by this section.

### 13 **Reporter's Notes**

14  
15 1. Section 4-103(b) requires that the public offering statement contain a  
16 projected budget, including "the projected monthly common expense assessment  
17 for each type of unit." Although monthly assessments are the common practice,  
18 UCOIA allows any period up to annual assessments. See Section 3-115(a)  
19 ("assessments must be made at least annually"). The amendment corrects this  
20 subsection by replacing "monthly common expense assessment" with "periodic  
21 common expense assessment," the term presently used in Section 4-109(a)(2) to  
22 describe content in the certificate to be provided to the purchaser of a resale unit.

23  
24 2. The proposed addition to the public offering statement in Section 4-  
25 103(a)(22) is a companion to the revision to Section 2-118(c) and (d), which  
26 allows termination of a common interest community and the sale of all real estate,  
27 including all units, with a supermajority vote of 80%, regardless of whether the  
28 units have horizontal boundaries.

### 29 **Comment**

30 \* \* \*

31 7. Paragraph (14) requires that the declarant disclose the existence of any ~~right~~  
32 restrictions on the use and occupancy of units, including restrictions on rentals or the creation of

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

10  
11 \* \* \*

12  
13 10. In addition to the information required to be disclosed by paragraphs (1) through  
14 (18), paragraph (19) requires that the declarant disclose all other "unusual and material  
15 circumstances, features, and characteristics" of the common interest community and all units  
16 therein. This requires only information which is both "unusual **and** material." Thus, the  
17 provision does not require the disclosure of "material" factors which are commonly understood  
18 to be part of the common interest community, *e.g.*, the fact that buildings have a roof, walls,  
19 doors, and windows. Similarly, the provision does not require the disclosure of "unusual"  
20 information about the common interest community which is not also "material;" (*e.g.*, the fact  
21 that a common interest community is the first development of its type in a particular locality).  
22 Information which would normally be required to be disclosed pursuant to paragraph (19) might  
23 include, to the extent that they are unusual and material, environmental conditions affecting the  
24 use or enjoyment of the common interest community, features of the location of the common  
25 interest community; (*e.g.*, near the end of an airport runway or a planned rendering plant), a plan  
26 to convert any units to time-share ownership, and the like.

### Reporter's Notes

27  
28  
29  
30 1. The proposed amendment to Comment 7 makes explicit what was  
31 already implicit: requiring the disclosure of restrictions on sale means a provision  
32 in the declaration that prohibits the creation of time-share arrangements should  
33 be disclosed. The amendment also cleans up the language and includes  
34 restrictions on rentals, including restrictions on short-term rentals.

35  
36 2. The proposed amendment to Comment 10 requires the disclosure of any  
37 plan to allow some or all of the units to be devoted to time-share arrangements.  
38 Such a provision would be unusual in many communities. If the plan is set forth  
39 in the declaration, Section 4-105 also requires inclusion in the public offering  
40 statement.

41  
42 **SECTION 4-105. ~~SAME~~ PUBLIC OFFERING STATEMENT SAME; TIME**  
43 **SHARES.**

44 If the declaration provides that ownership or occupancy of any units, is or may be in time

1 shares, the public offering statement shall disclose, in addition to the information required by  
2 Section 4-103:

- 3 (1) the number and identity of units in which time shares may be created;  
4 (2) the total number of time shares that may be created;  
5 (3) the minimum duration of any time shares that may be created; and  
6 (4) the extent to which the creation of time shares will or may affect the enforceability  
7 of the association's lien for assessments provided in Section 3-116.

### 8 **Comment**

9 1. Time sharing has become increasingly ~~important in recent years~~ frequent since the  
10 1960s, particularly with respect to in resort common interest communities. In recognition of this  
11 fact, this section requires the disclosure of certain information with respect to time sharing. This  
12 section does not apply to the sale of time-share units that are subject to another state statute  
13 requiring the declarant to file a public offering statement with a state agency. See Section 4-107.  
14

15 2. ~~Virtually all~~ Some existing state statutes dealing with condominiums, planned  
16 communities, or cooperatives are silent with respect to time-share ownership. The inclusion of  
17 disclosure provisions for certain forms of time sharing in this Act, however, does not imply that  
18 other law regulating time sharing is affected in any way in a State merely because that State  
19 enacts this Act.  
20

21 The Uniform Law Commissioners' Model Real Estate Time-Share Act specifies more  
22 extensive disclosures for time-share properties. A "time-share property" may include part or all  
23 of the common interest community, and Section 1-109 of the Model Act governs conflicts  
24 between this Act and time-share legislation.  
25

### 26 **Reporter's Notes**

27  
28 The amendment updates the language of the Comment and refers to  
29 Section 4-107, which contains a proposed amendment for an exemption from this  
30 act's requirement of a public offering statement when the declarant has prepared a  
31 time-share public offering statement.  
32

33 **SECTION 4-107. ~~SAME~~ PUBLIC OFFERING STATEMENT SAME; COMMON**  
34 **INTEREST COMMUNITY SECURITIES REGISTERED WITH GOVERNMENT**  
35 **AGENCY.**

1 If an interest in a common interest community is currently registered with the Securities  
2 and Exchange Commission of the United States [~~or with the state~~ pursuant to under [cite to  
3 appropriate state time-share statute]], a declarant satisfies all requirements of this [act] relating to  
4 the preparation of a public offering statement ~~of this [act]~~ if the declarant delivers to the  
5 purchaser [~~and files with the agency~~] a copy of the public offering statement filed with the  
6 Securities and Exchange Commission [~~or [the appropriate state agency]~~]. [An interest in a  
7 common interest community is not a security under ~~the provisions of~~ [insert cite to appropriate  
8 state securities regulation statutes].]

9 **Legislative Note:** A state that has an agency that regulates time-share developments  
10 should refer to the time-share statute and provide the name of the state agency in the brackets in  
11 the first sentence.

### Reporter's Notes

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

### 24 **SECTION 4-109. ~~RESALES OF UNITS~~ RESALE OF UNIT RESALES OF** 25 **UNITS.**

26  
27 (a) Except in the case of a sale in which delivery of a public offering statement is  
28 required, or unless exempt under Section 4-101(b), a unit owner shall furnish to a purchaser  
29 before the earlier of conveyance or transfer of the right to possession of a unit, ~~a copy~~ copies a  
30 copy of the ~~declaration, other than any plats and plans, the bylaws, the~~ association the rules or  
31 regulations of the association, and the declaration other than plats and plans. The unit owner

1 ~~also shall furnish; or regulations of the association, and~~ a certificate containing:

2 **Reporter's Note (4/2)**

3  
4 Some of the Style edits to subsection (a) are reversed. The edits that remain  
5 prevent the phrase "other than" from applying to the items listed after "plats and  
6 plans."

7  
8 **Reporter's Note (10/23)**

9  
10 At the September 2020 Zoom annual meeting first reading of the act, Howard  
11 Swibel suggested an edit to the preceding clause to make it clear that "other than"  
12 applies only to "any plats and plans" and not to the bylaws and rules, which  
13 follow later in the sentence.

14  
15 (1) a statement disclosing the effect on the proposed disposition of any right of  
16 first refusal or other restraint on the free alienability of the unit held by the association;

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

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

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

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

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

27 (7) the current operating budget of the association;

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

30 (9) a statement describing any insurance coverage provided for the benefit of



1 unit owners;

2 (10) a statement as to whether the executive board has given or received notice  
3 in a record that any existing uses, occupancies, alterations, or improvements in or to the unit or to  
4 the limited common elements assigned thereto violate any provision of the declaration;

5 (11) a statement as to whether the executive board has received notice in a  
6 record from a governmental agency of any violation of environmental, health, or building codes  
7 with respect to the unit, the limited common elements assigned thereto, or any other portion of  
8 the common interest community which has not been cured;

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

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

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

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

19 (16) a statement disclosing the effect on the unit to be conveyed of any  
20 restrictions on the owner's right to use or occupy the unit ~~or to~~, including a restriction on a lease  
21 or other rental of the unit to another person.

22 (b) The association, within 10 days after a request by a unit owner, shall furnish a  
23 certificate containing the information necessary to enable the unit owner to comply with this

1 section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the  
2 purchaser for any erroneous information provided by the association and included in the  
3 certificate.

4 (c) A purchaser is not liable for any unpaid assessment or fee greater than the amount  
5 set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser  
6 for the failure or delay of the association to provide the certificate in a timely manner, but the  
7 purchase contract is voidable by the purchaser until the certificate has been provided and for  
8 [five] days thereafter or until conveyance, whichever first occurs.

#### 9 **Reporter's Notes**

10  
11 The proposed amendment expands the scope of the disclosure in Section  
12 9-106(a)(16) to include not only standard leases, but also time-share  
13 arrangements, short-term rentals, and sharing platforms that sell licenses to  
14 guests, such as Airbnb. The proposed amendment matches the scope of what the  
15 declaration must and may disclose in Section 2-105(a)(12) and (b). Recently  
16 many common interest communities have placed restrictions on short-term rentals  
17 in declarations and rules, and this information is important for many buyers.