

Summary: As discussed below, I conclude that Section 1-205, *Applicability to Small Preexisting Cooperatives and Planned Communities*, does not have any content of value to small cooperatives and small planned communities that justifies keeping it as a transition rule for states that previously have adopted UCIOA and that will adopt our 2021 UCIOA Amendments. The existing exceptions for small cooperatives and small planned communities in Sections 1-202 and 1-205 are entirely adequate. ***I recommend dropping 1-205.***

I. Provisions for Small Cooperatives.

Section 1-202, *Exception for Small Cooperatives.*

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

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

Analysis.

1. The small cooperatives given special treatment are defined the same way in 1-202 and 1-205 (preexisting cooperatives, i.e., old cooperatives): no more than 12 units and not subject to any development rights (right).
2. Under both sections small cooperatives are subject to a few UCIOA provisions. Section 1-205 makes an old small cooperative subject to: 1-105 (Separate Titles and Taxation), 1-106, Applicability of Local Ordinances, Regulations, and Building Codes) and 1-107 (Eminent Domain). But 1-202 says a small cooperative is subject only to two provisions: 1-106 and 1-107. I take it this difference is intentional, but the purpose is not clear to me. Why shouldn't a new small cooperative be subject to the 1-105 rules? It seems odd that the old cooperative is subject to more of UCIOA than a new cooperative. Is there something here we should fix, or explain?

3. Both sections give small cooperatives an election. Under Section 1-202, a small cooperative can adopt all of UCIOA by having its declaration provide that the entire act is applicable. Under 1-205, a small old cooperative can amend its declaration “to take advantage of Section 1-206, in which case, all the sections enumerated in Section 1-204(a) apply to that cooperative.” Frankly, this mystifies me. Section 1-206(a) allows any old common interest community to amend its declaration “to achieve any result permitted by this [act]”, with no reference to the list of sections enumerated in Section 1-204(a). Does this mean a small old cooperative cannot “pick and choose”, adding less than or more than the Section 1-204(a) set? If the small old cooperative wants to adopt the entire act, may it use the 1-202 election? Presumably yes, because 1-102 applies to all small cooperatives, not just those created after the effective date of the act.

My recommendation. I think Section 1-202, *Exception for Small Cooperatives*, has a clear and simple rule for all small cooperatives. It applies to all small cooperatives, including preexisting (old) cooperatives in states have already adopted UCIOA and will consider our 2021 UCIOA amendments. I don’t see any benefit to old cooperatives in these states to continue 1-205 as a transition provision. The old cooperative can use the election to opt-in under 1-202, and I don’t see any point making old cooperatives, but not new cooperatives, subject to 1-105 (separate titles and taxation). The old cooperative can already use 1-206(a) without a special provision because Section 1-206(a) allows “any common interest community created before [the effective date of this act]” to amend its declaration “to achieve any result permitted by this [act].” We are planning to continue Section 1-206 as a transition provision and move it to the end of the act.

II. Provisions for Small Planned Communities.

Section 1-203, *Exception for Small and Limited Expense Liability Planned Communities.*

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

- (1) contains no more than 12 units; or
- (2) provides in its declaration that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed \$300, as adjusted pursuant to Section 1-115.

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

Analysis.

1. Section 1-203 provides special rules for two types of planned communities: small ones, i.e., those with no more than 12 units and not subject to any development rights (right); and limited-expense planned communities regardless of size. Section 1-203 makes these communities subject only to Sections 1-105, 1-106, and 1-107. Section 1-203 applies to all qualifying planned communities, regardless of whether they are preexisting (old) or new.

2. Section 1-205 has a special rule for old small planned communities, and does not apply to old limited-expense planned communities. Section 1-203 and 1-205 define small planned community the same way, and both say they are subject only to Sections 1-105, 1-106, and 1-107. The only item in 1-205 that is not redundant of content in 1-203 is the election for an old planned community to amend its declaration “to take advantage of Section 1-206, in which case, all the sections enumerated in Section 1-204(a) apply.”

My recommendation: Unlike cooperatives, for small planned communities there is no distinction as to whether Section 1-105 (Separate Titles and Taxation) applies based on formation before or after the effective date of the act. I don’t think old small planned communities get any benefit from continuing 1-205 as a transition provision. As I indicated above in my recommendation for small cooperatives, Section 1-206 applies to “any common interest community created before [the effective date of this act]” to amend its declaration to make itself subject to parts of UCIOA. And we plan to continue 1-206 as a transition provision at the end of the

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act.