

**No. 155. An act relating to the Uniform Common Interest Ownership Act.**

(H.689)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 27A V.S.A. § 1-103 is amended to read:

§ 1-103. DEFINITIONS

~~In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this title:~~

\* \* \*

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

\* \* \*

(7) ~~“Common interest community” means real estate described in a declaration with respect to which any a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes on, insurance premiums, on; maintenance, of; or improvement of, any or services or other expenses related to common elements, other units, or other real estate other than that unit described in the declaration. Ownership The term does not include an arrangement described in section 1-207 of this title. For purposes of~~

this subdivision, ownership of a unit does not include holding a leasehold interest of less than five years in a unit, including renewal options.

\* \* \*

(12) “Declarant” means ~~any~~ a person or group of persons acting in concert ~~who~~ that:

(A) as a part of a common promotional plan, offers to dispose of the ~~declarant’s~~ interest of the person or group of persons in a unit not previously disposed of; or

(B) reserves or succeeds to any special declarant right.

\* \* \*

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

\* \* \*

(28) “Special declarant rights” mean rights reserved for the benefit of a declarant to:

\* \* \*

(F) merge or consolidate a common interest community with another common interest community of the same form of ownership (section 2-121); ~~or~~

(G) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (section 3-103);

(H) control any construction, design review, or aesthetic standards committee or process;

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

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

\* \* \*

(30) “Unit” means a physical portion of the common interest community designated for separate ownership or occupancy, ~~the boundaries of which are described pursuant to subdivision 2-105(a)(5) of this title.~~

(31) “Unit owner” means a declarant or other person who that owns a unit, ~~or a lessee of a unit in a leasehold common interest community whose leases expire simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation.~~ The declarant is the owner of any unit created by the declaration.

(32) “Assessment” means the sum attributable to each unit and due to the association pursuant to the budget adopted under section 3-123 of this title.

(33) “Association” means the unit owners association.

(34) “Bylaws” means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any amendments to the instruments.

(35) “Record,” used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(37) “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.

Sec. 2. 27A V.S.A. § 1-104 is amended to read:

§ 1-104. VARIATION BY AGREEMENT

Except as expressly provided in this title, the effect of the provisions of this title may not be varied by agreement, and rights conferred by this title may not be waived. ~~A~~ 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 title or the declaration.

Sec. 3. 27A V.S.A. § 1-108 is amended to read:

§ 1-108. GENERAL PRINCIPLES OF LAW APPLICABLE

The principles of law and equity, including ~~but not limited to~~ the law of corporations, any other form of organization authorized by the law of this state, ~~and~~ unincorporated associations, the law of real ~~property and~~ estate, the law of contracts, principal and agent, and eminent domain, supplement the provisions of this title, except to the extent these principles are inconsistent with the title.

Sec. 4. REPEAL

27A V.S.A. § 1-114(b) is repealed.

Sec. 5. 27A V.S.A. § 1-116 is added to read:

§ 1-116. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This title modifies, limits, and supercedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supercede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Sec. 6. 27A V.S.A. § 1-201(a) is amended to read:

(a) Except as otherwise provided in subsection (b) of this section and sections 1-203 and 1-204 of this title, this title applies to all ~~common interest communities created within~~ condominiums in this state after the effective date

of this title that may be used for residential purposes and to all other common interest communities that contain 12 or more units that may be used for residential purposes and are created within this state after the effective date of this title. The provisions of subchapter 1 of chapter 15 of Title 27 shall not apply to common interest communities created after December 31, 1998. Amendments to this title apply to all common interest communities that contain 12 or more units that may be used for residential purposes and are created after January 1, 2011, or are subject to this title by amendment of their declaration, regardless of when the amendment to this title is adopted in this state.

Sec. 7. 27A V.S.A. § 1-203(b)(2) is amended to read:

(2) the declarant provides that the assessment may not be increased above the limitation in subdivision (a)(2) of this section during the period of ~~declarant~~ declarant's control without the consent of all unit owners.

Sec. 8. 27A V.S.A. § 1-204(a) is amended to read:

(a)(1) Unless excepted under section 1-203 of this title, ~~all common interest communities existing in this state on the effective date of this law are subject to~~ the following sections ~~or subdivisions of this title: 1-103,~~ apply to a common interest community created in this state before January 1, 1999: sections 1-103, 1-105, 1-106, 1-107, 2-103, 2-104, 2-121, 3-102(a)(1) through (6) and (11) through (16), 3-111, 3-116, 3-118, 4-109; and 4-117 to the extent

necessary to construe the applicable sections. ~~Those~~ The sections described in this subdivision apply only with respect to events and circumstances occurring after the effective date of this law December 31, 1998 and do not invalidate existing provisions of the declarations, bylaws, plats or plans of those common interest communities.

(2) Unless excepted under section 1-203 of this title, the following sections apply to a common interest community created in this state before January 1, 1999: sections 1-206; 2-102, 2-117(h) and (i), 2-124, 3-103, 3-108, 3-110, and 3-124. The sections described in this subdivision apply only to events and circumstances occurring after December 31, 2010 and do not invalidate existing provisions of the declarations, bylaws, plats or plans of those common interest communities.

Sec. 9. 27A V.S.A. § 1-206(b) is amended to read:

(b) ~~An~~ Except as otherwise provided in subsections 2-117(i) and (j) of this title, an amendment to the declaration, bylaws, or plats and plans authorized by this section ~~to be made under this title~~ shall be adopted in conformity with any procedures and requirements for amending the instruments specified in those instruments or, if there are none, in conformity with the amendment procedures of this title. If an amendment grants to any person any rights, powers or privileges permitted by this title, all correlative obligations, liabilities and restrictions in this title also apply to that person.

Sec. 10. 27A V.S.A. § 1-207 is amended to read:

§ 1-207. APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE

COMMON INTEREST COMMUNITIES

(a) ~~“Nonresidential common interest community” means a common interest community in which all units are restricted exclusively to nonresidential purposes. Except as provided in subsection (e), this section applies only to nonresidential common interest communities. [Repealed.]~~

(b) A nonresidential common interest community is not subject to this title ~~unless~~ except to the extent the declaration otherwise provides that:

(1) this entire title applies to the community;

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

(3) in the case of a planned community, only sections 1-105, 1-106, and 1-107 apply to the community.

(c) ~~The declaration of a nonresidential common interest community may provide that the entire title applies to the community or that only sections 1-105, 1-106 and 1-107 apply. [Repealed.]~~

(d) If this entire title applies to a nonresidential common interest community, the declaration may also require, subject to section 1-112, that:

(1) notwithstanding section 3-105, any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an

affiliate of a declarant continues in force after the declarant turns over control of the association; and

(2) notwithstanding section 1-104 of this title, purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(e) 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 title unless the units that may be used for residential purposes would comprise a common interest community that would be subject to this title in the absence of the nonresidential units or the declaration provides that this title applies as provided in subsection ~~(e)~~(b) or (d) of this section.

Sec. 11. 27A V.S.A. § 1-208 is amended to read:

§ 1-208. OUT-OF-STATE COMMON INTEREST COMMUNITIES

This title does not apply to a common interest community located outside this state, but ~~the public offering statement provisions, sections 4-102 through 4-107 of this title, sections 4-102 and 4-103, and to the extent applicable, sections 4-104 through 4-106, apply to all~~ contracts a contract for the disposition of a unit in a common interest community signed in this state by any party unless exempt under subsection 4-101(b) of this title.

Sec. 12. REPEAL

27A V.S.A. § 1-209 is repealed.

Sec. 13. 27A V.S.A. § 1-210 is added to read:

§ 1-210. 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 included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by this title.

Sec. 14. 27A V.S.A. § 1-211 is added to read:

§ 1-211. COVENANTS; COST-SHARING AGREEMENTS

A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

Sec. 15. 27A V.S.A. § 2-103(b) and (c) are amended to read:

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules, or regulations adopted pursuant to ~~subdivision 3-102(a)(1)~~ of this title.

(c) ~~In the event of~~ If a conflict exists between ~~the provisions of the~~ declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this title.

Sec. 16. 27A V.S.A. § 2-105(a)(15) is added to read:

(15) Any authorization pursuant to which the association may establish and enforce construction and design criteria and aesthetic standards as provided in sections 3-103 and 3-106 of this title.

Sec. 17. 27A V.S.A. § 2-109 is amended to read:

§ 2-109. PLATS AND PLANS

\* \* \*

(b) Each plat shall show or project:

\* \* \*

(3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel, but plats and plans need not designate or label which development rights are applicable to each parcel if that information is clearly delineated in the declaration;

\* \* \*

(6) except as otherwise provided in subsection (h) of this section, the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

(7) except as otherwise provided in subsection (h) of this section, the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

\* \* \*

(d) Except as otherwise provided in subsection (h) of this section, to the extent not shown or projected on the plats, plans of the units shall show or project:

\* \* \*

Sec. 18. 27A V.S.A. § 2-113 is amended to read:

§ 2-113. SUBDIVISION OF UNITS

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to ~~the provisions of the declaration and other provisions of law~~ other than this title, upon application to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(b) The amendment to the declaration shall be executed by the owner of the unit to be subdivided, shall assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

Sec. 19. 27A V.S.A. § 2-116 is amended to read:

§ 2-116. EASEMENT RIGHTS

(a) Subject to ~~the provisions of the declaration~~, a declarant has such easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this title or reserved in the declaration.

(b) ~~In a planned community, subject~~ Subject to the provisions of subdivision 3-102(a)(6) and section 3-112 of this title, the unit owners have an easement

(1) in the common elements for ~~purposes of~~ access to their units; and  
(2) ~~to use the common elements and all real estate which must become common elements pursuant to subdivision 2-105(a)(6) of this title for all other purposes.~~

(c) Subject to the declaration and the rules, the 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.

Sec. 20. 27A V.S.A. § 2-117 is amended to read:

§ 2-117. AMENDMENT OF DECLARATION

(a) Except in cases of amendments that may be executed by a declarant under subsection 2-109(f) or section 2-110 of this title, or ~~by~~ the association under subsections 2-106(d), 2-108(c), and 2-112(a) or section 2-113 of this title, or by certain unit owners under subsections 2-108(b), 2-112(a), 2-113(b) or 2-118(b) of this title, and except as limited by ~~subsection (d)~~ other subsections of this section, the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association is allocated ~~or any larger majority~~ unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid

~~without that approval. The declaration may specify a smaller number only if all the units are restricted exclusively to nonresidential use.~~

\* \* \*

(d) Except to the extent expressly permitted or required by other provisions of this title, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

\* \* \*

(f) Provisions in the declaration creating special declarant rights that have not expired may not be amended without the consent of the declarant.

\* \* \*

(h) If any provision of this title or of the declaration requires the consent of a holder of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if a refusal to consent in a record is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided to the association an address for notice, the association shall provide notice to the address in the security interest of record. Notwithstanding this

section, an amendment to the declaration that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(i) If the declaration contains a provision requiring that amendments to the declaration may be adopted only by the vote or agreement of unit owners of units to which more than 80 percent of the votes in the association are allocated, the amendment is approved:

(1) if:

(A) unit owners of units to which at least 80 percent of the votes in the association are allocated vote for or agree to the proposed amendment;

(B) no unit owner votes against the proposed amendment; and

(C) notice of the proposed amendment is delivered to the unit owners holding the votes in the association which have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within 60 days after the association delivers notice;

or

(2) unit owners of units to which at least 80 percent of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in the superior court for the county in which

the common interest community is located against all objecting unit owners, the court finds that the objecting unit owners do not have an interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.

(j) 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.

Sec. 21. 27A V.S.A. § 2-118 is amended to read:

§ 2-118. TERMINATION OF COMMON INTEREST COMMUNITY

(a) Except in the case of a taking of all the units by eminent domain or in the circumstances described in section 2-124 of this title, a common interest community may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association is allocated or any larger percentage the declaration specifies, and with any other approvals

required by the declaration. The declaration may specify a smaller percentage only if all the units are restricted exclusively to nonresidential uses.

\* \* \*

(i) The respective interests of unit owners referred to in subsections (e), (f), (g), and (h) of this section are as follows:

(1) Except as otherwise provided in subdivision (2) of this subsection, 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 independent appraisals shall be distributed to the unit owners and become final unless the unit owners to whom 25 percent or more of the votes in the association are allocated disapprove the appraisal. A unit owner's interest is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market value of all the units and their allocated interests.

\* \* \*

Sec. 22. 27A V.S.A. § 2-123(g) is amended to read:

(g) The period of declarant control of the association for a master planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and

after giving ~~written~~ notice in a record to all the unit owners, voluntarily surrenders all rights to control the activities of the association.

Sec. 23. 27A V.S.A. § 2-124 is added to read:

§ 2-124. TERMINATION FOLLOWING CATASTROPHE

If substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice under section 3-121 of this title of a meeting of unit owners to consider termination under section 2-118 will not likely result in receipt of the notice, the executive board or any other interested person may commence an action in superior court seeking to terminate the common interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may issue any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

Sec. 24. 27A V.S.A. § 3-101 is amended to read:

§ 3-101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION

A unit owners' association shall be organized ~~before~~ no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times shall consist ~~only~~ exclusively of ~~the~~ all unit owners or, following termination of the common interest community, of ~~the~~ all

former unit owners entitled to distributions of proceeds, or their heirs, successors or assigns. The association must have an executive board. The association shall be organized as a profit or nonprofit corporation, trust, limited liability company, partnership ~~or~~, unincorporated association, or any other form of organization authorized by the law of this state.

Sec. 25. 27A V.S.A. § 3-102 is amended to read:

§ 3-102. POWERS OF UNIT OWNERS' ASSOCIATION

(a) Except as otherwise provided in subsection (b) of this section, and ~~subject to the provisions of the declaration~~ other provisions of this title, the association ~~has the following powers:~~

(1) ~~To~~ Shall adopt and may amend bylaws and may adopt and amend rules.

(2) ~~To~~ Shall adopt and may amend budgets for revenues, expenditures, and reserves ~~and under section 3-123 of this title~~, may collect assessments for common expenses from unit owners, and may invest funds of the association.

(3) ~~To~~ May hire and discharge managing agents and other employees, agents and independent contractors.

(4) ~~To~~ May initiate, defend or intervene in litigation, arbitration, mediation, or administrative proceedings in its name on behalf of itself or two or more unit owners on matters affecting the common interest community, subject to section 3-124 of this title.

- (5) ~~They~~ May make contracts and incur liabilities.
- (6) ~~They~~ May regulate the use, maintenance, repair, replacement, and modification of common elements.
- (7) ~~They~~ May make additional improvements to the common elements.
- (8) ~~They~~ May acquire, hold, encumber and convey in its name any right, title, or interest to real estate or personal property, except as provided by section 3-112 of this title.
- (9) ~~They~~ May grant easements, leases, licenses, and concessions through or over the common elements.
- (10) ~~They~~ May impose and receive payments, fees, or charges:
- (A) for the use, rental or operation of the common elements, other than limited common elements described in subdivisions 2-102(2) and (4) of this title, and
- (B) for services provided to unit owners.
- (11) ~~They~~ May impose charges for late payment of assessments and, after notice and a hearing, may impose reasonable fines for violations of the declaration, bylaws, and rules ~~and regulations~~ of the association.
- (12) ~~They~~ May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 4-109 of this title, or statements of unpaid assessments.

(13) ~~To~~ May provide indemnification for its officers and executive board and maintain ~~liability insurance for its officers and directors~~ and officers liability insurance.

(14) ~~To~~ Except to the extent limited by the declaration, may assign its right to future income, including the right to receive ~~common expense~~ assessments, ~~to the extent provided by the declaration~~.

(15) ~~To~~ May exercise any other power conferred by the declaration or bylaws, or which is legally provided for similar entities or which is necessary and proper to govern and operate the association.

(16) ~~To~~ May require, ~~by regulation,~~ that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community must be submitted to nonbinding alternative dispute resolution ~~in the manner described in the regulation~~ as a prerequisite to commencement of a judicial proceeding.

(17) May exercise all other powers that may be exercised in this state by organizations of the same type as the association.

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

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

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

(C) prevent a unit owner from seeking election as a director or officer of 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 ~~impose limitations on~~ limit the power of the association beyond the limit authorized in subdivision (a)(18) of this section to:

(1) deal with the declarant ~~which are~~ if the limit is more restrictive than the ~~limitations~~ 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 of this title, if applicable, before instituting any proceeding described in subsection 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 rules or to recover unpaid assessments or other sums due the association.

~~(c) Unless otherwise permitted by the declaration or this title, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:~~

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

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

~~(3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages. Otherwise, the association may not regulate any use of or behavior in units. [Repealed.]~~

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

\* \* \*

(e) The rights ~~granted under~~ referred to in subdivision (d)(3) of this title may ~~only~~ 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.

(f) 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 rules ~~and regulations~~.

(g) 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 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 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

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

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

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

Sec. 26. 27A V.S.A. § 3-103 is amended to read:

§ 3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS

(a) Except as otherwise provided in the declaration, bylaws, subsection (b) of this section, or other provisions of this title, the executive board ~~may act~~ acts on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under Title 11B. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) The executive board shall not:

(1) amend the declaration, except as provided in section 2-117;

(2) amend the bylaws;

(3) terminate the common interest community;

(4) elect members of the executive board, but may fill vacancies in its membership for the unexpired portion of any term, or, if earlier, until the next regularly scheduled election of executive board members; or

(5) determine the qualifications, powers, duties or terms of office of executive board members. ~~The members of the executive board shall serve until their successors are duly elected and qualified. The board may fill vacancies for the unexpired portion of any term.~~

(c) ~~Within 30 days after adoption of any proposed budget for the common interest community, the executive board shall provide a summary of the budget to all the unit owners. The board shall set a date, not less than 14 or more than 30 days after the date the budget summary is sent to the unit owners, for a meeting of the unit owners to ratify the budget. The budget shall be ratified, unless a majority of all the unit owners or a larger vote specified in the declaration rejects the budget, whether or not a quorum is present. If the budget is rejected, the budget last ratified by the unit owners shall be in effect until the unit owners ratify a budget proposed by the executive board. The executive board shall adopt budgets as provided in section 3-123 of this title.~~

(d)(1) Subject to subsection (e) of this section, the declaration may provide for a period of declarant control of the association during which a declarant or the declarant's designee may appoint and remove the officers and members of the executive board. ~~Except~~ 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 subsection 2-123(g) of this title, a period of declarant control shall terminate on the earliest of ~~the following~~ dates:

(A) 60 days after ~~75 percent~~ three-fourths of the created units is conveyed to unit owners other than a declarant;

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

(C) two years after any development right to add new units is last exercised; or

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

(2) ~~A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period but in that event the declarant may require, for the duration of the period of declarant control, 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. [Repealed.]~~

(e) At least ~~25 percent~~ one-fourth of the members of the executive board shall be elected by unit owners who are not declarants within 60 days after ~~25 percent~~ one-fourth of the created units is conveyed to owners other than a declarant. At least ~~33 1/3 percent~~ one-third of the executive board shall be elected by unit owners who are not declarants within 60 days after ~~50 percent~~ one-half of the created units is conveyed to unit owners other than declarants.

(f) Except in elections pursuant to ~~subsection~~ subsections 2-120(e) and (f) of this title, before the termination of declarant control, the unit owners shall elect an executive board of at least three members, of which a majority shall be unit owners. ~~The~~ Unless the declaration provides for the election of officers by the unit owners, the executive board shall elect its officers who shall take office upon election or appointment.

(g) ~~Notwithstanding any provision of the declaration or bylaws, the unit owners may remove a member of the executive board, except a member appointed by a declarant, with or without cause by a two-thirds vote of all~~

~~persons present and entitled to vote at a unit owners' meeting at which a quorum is present.~~ A declaration may provide for the appointment of specified positions on the executive board by persons other than the declarant during or after the period of declarant control. It also may provide a method for filling vacancies in those positions, other than by election by the unit owners.

However, after the period of declarant control, appointed members:

- (1) may not make up more than one-third of the board; and
- (2) have no greater authority than any other member of the board.

Sec. 27. 27A V.S.A. § 3-105 is amended to read:

§ 3-105. TERMINATION OF CONTRACTS AND LEASES OF  
DECLARANT

(a) Except as provided in section 1-207, if entered into before ~~Within two~~ years after the executive board elected by the unit owners pursuant to subsection 3-103(f) of this title takes office, the association may terminate without penalty, upon at least 90 days' notice to the other party, any of the following if entered into before the executive board was elected:

- (1) any management, maintenance, operations, or employment contract, employment contract, or lease of recreational or parking areas or facilities; or
- (2) any other contract or lease between the association and a declarant or an affiliate of a declarant;~~or~~

~~(3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association any time after the executive board is elected with 90 days' notice to the other party.~~

(b) At any time after the executive board elected by the unit owners pursuant to subsection 3-103(f) of this title takes office, the association may terminate without penalty, upon at least 90 days' notice to the other party, any contract or lease that is not bona fide or was unconscionable to the unit owners at the time the contract was entered into.

(c) This section does not apply to a lease which if terminated would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section.

Sec. 28. 27A V.S.A. § 3-106 is amended to read:

§ 3-106. BYLAWS

(a) The bylaws of the association shall ~~provide for~~:

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

(2) provide for election by the executive board or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers the bylaws specify;

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) specify the powers that the executive board or officers may delegate to other persons or to a managing agent;

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

(6) establish the frequency of association meetings, which in no case shall be less than one per year;

(7) ~~specification of~~ establish the number of voters constituting a quorum, which shall not be less than 20 percent of the persons entitled to vote for the executive board. Proxy votes may be included for a quorum; ~~and~~

(8) ~~the method of amending~~ specify a method for the unit owners to amend the bylaws;

(9) contain any other provisions necessary to satisfy requirements of this title or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(10) provide for any matter required by the laws of this state other than this title that is required to appear in the bylaws of organizations of the same type as the association.

(b) Subject to ~~the provisions of the declaration~~ and this title, the bylaws may provide for any other necessary or appropriate matters ~~the association deems necessary and appropriate, including matters that could be adopted as~~ rules.

Sec. 29. 27A V.S.A. § 3-108 is amended to read:

§ 3-108. MEETINGS

~~A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having 20 percent of the votes in the association, or any lower percentage specified in the bylaws. No later than ten nor more than 60 days before a meeting, the secretary or other officer specified in the bylaws shall notify each unit owner by hand delivery or prepaid United States mail to the mailing address of each unit or to the mailing address designated in writing by the unit owner. The notice shall state the time and place of the meeting and the agenda, including the general nature of any proposed amendment to the declaration or bylaws, budget changes, and any proposals to remove an officer or member of the executive board.~~

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

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

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

(3) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any means described in section 3-121 of this title. The notice of any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(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.

(4) The minimum time to give notice required by subdivision (3) of this subsection may be reduced or waived for a meeting called to deal with an emergency.

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

(6) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with subdivision (b)(7) of this section.

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

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

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

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

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

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

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

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

(B) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in subdivision (4) of this subsection.

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

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

(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. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more 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.

Sec. 30. 27A V.S.A. § 3-109 is amended to read:

§ 3-109. ~~QUORUMS~~ QUORUM

(a) Unless the bylaws provide otherwise, a quorum ~~exists if persons entitled to 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting is present throughout any meeting of the unit owners if persons entitled to cast 20 percent of the votes in the association:~~

(1) are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with subdivision 3-110(c)(4) of this title which have been delivered to the secretary in a timely manner; or

(3) are present by any combination of subdivisions (1) and (2) of this subsection.

(b) Unless the bylaws specify a larger percentage, ~~a quorum exists throughout any meeting of the executive board if persons entitled to 50 percent of the votes on that board are present at the beginning of the meeting number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast 50 percent of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present~~

is the act of the executive board unless a greater vote is required by the declaration or bylaws.

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

Sec. 31. 27A V.S.A. § 3-110 is amended to read:

§ 3-110. VOTING; PROXIES; BALLOTS

~~(a) If only one of multiple owners of a unit is present at an association meeting, that owner is entitled to all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without prompt protest by any of the other unit owners.~~

~~(b) Votes allocated to a unit may be cast pursuant to a proxy executed by a unit owner. If a unit is owned by more than one person, each owner may vote or register protest to the voting by the other owners of the unit through a proxy. A unit owner may revoke a proxy only by actual notice of revocation to the person presiding over the association meeting. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after the date executed, unless a shorter term is specified.~~

~~(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units, subsections (a) and (b) of this section apply to lessees, the lessees are entitled to notice of meetings; access to records and other rights regarding those matters as if they were unit owners; and the unit owners who have leased their units to other persons may not vote on those specified matters. Unit owners shall also be notified of all meetings at which lessees are entitled to vote.~~

~~(d) No votes allocated to a unit owned by the association may be cast.~~

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subdivision (b)(4) of this section, by a proxy pursuant to subsection (c) of this section or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of unit owners, the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of multiple owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in

accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by this chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a) of this section, a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least three days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly 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) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person may not cast undirected proxies representing more than 15 percent of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than three days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which a unit owner wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) this section applies to lessees as if they were unit owners;

(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.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association shall 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.

Sec. 32. 27A V.S.A. § 3-113(a) and (b) are amended to read:

(a) After no later than the date of the first conveyance of a unit to a person other than a declarant, to the extent reasonably available and subject to reasonable deductibles, the association shall maintain the following insurance coverage:

(1) Property insurance on the common elements and, in a planned community, also on property which will become common elements, to insure against ~~all~~ risks of direct physical loss commonly insured against ~~or, in the case of a conversion building, against fire and extended coverage perils. The total amount of, which~~ insurance, after application of any deductibles, shall be not less than 80 percent of the actual cash value of the insured property at the

time the insurance is purchased and at each renewal date, exclusive of items normally excluded from property policies.

(2) ~~Liability~~ Commercial general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for ~~death~~, bodily injury or property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(3) Fidelity insurance.

(b) In the case of a building which contains units ~~having~~ divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, to the extent reasonably available, the insurance maintained under subdivision (a)(1) of this section shall include the units but need not include improvements and betterments installed by unit owners.

Sec. 33. 27A V.S.A. § 3-114 is amended to read:

§ 3-114. SURPLUS FUNDS

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid annually to the unit owners in

proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Sec. 34. 27A V.S.A. § 3-115 is amended to read:

§ 3-115. ASSESSMENTS FOR COMMON EXPENSES

\* \* \*

(b) Except for assessments under subsections (c), (d), and (e) of this section, or as otherwise provided in this title, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration. ~~Any~~ The association may charge interest on any past due common expense assessment or installment shall accrue interest portion thereof at a rate established by the association, not exceeding the legal rate.

(c) To the extent required by the declaration:

(1) ~~any~~ a common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally or in any other proportion the declaration provides;

(2) ~~any a common expense or portion of it which does not benefit all units shall be assessed only against the units benefited~~ benefiting fewer than all of the units or their owners may be assessed exclusively against the units or unit owners benefited; and

\* \* \*

(e) If damage to a unit or other part of the common interest community, or if any other common expense is caused by the willful misconduct or gross negligence of any unit owner, guest, or invitee of a unit owner, the association may, after notice and hearing, assess that expense exclusively against that owner's unit, even if the association maintains insurance with respect to that damage or common expense.

\* \* \*

Sec. 35. 27A V.S.A. § 3-116 is amended to read:

§ 3-116. LIEN FOR ~~ASSESSMENTS~~ SUMS DUE ASSOCIATION;

ENFORCEMENT

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to subdivisions 3-102(a)(10), (11), and (12) of this title, and any other sums due to the association under the declaration, this title, or as a result of an administrative, arbitration, mediation, or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

(1) liens and encumbrances recorded before the recordation of the declaration; and

(2) except as otherwise provided in subsection (c) of this section, a first mortgage or deed of trust on the unit recorded before the date on which the assessment to be enforced became delinquent; and

(3) liens for real estate taxes and other governmental assessments or charges against the unit.

(c) ~~The~~ A lien under this section is also prior to all security interests described in subdivision (b)(2) of this ~~subsection~~ section to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection 3-115(a) of this title which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. ~~This subsection does~~ Subsections (b) and (c) of this section do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of chapter 3 of Title 27.

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

~~(d)~~(e) Recording the declaration constitutes record notice and perfection of the lien. No further recording of any claim or lien for assessment under this section is required.

~~(e)~~(f) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

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

~~(g)~~(h) A judgment or decree in any action brought under this section shall include an award of costs and reasonable attorney fees to the prevailing party.

~~(h)~~(i) The association, upon ~~written~~ request made in a record, shall furnish to a unit owner a statement of the amount of unpaid assessments against that unit. If the unit owner's interest is real estate, the statement shall be recordable. The statement shall be provided within 10 business days after receipt of the request and is binding on the association, the executive board and every unit owner.

~~(j)~~(j) The association's lien may be foreclosed pursuant to section 4531a of Title 12 ~~in which case the association shall notify all the lienholders of the affected unit of its action~~ and subsection (o) of this section. The association shall give the notice required by statute, or if there is no such requirement, reasonable notice of its action to all lienholders of the unit whose interest would be affected.

~~(k)~~(k) A unit owner is not exempt from liability for payment of common expenses by a waiver of the use or enjoyment of any of the common elements or by abandonment of the unit.

~~(l)~~(l) In an action by an association to collect assessments or to foreclose a lien ~~for unpaid assessments~~ on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to section 3-115 of this title.

(m) An association may not commence an action to foreclose a lien on a unit under this section unless:

(1) the unit owner, at the time the action is commenced, owes a sum equal to at least three months of common expense assessments based on the

periodic budget last adopted by the association pursuant to subsection 3-115(a) of this title and the unit owner has failed to accept or comply with a payment plan offered by the association; and

(2) the executive board votes to commence a foreclosure action specifically against that unit.

(n) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

(1) unpaid assessments;

(2) late charges;

(3) reasonable attorney's fees and costs and other reasonable collection charges; and

(4) all other unpaid fees, charges, fines, penalties, interest, and late charges.

(o) Notwithstanding subsection (a) of this section, unless sums due the association include an unpaid assessment, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner for the sums due the association and has perfected a judgment lien against the unit.

(p) Every aspect of a foreclosure, sale, or other disposition under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

Sec. 36. 27A V.S.A. § 3-117(a) is amended to read:

(a) Except as otherwise provided in subsection (b) of this section, a judgment for money against the association pursuant to section 4531a of Title 12, if recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the other real estate of the association and all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

Sec. 37. 27A V.S.A. § 3-118 is amended to read:

§ 3-118. ASSOCIATION RECORDS

~~The association shall keep financial records sufficiently detailed to enable the association to comply with section 4-109 of this title. All financial and other records shall be made reasonably available for examination by any unit owner or the unit owner's authorized agents.~~

(a) An association must retain the following:

(1) detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and executive board other than executive sessions, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association;

(3) the names of unit owners in a form that permits preparation of a list of the names of all owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

(4) its original or restated organizational documents, if required by law other than this title, bylaws and all amendments to them, and all rules currently in effect;

(5) all financial statements and tax returns of the association for the past three years;

(6) a list of the names and addresses of its current executive board members and officers;

(7) its most recent annual report delivered to the secretary of state;

(8) financial and other records sufficiently detailed to enable the association to comply with section 4-109 of this title;

(9) copies of current contracts to which it is a party;

(10) records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

(11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) and (d) of this section, all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1) during reasonable business hours or at a mutually convenient time and location; and

(2) upon five days' notice in a record reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(1) personnel, salary, and medical records relating to specific individuals;

(2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

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

(4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;

(5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;

(6) information the disclosure of which would violate law other than this title;

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

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

(d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner.

(f) An association is not obligated to compile or synthesize information.

(g) Information provided pursuant to this section may not be used for commercial purposes.

Sec. 38. 27 V.S.A. § 3-120 is added to read:

§ 3-120. RULES

(a) Before adopting, amending, or repealing any rule, the executive board shall give all unit owners notice of:

(1) its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(2) a date on which the executive board will act on the proposed rule or amendment after considering comments from unit owners.

(b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule.

(c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number, and manner of those displays.

(e) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(f) An association may adopt rules that affect the use of or behavior in units that may be used for residential purposes, only to:

(1) implement a provision of the declaration;

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

(3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable.

Sec. 39. 27 V.S.A. § 3-121 is added to read:

§ 3-121. NOTICE TO UNIT OWNERS

(a) An association shall deliver any notice required to be given by the association under this title to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

(1) hand delivery to each unit owner;

(2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(3) electronic means, if the unit owner has given the association an electronic address; or

(4) any other method reasonably calculated to provide notice to the unit owner.

(b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

Sec. 40. 27 V.S.A. § 3-122 is added to read:

§ 3-122. REMOVAL OF OFFICERS AND DIRECTORS.

(a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present may remove any member of the executive board and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

(1) a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) a member appointed under subsection 3-103(g) of this title may be removed only by the person that appointed that member; and

(3) the unit owners may not consider whether to remove a member of the executive board or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the executive board or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

Sec. 41. 27 V.S.A. § 3-123 is added to read:

§ 3-123. ADOPTION OF BUDGETS; SPECIAL ASSESSMENTS

(a) The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than 30 days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting a majority of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

(b) The executive board, at any time, may propose a special assessment. Except as otherwise provided in subsection (c) of this section, the assessment is effective only if the executive board follows the procedures for ratification

of a budget described in subsection (a) and the unit owners do not reject the proposed assessment.

(c) If the executive board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency:

(1) the special assessment becomes effective immediately in accordance with the terms of the vote;

(2) notice of the emergency assessment must be provided promptly to all unit owners; and

(3) the executive board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

Sec. 42. 27 V.S.A. § 3-124 is added to read:

§ 3-124. LITIGATION INVOLVING DECLARANT

(a) The following requirements apply to an association's authority under subdivision 3-102 (a)(4) of this title to institute and maintain a proceeding alleging a construction defect with respect to the common interest community, whether by litigation, mediation, arbitration, or administratively, against a declarant or an employee, independent contractor, or other person directly or indirectly providing labor or materials to a declarant:

(1) Subject to subsection (e) of this section, before the association institutes a proceeding described in this section, it shall provide notice in a record of its claims to the declarant and those persons that the association seeks

to hold liable for the claimed defects. The text of the notice may be in any form reasonably calculated to give notice of the general nature of the association's claims, including a list of the claimed defects. The notice may be delivered by any method of service and may be addressed to any person if the method of service used:

(A) provides actual notice to the person named in the claim; or

(B) would be sufficient to give notice to the person in connection with commencement of an action by the association against the person.

(2) Subject to subsection (e) of this section, the association may not institute a proceeding against a person until 45 days after the association sends notice of its claim to that person.

(3) During the period described in subdivision (2) of this subsection, the declarant and any other person to which the association gave notice may present to the association a plan to repair or otherwise remedy the construction defects described in the notice. If the association does not receive a timely remediation plan from a person to which it gave notice, or if the association does not accept the terms of any plan submitted, the association may institute a proceeding against the person.

(4) If the association receives one or more timely remediation plans, the executive board shall consider promptly those plans and notify the persons to

which it directed notice whether the plan is acceptable as presented, acceptable with stated conditions, or not accepted.

(5) If the association accepts a remediation plan from a person the association seeks to hold liable for the claimed defect, or if a person agrees to stated conditions to an otherwise acceptable plan, the parties shall agree on a period for implementation of the plan. The association may not institute a proceeding against the person during the time the plan is being diligently implemented.

(6) Except as otherwise provided in subsection 4-116(d) of this title for warranty claims, any statute of limitation affecting the association's right of action against a declarant or other person is tolled during the period described in subdivision (2) of this section and during any extension of that time because a person to which notice was directed has commenced and is diligently pursuing the remediation plan.

(b) After the time described in subdivision (a)(2) of this section expires, whether or not the association agrees to any remediation plan, a proceeding may be instituted by:

(1) the association against a person to which notice was directed which fails to submit a timely remediation plan, the plan of which is not acceptable, or which fails to pursue diligent implementation of that plan; or

(2) a unit owner with respect to the owner's unit and any limited common elements assigned to that unit, regardless of any action of the association.

(c) This section does not preclude the association from making repairs necessary to mitigate damages or to correct any defect that poses a significant and immediate health or safety risk.

(d) Subject to the other provisions of this section, the determination of whether and when the association may institute a proceeding described in this section may be made by the executive board. The declaration may not require a vote by any number or percent of unit owners as a condition to institution of a proceeding.

(e) This section does not prevent an association from seeking equitable relief at any time without complying with subdivision (a)(1) or (2) of this section.

Sec. 43. 27A V.S.A. § 4-102 is amended to read:

#### § 4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT

##### REQUIREMENTS

(a) Except as otherwise provided in subsection (b) of this section, a declarant shall prepare a public offering statement conforming to the requirements of sections 4-103, 4-104, 4-105, and 4-106 of this title before offering any interest in a unit to the public.

\* \* \*

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection ~~4-108(a)~~ 4-103(a) of this title. The ~~person~~ declarant who prepared all or a part of the public offering statement is liable under section 4-117 of this title for any false or misleading statement stated in it or for any omission of material fact ~~from it~~ with respect to that portion of the public offering statement which the person prepared. ~~If a declarant did not prepare or cause to be prepared any part of a public offering statement that the declarant delivers, the declarant is not liable for any false or misleading statement stated in it or for any omission of material fact from it unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission~~ therefrom.

\* \* \*

Sec. 44. 27A V.S.A. § 4-103 is amended to read:

§ 4-103. PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS

(a) Except as otherwise provided in subsection (b) of this section, a public offering statement shall contain or fully and accurately disclose all the following:

\* \* \*

~~(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include all of the following:~~

~~(A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.~~

~~(B) A statement of any other reserves.~~

~~(C) The projected common expense assessment by category of expenditures for the association.~~

~~(D) The projected monthly common expense assessment for each type of unit. The financial information required by subsection (d) of this section.~~

\* \* \*

(7) Any initial or special fee due from the purchaser or seller at ~~closing~~ the time of sale and a description of the purpose and method of calculating the fee.

\* \* \*

(18) A description of any arrangement described in section 1-209 of this title that binds the association.

(b) If a common interest community composed of not more than four units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities or other real estate, a public offering statement need not include the information otherwise required by subdivisions (4), (9), (10), (15), (16), and (17) of subsection (a) of this section.

(c) A declarant shall promptly amend the public offering statement to report any material change in the information required by this section.

(d) The public offering statement must contain any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include:

(1) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(2) a statement of any other reserves;

(3) the projected common expense assessment by category of expenditures for the association; and

(4) the projected monthly common expense assessment for each type of unit.

Sec. 45. 27A V.S.A. § 4-113 is amended to read:

§ 4-113. EXPRESS WARRANTIES OF QUALITY

(a) Express warranties made by a ~~seller~~ declarant to a purchaser of a unit are created as follows:

\* \* \*

(2) Any model or description of the physical characteristics of the common interest community, including plans and specifications of or for improvement warranties conformance of improvements, creates an express warranty that the common interest community will conform to the model or description, unless the model or description clearly discloses that it is only proposed or is subject to change.

\* \* \*

(c) A conveyance of a unit transfers to the purchaser all express warranties of quality made by ~~previous sellers~~ the declarant.

Sec. 46. 27A V.S.A. § 4-116(d) is amended to read:

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by

unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney's fees, are common expenses, and must be added to the budget annually adopted by the association under section 3-115 of this title. If the committee is so created, the period of limitation for ~~claims for these warranties~~ a warranty claim considered by the committee begins to run from the date of the first meeting of the committee, ~~regardless of when the period of declarant control terminates.~~

Sec. 47. 27A V.S.A. § 4-117 is amended to read:

§ 4-117. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION

(a) ~~If a declarant or any other person subject to this title fails to comply with any provision of this title or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief~~ A declarant, association, unit owner, or any other person subject to this title may bring an action to enforce a right granted or obligation imposed by this title, the declaration, or the bylaws. The court, ~~in an appropriate case,~~ may award reasonable attorney fees and costs.

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

(1) a declarant may agree with the association to do so only after the period of declarant control ~~passes~~ has expired unless the agreement is made with an independent committee of the executive board elected pursuant to subsection 4-116(d) of this title; and

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

Sec. 48. EFFECTIVE DATE

This act shall take effect on January 1, 2012.

Approved: June 3, 2010