CHAPTER 31

MAINE CONDOMINIUM ACT

ARTICLE 1

GENERAL PROVISIONS

§1601-101. Short title

This Act shall be known and may be cited as the Maine Condominium Act. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-102. Applicability

(a) This Act applies to all condominiums created, in accordance with the provisions of this Act, within this State after the effective date of this Act and to all condominiums created within this State before the effective date of this Act which, on or after the effective date of this Act, amend the instruments creating the same so as to subject the condominium to the provisions of this Act and so as to conform those instruments to the provisions of this Act in all necessary respects. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by sections 560 through 587. Sections 1601-105 Separate titles and taxation, 1601-106 Applicability of local laws and regulations, 1601-107 Eminent domain, 1602-103 Construction and validity of declaration and bylaws, 1602-104 Description of units, 1603-102, subsection (a) paragraphs (1) through (6) and (11) through (16) Powers of unit owners' association, 1603-111 Tort and contract liability, 1603-116 Lien for assessments, 1603-118 Association records, 1604-108 Resales of units, and 1604-116 Effect of violation on rights of action and section 1601-103 Definitions, to the extent necessary in construing any of those sections, apply to all condominiums created in this State before the effective date of this Act; but those sections apply only with respect to events and circumstances occurring after the effective date of this Act and do not invalidate provisions of declarations, bylaws, floor plans, surveys or duly adopted administrative rules and regulations existing on the effective date of this Act. [PL 1981, c. 699 (NEW).]

(b) The provisions of sections 560 through 587 do not apply to condominiums created after the effective date of this Act or amended pursuant to subsection (a) so as to be subject to the provisions of this Act and do not invalidate any amendment to declarations, bylaws, floor plans, surveys or duly adopted administrative rules and regulations relating to any condominium created before the effective date of this Act if the amendment would be permitted by this Act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by sections 560 through 587. If the amendment grants to any person any rights, powers or privileges permitted by this Act, all correlative obligations, liabilities and restrictions in this Act also apply to that person. [PL 1983, c. 78, §1 (AMD).]

(c) This Act does not apply to condominiums or units located outside this State, but the public offering statement provisions contained in sections 1604-102 through and including 1604-106 apply to all offers, contracts for disposition signed by any party in this State or dispositions in this State of condominiums or units unless exempt under section 1604-101, subsection (b). [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 1983, c. 78, §1 (AMD).

§1601-103. Definitions

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Act: [PL 1981, c. 699 (NEW).]

(1) "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant. A person "controls" a declarant if the person: (i) Is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interests of the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20% of the capital in the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20% of the voting interests in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than 20% of the capital of the person;

Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised. [PL 1981, c. 699 (NEW).]

(2) "Allocated interests" means the undivided interests in the common elements, the common expense liability and votes in the association allocated to each unit; [PL 1981, c. 699 (NEW).]

(3) "Association" or "unit owners' association" means the unit owners' association organized under section 1603-101; [PL 1981, c. 699 (NEW).]

(4) "Common elements" means all portions of a condominium other than the units; [PL 1981, c. 699 (NEW).]

(5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves; [PL 1981, c. 699 (NEW).]

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 1602-107; [PL 1981, c. 699 (NEW).]

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions under a declaration, or an amendment to a declaration, duly recorded pursuant to this Act. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Any real estate development consisting exclusively of clustered, detached, single family residences is not a condominium, unless so designated in the declaration; [PL 1983, c. 190 (AMD).]

(8) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by one or more persons other than purchasers and persons who occupy with the consent of purchasers; [PL 1981, c. 699 (NEW).]

(9) "Declarant" means any person or group of persons acting in concert who: (i) As part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or (ii) reserves or succeeds to any special declarant right; [PL 1981, c. 699 (NEW).]

(10) "Declaration" means any instruments, however denominated, which create a condominium and any amendments to those instruments; [PL 1981, c. 699 (NEW).]

(11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements or limited common

elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium; [PL 1981, c. 699 (NEW).]

(12) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest; [PL 1981, c. 699 (NEW).]

(13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association; [PL 1981, c. 699 (NEW).]

(14) "Identifying number" means a symbol or address that identifies only one unit in a condominium; [PL 1981, c. 699 (NEW).]

(15) "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size; [PL 1981, c. 699 (NEW).]

(16) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section, 1602-102, paragraphs (2) or (4) for the exclusive use of one or more but fewer than all of the units; [PL 1981, c. 699 (NEW).]

(17) "Master association" means an organization described in section 1602-120, whether or not it is also an association described in section 1603-101; [PL 1981, c. 699 (NEW).]

(18) "Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located; [PL 1981, c. 699 (NEW).]

(19) "Person" means a natural person, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture or other legal or commercial entity; [PL 1981, c. 699 (NEW).]

(20) "Purchaser" means any person, other than a declarant, or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit, other than: (i) A leasehold interest, including renewal options, of less than 20 years; or (ii) as security for an obligation; [PL 1981, c. 699 (NEW).]

(21) "Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interest which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water; [PL 1981, c. 699 (NEW).]

(22) "Real estate trust" means an arrangement evidenced by a writing, the purposes of which include the ownership of real estate and the creation and management of a condominium, under which arrangement one or more trustees are empowered to hold legal title to real estate for the benefit of beneficiaries. Trustees may also be beneficiaries under a real estate trust; [PL 1981, c. 699 (NEW).]

(23) "Recorded" means that the instrument, plan or plat shall be duly recorded in every registry of deeds in each county or registry district in which the condominium or any portion thereof is located. Each such instrument, plan or plat shall be indexed by the Register of Deeds, in the name of the condominium and the parties thereto; [PL 1981, c. 699 (NEW).]

(24) "Residential" means use for dwelling or recreational purposes, or both; [PL 1981, c. 699 (NEW).]

(25) "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration, section 1602-109; to exercise any development right, section 1602-110; to maintain sales offices, management offices, signs advertising the condominium and models, section 1602-115; to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium, section 1602-116; to make the condominium part of a larger condominium or a planned community, section 1602-121; to make the condominium subject to a master association, section 1602-120; or to appoint or remove any officer of the association or any master association or any executive board member or to approve any acts of the association or the executive board, during any period of declarant control, section 1603-103, subsection (d); [PL 1981, c. 699 (NEW).]

(26) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 1602-105, paragraph (5); and [PL 1981, c. 699 (NEW).]

(27) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 1983, c. 190 (AMD).

§1601-104. Variation by agreement

Except as expressly provided in this Act, provisions of this Act may not be varied by agreement, and rights conferred by this Act may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this Act or the declaration. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-105. Separate titles and taxation

(a) If there is any unit owner other than a declarant, each unit which has been created, together with its appurtenant interests, constitutes for all purposes a separate parcel of real estate. [PL 1981, c. 699 (NEW).]

(b) If there is any unit owner other than a declarant, each unit shall be separately taxed and assessed and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights. [PL 1981, c. 699 (NEW).]

(c) Any portion of the common elements for which the declarant has reserved any development right to add real estate to a condominium or to withdraw real estate from a condominium, shall be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes. [PL 1981, c. 699 (NEW).]

(d) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-106. Applicability of local laws and regulations

A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership. Otherwise, no provision of this Act invalidates or

modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation. No county, municipality, village corporation or other political subdivision, whether or not acting under the municipal home rule powers provided for under the Constitution of Maine, Article VIII, Part Second or Title 30-A, chapter 111, and section 3001, or any other authority from time to time, may adopt or enforce any law, ordinance, rule, regulation or policy which conflicts with the provisions of this Act. [PL 1987, c. 737, Pt. C, §§76, 106 (AMD); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 1987, c. 322 (AMD). PL 1987, c. 737, §§C76,C106 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD).

§1601-107. Eminent Domain

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element. [PL 1981, c. 699 (NEW).]

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition: (1) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (2) the portion of the allocated interest, votes and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests. [PL 1981, c. 699 (NEW).]

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. [PL 1981, c. 699 (NEW).]

(d) The court decree shall be recorded. [PL 1981, c. 699 (NEW).]

(e) Notwithstanding anything to the contrary in this section, lien holders on any unit, common element or limited common element, shall have a lien on any such awards in order of priority of their respective liens. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-108. Supplemental general principles of law applicable

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance or other validated or invalidating cause supplement the provisions of this Act, except to the extent inconsistent with this Act. [PL 1981, c. 699 (NEW).]

No consent or joinder of the spouse of a unit owner shall be required for any action of the unit owner required or permitted under this Act, except that in a case of a conveyance or transfer of a unit, the law of Maine relating to the rights of a spouse in real estate shall apply to such conveyance or transfer. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-109. Construction against implicit repeal

This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-110. Uniformity of application and construction

This Act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-111. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-112. Unconscionable agreement or term of contract

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. [PL 1981, c. 699 (NEW).]

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) The commercial setting of the negotiations; [PL 1981, c. 699 (NEW).]

(2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors; [PL 1981, c. 699 (NEW).]

(3) The effect and purpose of the contract or clause; and [PL 1981, c. 699 (NEW).]

(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 669 (NEW).

§1601-113. Obligation of good faith

Every contract or duty governed by this Act imposes an obligation of good faith in its performance or enforcement. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-114. Remedies to be liberally administered

(a) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special or punitive damages may not be awarded except as specifically provided in this Act or by other rule of law. [PL 1981, c. 699 (NEW).]

(b) Any right or obligation declared by this Act is enforceable by judicial proceeding. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-115. Legal investments

Financial institutions may make loans to any person or persons to be secured by a mortgage of a unit or units together with their allocated interests, created pursuant to this chapter, to the extent that each of them may make loans secured by real estate mortgages, and subject to the applicable conditions and limitations imposed by law. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1601-116. Effective date

This Act shall be effective on January 1, 1983. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

ARTICLE 2

CREATION, ALTERATION AND TERMINATION OF CONDOMINIUMS

§1602-101. Creation of condominium

(a) A condominium may be created pursuant to this Act only by recording a declaration executed in the same manner as a deed, by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. In the creation of a condominium, the declaration shall be recorded in the same manner as a deed and plats and plans shall be recorded in the same manner as plats and plans generally. All such documents, shall be indexed in the name of the condominium and the parties thereto and may be included in such other indices as shall be determined by the Register of Deeds. [PL 1981, c. 699 (NEW).]

(b) No interest in any unit may be conveyed to a purchaser until the unit is substantially completed as evidenced by a certificate or statement of substantial completion executed by an engineer or architect, or until a certificate of occupancy is issued by the municipal building official; except that this limitation does not apply to contracts, options or reservations for sale of units later to be so completed or to mortgages or transfers of units as security for an obligation, deeds in lieu of foreclosure, foreclosures and foreclosure sales, conveyances to successor declarants or to any person in the business of selling real estate for that person's own account, or to financial institutions. [PL 1981, c. 699 (NEW); PL 2009, c. 261, Pt. B, §16 (AMD).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2009, c. 261, Pt. B, §16 (AMD).

§1602-102. Unit boundaries

Except as provided by the declaration: [PL 1981, c. 699 (NEW).]

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereon are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements. [PL 1981, c. 699 (NEW).]

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. [PL 1981, c. 699 (NEW).]

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit. [PL 1981, c. 699 (NEW).]

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-103. Construction and validity of declaration and bylaws

(a) All provisions of the declaration and bylaws are severable. [PL 1981, c. 699 (NEW).]

(b) Neither the rule against perpetuities nor the provisions of section 116, as it or its equivalent may be amended from time to time, may be applied to defeat any provision of the declaration, bylaws or rules and regulations adopted pursuant to section 1603-102, subsection (a), paragraph (1). [PL 2017, c. 402, Pt. B, §3 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Act. [PL 1981, c. 699 (NEW).]

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this Act. Whether a substantial failure impairs marketability is not affected by this Act. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2017, c. 402, Pt. B, §3 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§1602-104. Description of units

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or registry district in which the condominium is located and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-105. Contents of declaration

(a) The declaration for a condominium contains:

(1) The name of the condominium, which includes the word "condominium" or be followed by the words "a condominium," and of the association; [PL 1981, c. 699 (NEW).]

(2) The name of every municipality and every county or registry district in which any part of the condominium is situated; [PL 1981, c. 699 (NEW).]

(3) A legally sufficient description of the real estate included in the condominium; [PL 1981, c. 699 (NEW).]

(4) A statement of the maximum number of units which the declarant reserves the right to create; [PL 1981, c. 699 (NEW).]

(5) A description of the boundaries of each unit created by the declaration, including the unit's identifying number; [PL 1981, c. 699 (NEW).]

(6) A description of any limited common elements, other than those specified in section 1602-102, paragraphs (2) and (4), as provided in section 1602-109, subsection (b), paragraph (10); [PL 1981, c. 699 (NEW).]

(7) A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in section 1602-102, paragraphs (2) and (4), together with a statement that they may be so allocated; [PL 1981, c. 699 (NEW).]

(8) A description of any development rights and other special declarant rights, section 1601-103, paragraph (25), reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised; [PL 1981, c. 699 (NEW).]

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

(i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and

(ii) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate; [PL 1981, c. 699 (NEW).]

(10) Any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse; [PL 1981, c. 699 (NEW).]

(11) An allocation to each unit of the allocated interests in the manner described in section 1602-107; [PL 1981, c. 699 (NEW).]

(12). Any restrictions on use, occupancy and alienation of the units; [PL 1981, c. 699 (NEW).]

(13). The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; [PL 1981, c. 699 (NEW).]

(14). All matters required by sections 1602-106, 1602-107, 1602-108, 1602-109, 1602-115, 1602-116 and 1603-103, subsection (d); and [PL 1981, c. 699 (NEW).]

(15). Reasonable provisions regarding the manner in which notice of matters affecting the condominium may be given to unit owners by the association. [PL 1981, c. 699 (NEW).]

(b) The declaration may contain any other matters the declarant deems appropriate. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-106. Leasehold condominiums

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration and the declaration shall state:

(1) The recording data for the lease or memorandum thereof; [PL 1981, c. 699 (NEW).]

(2) The date on which the lease is scheduled to expire; [PL 1981, c. 699 (NEW).]

(3) A legally sufficient description of the real estate subject to the lease; [PL 1981, c. 699 (NEW).]

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights; [PL 1981, c. 699 (NEW).]

(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or a statement that they do not have those rights; and [PL 1981, c. 699 (NEW).]

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that they do not have those rights. [PL 1981, c. 699 (NEW).]

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant. [RR 2013, c. 2, §40 (COR).]

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests, unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired. [PL 1981, c. 699 (NEW).]

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with section 1602-107, subsection (a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). RR 2013, c. 2, §40 (COR).

§1602-107. Allocations of common element interests, votes and common expense liabilities

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association

to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant. [PL 1981, c. 699 (NEW).]

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal. [PL 1981, c. 699 (NEW).]

(c) The declaration may provide:

(1) That different allocations of votes shall be made to the units on particular matters specified in the declaration; and [PL 1981, c. 699 (NEW).]

(2) For class voting on specified issues affecting the class if necessary to protect valid interests of the class. [PL 1981, c. 699 (NEW).]

A declarant may not utilize class voting for the purpose of evading any limitation imposed on declarants by this Act, nor may units constitute a class because they are owned by a declarant. [PL 1981, c. 699 (NEW).]

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100% if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formulas, the allocated interest prevails. [PL 1981, c. 699 (NEW).]

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void, except as permitted in section 1603-112. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-108. Limited common elements

(a) Except for the limited common elements described in section 1602-102, paragraphs (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected. [PL 1981, c. 699 (NEW).]

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration upon application to the association by the unit owners between or among whose units the reallocation is made. Unless the executive board determines within 30 days that the reallocation is unreasonable, the association shall prepare an amendment and any plats or plans needed to depict the amendment. Upon execution by the unit owners, the amendment together with such plats or plans shall be recorded in the names of the parties and the condominium. [PL 1981, c. 699 (NEW).]

(c) A common element not previously allocated as a limited common element may not be so allocated, except pursuant to provisions in the declaration made in accordance with section 1602-105, subsection (a), paragraph (7). The allocations shall be made by amendments to the declarations. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-109. Plats and plans

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible, bear the seal and signature of the land surveyor, engineer or architect under whose direction the plat or plan was prepared. [PL 1981, c. 699 (NEW).]

(b) Each plat must show:

(1) The name and a survey or general schematic map of the entire condominium; [PL 1981, c. 699 (NEW).]

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate; [PL 1981, c. 699 (NEW).]

(3) The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel; [PL 1981, c. 699 (NEW).]

(4) The extent of any encroachments by or upon any portion of the condominium; [PL 1981, c. 699 (NEW).]

(5) The location and dimensions of all easements serving or burdening any portion of the condominium; [PL 1981, c. 699 (NEW).]

(6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number; [PL 1981, c. 699 (NEW).]

(7) The location with reference to any established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number; [PL 1981, c. 699 (NEW).]

(8) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate;" [PL 1981, c. 699 (NEW).]

(9) The distances and courses between noncontiguous parcels of real estate comprising the condominium; [PL 1981, c. 699 (NEW).]

(10) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in section 1602-102, paragraphs (2) and (4); and [PL 1981, c. 699 (NEW).]

(11) In the case of real estate not subject to development rights, other matters customarily shown on land surveys. [PL 1981, c. 699 (NEW).]

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled "MUST BE BUILT" or "NEED NOT BE BUILT." [PL 1981, c. 699 (NEW).]

(d) To the extent not shown or projected on the plats, plans must show:

(1) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number; [PL 1981, c. 699 (NEW).]

(2) Any horizontal unit boundaries, with reference to established datum and the unit's identifying number; and [PL 1981, c. 699 (NEW).]

(3) Any units in which the declarant has reserved the right to create additional units or common elements, section 1602-110, subsection (c), identified appropriately. [PL 1981, c. 699 (NEW).]

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans. [PL 1981, c. 699 (NEW).]

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b) and (c), or the declarant may record an affidavit that plats and plans previously recorded conform to the requirements of those subsections. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-110. Exercise of development rights

(a) To exercise any development right reserved under section 1602-105, subsection (a), paragraph (8), the declarant shall prepare, execute and record an amendment to the declaration, section 1602-117, and comply with section 1602-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number of each new unit created, and except in the case of subdivision or conversion of units described in subsection (c), reallocate the allocated interests among all units. The amendment must describe any limited common elements thereby created and designate the unit to which each is allocated to the extent required by section 1602-108, limited common elements. [PL 1981, c. 699 (NEW).]

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 1602-105 or section 1602-106, as the case may be, and the plats and plans includes all matters required by section 1602-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 1602-105, subsection (a), paragraph (8). [PL 1981, c. 699 (NEW).]

(c) When a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain, section 1601-107. [PL 1981, c. 699 (NEW).]

(2) If the declarant subdivides the unit into 2 or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant. [PL 1981, c. 699 (NEW).]

(3) Until written notice of conversion is given to the appropriate real estate tax assessor or the period during which conversion may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inures to the declarant. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-111. Alterations of units

Subject to the provisions of the declaration and other provisions of law, a unit owner: [PL 1981, c. 699 (NEW).]

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium; [PL 1981, c. 699 (NEW).]

(2) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association; [PL 1981, c. 699 (NEW).]

(3) After acquiring an adjoining unit or adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not alteration of boundaries. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-112. Relocation of boundaries between adjoining units

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee. [PL 1981, c. 699 (NEW).]

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-113. Subdivision of units

(a) If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing that unit. [PL 1981, c. 699 (NEW).]

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, 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. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-114. Easement for encroachments

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-115. Use for sales purposes

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. Any sales office, management office or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-116. Easement to facilitate exercise of special declarant rights

Subject to the provisions of the declaration, a declarant has an 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 Act or reserved in the declaration. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-117. Amendment of declaration

(a) Except in cases of amendments that may be executed by a declarant under section 1602-109, subsection (f) or 1602-110; the association under section 1601-107, 1602-106, subsection (d), 1602-108, subsection (c), 1602-112, subsection (a) or 1602-113; or certain unit owners under section 1602-108, subsection (b), 1602-112, subsection (a), 1602-113, subsection (b) or 1602-118, subsection (b), and except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by vote or agreement of the unit owners of units to which at least 67% of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use. [PL 1981, c. 699 (NEW).]

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded. [PL 1981, c. 699 (NEW).]

(c) Every amendment to the declaration must be recorded and is effective only upon recordation. Notice of the amendment shall be sent to all unit owners and mortgagees known to the executive board, but failure to send such notices shall not affect the validity of the amendment. [PL 1981, c. 699 (NEW).]

(d) Except to the extent expressly permitted or required by other provisions of this Act, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, 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. [PL 1981, c. 699 (NEW).]

(e) Amendments to the declaration required by this Act to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-118. Termination of condominium

(a) Except in the case of taking of all the units by eminent domain, section 1601-107, a condominium may be terminated only by agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses. [PL 1981, c. 699 (NEW).]

(b) Such an agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless recorded before that date. A termination agreement and all ratifications thereof must be recorded and is effective only upon recordation. [PL 1981, c. 699 (NEW).]

(c) In the case of a condominium containing only units having horizontal boundaries between units, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale. [PL 1981, c. 699 (NEW).]

(d) In the case of a condominium containing any units not having horizontal boundaries between units, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale. [PL 1981, c. 699 (NEW).]

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium following termination, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Act or the declaration. [PL 1981, c. 699 (NEW).]

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries between units, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. [PL 1981, c. 699 (NEW).]

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded prior to termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association shall be treated as if they had perfected liens on the unit immediately prior to the termination. [PL 1981, c. 699 (NEW).]

(h) The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements. [PL 1981, c. 699 (NEW).]

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination. [PL 1981, c. 699 (NEW).]

(i) Except as provided in subsection (j), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium. [PL 1981, c. 699 (NEW).]

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-119. Rights of secured lenders

(a) The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or [PL 1981, c. 699 (NEW).]

(2) Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to section 1603-113. [PL 1981, c. 699 (NEW).]

(b) The association shall send reasonable prior written notice by prepaid United States mail to eligible mortgage holders as hereinafter defined of the consideration by the association of following proposed actions:

(1) The termination of the condominium pursuant to section 1602-118; [PL 1981, c. 699 (NEW).]

(2) A change in the allocated interest of a unit, a change in the boundaries of a unit or a subdivision of a unit; [PL 1981, c. 699 (NEW).]

(3) The merger or consolidation of the condominium with another condominium; [PL 1981, c. 699 (NEW).]

(4) The conveyance or subjection to a security interest of any portion of the common elements; [PL 1981, c. 699 (NEW).]

(5) The proposed use of any proceeds of hazard insurance required to be maintained by the association under section 1603-113, subsection (a), for purposes other than the repair or restoration of the damaged property; [PL 1981, c. 699 (NEW).]

(6) The adoption of any proposed budget by the executive board under section 1603-103, subsection (c), and of the date of the scheduled unit owners meeting to consider ratification thereof; a summary of the proposed budget shall accompany this notice; and [PL 1981, c. 699 (NEW).]

(7) Any default in the performance or payment by a unit owner of any obligations under the condominium declaration, including, without limitation, default in the payment of common expense liabilities.

An "eligible mortgage holder" means the holder of a recorded first mortgage on a unit which has delivered written notice to the association by prepaid United States mail, return receipt requested, or by delivery in hand securing a receipt therefor, which notice shall state the mortgagee's name and address, the unit owner's name and address, and the identifying number of the unit, and shall state that the mortgage is a recorded first mortgage. Such notice shall be deemed to have been given reasonably prior to the proposed action if sent at the time notice thereof is given to the unit owners. In addition, the declaration may require that similar notice be given to other persons or of other proposed actions. [PL 1981, c. 699 (NEW).]

(c) In the event of any proposed actions described in subsection (b), paragraphs (1), (2), (3), (4) or (5), an eligible mortgage holder shall have the right but not the obligation in place of the unit owner to cast the votes allocated to that unit or give or withhold any consent required of the unit owner for such action by delivering written notice to the association with a copy to the unit owner prior to or at the time of the taking of the proposed action, which notice shall be sent by prepaid United States mail, return receipt requested, or by delivery in hand. Failure of the eligible mortgage holder to so exercise such rights shall constitute a waiver thereof and shall not preclude the unit owner from exercising such right. In the event of any default described in subsection (b), paragraph (7), the eligible mortgage holder shall have the right but not the obligation to cure such default. [PL 1981, c. 699 (NEW).]

(d) In addition, an eligible mortgage holder, or its representative, shall have the right to attend association and executive board meetings for the purposes of discussing the matters described in subsection (b), paragraphs (1) to (6). [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-120. Master associations

(a) If the declaration for a condominium provides that any of the powers described in section 1603-102 are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association, which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this Act applicable to unit owners' associations apply to any such corporation, or unincorporated association, except as modified by this section. [PL 1981, c. 699 (NEW).]

(b) Unless a master association is acting in the capacity of an association described in section 1603-101, it may exercise the powers set forth in section 1603-102, subsection (a), paragraph (2), only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from such condominiums to the master association. [PL 1981, c. 699 (NEW).]

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or

omissions of the master association with respect to those powers following delegation. [PL 1981, c. 699 (NEW).]

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 1603-103, 1603-106, 1603-108, 1603-110 and 1603-113, apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not such persons are otherwise unit owners within the meaning of this Act. [PL 1981, c. 699 (NEW).]

(e) Notwithstanding the provisions of section 1603-103 with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 1603-101, the articles of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members to that executive board; [PL 1981, c. 699 (NEW).]

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board; [PL 1981, c. 699 (NEW).]

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board; or [PL 1981, c. 699 (NEW).]

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1602-121. Merger or consolidation of condominiums

(a) Any 2 or more condominiums may, by agreement of the unit owners as provided in subsection (b), be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. [PL 1981, c. 699 (NEW).]

(b) An agreement of 2 or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded. [PL 1981, c. 699 (NEW).]

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either:

(1) By stating such reallocations or the formulas upon which they are based; or [PL 1981, c. 699 (NEW).]

(2) By stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of such percentages allocated to each unit formerly comprising a part of such preexisting

condominium shall be equal to the percentages of allocated interests allocated to such unit by the declaration of the preexisting condominiums. [PL 1981, c. 699 (NEW).]

(d) Every merger or consolidation of 2 or more condominium associations shall comply with the requirements of Title 13-B, the Maine Nonprofit Corporation Act, except to the extent inconsistent with this Act. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

ARTICLE 3

MANAGEMENT OF THE CONDOMINIUM

§1603-101. Organization of unit owners' association

A unit owners' association shall be organized prior to any conveyance, except a conveyance as security for an obligation, of a unit by the declarant. The membership of the association at all times shall consist exclusively of all the unit owners, or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 1602-118, or their heirs, successors or assigns. The association shall be organized as a nonprofit corporation under Title 13-B, as it or its equivalent may be amended from time to time. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-102. Powers of unit owners' association

(a) Subject to the provisions of the declaration, the association may:

(1) Adopt and amend bylaws and rules and regulations; [PL 1981, c. 699 (NEW).]

(2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners; [PL 1981, c. 699 (NEW).]

(3) Hire and terminate managing agents and other employees, agents and independent contractors; [PL 1981, c. 699 (NEW).]

(4) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the condominium; [PL 1981, c. 699 (NEW).]

(5) Make contracts and incur liabilities; [PL 1981, c. 699 (NEW).]

(6) Regulate the use, maintenance, repair, replacement and modification of common elements; [PL 1981, c. 699 (NEW).]

(7) Cause additional improvements to be made as a part of the common elements; [PL 1981, c. 699 (NEW).]

(8) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to section 1603-112; [PL 1981, c. 699 (NEW).]

(9) Grant easements, leases, licenses and concessions through or over the common elements; [PL 1981, c. 699 (NEW).]

(10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 1602-102, paragraphs (2) and (4) and services provided to unit owners; [PL 1981, c. 699 (NEW).]

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association; [PL 1981, c. 699 (NEW).]

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 1604-108 or statements of unpaid assessments; [PL 1981, c. 699 (NEW).]

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance; [PL 1981, c. 699 (NEW).]

(14) Assign its right to future income, including the right to receive assessments, but only if approval of a majority of unit owners is obtained; [PL 2011, c. 368, §1 (AMD).]

(15) Exercise any other powers conferred by the declaration or bylaws; [PL 1981, c. 699 (NEW).]

(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; [PL 2011, c. 368, §2 (AMD).]

(17) Exercise any other powers necessary and proper for the governance and operation of the association; and [PL 2011, c. 368, §3 (AMD).]

(18) 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 unit owner's unit; or

(B) 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. [PL 2011, c. 368, §4 (NEW).]

(b) Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons except as permitted by this Act. A provision requiring arbitration of disputes between the declarant and the association or between the declarant and unit owners does not violate this section. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2011, c. 368, §§1-4 (AMD).

§1603-103. Executive board members and officers; declarant control

(a) Except as provided in the declaration, the bylaws, in subsection (b), or other provisions of this Act, the executive board may act in all instances on behalf of the association. The declarant is a fiduciary for the unit owners with respect to actions taken or omitted at his direction by officers and members of the executive board appointed by the declarant, and acting in those capacities, or elected by the members at a time when more than 50% of the voting rights are held by the declarant. [PL 1981, c. 699 (NEW).]

(b) The executive board may not act on behalf of the association to amend the declaration, section 1602-117, to terminate the condominium, section 1602-118, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, subsection (e), but the executive board may fill vacancies in its membership for the unexpired portion of any term. [PL 1981, c. 699 (NEW).]

(c) Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting

of the unit owners to consider ratification of the budget not less than 10 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board. [PL 2015, c. 122, §1 (AMD).]

(d) The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him may appoint and remove the officers and members of the executive board. Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period not exceeding 7 years in the case of a condominium in which the declarant has reserved development rights, or 5 years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates no later than 60 days after conveyance of 75% of the units to unit owners other than a declarant. 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 he 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. Within the above limits, the period of declarant control shall end no earlier than the later of: (1) Conveyance by the declarant of 50% of the units; (2) Termination of any right of declarant to appoint officers or members of the executive board; or (3) Termination of any right of declarant to approve or veto any actions of the association or the executive board. [PL 1983, c. 78, §2 (AMD).]

(e) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least 3 persons, at least a majority of whom must be unit owners or spouses of unit owners or, in the case of a unit owner which is a corporation, partnership, trust or estate, a designated agent thereof. The declaration may provide for staggered terms for the executive board. The executive board shall elect the officers. The executive board members and officers shall take office upon election. [PL 1981, c. 699 (NEW).]

(f) In determining whether the period of declarant control has terminated under subsection (d), the percentage of the units conveyed is presumed to be that percentage which would have been conveyed if all the units the declarant has built or reserved the right to build in the declaration were included in the condominium. [PL 1983, c. 78, §2 (AMD).]

(g) The executive board may make a special assessment, subject to the following ratification requirements.

(1) A special assessment must be ratified by unit owners in accordance with subsection (c), except that, if payment of any portion of the proposed special assessment is due after the end of the association's current budget year, ratification requires approval of a majority in interest of all unit owners.

(2) If the amount of the special assessment does not exceed 2 months' common charges and the board determines that the assessment is necessary to meet an emergency, the board may make the special assessment immediately in accordance with the terms of the board's vote, without ratification by unit owners. [PL 2015, c. 122, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 1983, c. 78, §2 (AMD). PL 2015, c. 122, §§1, 2 (AMD).

§1603-104. Transfer of special declarant rights

(a) No special declarant rights, section 1601-103, paragraph (25), created or reserved under this Act may be transferred except by a recorded instrument. The instrument is not effective unless executed by the transferee. [PL 1981, c. 699 (NEW).]

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows.

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this Act. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor. [PL 1981, c. 699 (NEW).]

(2) If the successor to any special declarant right is an affiliate of a declarant, section 1601-103, paragraph (1), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium. [PL 1981, c. 699 (NEW).]

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is also liable for any obligations and liabilities relating to the retained special declarant rights imposed on a declarant by this Act or by the declaration arising after the transfer. [PL 1981, c. 699 (NEW).]

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor. [PL 1981, c. 699 (NEW).]

(c) Unless otherwise provided in a mortgage instrument in case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration pursuant to section 1602-115 and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. [PL 1981, c. 699 (NEW).]

(d) Upon foreclosure, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights; and [PL 1981, c. 699 (NEW).]

(2) The period of declarant control, section 1603-103, subsection (d), terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant. [PL 1981, c. 699 (NEW).]

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows.

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this Act or by the declaration. [PL 1981, c. 699 (NEW).]

(2) A successor to any special declarant rights other than a successor described in paragraphs (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this Act or the declaration:

(A) On a declarant which relate to his exercise or nonexercise of special rights; or

(B) On his transferor, other than:

(i) Misrepresentations by any prior declarant;

(ii) Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

(iii) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer. [PL 1981, c. 699 (NEW).]

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs, section 1602-115, if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof. [PL 1981, c. 699 (NEW).]

(4) A successor to all special declarant rights held by his transferor, who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of section 1603-103, subsection (d), for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 1603-103, subsection (d). [PL 1981, c. 699 (NEW).]

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this Act or the declaration. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-105. Termination of contracts and leases of declarant

If entered into before the executive board elected by the unit owners pursuant to section 1603-103, subsection (e), takes office: (1) Any management contract, employment contract or lease of recreational or parking areas or facilities; (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 at any time after the executive board elected by the unit owners pursuant to section 1603-103, subsection (e), takes office upon not less than 90 days' notice to the other party. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-106. Bylaws

(a) The bylaws of the association must provide for:

(1) The number of members of the executive board and the titles of the officers of the association; [PL 1981, c. 699 (NEW).]

(2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify; [PL 1981, c. 699 (NEW).]

(3) The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies; [PL 1981, c. 699 (NEW).]

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent; [PL 1981, c. 699 (NEW).]

(5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and [PL 1981, c. 699 (NEW).]

(6) The method of amending the bylaws. [PL 1981, c. 699 (NEW).]

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate. [PL 1981, c. 699 (NEW).]

(c) An association may not include in its bylaws or declaration, or any rule adopted pursuant to the bylaws or declaration, or any deed a restriction that prohibits a unit owner from displaying on that unit owner's unit a sign that supports or opposes a candidate for public office or a referendum question during the period from 6 weeks prior to the date that a primary or general election or special election is held regarding that candidate or referendum question to one week after the election for that political candidate or vote for that referendum question is held. [PL 2015, c. 271, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2015, c. 271, §2 (AMD).

§1603-107. Upkeep of the condominium

(a) Except to the extent provided by the declaration, subsection (b), or section 1603-113, subsection (h), the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof. [PL 1981, c. 699 (NEW).]

(b) In addition to the liability which a declarant has under this Act as a unit owner, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-108. Meetings

A meeting of the association must be held at least once each year. Special meetings of the association may be called as provided in the Maine Nonprofit Corporation Act. The bylaws must specify which of the association's officers, not less than 10 nor more than 60 days in advance of any meeting, shall cause notice to be hand delivered or sent prepaid by United States' mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner or sent by electronic means to any other address, including an e-mail address, specifically designated by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes and any proposal to remove a director or officer. [PL 2015, c. 122, §3 (AMD).]

The executive board shall give timely notice reasonably calculated to inform unit owners of the date, time and place of and topics proposed to be discussed at meetings of the executive board. The notice may be given by a posting in a prominent place in the common elements or elsewhere, by e-mail or by other means, but actual notice need not be delivered to each unit owner. Failure of a unit owner to receive notice does not invalidate any action taken by the executive board at the meeting. Unit owners have the right to attend meetings of the executive board, subject to reasonable rules established by the executive board. [PL 2011, c. 368, §5 (NEW).]

The executive board may restrict or prohibit attendance by unit owners and others during executive sessions. An executive session may be held only to: [PL 2011, c. 368, §5 (NEW).]

(a) Consult with the association's attorney concerning legal matters; [PL 2011, c. 368, §5 (NEW).]

(b) Discuss existing or potential litigation or mediation, arbitration or administrative proceedings; [PL 2011, c. 368, §5 (NEW).]

(c) Discuss labor or personnel matters; [PL 2011, c. 368, §5 (NEW).]

(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 [PL 2011, c. 368, §5 (NEW).]

(e) Prevent public knowledge of the matter to be discussed if the executive board determines that public knowledge would violate the privacy of any person. [PL 2011, c. 368, §5 (NEW).]

A final vote or action may not be taken during an executive session. [PL 2011, c. 368, §5 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2011, c. 368, §5 (AMD). PL 2015, c. 122, §3 (AMD).

§1603-109. Quorums

(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%. [PL 1981, c. 699 (NEW).]

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on that board are present at the beginning of the meeting. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-110. Voting; proxies

(a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple 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 multiple owners unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. [PL 1981, c. 699 (NEW).]

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. 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. A unit owner may not revoke

a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date, unless it specifies a shorter term. [PL 1981, c. 699 (NEW).]

(c) The declaration may provide for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize class voting for the purpose of evading any limitation imposed on declarants by this Act. [PL 1981, c. 699 (NEW).]

(d) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice of all meetings at which lessees may be entitled to vote. [PL 1981, c. 699 (NEW).]

(e) No votes allocated to a unit owned by the association may be cast. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-111. Tort and contract liability

Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association shall be brought against the association and not against any unit owner. [PL 1981, c. 699 (NEW).]

If the wrong accrued during any period of declarant control, and if the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for the breach of contract or other wrongful act or omission. In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. During any period in which the control of the declarant is limited to the power to approve actions of the association or executive board, as provided in section 1603-103, subsection (d), the declarant shall be liable under this section only for losses caused by the exercise of declarant's right of disapproval. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 1603-117, other liens affecting the condominium. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-112. Alienation of common elements

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; provided that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units in the condominium are

restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. [PL 1981, c. 699 (NEW).]

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation. [PL 1981, c. 699 (NEW).]

(c) The association, on behalf of the unit owners, may contract to sell real estate in the condominium or subject real estate to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instrument. [PL 1981, c. 699 (NEW).]

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of common elements, unless made in accordance with this section or in accordance with section 1603-117, subsection (b), is void. [PL 1981, c. 699 (NEW).]

(e) Any vote to sell, transfer or encumber common elements under this section may include a release of that real estate from any or all restrictions imposed on that real estate by the declaration or this Act, but may not deprive any unit of its rights of access and support. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-113. Insurance

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion condominium, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and [PL 1981, c. 699 (NEW).]

(2) 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 and property damage arising out of or in connection with the use, ownership or maintenance of the common elements. [PL 1981, c. 699 (NEW).]

(b) The insurance maintained under subsection (a), paragraph (1), to the extent reasonably available, may, and in the case of buildings containing units having horizontal boundaries between them, shall include the units, but need not include improvements and betterments installed by unit owners. [PL 1981, c. 699 (NEW).]

(c) If the insurance described in subsection (a) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States' mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners. [PL 1981, c. 699 (NEW).]

(d) Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the association; [PL 1981, c. 699 (NEW).]

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household; [PL 1981, c. 699 (NEW).]

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and [PL 1981, c. 699 (NEW).]

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance. [PL 1981, c. 699 (NEW).]

(e) Any loss covered by the property policy under subsection (a), paragraph (1), and subsection (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lien holders as their interest may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored, or the condominium is terminated. [PL 1981, c. 699 (NEW).]

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit. [PL 1981, c. 699 (NEW).]

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until 20 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. [PL 1981, c. 699 (NEW).]

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (1) The condominium is terminated; (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (3) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced: (1) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to their respective lien holders as their interests may appear; and (3) the remainder of the proceeds shall be distributed to all the unit owners or lien holders as their interests may appear in proportion to the common element interests of all the unit owners. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1601-107, subsection (a), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 1602-118 governs the distribution of insurance proceeds if the condominium is terminated. [PL 1981, c. 699 (NEW).]

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-114. 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 must be paid to the unit owners in proportion to their common expense liability or credited to them to reduce their future common expense assessments. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-115. Assessments for common expenses

(a) Until the association makes a common expense assessment, the declarant shall pay all the common expenses. After any assessment has been made by the association, assessments thereafter must be made at least annually, based on a budget adopted at least annually by the association. [PL 1981, c. 699 (NEW).]

(b) Except for assessments under subsections (c) and (d), common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 1602-107. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association not exceeding 18% per year. [PL 1981, c. 699 (NEW).]

(c) To the extent required by the declaration:

(1) Any 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 that the declaration provides; [PL 1981, c. 699 (NEW).]

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and [PL 1981, c. 699 (NEW).]

(3) Any payments, fees or charges for the use, rental or operation of any common element shall be applied first to reduce the common expense relating to such common element. Any excess thereof shall be applied to common expenses generally. [PL 1981, c. 699 (NEW).]

(d) Assessments to pay a judgment against the association, section 1603-117, subsection (a), shall be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liability. [PL 1981, c. 699 (NEW).]

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit. [PL 1981, c. 699 (NEW).]

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-115-A. Optional escrow of assessments

(a) The association may require that a person who purchases a unit after October 1, 2009 make payments into an escrow account established by the association until the balance in the escrow account

for that unit is equal to 6 months of assessments as established under section 1603-115. [PL 2009, c. 332, §1 (NEW).]

(b) All assessment payments made under this section and received after October 1, 2009 must be held in an account of a bank or other financial institution under terms that place these assessment payments beyond the claim of creditors of the association. Upon request by a unit owner, the association shall disclose the name of the institution and the account number where these assessment payments are being held. An association may use a single escrow account to hold assessment payments made under this section from all of the unit owners. [PL 2009, c. 332, §1 (NEW).]

(c) The association shall pay interest on the assessment payments under this section in an amount equivalent to the rate required under Title 9-B, section 429. [PL 2009, c. 332, §1 (NEW).]

(d) The association shall return the assessment payments made under this section, together with the interest earned under subsection (c), to the unit owner when the owner sells the unit and has fully paid all assessments under section 1603-115. The association may use the balance in the account to offset any assessments remaining unpaid. [PL 2009, c. 332, §1 (NEW).]

(e) The assessment payments made under this section may be used by the association to cover up to 6 months of the costs attributable to a unit for which assessment payments have not been made. [PL 2009, c. 332, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 332, §1 (NEW).

§1603-116. Lien for assessments

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 1603-102, subsection (a), paragraphs (10), (11) and (12) are enforceable as 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 thereof becomes due. [PL 1981, c. 699 (NEW).]

(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; (2) A first mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent; and (3) Liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this section is not subject to the provisions of Title 14, section 4651 and Title 18-C, Article 2, as they or their equivalents may be amended or modified from time to time. [PL 2017, c. 402, Pt. C, §90 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority. [PL 1981, c. 699 (NEW).]

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required. [PL 1981, c. 699 (NEW).]

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of the assessments becomes due. [PL 2019, c. 3, §1 (AMD).]

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien, or to prohibit an association from taking a deed in lieu of foreclosure. [PL 1981, c. 699 (NEW).]

(g) A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party. [PL 1981, c. 699 (NEW).]

(h) The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit owner. [PL 1981, c. 699 (NEW).]

(i) (REALLOCATED FROM T. 33, §1603-116, sub-§(j)) Assessments for common expenses accrue, free from the lien of a foreclosing first mortgagee, from and after the date of sale of a condominium unit pursuant to Title 14, section 6323. [RR 2011, c. 1, §47 (RAL).]

(j) (Subsection (j) as enacted by PL 2011, c. 368, §7 is REALLOCATED TO TITLE 33, SECTION 1603-116, SUBSECTION (i)) [RR 2011, c. 1, §47 (RAL).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 1983, c. 78, §3 (AMD). PL 1983, c. 480, §A38 (AMD). PL 1983, c. 816, §A40 (AMD). RR 2011, c. 1, §47 (COR). PL 2011, c. 368, §§6, 7 (AMD). PL 2017, c. 402, Pt. C, §90 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 3, §1 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§1603-117. Other liens affecting the condominium

(a) A judgment for money against the association, if a lien order is filed with the Register of Deeds of the county where the condominium is located, as provided in Title 14, section 3132, as it or its equivalent may be amended or modified from time to time, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association. [PL 1981, c. 699 (NEW).]

(b) Notwithstanding the provisions of subsection (a), if the association has granted a security interest in the common elements to a creditor of the association pursuant to section 1603-112, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced. [PL 1981, c. 699 (NEW).]

(c) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against 2 or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering the unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien. [PL 1981, c. 699 (NEW).]

(d) A judgment against the association shall be indexed in the name of the condominium and the association and, if so indexed, is constructive notice of the lien against the units. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1603-118. Association records

(a) An association must retain the following: [PL 2011, c. 368, §8 (NEW).]

(1) Records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records for the past 6 years; [PL 2011, c. 368, §8 (NEW).]

(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; [PL 2011, c. 368, §8 (NEW).]

(3) The names of current unit owners in a form that permits preparation of a list of the names of all unit owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each unit owner is entitled to cast; [PL 2011, c. 368, §8 (NEW).]

(4) Copies of its original or restated organizational documents and bylaws and all amendments to them and all rules currently in effect; [PL 2011, c. 368, §8 (NEW).]

(5) All financial statements and tax returns of the association for the past 3 years; [PL 2011, c. 368, §8 (NEW).]

(6) A list of the names and addresses of its current executive board members and officers; [PL 2011, c. 368, §8 (NEW).]

(7) Its most recent annual report delivered to the Secretary of State; [PL 2011, c. 368, §8 (NEW).]

(8) Financial and other records sufficiently detailed to enable the association to comply with section 1604-108; [PL 2011, c. 368, §8 (NEW).]

(9) Copies of current contracts to which it is a party; [PL 2011, c. 368, §8 (NEW).]

(10) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and [PL 2011, c. 368, §8 (NEW).]

(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. [PL 2011, c. 368, §8 (NEW).]

(b) Subject to subsections (c) and (d), all records retained by an association must be available for examination and copying by a unit owner or the unit owner's authorized agent: [PL 2011, c. 368, §8 (NEW).]

(1) During reasonable business hours or at a mutually convenient time and location; and [PL 2011, c. 368, §8 (NEW).]

(2) Upon 10 days' notice in writing reasonably identifying the specific records of the association requested. [PL 2011, c. 368, §8 (NEW).]

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern: [PL 2011, c. 368, §8 (NEW).]

(1) Personnel, salary and medical records relating to specific individuals; [PL 2011, c. 368, §8 (NEW).]

(2) Contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated; [PL 2011, c. 368, §8 (NEW).]

(3) Existing or potential litigation or mediation, arbitration or administrative proceedings; [PL 2011, c. 368, §8 (NEW).]

(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; [PL 2011, c. 368, §8 (NEW).]

(5) Communications with the association's attorney that are otherwise protected by the attorney-client privilege or the attorney work-product doctrine; [PL 2011, c. 368, §8 (NEW).]

(6) Information the disclosure of which would violate law other than this Act; [PL 2011, c. 368, §8 (NEW).]

(7) Records of an executive session of the executive board; or [PL 2011, c. 368, §8 (NEW).]

(8) Individual unit files other than those of the requesting unit owner. [PL 2011, c. 368, §8 (NEW).]

(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. [PL 2011, c. 368, §8 (NEW).]

(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. [PL 2011, c. 368, §8 (NEW).]

(f) An association is not obligated to compile or synthesize information. [PL 2011, c. 368, §8 (NEW).]

(g) Information provided pursuant to this section may not be used for commercial purposes or any other purpose not reasonably related to the management of the association or the duties, rights or responsibilities of unit owners, officers or executive board members under this Act or the association's governing documents. [PL 2011, c. 368, §8 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2011, c. 368, §8 (RPR).

§1603-119. Association as trustee

With respect to a 3rd person dealing with the association in the association's capacity as a trustee under section 1602-118 and 1603-113, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A 3rd person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a 3rd person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A 3rd person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

ARTICLE 4

PROTECTION OF CONDOMINIUM PURCHASERS

§1604-101. Applicability; waiver

(a) This article applies to all units subject to this Act, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use. [PL 1981, c. 699 (NEW).]

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit; [PL 1981, c. 699 (NEW).]

(2) A disposition pursuant to court order; [PL 1981, c. 699 (NEW).]

(3) A disposition by a government or governmental agency; [PL 1981, c. 699 (NEW).]

(4) A disposition by foreclosure or deed in lieu of foreclosure; [PL 1981, c. 699 (NEW).]

(5) A disposition to a person in the business of selling real estate who intends to offer those units to purchasers; or [PL 1981, c. 699 (NEW).]

(6) A disposition which may be cancelled at any time and for any reason by the purchaser without penalty. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-102. Liability for public offering statement requirements

(a) Except as provided in subsection (b) or section 1604-106, a declarant must, prior to the offering of any interest in a unit to the public, prepare a public offering statement conforming to the requirements of sections 1604-103, 1604-104 and 1604-105. [PL 1981, c. 699 (NEW).]

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor must provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a). [PL 1981, c. 699 (NEW).]

(c) Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser must deliver a public offering statement in the manner prescribed in section 1604-107, subsection (a). If the offeror prepared all or a part of the public offering statement, he is liable under sections 1604-107 and 1604-116, for any materially false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any materially false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of such statement or omission or, in the exercise of reasonable care, could have known of such statement or omission. [PL 1981, c. 699 (NEW).]

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of sections 1604-103, 1604-104 and 1604-105, as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing 2 or more public offering statements. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-103. Public offering statement; general provisions

(a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the condominium; [PL 1981, c. 699 (NEW).]

(2) A general description of the condominium, including, to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings and amenities which declarant anticipates including in the condominium; [PL 1981, c. 699 (NEW).]

(3) The number of units in the condominium; [PL 1981, c. 699 (NEW).]

(4) Copies and a brief narrative description of the significant features of the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws and any rules and regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 1603-105; [PL 1981, c. 699 (NEW).]

(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 must include, without limitation:

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

(ii) A statement of the amount and purpose of any other reserves;

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

(iv) The projected monthly common expense assessment for each type of unit; [PL 1981, c. 699 (NEW).]

(6) Any services not reflected in the budget that the declarant provides, or expenses that he pays, and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit; [PL 1981, c. 699 (NEW).]

(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee; [PL 1981, c. 699 (NEW).]

(8) A description of any liens, defects or encumbrances on or affecting the title to the condominium which are noted in the property description included in the declaration; [PL 1981, c. 699 (NEW).]

(9) A description of any financing offered or arranged by the declarant; [PL 1981, c. 699 (NEW).]

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages; [PL 1981, c. 699 (NEW).]

(11) A statement that:

(i) Unless a purchaser has received and reviewed a copy of the public offering statement prior to the execution of a contract for sale, a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant; and

(ii) If a purchaser accepts the conveyance of a unit, he may not cancel the contract. [PL 1981, c. 699 (NEW).]

(12) A statement of any unsatisfied judgment or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge; [PL 1981, c. 699 (NEW).]

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 1604-107, together with the name and address of the escrow agent; [PL 1981, c. 699 (NEW).]

(14) Any restraints on alienation of any portion of the condominium; [PL 1981, c. 699 (NEW).]

(15) A description of the insurance coverage provided for the benefit of unit owners; [PL 1981, c. 699 (NEW).]

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; [PL 1981, c. 699 (NEW).]

(17) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to section 1604-118, Declarant's obligation to complete and restore; [PL 1981, c. 699 (NEW).]

(18) A description of any common elements which may be alienated pursuant to section 1603-112, and any conditions on that right to alienate; and [PL 1981, c. 699 (NEW).]

(19) A brief narrative description of any zoning and other land use requirements affecting the condominium; [PL 1981, c. 699 (NEW).]

(b) If a condominium composed of not more than 12 units is not subject to development rights and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, the public offering statement, for all purposes under this Act, may consist of a copy of the declaration, including plots and plans and the bylaws, and need not contain any additional information specified in subsection (a). [PL 1981, c. 699 (NEW).]

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-104. Public offering statement; condominiums subject to development rights

If the declaration provides that a condominium is subject to any development rights, the public offering statement shall disclose, in addition to the information required by section 1604-103: [PL 1981, c. 699 (NEW).]

(1) The maximum number of units, and the maximum number of units per acre, that may be created; [PL 1981, c. 699 (NEW).]

(2) A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions; [PL 1981, c. 699 (NEW).]

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use; [PL 1981, c. 699 (NEW).]

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights; [PL 1981, c. 699 (NEW).]

(5) A statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subsection (4); [PL 1983, c. 78, §5 (AMD).]

(6) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction and size, or a statement that no assurances are made in those regards; [PL 1981, c. 699 (NEW).]

(7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard; [PL 1981, c. 699 (NEW).]

(8) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard; [PL 1981, c. 699 (NEW).]

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard; [PL 1981, c. 699 (NEW).]

(10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard; [PL 1981, c. 699 (NEW).]

(11) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and [PL 1981, c. 699 (NEW).]

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 1983, c. 78, §4 (AMD).

§1604-105. Public offering statement; condominiums containing conversion buildings

(a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by section 1604-103:

(1) A statement by the declarant, based on a report prepared by an independent architect or engineer, who is not affiliated with the declarant, describing the present condition of all structural components, waste disposal system, water system and mechanical and electrical installations material to the use and enjoyment of the building; [PL 1981, c. 699 (NEW).]

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and [PL 1981, c. 699 (NEW).]

(3) A list of any outstanding notices of uncured violations of building code or other municipal, state or federal laws or regulations, together with the estimated cost of curing those violations. [PL 1981, c. 699 (NEW).]

(b) This section applies only to buildings containing units that may be occupied for residential use, and does not apply to a condominium governed by section 1604-103, subsection (b). [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-106. Public offering statement; condominium securities

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States or the Office of Securities of this State, a declarant satisfies all requirements relating to the preparation of a public offering statement of this Act if the declarant

delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission or the Office of Securities. When a condominium is located in a state other than Maine, under the laws of which a public offering statement is required in detail similar to the requirements of this Act, a declarant satisfies all requirements relating to the preparation of a public offering statement if the declarant delivers to the purchaser a copy of that public offering statement. [PL 2001, c. 182, §14 (AMD).]

SECTION HISTORY

PL 1981, c. 699 (NEW). PL 2001, c. 182, §14 (AMD).

§1604-107. Purchaser's right to cancel

(a) A person required to deliver a public offering statement pursuant to section 1604-102, subsection (c), shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before the execution of a contract for sale. Unless prior to the execution of a contract for sale, a purchaser acknowledges in writing receipt and review of such offering statement, the purchaser, upon written notice to the declarant, may cancel the contract at any time prior to conveyance of the unit, unless the purchaser shall, subsequently, expressly and in writing waive such right to cancel after having received and reviewed such offering statement. [PL 1981, c. 699 (NEW).]

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand delivering notice thereof to the declarant or by mailing notice thereof by prepaid United States' mail to the declarant or to his agent for service of process. Cancellation is without penalty and all payments made by the purchaser before cancellation shall be refunded promptly. [PL 1981, c. 699 (NEW).]

(c) A purchaser who accepts a conveyance of a unit may not later exercise the right to cancel or rescind the contract for sale under this section, and all persons may rely on the conveyance. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-108. Resales of units

(a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under section 1604-101, subsection (b), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration, other than the plats and plans, the bylaws, the rules or regulations of the association, and a reasonably current certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit; [PL 1981, c. 699 (NEW).]

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner; [PL 1981, c. 699 (NEW).]

(3) A statement of any other fees payable by unit owners; [PL 1981, c. 699 (NEW).]

(4) A statement of any capital expenditures anticipated by the association; [PL 1981, c. 699 (NEW).]

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects; [PL 1981, c. 699 (NEW).]

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association; [PL 1981, c. 699 (NEW).]

(7) The current operating budget of the association; [PL 1981, c. 699 (NEW).]

(8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant; [PL 1981, c. 699 (NEW).]

(9) A statement describing any insurance coverage provided for the benefit of unit owners; [PL 1981, c. 699 (NEW).]

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provisions of the declaration; [PL 1981, c. 699 (NEW).]

(11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and [PL 1981, c. 699 (NEW).]

(12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extensions or renewal thereof. [PL 1981, c. 699 (NEW).]

(b) The association, within 10 days after a request by a unit owner and payment by such owner of any reasonable fee therefor established by the association, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate. [PL 1981, c. 699 (NEW).]

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for 5 days thereafter or until conveyance, whichever first occurs. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-109. Escrow of deposits

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section 1604-102, subsection (c) shall be placed in escrow by declarant and held either in this State or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an attorney, a licensed real estate broker or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) Delivered to the declarant because of purchaser's default under a contract to purchase the unit; or (3) Refunded to the purchaser. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-110. Release of liens

In the case of a sale of a unit where delivery of a public offering statement is required pursuant to section 1604-102, subsection (c), a seller shall, before or simultaneously with conveying a unit, record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien. This section does not apply to any real estate which a declarant has the right to withdraw. [PL 1981, c. 699 (NEW).]

Before conveying real estate to the association, the declarant shall have that real estate released from: [PL 1981, c. 699 (NEW).]

(1) All liens, the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and [PL 1981, c. 699 (NEW).]

(2) All other liens on that real estate, unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-111. Conversion buildings

(a) A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the declarant will require the tenants and any subtenant in possession to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States' mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required by the declarant to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure of a declarant to give notice as required by this section is a defense to an action for possession. [PL 1981, c. 699 (NEW).]

(b) For 60 days after delivery or mailing of the notice described in subsection (a), the declarant shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that 60-day period, the declarant may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion. [PL 1981, c. 699 (NEW).]

(c) If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b). [PL 1981, c. 699 (NEW).]

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of Title 14, section 6001, the notice also constitutes a notice to vacate specified by that statute. [PL 1981, c. 699 (NEW).]

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms. [PL 1981, c. 699 (NEW).]

(f) Nothing in this Act, including section 1601-106, shall be construed to prohibit a municipality from enacting ordinances imposing more stringent standards than those contained in subsections (a) and (b), or otherwise providing for the protection of tenants or the conversion of rental housing stock, including ordinances controlling the number of housing units within a municipality that may be converted to the condominium form of ownership. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-112. Express warranties of quality

(a) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are only created as follows:

(1) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominiums that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise; [PL 1981, c. 699 (NEW).]

(2) Any model or description of the physical characteristics of the condominium, including plans and specifications of or for improvements, creates an express warranty that the condominium will substantially conform to the model or description; [PL 1981, c. 699 (NEW).]

(3) Any written description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and [PL 1981, c. 699 (NEW).]

(4) A provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful. [PL 1981, c. 699 (NEW).]

(b) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. [PL 1981, c. 699 (NEW).]

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-113. Implied warranties of quality

(a) A declarant and any person in the business of selling real estate for his own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted. [PL 1981, c. 699 (NEW).]

(b) A declarant and any person in the business of selling real estate for his own account impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the condominium, will be:

(1) Free from defective materials; and [PL 1981, c. 699 (NEW).]

(2) Constructed in accordance with applicable law, according to sound engineering and construction standards and in a workmanlike manner. Construction complying with the National Building Code and Code Administrators (BOCA), Basic Building Code or equivalent applicable local building code, if any, shall be deemed to satisfy such sound engineering or construction standards. [PL 1981, c. 699 (NEW).]

(c) In addition, a declarant warrants to a purchaser from him of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession. [PL 1981, c. 699 (NEW).]

(d) Warranties imposed by this section may be excluded or modified as specified in section 1604-114. [PL 1981, c. 699 (NEW).]

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, section 1601-103, paragraph (1), are made or contracted for by the declarant. [PL 1981, c. 699 (NEW).]

(f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-114. Exclusion or modification of implied warranties of quality

(a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) May be excluded or modified by agreement of the parties; and [PL 1981, c. 699 (NEW).]

(2) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties. [PL 1981, c. 699 (NEW).]

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant may disclaim liability in an instrument signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-115. Statute of limitations for warranties

(a) A judicial proceeding for breach of any obligation arising under section 1604-112 or 1604-113 must be commenced within 6 years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser. [PL 1981, c. 699 (NEW).]

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and [PL 1981, c. 699 (NEW).]

(2) As to each common element, at the time the common element is completed or, if later:

(i) As to a common element which may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or

(ii) As to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser. [PL 1981, c. 699 (NEW).]

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-116. Effect of violations on rights of action

If a declarant or any other person subject to this Act fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by that failure has a claim for appropriate relief. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-117. Labeling of promotional material

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement, unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

§1604-118. Declarant's obligation to complete and restore

(a) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to section 1602-109. [PL 1981, c. 699 (NEW).]

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 1602-110, 1602-111, 1602-112, 1602-113, 1602-115 and 1602-116. [PL 1981, c. 699 (NEW).]

SECTION HISTORY

PL 1981, c. 699 (NEW).

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