

# **A Summary of Illinois Association Law**

**ILLINOIS CONDOMINIUM PROPERTY ACT**

**COMMON INTEREST  
COMMUNITY ASSOCIATION ACT**

**CONDOMINIUM AND COMMON INTEREST  
COMMUNITY OMBUDSPERSON ACT**

**ILLINOIS GENERAL NOT FOR PROFIT  
CORPORATION ACT OF 1986**



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**2019 Edition**

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## **INTRODUCTION**

There are a variety of laws pertinent to community association governance, including numerous appellate court decisions which impact associations.

The primary community association laws are the Illinois Condominium Property Act and the Common Interest Community Association Act.

We have also included for your convenience and reference the Community Association Manager Licensing and Disciplinary Act and relevant portions of the Illinois General Not For Profit Corporation Act and the Forcible Entry and Detainer Act.

Of course, this is not a substitute for legal advice since many of the laws on the books are subject to interpretation and, in some instances, differences of opinion. Further, all laws must be reviewed in conjunction with each individual association's Declaration, By-Laws, and other covenants. Please contact us if you have any questions.

We hope that you find this summary useful.

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**ILLINOIS CONDOMINIUM PROPERTY ACT**  
**(765 ILCS 605/1, *et seq.*)**

# ILLINOIS CONDOMINIUM PROPERTY ACT

## INTRODUCTION

Originally drafted in 1963, and extensively and frequently revised since, the Illinois Condominium Property Act is the primary document governing condominium associations. Portions of this Act may even take precedence over the Declaration of an association. Note that this statute only applies to those associations submitted to the Act. You can tell if an association has been submitted to the Act by looking at the title of the Declaration for the association. If it has the words "Declaration of Condominium" in the title, you have come to the right place. If it says "Declaration of Covenants", or anything else other than "Condominium", see Section II for the Common Interest Community Association Act.

Master Associations are subject to Section 18.5 of the Illinois Condominium Property Act.

## **FULL TEXT** (as of January 1, 2019):

Title: An Act concerning the ownership in and rights and responsibilities of parties under the condominium form of ownership of property.

### **Section 1. Short title.**

This Act shall be known and may be cited as the "Condominium Property Act."

### **Section 2. Definitions.** As used in this Act, unless the context otherwise requires:

(a) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such declaration as from time to time amended.

(b) "Parcel" means the lot or lots, tract or tracts of land, described in the declaration, submitted to the provisions of this Act.

(c) "Property" means all the land, property and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the unit owners, submitted to the provisions of this Act.

(d) "Unit" means a part of the property designed and intended for any type of independent use.

(e) "Common Elements" means all portions of the property except the units, including limited common elements unless otherwise specified.

(f) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(g) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit, or, in

the case of a leasehold condominium, the lessee or lessees of a unit whose leasehold ownership of the unit expires simultaneously with the lease described in item (x) of this Section.

(h) "Majority" or "majority of the unit owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common elements. Any specified percentage of the unit owners means such percentage in the aggregate in interest of such undivided ownership. "Majority" or "majority of the members of the board of managers" means more than 50% of the total number of persons constituting such board pursuant to the bylaws. Any specified percentage of the members of the board of managers means that percentage of the total number of persons constituting such board pursuant to the bylaws.

(i) "Plat" means a plat or plats of survey of the parcel and of all units in the property submitted to the provisions of this Act, which may consist of a three-dimensional horizontal and vertical delineation of all such units.

(j) "Record" means to record in the office of the recorder or, whenever required, to file in the office of the Registrar of Titles of the county wherein the property is located.

(k) "Conversion Condominium" means a property which contains structures, excepting those newly constructed and intended for condominium ownership, which are, or have previously been, wholly or partially occupied before recording of condominium instruments by persons other than those who have contracted for the purchase of condominiums.

(l) "Condominium Instruments" means all documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the declaration, bylaws and plat.

(m) "Common Expenses" means the proposed or actual expenses affecting the property, including reserves, if any, lawfully assessed by the Board of Managers of the Unit Owner's Association.

(n) "Reserves" means those sums paid by unit owners which are separately maintained by the board of managers for purposes specified by the board of managers or the condominium instruments.

(o) "Unit Owners' Association" or "Association" means the association of all the unit owners, acting pursuant to bylaws through its duly elected board of managers.

(p) "Purchaser" means any person or persons other than the Developer who purchase a unit in a bona fide transaction for value.

(q) "Developer" means any person who submits property legally or equitably owned in fee simple by the developer, or leased to the developer under a lease described in item (x) of this Section, to the provisions of this Act, or any person who offers units legally or equitably owned in fee simple by the developer, or leased to the developer under a lease described in item (x) of this Section, for sale in the ordinary course of such person's business, including any successor or successors to such developers' entire interest in the property other than the purchaser of an individual unit.

(r) "Add-on Condominium" means a property to which additional property may be added in accordance with condominium instruments and this Act.

(s) "Limited Common Elements" means a portion of the common elements so designated in the declaration as being reserved for the use of a certain unit or units to the exclusion of other units, including but not limited to balconies, terraces, patios and parking spaces or facilities.

(t) "Building" means all structures, attached or unattached, containing one or more units.

(u) "Master Association" means an organization described in Section 18.5 whether or not it is also an association described in Section 18.3.

(v) "Developer Control" means such control at a time prior to the election of the Board of Managers provided for in Section 18.2(b) of this Act.

(w) "Meeting of Board of Managers or Board of Master Association" means any gathering of a quorum of the members of the Board of Managers or Board of the Master Association held for the purpose of conducting board business.

(x) "Leasehold Condominium" means a property submitted to the provisions of this Act which is subject to a lease, the expiration or termination of which would terminate the condominium and the lessor of which is (i) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) a limited liability company whose sole member is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended, or (iii) a Public Housing Authority created pursuant to the Housing Authorities Act that is located in a municipality having a population in excess of 1,000,000 inhabitants.

(y) "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.

(z) "Acceptable technological means" includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability.

**Section 2.1. Applicability.** Unless otherwise expressly provided in another Section, the provisions of this Act are applicable to all condominiums in this State. Any provisions of a condominium instrument that contains provisions inconsistent with the provisions of this Act are void as against public policy and ineffective.

**Section 3. Submission of property.** Whenever the owner or owners in fee simple, or the sole lessee or all lessees of a lease described in item (x) of Section 2, of a parcel intend to submit such property to the provisions of this Act, they shall do so by recording a declaration, duly executed and acknowledged, expressly stating such intent and setting forth the particulars enumerated in Section 4. If the condominium is a leasehold condominium, then every lessor of the lease creating a leasehold



interest as described in item (x) of Section 2 shall also execute the declaration and such lease shall be recorded prior to the recording of the declaration.

The execution of a declaration required under this Section by the lessor under a lease as described in item (x) of Section 2 does not make the lessor a developer for purposes of this Act.

**Section 4. Declaration - Contents.** The declaration shall set forth the following particulars:

- (a) The legal description of the parcel.
- (b) The legal description of each unit, which may consist of the identifying number or symbol of such unit as shown on the plat.
- (c) The name of the condominium, which name shall include the word "Condominium" or be followed by the words "a Condominium".
- (d) The name of the city and county or counties in which the condominium is located.
- (e) The percentage of ownership interest in the common elements allocated to each unit. Such percentages shall be computed by taking as a basis the value of each unit in relation to the value of the property as a whole, and having once been determined and set forth as herein provided, such percentages shall remain constant unless otherwise provided in this Act or thereafter changed by agreement of all unit owners.
- (f) If applicable, all matters required by this Act in connection with an add-on condominium.
- (g) A description of both the common and limited common elements, if any, indicating the manner of their assignment to a unit or units.
- (h) If applicable, all matters required by this Act in connection with a conversion condominium.
- (h-5) If the condominium is a leasehold condominium, then:
  - (1) The date of recording and recording document number for the lease creating a leasehold interest as described in item (x) of Section 2;
  - (2) The date on which the lease is scheduled to expire;
  - (3) The legal description of the property subject to the lease;
  - (4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that the unit owners do not have such rights;
  - (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 the unit owners do not have such rights;
  - (6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that the unit owners do not have such rights; and

(7) A requirement that any sale of the property pursuant to Section 15 of this Act, or any removal of the property pursuant to Section 16 of this Act, must be approved by the lessor under the lease.

(i) Such other lawful provisions not inconsistent with the provisions of this Act as the owner or owners may deem desirable in order to promote and preserve the cooperative aspect of ownership of the property and to facilitate the proper administration thereof.

**Section 4.1. Construction, interpretation, and validity of Condominium Instruments.**

(a) Except to the extent otherwise provided by the declaration or other condominium instruments:

(1) The terms defined in Section 2 of this Act shall be deemed to have the meaning specified therein unless the context otherwise requires.

(2) To the extent that perimeter and partition walls, floors or ceilings are designated as the boundaries of the units or of any specified units, all decorating, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors or ceilings and all portions of perimeter doors and all portions of windows in perimeter walls shall be deemed part of the common elements.

(3) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements.

(4) Subject to the provisions of paragraph (3) of subsection (a), all space and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

(5) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, perimeter doors, windows in perimeter walls, and any other apparatus designed to serve a single unit shall be deemed a limited common element appertaining to that unit exclusively.

(6) All provisions of the declaration, bylaws and other condominium instruments are severable.

(b) Except to the extent otherwise provided by the declaration or by other condominium instruments recorded prior to the effective date of this amendatory Act of 1984, in the event of a conflict between the provisions of the declaration and the bylaws or other condominium instruments, the declaration prevails except to the extent the declaration is inconsistent with this Act.

(c) A provision in the initial declaration limiting ownership, rental or occupancy of a condominium unit to a person 55 years of age or older shall be valid and deemed not to be in violation of Article 3 of the Illinois Human Rights Act provided that the person or the immediate family of a person owning, renting or

lawfully occupying such unit prior to the recording of the initial declaration shall not be deemed to be in violation of such age restriction so long as they continue to own or reside in such unit.

**Section 5. Plat to be recorded.** Simultaneously with the recording of the declaration there shall be recorded a plat as defined in Section 2, which plat shall be made by a Registered Illinois Land Surveyor and shall set forth (1) all angular and linear data along the exterior boundaries of the parcel; (2) the linear measurements and location, with reference to said exterior boundaries, of any buildings improvements and structures located on the parcel; and (3) the elevations at, above, or below official datum of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and lateral extensions thereof or other monumental perimeter boundaries, where there are no wall surfaces, that part of every unit which is in any building on the parcel, and the locations of such wall surfaces or unit boundaries with respect to the exterior boundaries of the parcel projected vertically upward; (4) the elevations at, above, or below official datum and the linear measurements of the perimeter boundaries, of that part of the property which constitute a unit or a part thereof outside any building on the parcel and the location of the boundaries with respect to the exterior vertical boundaries of the parcel, projected vertically upward. Every such unit shall be identified on the plat by a distinguishing number or other symbol; (5) if the Registered Illinois Land Surveyor does not certify that such plat accurately depicts the matters set forth in subsection (3) and (4) above, such a certification for any particular unit or units as built shall be recorded prior to the first conveyance of such particular unit or units as part of an amended plat, thereby complying with the requirements of subsections (3) and (4) of this Section; (6) when adding additional property to an add-on condominium, the developer, or in the event of any other alteration in the boundaries or location of a unit, any building on the parcel or the parcel authorized in this Act, the president of the board of managers or other officer authorized and designated by the condominium instruments shall record an amended plat of survey conforming to the requirements of this Section, or shall provide a certificate of a plat previously recorded that is in accordance with the certification requirements of this subsection. Such amended plat or certificate shall be certified by a Registered Illinois Land Surveyor as to accuracy in depicting changes in boundary or location in the portions of the property set forth in subsections (1), (2), (3) and (4) above, and that such changes have been completed.

**Section 6. Recording - Effect.** Upon compliance with the provisions of Sections 3, 4, and 5 and upon recording of the declaration and plat the property shall become subject to the provisions of this Act, and all units shall thereupon be capable of ownership in fee simple or any lesser estate, and may thereafter be conveyed, leased, mortgaged or otherwise dealt with in the same manner as other real property, but subject, however, to the limitations imposed by this Act.

Each unit owner shall be entitled to the percentage of ownership in the common elements appertaining to such unit as computed and set forth in the declaration pursuant to subsection (e) of Section 4 hereof, and ownership of such unit and of the owner's corresponding percentage of ownership in the common elements shall not be separated, except as provided in this Act, nor, except by the recording of an amended declaration and amended plat approved in writing by all

unit owners, shall any unit, by deed, plat, judgment of a court or otherwise, be subdivided or in any other manner separated into tracts or parcels different from the whole unit as shown on the plat, except as provided in this Act.

The condominium instruments may contain provisions in accordance with this Act providing for the reallocation and adjustment of the percentage of ownership in the common elements appertaining to a unit or units in circumstances relating to the following transactions: an add-on condominium; condemnation; damage or destruction of all or a portion of the property; and the subdivision or combination of units. Interests in the common elements shall be re-allocated, and the transaction shall be deemed effective at the time of the recording of an amended plat depicting same pursuant to Section 5 of this Act. Simultaneously with the recording of the amended plat, the developer in the case of an add-on condominium, or the President of the board of managers or other officer in other instances authorized in this Act shall execute and record an amendment to the declaration setting forth all pertinent aspects of the transaction including the reallocation or adjustment of the common interest. The amendment shall contain legal descriptions sufficient to indicate the location of any property involved in the transaction.

**Section 7. Descriptions in deeds, etc.** Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as shown on the plat and as set forth in the declaration, and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the owner's corresponding percentage of ownership in the common elements even though the same is not expressly mentioned or described therein.

**Section 8. Partition of common elements prohibited.** As long as the property is subject to the provisions of this Act the common elements shall, except as provided in Section 14 hereof, remain undivided, and no unit owner shall bring any action for partition or division of the common elements. Any covenant or agreement to the contrary shall be void.

**Section 9. Sharing of expenses - Lien for nonpayment.**

(a) All common expenses incurred or accrued prior to the first conveyance of a unit shall be paid by the developer, and during this period no common expense assessment shall be payable to the association. It shall be the duty of each unit owner including the developer to pay his proportionate share of the common expenses commencing with the first conveyance. The proportionate share shall be in the same ratio as his percentage of ownership in the common elements set forth in the declaration.

(b) The condominium instruments may provide that common expenses for insurance premiums be assessed on a basis reflecting increased charges for coverage on certain units.

(c) Budget and reserves.

(1) The board of managers shall prepare and distribute to all unit owners a detailed proposed annual budget, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The initial budget and common expense assessment based thereon

shall be adopted prior to the conveyance of any unit. The budget shall also set forth each unit owner's proposed common expense assessment.

(2) All budgets adopted by a board of managers on or after July 1, 1990 shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements. To determine the amount of reserves appropriate for an association, the board of managers shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the buildings and common elements, and energy systems and equipment; (ii) the current and anticipated return on investment of association funds; (iii) any independent professional reserve study which the association may obtain; (iv) the financial impact on unit owners, and the market value of the condominium units, of any assessment increase needed to fund reserves; and (v) the ability of the association to obtain financing or refinancing.

(3) Notwithstanding the provisions of this subsection (c), an association without a reserve requirement in its condominium instruments may elect to waive in whole or in part the reserve requirements of this Section by a vote of 2/3 of the total votes of the association. Any association having elected under this paragraph (3) to waive the provisions of subsection (c) may by a vote of 2/3 of the total votes of the association elect to again be governed by the requirements of subsection (c).

(4) In the event that an association elects to waive all or part of the reserve requirements of this Section, that fact must be disclosed after the meeting at which the waiver occurs by the association in the financial statements of the association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under Section 22.1; and no member of the board of managers or the managing agent of the association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of reserve funds in the association budget.

(5) At the end of an association's fiscal year and after the association has approved any end-of-year fiscal audit, if applicable, if the fiscal year ended with a surplus of funds over actual expenses, including budgeted reserve fund contributions, then, to the extent that there are not any contrary provisions in the association's declaration and bylaws, the board of managers has the authority, in its discretion, to dispose of the surplus in one or more of the following ways: (i) contribute the surplus to the association's reserve fund; (ii) return the surplus to the unit owners as a credit against the remaining monthly assessments for the current fiscal year; (iii) return the surplus to the unit owners in the form of a direct payment to the unit owners; or (iv) maintain the funds in the operating account, in which case the funds shall be applied as a credit when calculating the following year's annual budget. If the fiscal year ends in a deficit, then, to the extent that there are not any contrary provisions in the association's declaration and bylaws, the board of managers has the authority, in its discretion, to address the deficit by incorporating it into the following year's annual budget. If 20% of the unit owners of the association deliver a petition objecting to the action under this paragraph (5) within 30 days after notice to the unit owners of the action, the board of managers shall call a meeting of the unit owners within 30 days of the date of delivery of the petition. At

the meeting, the unit owners may vote to select a different option than the option selected by the board of managers. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the board's selection and select a different option, the board's decision is ratified.

(d) (Blank).

(e) The condominium instruments may provide for the assessment, in connection with expenditures for the limited common elements, of only those units to which the limited common elements are assigned.

(f) Payment of any assessment shall be in amounts and at times determined by the board of managers.

(g) Lien.

(1) If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and costs of collections shall constitute a lien on the interest of the unit owner in the property prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or federal taxes which by law are a lien on the interest of the unit owner prior to preexisting recorded encumbrances thereon and (b) encumbrances on the interest of the unit owner recorded prior to the date of such failure or refusal which by law would be a lien thereon prior to subsequently recorded encumbrances. Any action brought to extinguish the lien of the association shall include the association as a party.

(2) With respect to encumbrances executed prior to August 30, 1984 or encumbrances executed subsequent to August 30, 1984 which are neither bonafide first mortgages nor trust deeds and which encumbrances contain a statement of a mailing address in the State of Illinois where notice may be mailed to the encumbrancer thereunder, if and whenever and as often as the manager or board of managers shall send, by United States certified or registered mail, return receipt requested, to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of the unpaid common expenses with respect to the encumbered unit, then, unless otherwise provided in the declaration or bylaws, the prior recorded encumbrance shall be subject to the lien of all unpaid common expenses with respect to the unit which become due and payable within a period of 90 days after the date of mailing of each such notice.

(3) The purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law, shall have the duty to pay the unit's proportionate share of the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order. Such payment confirms the extinguishment of any lien created pursuant to paragraph (1) or (2) of this subsection (g) by virtue of the failure or refusal of a prior unit owner to make

payment of common expenses, where the judicial foreclosure sale has been confirmed by order of the court, a deed in lieu thereof has been accepted by the lender, or a consent judgment has been entered by the court.

(4) The purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, who takes possession of a condominium unit pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments, and which remain unpaid by the owner during whose possession the assessments accrued. If the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title.

(5) The notice of sale of a condominium unit under subsection (c) of Section 15-1507 of the Code of Civil Procedure shall state that the purchaser of the unit other than a mortgagee shall pay the assessments and the legal fees required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act. The statement of assessment account issued by the association to a unit owner under subsection (i) of Section 18 of this Act, and the disclosure statement issued to a prospective purchaser under Section 22.1 of this Act, shall state the amount of the assessments and the legal fees, if any, required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act.

(h) A lien for common expenses shall be in favor of the members of the board of managers and their successors in office and shall be for the benefit of all other unit owners. Notice of the lien may be recorded by the board of managers, or if the developer is the manager or has a majority of seats on the board of managers and the manager or board of managers fails to do so, any unit owner may record notice of the lien. Upon the recording of such notice the lien may be foreclosed by an action brought in the name of the board of managers in the same manner as a mortgage of real property.

(i) Unless otherwise provided in the declaration, the members of the board of managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid on the interest so foreclosed at the foreclosure sale, and to acquire and hold, lease, mortgage and convey it.

(j) Any encumbrancer may from time to time request in writing a written statement from the manager or board of managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance. Unless the request is complied with within 20 days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of the encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to the unit, and upon payment the encumbrancer shall have a lien on the unit for the amounts paid at the same rank as the lien of his encumbrance.

(k) Nothing in Public Act 83-1271 is intended to change the lien priorities of any encumbrance created prior to August 30, 1984.

**Section 9.1.** (a) Other liens; attachment and satisfaction. Subsequent to the recording of the declaration, no liens of any nature shall be created or arise against any portion

of the property except against an individual unit or units. No labor performed or materials furnished with the consent or at the request of a particular unit owner shall be the basis for the filing of a mechanics' lien claim against any other unit. If the performance of the labor or furnishing of the materials is expressly authorized by the board of managers, each unit owner shall be deemed to have expressly authorized it and consented thereto, and shall be liable for the payment of his unit's proportionate share of any due and payable indebtedness as set forth in this Section.

Each mortgage and other lien, including mechanics liens, securing a debt incurred in the development of the land submitted to the provisions of this Act for the sale of units shall be subject to the provisions of this Act, subsequent to the conveyance of a unit to the purchaser.

In the event any lien exists against 2 or more units and the indebtedness secured by such lien is due and payable, the unit owner of any such unit so affected may remove such unit and the undivided interest in the common elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such unit. In the event such lien exists against the units or against the property, the amount of such proportional payment shall be computed on the basis of the percentages set forth in the declaration. Upon payment as herein provided, it is the duty of the encumbrancer to execute and deliver to the unit owner a release of such unit and the undivided interest in the common elements appertaining thereto from such lien, except that such proportional payment and release shall not prevent the encumbrancer from proceeding to enforce his rights against any unit or interest with respect to which such lien has not been so paid or released.

The owner of a unit shall not be liable for any claims, damages, or judgments, including but not limited to State or local government fees or fines, entered as a result of any action or inaction of the board of managers of the association other than for mechanics' liens as set forth in this Section. Unit owners other than the developer, members of the board of managers other than the developer or developer representatives, and the association of unit owners shall not be liable for any claims, damages, or judgments, including but not limited to State or local government fees or fines, entered as result of any action or inaction of the developer other than for mechanics' liens as set forth in this Section. Each unit owner's liability for any judgment entered against the board of managers or the association, if any, shall be limited to his proportionate share of the indebtedness as set forth in this Section, whether collection is sought through assessment or otherwise. A unit owner shall be liable for any claim, damage or judgment entered as a result of the use or operation of his unit, or caused by his own conduct. Before conveying a unit, a developer shall record and furnish 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, and the developer shall provide a surety bond or substitute collateral for or insurance against liens for which a release is not provided. After conveyance of such unit, no mechanics lien shall be created against such unit or its common element interest by reason of any subsequent contract by the developer to improve or make additions to the property.

Each mortgagee or other lienholder of the unit of a common interest community or of a unit subject to the Condominium Property Act shall provide an address to the unit owners' association at the time the lien or mortgage is recorded at



which address such unit owners' association shall send notice to such mortgagee or lienholder of any eminent domain proceeding to which the association thereafter becomes a party. If the mortgagee or lienholder has not provided an address for notice purposes to the association, then such notice shall be sent to all mortgagees or lienholders which are named insureds on the master policy of insurance which exists or may exist on the common interest community or unit subject to the Condominium Property Act.

(b) Board of Managers' standing and capacity. The board of managers shall have standing and capacity to act in a representative capacity in relation to matters involving the common elements or more than one unit, on behalf of the unit owners, as their interests may appear.

### **Section 9.2. Other remedies.**

(a) In the event of any default by any unit owner, his tenant, invitee or guest in the performance of his obligations under this Act or under the declaration, bylaws, or the rules and regulations of the board of managers, the board of managers or its agents shall have such rights and remedies as provided in the Act or condominium instruments including the right to maintain an eviction action against such defaulting unit owner or his tenant for the benefit of all the other unit owners in the manner prescribed by Article IX of the Code of Civil Procedure.

(b) Any attorneys' fees incurred by the Association arising out of a default by any unit owner, his tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense.

(c) Other than attorney's fees, no fees pertaining to the collection of a unit owner's financial obligation to the Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of an owner's respective share of the common expenses unless: (i) the managing agent fees relate to the costs to collect common expenses for the Association; (ii) the fees are set forth in a contract between the managing agent and the Association; and (iii) the authority to add the management fees to an owner's respective share of the common expenses is specifically stated in the declaration or bylaws of the Association.

**Section 9.3. Eminent domain proceedings; standing.** The unit owners' association shall be named as defendant on behalf of all unit owners in any eminent domain proceeding to take or damage property which is a common element and which includes no portions of any units or limited common elements. The association shall act therein on behalf of all unit owners. Nothing contained herein shall bar a unit owner or mortgagee or lienholder from intervening in the eminent domain proceeding on his own behalf.

**Section 9.4. Eminent domain proceedings; notice.** After receipt of summons in an action to take or damage a common element, the unit owners' association shall provide to the plaintiff a list of the unit owners, mortgagees and lienholders, and the plaintiff shall provide notice by certified mail to the unit owners, mortgagees and lienholders.

The notice shall include the following:

- (1) case name and number and jurisdiction in which the case is filed;
- (2) date of filing;
- (3) brief description of the nature of the case;
- (4) description of the property being damaged or taken;
- (5) statement that the unit owner may petition the court to intervene; and
- (6) statement that the mortgagee or lienholder may petition the court to intervene.

An immaterial error in providing notice shall not invalidate the legal effect of the proceeding.

**Section 9.5. Successor developers.** Any assignment of a developer's interest in the property is not effective until the successor: (i) obtains the assignment in writing; and (ii) records the assignment.

**Section 10. Separate taxation.**

(a) Real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed against and levied upon real property shall be assessed against and levied upon each unit and the owner's corresponding percentage of ownership in the common elements as a tract, and not upon the property as a whole. For purposes of property taxes, real property owned and used for residential purposes by a condominium association, including a master association, but subject to the exclusive right by easement, covenant, deed or other interest of the owners of one or more condominium properties and used exclusively by the unit owners for recreational or other residential purposes shall be assessed at \$1.00 per year. The balance of the value of the property shall be assessed to the condominium unit owners. In counties containing 1,000,000 or more inhabitants, any person desiring to establish or to reestablish an assessment of \$1.00 under this Section shall make application therefor and be subject to the provisions of Section 10-35 of the Property Tax Code.

(b) Each condominium unit shall be only subject to the tax rate for those taxing districts in which such unit is actually, physically located. The county clerk shall not apply a rate which is an average of two or more different districts to any condominium unit.

(c) Upon authorization by a two-thirds vote of the members of the board of managers or by the affirmative vote of not less than a majority of the unit owners at a meeting duly called for such purpose, or upon such greater vote as may be required by the declaration or bylaws, the board of managers acting on behalf of all unit owners shall have the power to seek relief from or in connection with the assessment or levy of any such taxes, special assessments or charges, and to charge and collect all expenses incurred in connection therewith as common expenses.

**Section 11. Tax deeds.** In the event any person shall acquire or be entitled to the issuance of a tax deed conveying the interest of any unit owner, the interest so acquired shall be subject to all the provisions of this Act and to the terms,

provisions, covenants, conditions and limitations contained in the declaration, the plat, the bylaws or any deed affecting such interest then in force.

**Section 12. Insurance.**

(a) Required coverage. No policy of insurance shall be issued or delivered to a condominium association, and no policy of insurance issued to a condominium association shall be renewed, unless the insurance coverage under the policy includes the following:

(1) Property insurance. Property insurance (i) on the common elements and the units, including the limited common elements and except as otherwise determined by the board of managers, the bare walls, floors, and ceilings of the unit, (ii) providing coverage for special form causes of loss, and (iii) providing coverage, at the time the insurance is purchased and at each renewal date, in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage sufficient to rebuild the insured property in compliance with building code requirements subsequent to an insured loss, including: Coverage B, demolition costs; and Coverage C, increased cost of construction coverage. The combined total of Coverage B and Coverage C shall be no less than 10% of each insured building value, or \$500,000, whichever is less.

(2) General liability insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer must be included as an additional insured in its capacity as a unit owner, manager, board member, or officer. The unit owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance must cover claims of one or more insured parties against other insured parties.

(3) Fidelity bond; directors and officers coverage.

(A) An association with 6 or more dwelling units must obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, for the maximum amount of coverage available to protect funds in the custody or control of the association, plus the association reserve fund.

(B) All management companies that are responsible for the funds held or administered by the association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The association has standing to make a loss claim against the bond of the managing agent as a party covered under the bond.

(C) For purposes of paragraphs (A) and (B), the fidelity bond must be in the full amount of association funds and reserves in the custody of the association or the management company.

(D) The board of directors must obtain directors and officers liability coverage at a level deemed reasonable by the board, if not

otherwise established by the declaration or bylaws. Directors and officers liability coverage must extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or the declaration and bylaws of the association. The coverage required by this subparagraph (D) shall include, but not be limited to, coverage of: defense of non-monetary actions; defense of breach of contract; and defense of decisions related to the placement or adequacy of insurance. The coverage required by this subparagraph (D) shall include as an insured: past, present, and future board members while acting in their capacity as members of the board of directors; the managing agent; and employees of the board of directors and the managing agent.

(b) Contiguous units; improvements and betterments. The insurance maintained under subdivision (a)(1) must include the units, the limited common elements except as otherwise determined by the board of managers, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.

Common elements include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed by the developer. Common elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, built-in cabinets installed by unit owners, or any other additions, alterations, or upgrades installed or purchased by any unit owner.

(c) Deductibles. The board of directors of the association may, in the case of a claim for damage to a unit or the common elements, (i) pay the deductible amount as a common expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated, or (iii) require the unit owners of the units affected to pay the deductible amount.

(d) Other coverages. The declaration may require the association to carry any other insurance, including workers compensation, employment practices, environmental hazards, and equipment breakdown, the board of directors considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association.

(e) Insured parties; waiver of subrogation. Insurance policies carried pursuant to subsections (a) and (b) must include each of the following provisions:

(1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board of directors.

(3) The unit owner waives his or her right to subrogation under the association policy against the association and the board of directors.

(f) Primary insurance. If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy is primary insurance.

(g) Adjustment of losses; distribution of proceeds. Any loss covered by the property policy under subdivision (a)(1) must be adjusted by and with the association. The insurance proceeds for that loss must be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association must hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners are not entitled to receive 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 association has been terminated as trustee.

(h) Mandatory unit owner coverage. The board of directors may, under the declaration and bylaws or by rule, require condominium unit owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another unit caused by the negligence of the owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the unit. The personal liability of a unit owner or association member must include the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

(i) Certificates of insurance. Contractors and vendors (except public utilities) doing business with a condominium association under contracts exceeding \$10,000 per year must provide certificates of insurance naming the association, its board of directors, and its managing agent as additional insured parties.

(j) Non-residential condominiums. The provisions of this Section may be varied or waived in the case of a condominium community in which all units are restricted to nonresidential use.

(k) Settlement of claims. Any insurer defending a liability claim against a condominium association must notify the association of the terms of the settlement no less than 10 days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.

(l) The changes to this Section made by this amendatory Act of the 98th General Assembly apply only to insurance policies issued or renewed on or after June 1, 2015.

### **Section 12.1. Insurance risk pooling trusts.**

(a) This Section shall be known and may be cited as the Condominium and Common Interest Community Risk Pooling Trust Act.

(b) The boards of managers or boards of directors, as the case may be, of two or more condominium associations or common interest community associations, are authorized to establish, with the unit owners and the condominium or common interest community associations as the beneficiaries thereof, a trust fund for the purpose of providing protection of the participating condominium and common interest community associations against the risk of financial loss due to damage to, destruction of or loss of property, or the imposition of legal liability as required or authorized under this Act or the declaration of the condominium or common interest community association.

(c) The trust fund shall be established and amended only by a written instrument which shall be filed with and approved by the Director of Insurance prior to its becoming effective.

(d) No association shall be a beneficiary of the trust fund unless it shall be incorporated under the laws of this State.

(e) The trust fund is authorized to indemnify the condominium and common interest community association beneficiaries thereof against the risk of loss due to damage, destruction or loss to property or imposition of legal liability as required or authorized under this Act or the declaration of the condominium or common interest community association.

(f) Risks assumed by the trust fund may be pooled and shared with other trust funds established under this Section.

(g) (Blank).

(h) (Blank).

(i) No trustee of the trust fund shall be paid a salary or receive other compensation, except that the written trust instrument may provide for reimbursement for actual expenses incurred on behalf of the trust fund.

(j) (Blank).

(k) (Blank).

(l) (Blank).

(m) Each trust fund shall file annually with the Director of Insurance a full independently audited financial statement.

(n-r) (Blank).

(s) The Director of Insurance shall have with respect to trust funds established under this Section the powers of examination conferred upon him relative to insurance companies by Section 132 of the Illinois Insurance Code.

(t) (Blank).

(u) (Blank).

(v) Trust funds established under and which fully comply with this Section shall not be considered member insurance companies or to be in the business of insurance nor shall the provision of Article XXXIV of the Illinois Insurance Code apply to any such trust fund established under this Section.

(w) (Blank).

(x) The Director of Insurance shall adopt reasonable rules pertaining to the standards of coverage and administration of trust funds authorized under this Section.

**Section 13. Application of insurance proceeds to reconstruction.** In case of fire or any other disaster the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. Reconstruction of the building as used in this and succeeding Section 14 of this Act, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

**Section 14. Disposition of property where insurance proceeds are insufficient for reconstruction.**

(1) In case of fire or other disaster, if the insurance proceeds are insufficient to reconstruct the building and the unit owners and all other parties in interest do not voluntarily make provision for reconstruction of the building within 180 days from the date of damage or destruction, the board of managers may record a notice setting forth such facts and upon the recording of such notice:

(a) The property shall be deemed to be owned in common by the unit owners;

(b) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;

(c) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property as provided herein; and

(d) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

(2) In the case of fire or other disaster in which fewer than 1/2 of the units are rendered uninhabitable: the condominium instruments may provide for the reconstruction of the building or other portion of the property, if the insurance proceeds are insufficient to reconstruct, upon the affirmative vote of not fewer than 3/4 of the owners voting at a meeting called for that purpose. The meeting shall be held within 30 days following the final adjustment of insurance claims, if any. Otherwise, such meeting shall be held within 90 days of the occurrence. At such meeting the board of managers, or its representative, shall present to the members present an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each unit owner.

(3) In the case of fire or other disaster, the condominium instruments may provide for the withdrawal of any portion of the property if the insurance proceeds are insufficient to reconstruct the portion of the property affected. Upon the withdrawal of any unit or portion thereof, the percentage of interest in the common elements appurtenant to such unit or portion thereof shall be reallocated among the remaining units on the basis of the percentage of interest of each remaining unit. If only a portion of a unit is withdrawn, the percentage of interest appurtenant to that unit shall be reduced accordingly, upon the basis of diminution in market value of the unit, as determined by the board of managers. The payment of just compensation, or the allocation of any insurance, or other proceeds to any withdrawing or remaining unit owner shall be on an equitable basis, which need not be a unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the common elements, not necessarily including the limited common elements, shall be allocated on the basis of each unit owner's percentage interest therein. The declaration may provide that proceeds available from the withdrawal of any limited common element will be distributed in accordance with the interests of those entitled to their use. The condominium instruments shall provide for the cessation of responsibility for the payment of assessments for any unit or portion thereof withdrawn from the condominium.

**Section 14.1. Disposition or removal of any portion of the property.**

(a) The condominium instruments may provide for the withdrawal of any portion of the property in connection with eminent domain proceedings in compliance with the provisions of this Act. Upon the withdrawal of any unit or portion thereof, the percentage of interest in the common elements appurtenant to such unit or portion thereof shall be reallocated among the remaining units on the basis of the percentage of interest of each remaining unit. If only a portion of a unit is withdrawn, the percentage of interest appurtenant to that unit shall be reduced accordingly, upon the basis of diminution in market value of the unit, as determined by the board of managers. The allocation of any condemnation award or other proceeds to any withdrawing or remaining unit owner shall be on an equitable basis, which need not be a unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the common elements, not necessarily including the limited common elements, shall be allocated on the basis of each unit owner's percentage interest therein. The declaration may provide that proceeds available from the withdrawal of any limited common element will be distributed in accordance with the interests of those entitled to their use. The condominium instruments shall provide for the cessation of responsibility for the payment of assessments for any unit or portion thereof withdrawn from the condominium. In the event that the unit owners' association is named as defendant in an eminent domain proceeding on behalf of all unit owners, then the payment of the proceeds of the eminent domain proceeding attributable to the taking or damaging of the common element shall be according to this Section unless the condominium instrument or declaration of a common interest community expressly provides for different procedures. This Section shall also apply to eminent domain proceedings in which the unit owners' association of a common interest community is named as a defendant on behalf of all unit owners.



(b) Notwithstanding anything to the contrary contained in this Section, in a leasehold condominium, any allocation of any condemnation award or other proceeds available in connection with the withdrawal of any portion of the property shall include an equitable allocation to the lessor. The allocation shall take into account any provisions of the lease described in item (x) of Section 2 of this Act concerning such allocations.

**Section 14.2. Street and utilities dedication.** Unless the condominium instrument expressly provides for a greater percentage or different procedures a two-thirds majority of the unit owners at a meeting of unit owners duly called for such purpose may elect to dedicate a portion of the common elements to a public body for use as, or in connection with, a street or utility. Where such a dedication is made, nothing in this Act or any other law shall be construed to require that the real property taxes of every unit of the condominium must be paid prior to recordation of the dedication.

**Section 14.3. Granting of easement for laying of cable television or high speed Internet cable.** Unless the condominium instrument expressly provides for a greater percentage or different procedures a majority of more than 50% of the unit owners at a meeting of unit owners duly called for such purpose may authorize the granting of an easement for the laying of cable television or high speed Internet cable. The grant of such easement shall be according to the terms and conditions of the local ordinance providing for cable television or high speed Internet in the municipality.

**Section 14.4. Granting of easement to a governmental body for protection against water damage or erosion.** Unless the condominium instrument expressly provides for a greater percentage or different procedures, a majority of more than 50% of the unit owners at a meeting of unit owners duly called for such purpose may authorize the granting of an easement to a governmental body for construction, maintenance or repair of a project for protection against water damage or erosion.

**Section 14.5. Distressed condominium property.**

(a) As used in this Section:

(1) "Distressed condominium property" means a parcel containing condominium units which are operated in a manner or have conditions which may constitute a danger, blight, or nuisance to the surrounding community or to the general public, including but not limited to 2 or more of the following conditions:

(A) 50% or more of the condominium units are not occupied by persons with a legal right to reside in the units;

(B) the building has serious violations of any applicable local building code or zoning ordinance;

(C) 60% or more of the condominium units are in foreclosure or are units against which a judgment of foreclosure was entered within the last 18 months;

(D) there has been a recording of more condominium units on the parcel than physically exist;

(E) any of the essential utilities to the parcel or to 40% or more of the condominium units is either terminated or threatened with termination; or

(F) there is a delinquency on the property taxes for at least 60% of the condominium units.

(2) "Owner" means any unit owner or owner of record of the condominium property.

(3) "Other party in interest" means any mortgagee of record, lien holder of record, judgment creditor, tax purchaser, or other party of record, other than the owner, having legal or equitable title or other interest in the distressed condominium property or in a unit of the property.

(4) "Municipality" means a city, village, or incorporated town in which the distressed condominium property is located.

(b) A proceeding under this Section shall be commenced by a municipality filing a verified petition or verified complaint in the circuit court in the county in which the property is located. The petition or complaint shall allege conditions specified in paragraph (1) of subsection (a) of this Section and shall request the relief available under this Section. All owners shall be named as defendants in the petition or complaint and summons shall be issued and service shall be had as in other civil cases. All known other parties in interest shall be provided written notice and a copy of the petition or complaint either by United States certified mail, return receipt requested, within 30 days of the issuance of the summons or by personal service of the complaint. The hearing upon the suit shall be expedited by the court and shall be given precedence over other actions.

(c) If a court finds that the property is a distressed condominium property:

(1) the court may order the appointment of a receiver for the property with the powers specified in this Section; or

(2) the court, after a hearing held upon giving notice to all interested parties as provided in subsection (b), may appoint a receiver for the property and if the court further finds that the property is not viable as a condominium, then the court may declare:

(A) that the property is no longer a condominium;

(B) that the property shall be deemed to be owned in common by the unit owners;

(C) that the undivided interest in the property which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by the owner in the common elements; and

(D) that any liens affecting any unit shall be deemed to be attached to the undivided interest of the unit owner in the property as provided herein.

A copy of the court's declaration under paragraph (2) of this subsection (c) shall be recorded by the municipality in the office of the recorder of deeds in the

county where the property is located against both the individual units and owners and the general property. The court's declaration shall be forwarded to the county assessor's office in the county where the property is located.

(d) If a court finds that property is subject to paragraph (2) of subsection (c) of this Section, the court may upon a motion filed, notice given to all owners and other parties in interest as provided in subsection (b) and those parties having an opportunity to be heard, authorize the receiver to enter into a sales contract and transfer the title of the property on behalf of the owners of the property. In the event of such a sale, the net proceeds of the sale, after payment of all the receiver's costs, time, expenses, and fees as approved by the court, shall be deposited into an escrow account. Proceeds in the escrow account shall be segregated into the respective shares of each unit owner as determined under subparagraph (C) of paragraph (2) of subsection (c) of this Section and shall be distributed from each respective share as follows: (1) to pay taxes attributable to the unit owner; then (2) to pay other liens attributable to the unit owner; and then (3) to pay each unit owner any remaining sums from his or her respective share.

(e) A receiver appointed under this Section shall have possession of the property and shall have full power and authority to operate, manage, and conserve the property. A receiver appointed pursuant to this Section must manage the property as would a prudent person. A receiver may, without an order of the court, delegate managerial functions to a person in the business of managing real estate of the kind involved who is financially responsible and prudently selected.

Without limiting the foregoing, a receiver during such time shall have the power and authority to:

(1) secure, clean, board and enclose, and keep secure, clean, boarded and enclosed, the property or any portion of the property;

(2) secure tenants and execute leases for the property, the duration and terms of which are reasonable and customary for the type of use involved, and the leases shall have the same priority as if made by the owner of the property;

(3) collect the rents, issues, and profits, including assessments which have been or may be levied;

(4) insure the property against loss by fire or other casualty;

(5) employ counsel, custodians, janitors, and other help;

(6) pay taxes which may have been or may be levied against the property;

(7) maintain or disconnect, as appropriate, any essential utility to the property;

(8) make repairs and improvements necessary to comply with building, housing, and other similar codes;

(9) hold receipts as reserves as reasonably required for the foregoing purposes; and

(10) exercise the other powers as are granted to the receiver by the appointing court.

(f) If the court orders the appointment of a receiver, the receiver may use the rents and issues of the property toward maintenance, repair, and rehabilitation of the property prior to and despite any assignment of rents; and the court may further authorize the receiver to recover the cost of any feasibility study, sale, management, maintenance, repair, and rehabilitation by the issuance and sale of notes or receiver's certificates bearing such interest as the court may fix, and the notes or certificates, after their initial issuance and transfer by the receiver, shall be freely transferable and when sold or transferred by the receiver in return for a valuable consideration in money, material, labor, or services shall be a first lien upon the real estate and the rents and issues thereof and shall be superior to all prior assignments of rents and all prior existing liens and encumbrances, except taxes; provided, that within 90 days of the sale or transfer for value by the receiver of a note or certificate, the holder thereof shall file notice of the lien in the office of the recorder in the county in which the real estate is located. The notice of the lien filed shall set forth (i) a description of the real estate affected sufficient for the identification thereof, (ii) the face amount of the receiver's note or certificate, together with the interest payable thereon, and (iii) the date when the receiver's note or certificate was sold or transferred for value by the receiver. Upon payment to the holder of the receiver's note or certificate of the face amount thereof together with any interest thereon to the date of payment, and upon the filing of record of a sworn statement of such payment, the lien of such certificate shall be released. The lien may be enforced by proceedings to foreclose as in the case of a mortgage or a mechanics lien, and the action to foreclose the lien may be commenced at any time after the date of default. For the purposes of this subsection, the date of default shall be deemed to occur 30 days from the date of issuance of the receiver's certificate if at that time the certificate remains unpaid in whole or in part. The receiver's lien shall be paid upon the sale of the property as set forth in subsection (d) of this Section.

(g) The court may remove a receiver upon a showing of good cause, in which case a new receiver may be appointed in accordance with this Section.

### **Section 15. Sale of property.**

(a) Unless a greater percentage is provided for in the declaration or bylaws, and notwithstanding the provisions of Sections 13 and 14 hereof, a majority of the unit owners where the property contains 2 units, or not less than 66 2/3% where the property contains three units, and not less than 75% where the property contains 4 or more units may, by affirmative vote at a meeting of unit owners duly called for such purpose, elect to sell the property. Such action shall be binding upon all unit owners, and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale, provided, however, that any unit owner who did not vote in favor of such action and who has filed written objection thereto with the manager or board of managers within 20 days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the greater of: (i) the value of his or her interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such unit owner or (ii) the outstanding balance of any bona fide debt secured by the objecting unit owner's interest which was incurred by such unit

owner in connection with the acquisition or refinance of the unit owner's interest, less the amount of any unpaid assessments or charges due and owing from such unit owner. The objecting unit owner is also entitled to receive from the proceeds of a sale under this Section reimbursement for reasonable relocation costs, determined in the same manner as under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended from time to time, and as implemented by regulations promulgated under that Act.

(b) If there is a disagreement as to the value of the interest of a unit owner who did not vote in favor of the sale of the property, that unit owner shall have a right to designate an expert in appraisal or property valuation to represent him, in which case, the prospective purchaser of the property shall designate an expert in appraisal or property valuation to represent him, and both of these experts shall mutually designate a third expert in appraisal or property valuation. The 3 experts shall constitute a panel to determine by vote of at least 2 of the members of the panel, the value of that unit owner's interest in the property. The changes made by this amendatory Act of the 100th General Assembly apply to sales under this Section that are pending or commenced on and after the effective date of this amendatory Act of the 100th General Assembly.

**Section 16. Removal from provisions of this Act.** All of the unit owners may remove the property from the provisions of this Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner. Upon such removal the property shall be deemed to be owned in common by all the owners. The undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common elements.

**Section 17. Amendments to the declaration or bylaws.**

(a) The administration of every property shall be governed by bylaws, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration or bylaws shall be valid unless the same is set forth in an amendment thereof and such amendment is duly recorded. An amendment of the declaration or bylaws shall be deemed effective upon recordation unless the amendment sets forth a different effective date.

(b) Unless otherwise provided by this Act, amendments to condominium instruments authorized to be recorded shall be executed and recorded by the president of the association or such other officer authorized by the board of managers.

**Section 18. Contents of bylaws.** The bylaws shall provide for at least the following:

(a) (1) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually and that all members of the board shall be elected at large; if there are multiple owners of a

single unit, only one of the multiple owners shall be eligible to serve as a member of the board at any one time;

- (2) the powers and duties of the board;
- (3) the compensation, if any, of the members of the board;
- (4) the method of removal from office of members of the board;
- (5) that the board may engage the services of a manager or managing agent;

(6) that each unit owner shall receive, at least 25 days prior to the adoption thereof by the board of managers, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes;

(7) that the board of managers shall annually supply to all unit owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves;

(8) (i) that each unit owner shall receive notice, in the same manner as is provided in this Act for membership meetings, of any meeting of the board of managers concerning the adoption of the proposed annual budget and regular assessments pursuant thereto or to adopt a separate (special) assessment, (ii) that except as provided in subsection (iv) below, if an adopted budget or any separate assessment adopted by the board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, the board of managers, upon written petition by unit owners with 20 percent of the votes of the association delivered to the board within 21 days of the board action, shall call a meeting of the unit owners within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the unit owners are cast at the meeting to reject the budget or separate assessment, it is ratified, (iii) that any common expense not set forth in the budget or any increase in assessments over the amount adopted in the budget shall be separately assessed against all unit owners, (iv) that separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the board of managers without being subject to unit owner approval or the provisions of item (ii) above or item (v) below. As used herein, "emergency" means an immediate danger to the structural integrity of the common elements or to the life, health, safety or property of the unit owners, (v) that assessments for additions and alterations to the common elements or to association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds of the total votes of all unit owners, (vi) that the board of managers may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by items (iv) and (v), the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved;

(9) (A) that every meeting of the board of managers shall be open to any unit owner, except that the board may close any portion of a noticed meeting or meet separately from a noticed meeting to: (i) discuss litigation when an action against or on behalf of the particular association has been filed and is pending in a court or administrative tribunal, or when the board of managers finds that such an action is probable or imminent, (ii) discuss the appointment, employment, engagement, or dismissal of an employee, independent contractor, agent, or other provider of goods and services, (iii) interview a potential employee, independent contractor, agent, or other provider of goods and services, (iv) discuss violations of rules and regulations of the association, (v) discuss a unit owner's unpaid share of common expenses, or (vi) consult with the association's legal counsel; that any vote on these matters shall take place at a meeting of the board of managers or portion thereof open to any unit owner;

(B) that board members may participate in and act at any meeting of the board of managers in person, by telephonic means, or by use of any acceptable technological means whereby all persons participating in the meeting can communicate with each other; that participation constitutes attendance and presence in person at the meeting;

(C) that any unit owner may record the proceedings at meetings of the board of managers or portions thereof required to be open by this Act by tape, film or other means, and that the board may prescribe reasonable rules and regulations to govern the right to make such recordings;

(D) that notice of every meeting of the board of managers shall be given to every board member at least 48 hours prior thereto, unless the board member waives notice of the meeting pursuant to subsection (a) of Section 18.8; and

(E) that notice of every meeting of the board of managers shall be posted in entranceways, elevators, or other conspicuous places in the condominium at least 48 hours prior to the meeting of the board of managers except where there is no common entranceway for 7 or more units, the board of managers may designate one or more locations in the proximity of these units where the notices of meetings shall be posted; that notice of every meeting of the board of managers shall also be given at least 48 hours prior to the meeting, or such longer notice as this Act may separately require, to: (i) each unit owner who has provided the association with written authorization to conduct business by acceptable technological means, and (ii) to the extent that the condominium instruments of an association require, to each other unit owner, as required by subsection (f) of Section 18.8, by mail or delivery, and that no other notice of a meeting of the board of managers need be given to any unit owner;

(10) that the board shall meet at least 4 times annually;

(11) that no member of the board or officer shall be elected for a term of more than 2 years, but that officers and board members may succeed themselves;

(12) the designation of an officer to mail and receive all notices and execute amendments to condominium instruments as provided for in this Act and in the condominium instruments;

(13) the method of filling vacancies on the board which shall include authority for the remaining members of the board to fill the vacancy by two-thirds vote until the next annual meeting of unit owners or for a period terminating no later than 30 days following the filing of a petition signed by unit owners holding 20% of the votes of the association requesting a meeting of the unit owners to fill the vacancy for the balance of the term, and that a meeting of the unit owners shall be called for purposes of filling a vacancy on the board no later than 30 days following the filing of a petition signed by unit owners holding 20% of the votes of the association requesting such a meeting, and the method of filling vacancies among the officers that shall include the authority for the members of the board to fill the vacancy for the unexpired portion of the term;

(14) what percentage of the board of managers, if other than a majority, shall constitute a quorum;

(15) provisions concerning notice of board meetings to members of the board;

(16) the board of managers may not enter into a contract with a current board member or with a corporation or partnership in which a board member or a member of the board member's immediate family has 25% or more interest, unless notice of intent to enter the contract is given to unit owners within 20 days after a decision is made to enter into the contract and the unit owners are afforded an opportunity by filing a petition, signed by 20% of the unit owners, for an election to approve or disapprove the contract; such petition shall be filed within 30 days after such notice and such election shall be held within 30 days after filing the petition; for purposes of this subsection, a board member's immediate family means the board member's spouse, parents, and children;

(17) that the board of managers may disseminate to unit owners biographical and background information about candidates for election to the board if (i) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated; and (ii) the board does not express a preference in favor of any candidate;

(18) any proxy distributed for board elections by the board of managers gives unit owners the opportunity to designate any person as the proxy holder, and gives the unit owner the opportunity to express a preference for any of the known candidates for the board or to write in a name;

(19) that special meetings of the board of managers can be called by the president or 25% of the members of the board;

(20) that the board of managers may establish and maintain a system of master metering of public utility services and collect payments in connection therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act; and

(21) that the board may ratify and confirm actions of the members of the board taken in response to an emergency, as that term is defined in subdivision (a)(8)(iv) of this Section; that the board shall give notice to the unit owners of: (i) the occurrence of the emergency event within 7 business days after the



emergency event, and (ii) the general description of the actions taken to address the event within 7 days after the emergency event.

The intent of the provisions of this amendatory Act of the 99th General Assembly adding this paragraph (21) is to empower and support boards to act in emergencies.

(b) (1) What percentage of the unit owners, if other than 20%, shall constitute a quorum provided that, for condominiums with 20 or more units, the percentage of unit owners constituting a quorum shall be 20% unless the unit owners holding a majority of the percentage interest in the association provide for a higher percentage, provided that in voting on amendments to the association's bylaws, a unit owner who is in arrears on the unit owner's regular or separate assessments for 60 days or more, shall not be counted for purposes of determining if a quorum is present, but that unit owner retains the right to vote on amendments to the association's bylaws;

(2) that the association shall have one class of membership;

(3) that the members shall hold an annual meeting, one of the purposes of which shall be to elect members of the board of managers;

(4) the method of calling meetings of the unit owners;

(5) that special meetings of the members can be called by the president, board of managers, or by 20% of unit owners;

(6) that written notice of any membership meeting shall be mailed or delivered giving members no less than 10 and no more than 30 days' notice of the time, place and purpose of such meeting except that notice may be sent, to the extent the condominium instruments or rules adopted thereunder expressly so provide, by electronic transmission consented to by the unit owner to whom the notice is given, provided the director and officer or his agent certifies in writing to the delivery by electronic transmission;

(7) that voting shall be on a percentage basis, and that the percentage vote to which each unit is entitled is the percentage interest of the undivided ownership of the common elements appurtenant thereto, provided that the bylaws may provide for approval by unit owners in connection with matters where the requisite approval on a percentage basis is not specified in this Act, on the basis of one vote per unit;

(8) that, where there is more than one owner of a unit, if only one of the multiple owners 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, that there is majority agreement if any one of the multiple owners cast 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;

(9) (A) except as provided in subparagraph (B) of this paragraph (9) in connection with board elections, that a unit owner may vote by proxy executed in writing by the unit owner or by his duly authorized attorney in fact; that the proxy must bear the date of execution and, unless the condominium instruments

or the written proxy itself provide otherwise, is invalid after 11 months from the date of its execution; to the extent the condominium instruments or rules adopted thereunder expressly so provide, a vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the unit owner or the unit owner's proxy;

(B) that if a rule adopted at least 120 days before a board election or the declaration or bylaws provide for balloting as set forth in this subsection, unit owners may not vote by proxy in board elections, but may vote only (i) by submitting an association-issued ballot in person at the election meeting or (ii) by submitting an association-issued ballot to the association or its designated agent by mail or other means of delivery specified in the declaration, bylaws, or rule; that the ballots shall be mailed or otherwise distributed to unit owners not less than 10 and not more than 30 days before the election meeting, and the board shall give unit owners not less than 21 days' prior written notice of the deadline for inclusion of a candidate's name on the ballots; that the deadline shall be no more than 7 days before the ballots are mailed or otherwise distributed to unit owners; that every such ballot must include the names of all candidates who have given the board or its authorized agent timely written notice of their candidacy and must give the person casting the ballot the opportunity to cast votes for candidates whose names do not appear on the ballot; that a ballot received by the association or its designated agent after the close of voting shall not be counted; that a unit owner who submits a ballot by mail or other means of delivery specified in the declaration, bylaws, or rule may request and cast a ballot in person at the election meeting, and thereby void any ballot previously submitted by that unit owner;

(B-5) that if a rule adopted at least 120 days before a board election or the declaration or bylaws provide for balloting as set forth in this subparagraph, unit owners may not vote by proxy in board elections, but may vote only (i) by submitting an association-issued ballot in person at the election meeting; or (ii) by any acceptable technological means as defined in Section 2 of this Act; instructions regarding the use of electronic means for voting shall be distributed to all unit owners not less than 10 and not more than 30 days before the election meeting, and the board shall give unit owners not less than 21 days' prior written notice of the deadline for inclusion of a candidate's name on the ballots; the deadline shall be no more than 7 days before the instructions for voting using electronic or acceptable technological means is distributed to unit owners; every instruction notice must include the names of all candidates who have given the board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or acceptable technological means the opportunity to cast votes for candidates whose names do not appear on the ballot; a unit owner who submits a vote using electronic or acceptable technological means may request and cast a ballot in person at the election meeting, thereby voiding any vote previously submitted by that unit owner;

(C) that if a written petition by unit owners with at least 20% of the votes of the association is delivered to the board within 30 days after the board's approval of a rule adopted pursuant to subparagraph (B) or subparagraph (B-5) of this paragraph (9), the board shall call a meeting of the unit owners within 30 days after the date of delivery of the petition; that unless a majority of the total votes of the unit owners are cast at the meeting to reject the rule, the rule is ratified;

(D) that votes cast by ballot under subparagraph (B) or electronic or acceptable technological means under subparagraph (B-5) of this paragraph (9) are valid for the purpose of establishing a quorum;

(10) that the association may, upon adoption of the appropriate rules by the board of managers, conduct elections by secret ballot whereby the voting ballot is marked only with the percentage interest for the unit and the vote itself, provided that the board further adopt rules to verify the status of the unit owner issuing a proxy or casting a ballot; and further, that a candidate for election to the board of managers or such candidate's representative shall have the right to be present at the counting of ballots at such election;

(11) that in the event of a resale of a condominium unit the purchaser of a unit from a seller other than the developer pursuant to an installment sales contract for purchase shall during such times as he or she resides in the unit be counted toward a quorum for purposes of election of members of the board of managers at any meeting of the unit owners called for purposes of electing members of the board, shall have the right to vote for the election of members of the board of managers and to be elected to and serve on the board of managers unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the board. Satisfactory evidence of the installment sales contract shall be made available to the association or its agents. For purposes of this subsection, "installment sales contract" shall have the same meaning as set forth in Section 5 of the Installment Sales Contract Act and Section 1 (e) of the Dwelling Unit Installment Contract Act;

(12) the method by which matters subject to the approval of unit owners set forth in this Act, or in the condominium instruments, will be submitted to the unit owners at special membership meetings called for such purposes; and

(13) that matters subject to the affirmative vote of not less than 2/3 of the votes of unit owners at a meeting duly called for that purpose, shall include, but not be limited to:

- (i) merger or consolidation of the association;
- (ii) sale, lease, exchange, or other disposition (excluding the mortgage or pledge) of all, or substantially all of the property and assets of the association; and
- (iii) the purchase or sale of land or of units on behalf of all unit owners.

(c) Election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners.

(d) Election of a secretary from among the board of managers, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who shall, in general, perform all the duties incident to the office of secretary.

(e) Election of a treasurer from among the board of managers, who shall keep the financial records and books of account.

(f) Maintenance, repair and replacement of the common elements and payments therefor, including the method of approving payment vouchers.

(g) An association with 30 or more units shall obtain and maintain fidelity insurance covering persons who control or disburse funds of the association for the maximum amount of coverage available to protect funds in the custody or control of the association plus the association reserve fund. All management companies which are responsible for the funds held or administered by the association shall maintain and furnish to the association a fidelity bond for the maximum amount of coverage available to protect funds in the custody of the management company at any time. The association shall bear the cost of the fidelity insurance and fidelity bond, unless otherwise provided by contract between the association and a management company. The association shall be the direct obligee of any such fidelity bond. A management company holding reserve funds of an association shall at all times maintain a separate account for each association, provided, however, that for investment purposes, the Board of Managers of an association may authorize a management company to maintain the association's reserve funds in a single interest bearing account with similar funds of other associations. The management company shall at all times maintain records identifying all moneys of each association in such investment account. The management company may hold all operating funds of associations which it manages in a single operating account but shall at all times maintain records identifying all moneys of each association in such operating account. Such operating and reserve funds held by the management company for the association shall not be subject to attachment by any creditor of the management company.

For the purpose of this subsection a management company shall be defined as a person, partnership, corporation, or other legal entity entitled to transact business on behalf of others, acting on behalf of or as an agent for a unit owner, unit owners or association of unit owners for the purpose of carrying out the duties, responsibilities, and other obligations necessary for the day to day operation and management of any property subject to this Act. For purposes of this subsection, the term "fiduciary insurance coverage" shall be defined as both a fidelity bond and directors and officers liability coverage, the fidelity bond in the full amount of association funds and association reserves that will be in the custody of the association, and the directors and officers liability coverage at a level as shall be determined to be reasonable by the board of managers, if not otherwise established by the declaration or by laws.

Until one year after September 21, 1985, if a condominium association has reserves plus assessments in excess of \$250,000 and cannot reasonably obtain 100% fidelity bond coverage for such amount, then it must obtain a fidelity bond coverage of \$250,000.

(h) Method of estimating the amount of the annual budget, and the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses, and of any other expenses lawfully agreed upon.

(i) That upon 10 days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

(j) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(k) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(l) Method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements.

(m) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.

(n) (i) The provisions of this Act, the declaration, bylaws, other condominium instruments, and rules and regulations that relate to the use of the individual unit or the common elements shall be applicable to any person leasing a unit and shall be deemed to be incorporated in any lease executed or renewed on or after August 30, 1984. (ii) With regard to any lease entered into subsequent to July 1, 1990, the unit owner leasing the unit shall deliver a copy of the signed lease to the board or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or 10 days after the lease is signed, whichever occurs first. In addition to any other remedies, by filing an action jointly against the tenant and the unit owner, an association may seek to enjoin a tenant from occupying a unit or seek to evict a tenant under the provisions of Article IX of the Code of Civil Procedure for failure of the lessor-owner to comply with the leasing requirements prescribed by this Section or by the declaration, bylaws, and rules and regulations. The board of managers may proceed directly against a tenant, at law or in equity, or under the provisions of Article IX of the Code of Civil Procedure, for any other breach by tenant of any covenants, rules, regulations or bylaws.

(o) The association shall have no authority to forbear the payment of assessments by any unit owner.

(p) That when 30% or fewer of the units, by number, possess over 50% in the aggregate of the votes in the association, any percentage vote of members specified herein or in the condominium instruments shall require the specified percentage by number of units rather than by percentage of interest in the common elements allocated to units that would otherwise be applicable and garage units or storage units, or both, shall have, in total, no more votes than their aggregate percentage of ownership in the common elements; this shall mean that if garage units or storage units, or both, are to be given a vote, or portion of a vote, that the association must add the total number of votes cast of garage units, storage units, or both, and divide the total by the number of garage units, storage units, or both, and multiply by the aggregate percentage of ownership of garage units and storage units to determine the vote, or portion of a vote, that garage units or storage units, or both, have. For purposes of this subsection (p), when making a determination of whether 30% or fewer of the units, by number, possess over 50% in the aggregate of the votes in the association, a unit shall not include a garage unit or a storage unit.

(q) That a unit owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a unit owner under this Act, the condominium instruments, or the rules and regulations of the Association; and that

such an attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void.

The provisions of this Section are applicable to all condominium instruments recorded under this Act. Any portion of a condominium instrument which contains provisions contrary to these provisions shall be void as against public policy and ineffective. Any such instrument which fails to contain the provisions required by this Section shall be deemed to incorporate such provisions by operation of law.

**Section 18.1.** (a) The owner or owners of the property, or the board of managers, may cause to be incorporated a not-for-profit corporation under the General Not For Profit Corporation Act of the State of Illinois for the purpose of facilitating the administration and operation of the property.

(b) The Secretary of State shall include on the application of the Articles of Incorporation under the General Not For Profit Corporation Act and the annual report form and such other forms as he deems necessary a question asking whether the corporation is a condominium association under the provisions of this Act.

(c) The Secretary of State shall maintain a computer record of all not for profit corporations which are condominium associations in this State and their current officers and members of the Board of Managers or Board of Directors, as shown on the latest annual report or the articles of incorporation, whichever is more current.

(d) The board of directors of such corporation shall constitute the board of managers provided for in this Act, and all of the rights, titles, powers, privileges and obligations vested in or imposed upon the board of managers in this Act and in the declaration may be held or performed by such corporation or by the duly elected members of the board of directors thereof and their successors in office.

(e) Nothing in this Section shall be construed to affect the ownership of the property.

**Section 18.2. Administration of property prior to election of initial board of managers.**

(a) Until election of the initial board of managers that is comprised of a majority of unit owners other than the developer (first unit owner board of managers), the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the board of managers by this Act and in the declaration and bylaws shall be held and performed by the developer.

(b) (i) The election of the first unit owner board of managers shall be held not later than 60 days after the conveyance by the developer of 75% of the units, or 3 years after the recording of the declaration, whichever is earlier. The developer shall give at least 21 days' notice of such meeting to elect the first unit owner board of managers and shall provide to any unit owner within 3 working days of the request, the names, addresses, and weighted vote of each unit owner entitled to vote at such meeting. Any unit owner shall be provided with the same information within 10 days of receipt of the request, with respect to each subsequent meeting to elect members of the Board of Managers.

(ii) In the event the developer does not call a meeting for the purpose of election of the board of managers within the time provided in this subsection (b), unit owners holding 20% of the interest in the association may call a meeting by filing a petition for such meeting with the developer, after which said unit owners shall have authority to send notice of said meeting to the unit owners and to hold such meeting.

(c) If the first unit board of managers is not elected at the time so established, the developer shall continue in office for a period of 30 days whereupon written notice of his resignation shall be sent to all of the unit owners entitled to vote at such election.

(d) Within 60 days following the election of the first unit owner board of managers, the developer shall deliver to the board of managers:

(1) All original documents as recorded or filed pertaining to the property, its administration, and the association, such as the declaration, by-laws, articles of incorporation, other condominium instruments, annual reports, minutes and rules and regulations, contracts, leases, or other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual document recorded as filed.

(2) A detailed accounting by the developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the property and copies of all insurance policies and a list of any loans or advances to the association which are outstanding.

(3) Association funds, which shall have been at all times segregated from any other moneys of the developer.

(4) A schedule of all real or personal property, equipment and fixtures belonging to the association, including documents transferring the property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

(5) A list of all litigation, administrative action and arbitrations involving the association, any notices of governmental bodies involving actions taken or which may be taken concerning the association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any association requirements, copies of any documents relating to disputes involving unit owners, originals of all documents relating to everything listed in this subparagraph.

(e) Upon election of the first unit owner board of managers, any contract, lease, or other agreement made prior to the date of election of the first unit owner board by or on behalf of unit owners, individually or collectively, the unit owners' association, the board of managers, or the developer or its affiliates which extends for a period of more than 2 years from the date of the election, shall be subject to cancellation by a majority of the votes of the unit owners other than the developer cast at a special meeting of members called for that purpose during the 180 day period beginning on the date of the election of the first unit owner board. At least 60 days prior to the expiration of the 180 day cancellation period, the board of

managers shall send notice to every unit owner, notifying them of this provision, what contracts, leases and other agreements are affected, and the procedure for calling a meeting of the unit owners for the purpose of voting on termination of such contracts, leases or other agreements. During the 180 day cancellation period the other party to the contract, lease, or other agreement shall also have the right of cancellation. The cancellation shall be effective 30 days after mailing notice by certified mail, return receipt requested, to the last known address of the other parties to the contract, lease, or other agreement.

(f) The statute of limitations for any actions in law or equity which the condominium association may bring shall not begin to run until the unit owners have elected a majority of the members of the board of managers.

(g) If the developer fails to fully comply with subsection (d) within the 60 days provided and fails to fully comply within 10 days of written demand mailed by registered or certified mail to his or her last known address, the board may bring an action to compel compliance with subsection (d). If the court finds that any of the required deliveries were not made within the required period, the board shall be entitled to recover its reasonable attorneys' fees and costs incurred from and after the date of expiration of the 10 day demand.

**Section 18.3. Unit Owners' Association.** The unit owners' association is responsible for the overall administration of the property through its duly elected board of managers. Each unit owner shall be a member of the association. The association, whether or not it is incorporated, shall have those powers and responsibilities specified in the General Not For Profit Corporation Act of 1986 that are not inconsistent with this Act or the condominium instruments, including but not limited to the power to acquire and hold title to land. Such land is not part of the common elements unless and until it has been added by an amendment of the condominium instruments, properly executed and placed of record as required by this Act. The association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the association is organized, and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in this Act or in the condominium instruments.

**Section 18.4. Powers and duties of board of managers.** The board of managers shall exercise for the association all powers, duties and authority vested in the association by law or the condominium instruments except for such powers, duties and authority reserved by law to the members of the association. The powers and duties of the board of managers shall include, but shall not be limited to, the following:

(a) To provide for the operation, care, upkeep, maintenance, replacement and improvement of the common elements. Nothing in this subsection (a) shall be deemed to invalidate any provision in a condominium instrument placing limits on expenditures for the common elements, provided, that such limits shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the common elements. The term "repair, replacement or restoration" means expenditures to deteriorated or damaged portions of the property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such areas. Replacement of the common elements may result



in an improvement over the original quality of such elements or facilities; provided that, unless the improvement is mandated by law or is an emergency as defined in item (iv) of subparagraph (8) of paragraph (a) of Section 18, if the improvement results in a proposed expenditure exceeding 5% of the annual budget, the board of managers, upon written petition by unit owners with 20% of the votes of the association delivered to the board within 21 days of the board action to approve the expenditure, shall call a meeting of the unit owners within 30 days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the expenditure, it is ratified.

- (b) To prepare, adopt and distribute the annual budget for the property.
- (c) To levy and expend assessments.
- (d) To collect assessments from unit owners.
- (e) To provide for the employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the common elements.
- (f) To obtain adequate and appropriate kinds of insurance.
- (g) To own, convey, encumber, lease, and otherwise deal with units conveyed to or purchased by it.
- (h) To adopt and amend rules and regulations covering the details of the operation and use of the property, after a meeting of the unit owners called for the specific purpose of discussing the proposed rules and regulations. Notice of the meeting shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements of Section 18(b) of this Act, except that no quorum is required at the meeting of the unit owners unless the declaration, bylaws or other condominium instrument expressly provides to the contrary. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of this Act or the condominium instruments. No rule or regulation shall prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit.
- (i) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the property.
- (j) To have access to each unit from time to time as may be necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units.
- (k) To pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium.
- (l) To impose charges for late payment of a unit owner's proportionate share of the common expenses, or any other expenses lawfully agreed upon, and

after notice and an opportunity to be heard, to levy reasonable fines for violation of the declaration, by-laws, and rules and regulations of the association.

(m) By a majority vote of the entire board of managers, to assign the right of the association to future income from common expenses or other sources, and to mortgage or pledge substantially all of the remaining assets of the association.

(n) To record the dedication of a portion of the common elements to a public body for use as, or in connection with, a street or utility where authorized by the unit owners under the provisions of Section 14.2.

(o) To record the granting of an easement for the laying of cable television or high speed Internet cable where authorized by the unit owners under the provisions of Section 14.3; to obtain, if available and determined by the board to be in the best interests of the association, cable television or bulk high speed Internet service for all of the units of the condominium on a bulk identical service and equal cost per unit basis; and to assess and recover the expense as a common expense and, if so determined by the board, to assess each and every unit on the same equal cost per unit basis.

(p) To seek relief on behalf of all unit owners when authorized pursuant to subsection (c) of Section 10 from or in connection with the assessment or levying of real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body.

(q) To reasonably accommodate the needs of a unit owner who is a person with a disability as required by the federal Civil Rights Act of 1968, the Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of common elements or approval of modifications in an individual unit.

(r) To accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Unit Owners' Association with respect to improvements performed pursuant to any contract entered into by the Board of Managers or any contract entered into prior to the recording of the condominium declaration pursuant to this Act, for a property containing more than 8 units, and to distribute the notice to the unit owners within 7 days of the acceptance of the service by the Board of Managers. The service shall be effective as if each individual unit owner had been served individually with notice.

(s) To adopt and amend rules and regulations (1) authorizing electronic delivery of notices and other communications required or contemplated by this Act to each unit owner who provides the association with written authorization for electronic delivery and an electronic address to which such communications are to be electronically transmitted; and (2) authorizing each unit owner to designate an electronic address or a U.S. Postal Service address, or both, as the unit owner's address on any list of members or unit owners which an association is required to provide upon request pursuant to any provision of this Act or any condominium instrument.

In the performance of their duties, the officers and members of the board, whether appointed by the developer or elected by the unit owners, shall exercise the care required of a fiduciary of the unit owners.

The collection of assessments from unit owners by an association, board of managers or their duly authorized agents shall not be considered acts constituting a collection agency for purposes of the Collection Agency Act.

The provisions of this Section are applicable to all condominium instruments recorded under this Act. Any portion of a condominium instrument which contains provisions contrary to these provisions shall be void as against public policy and ineffective. Any such instrument that fails to contain the provisions required by this Section shall be deemed to incorporate such provisions by operation of law.

**Section 18.5. Master Associations.**

(a) If the declaration, other condominium instrument, or other duly recorded covenants provide that any of the powers of the unit owners associations are to be exercised by or may be delegated to a nonprofit corporation or unincorporated association that 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, such corporation or association shall be a master association.

(b) There shall be included in the declaration, other condominium instruments, or other duly recorded covenants establishing the powers and duties of the master association the provisions set forth in subsections (c) through (h).

In interpreting subsections (c) through (h), the courts should interpret these provisions so that they are interpreted consistently with the similar parallel provisions found in other parts of this Act.

(c) Meetings and finances.

(1) Each unit owner of a condominium subject to the authority of the board of the master association shall receive, at least 30 days prior to the adoption thereof by the board of the master association, a copy of the proposed annual budget.

(2) The board of the master association shall annually supply to all unit owners of condominiums subject to the authority of the board of the master association an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

(3) Each unit owner of a condominium subject to the authority of the board of the master association shall receive written notice mailed or delivered no less than 10 and no more than 30 days prior to any meeting of the board of the master association concerning the adoption of the proposed annual budget or any increase in the budget, or establishment of an assessment.

(4) Meetings of the board of the master association shall be open to any unit owner in a condominium subject to the authority of the board of the master association, except for the portion of any meeting held:

(A) to discuss litigation when an action against or on behalf of the particular master association has been filed and is pending in a court or administrative tribunal, or when the board of the master association finds that such an action is probable or imminent,

(B) to consider information regarding appointment, employment or dismissal of an employee, or

(C) to discuss violations of rules and regulations of the master association or unpaid common expenses owed to the master association.

Any vote on these matters shall be taken at a meeting or portion thereof open to any unit owner of a condominium subject to the authority of the master association.

Any unit owner may record the proceedings at meetings required to be open by this Act by tape, film or other means; the board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of meetings shall be mailed or delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the persons entitled to notice before the meeting is convened. Copies of notices of meetings of the board of the master association shall be posted in entranceways, elevators, or other conspicuous places in the condominium at least 48 hours prior to the meeting of the board of the master association. Where there is no common entranceway for 7 or more units, the board of the master association may designate one or more locations in the proximity of these units where the notices of meetings shall be posted.

(5) If the declaration provides for election by unit owners of members of the board of directors in the event of a resale of a unit in the master association, the purchaser of a unit from a seller other than the developer pursuant to an installment sales contract for purchase shall, during such times as he or she resides in the unit, be counted toward a quorum for purposes of election of members of the board of directors at any meeting of the unit owners called for purposes of electing members of the board, and shall have the right to vote for the election of members of the board of directors and to be elected to and serve on the board of directors unless the seller expressly retains in writing any or all of those rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office, or be elected and serve on the board. Satisfactory evidence of the installment sales contract shall be made available to the association or its agents. For purposes of this subsection, "installment sales contract" shall have the same meaning as set forth in Section 5 of the Installment Sales Contract Act and subsection (e) of Section 1 of the Dwelling Unit Installment Contract Act.

(6) The board of the master association shall have the authority to establish and maintain a system of master metering of public utility services and to collect payments in connection therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act.

(7) The board of the master association or a common interest community association shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members for violations of the declaration, bylaws, and rules and regulations of the master association or the common interest community association. Nothing contained in this subdivision (7) shall give rise to a statutory lien for unpaid fines.

(8) Other than attorney's fees, no fees pertaining to the collection of a unit owner's financial obligation to the Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of an owner's respective share of the common expenses unless: (i) the managing agent fees relate

to the costs to collect common expenses for the Association; (ii) the fees are set forth in a contract between the managing agent and the Association; and (iii) the authority to add the management fees to an owner's respective share of the common expenses is specifically stated in the declaration or bylaws of the Association.

(d) Records.

(1) The board of the master association shall maintain the following records of the association and make them available for examination and copying at convenient hours of weekdays by any unit owners in a condominium subject to the authority of the board or their mortgagees and their duly authorized agents or attorneys:

(i) Copies of the recorded declaration, other condominium instruments, other duly recorded covenants and bylaws and any amendments, articles of incorporation of the master association, annual reports and any rules and regulations adopted by the master association or its board shall be available. Prior to the organization of the master association, the developer shall maintain and make available the records set forth in this subdivision (d)(1) for examination and copying.

(ii) Detailed and accurate records in chronological order of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the master association, shall be maintained.

(iii) The minutes of all meetings of the master association and the board of the master association shall be maintained for not less than 7 years.

(iv) Ballots and proxies related thereto, if any, for any election held for the board of the master association and for any other matters voted on by the unit owners shall be maintained for not less than one year.

(v) Such other records of the master association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986 shall be maintained.

(vi) With respect to units owned by a land trust, if a trustee designates in writing a person to cast votes on behalf of the unit owner, the designation shall remain in effect until a subsequent document is filed with the association.

(2) Where a request for records under this subsection is made in writing to the board of managers or its agent, failure to provide the requested record or to respond within 30 days shall be deemed a denial by the board of directors.

(3) A reasonable fee may be charged by the master association or its board for the cost of copying.

(4) If the board of directors fails to provide records properly requested under subdivision (d)(1) within the time period provided in subdivision (d)(2), the unit owner may seek appropriate relief, including an award of attorney's fees and costs.

(e) The board of directors shall have standing and capacity to act in a representative capacity in relation to matters involving the common areas of the master association or more than one unit, on behalf of the unit owners as their interests may appear.

(f) Administration of property prior to election of the initial board of directors.

(1) Until the election, by the unit owners or the boards of managers of the underlying condominium associations, of the initial board of directors of a master association whose declaration is recorded on or after August 10, 1990, the same rights, titles, powers, privileges, trusts, duties and obligations that are vested in or imposed upon the board of directors by this Act or in the declaration or other duly recorded covenant shall be held and performed by the developer.

(2) The election of the initial board of directors of a master association whose declaration is recorded on or after August 10, 1990, by the unit owners or the boards of managers of the underlying condominium associations, shall be held not later than 60 days after the conveyance by the developer of 75% of the units, or 3 years after the recording of the declaration, whichever is earlier. The developer shall give at least 21 days' notice of the meeting to elect the initial board of directors and shall upon request provide to any unit owner, within 3 working days of the request, the names, addresses, and weighted vote of each unit owner entitled to vote at the meeting. Any unit owner shall upon receipt of the request be provided with the same information, within 10 days of the request, with respect to each subsequent meeting to elect members of the board of directors.

(3) If the initial board of directors of a master association whose declaration is recorded on or after August 10, 1990 is not elected by the unit owners or the members of the underlying condominium association board of managers at the time established in subdivision (f)(2), the developer shall continue in office for a period of 30 days, whereupon written notice of his resignation shall be sent to all of the unit owners or members of the underlying condominium board of managers entitled to vote at an election for members of the board of directors.

(4) Within 60 days following the election of a majority of the board of directors, other than the developer, by unit owners, the developer shall deliver to the board of directors:

(i) All original documents as recorded or filed pertaining to the property, its administration, and the association, such as the declaration, articles of incorporation, other instruments, annual reports, minutes, rules and regulations, and contracts, leases, or other agreements entered into by the association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual document recorded or filed.

(ii) A detailed accounting by the developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the property, copies of all insurance policies, and a list of any loans or advances to the association which are outstanding.

(iii) Association funds, which shall have been at all times segregated from any other moneys of the developer.

(iv) A schedule of all real or personal property, equipment and fixtures belonging to the association, including documents transferring the property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

(v) A list of all litigation, administrative action and arbitrations involving the association, any notices of governmental bodies involving actions taken or which may be taken concerning the association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any association requirements, copies of any documents relating to disputes involving unit owners, and originals of all documents relating to everything listed in this subparagraph.

(vi) If the developer fails to fully comply with this paragraph (4) within the 60 days provided and fails to fully comply within 10 days of written demand mailed by registered or certified mail to his or her last known address, the board may bring an action to compel compliance with this paragraph (4). If the court finds that any of the required deliveries were not made within the required period, the board shall be entitled to recover its reasonable attorneys' fees and costs incurred from and after the date of expiration of the 10 day demand.

(5) With respect to any master association whose declaration is recorded on or after August 10, 1990, any contract, lease, or other agreement made prior to the election of a majority of the board of directors other than the developer by or on behalf of unit owners or underlying condominium associations, the association or the board of directors, which extends for a period of more than 2 years from the recording of the declaration, shall be subject to cancellation by more than 1/2 of the votes of the unit owners, other than the developer, cast at a special meeting of members called for that purpose during a period of 90 days prior to the expiration of the 2 year period if the board of managers is elected by the unit owners, otherwise by more than 1/2 of the underlying condominium board of managers. At least 60 days prior to the expiration of the 2 year period, the board of directors, or, if the board is still under developer control, then the board of managers or the developer shall send notice to every unit owner or underlying condominium board of managers, notifying them of this provision, of what contracts, leases and other agreements are affected, and of the procedure for calling a meeting of the unit owners or for action by the underlying condominium board of managers for the purpose of acting to terminate such contracts, leases or other agreements. During the 90 day period the other party to the contract, lease, or other agreement shall also have the right of cancellation.

(6) The statute of limitations for any actions in law or equity which the master association may bring shall not begin to run until the unit owners or underlying condominium board of managers have elected a majority of the members of the board of directors.

(g) In the event of any resale of a unit in a master association by a unit owner other than the developer, the owner shall obtain from the board of directors

and shall make available for inspection to the prospective purchaser, upon demand, the following:

- (1) A copy of the declaration, other instruments and any rules and regulations.
- (2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing.
- (3) A statement of any capital expenditures anticipated by the association within the current or succeeding 2 fiscal years.
- (4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the board of directors.
- (5) A copy of the statement of financial condition of the association for the last fiscal year for which such a statement is available.
- (6) A statement of the status of any pending suits or judgments in which the association is a party.
- (7) A statement setting forth what insurance coverage is provided for all unit owners by the association.
- (8) A statement that any improvements or alterations made to the unit, or any part of the common areas assigned thereto, by the prior unit owner are in good faith believed to be in compliance with the declaration of the master association.

The principal officer of the unit owner's association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing, within 30 days of receiving the request.

A reasonable fee covering the direct out-of-pocket cost of copying and providing such information may be charged by the association or its board of directors to the unit seller for providing the information.

(g-1) The purchaser of a unit of a common interest community at a judicial foreclosure sale, other than a mortgagee, who takes possession of a unit of a common interest community pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit that would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments, and the court costs incurred by the association in an action to enforce the collection that remain unpaid by the owner during whose possession the assessments accrued. If the outstanding assessments and the court costs incurred by the association in an action to enforce the collection are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments that accrued before he or she acquired title. The notice of sale of a unit of a common interest community under subsection (c) of Section 15-1507 of the Code of Civil Procedure shall state that the purchaser of the unit other than a mortgagee shall pay the assessments and court costs required by this subsection (g-1).



(h) Errors and omissions.

(1) If there is an omission or error in the declaration or other instrument of the master association, the master association may correct the error or omission by an amendment to the declaration or other instrument, as may be required to conform it to this Act, to any other applicable statute, or to the declaration. The amendment shall be adopted by vote of two-thirds of the members of the board of directors or by a majority vote of the unit owners at a meeting called for that purpose, unless the Act or the declaration of the master association specifically provides for greater percentages or different procedures.

(2) If, through a scrivener's error, a unit has not been designated as owning an appropriate undivided share of the common areas or does not bear an appropriate share of the common expenses, or if all of the common expenses or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common areas which have been distributed or the sum total of the shares of the common expenses fail to equal 100%, or if it appears that more than 100% of the common elements or common expenses have been distributed, the error may be corrected by operation of law by filing an amendment to the declaration, approved by vote of two-thirds of the members of the board of directors or a majority vote of the unit owners at a meeting called for that purpose, which proportionately adjusts all percentage interests so that the total is equal to 100%, unless the declaration specifically provides for a different procedure or different percentage vote by the owners of the units and the owners of mortgages thereon affected by modification being made in the undivided interest in the common areas, the number of votes in the unit owners association or the liability for common expenses appertaining to the unit.

(3) If an omission or error or a scrivener's error in the declaration or other instrument is corrected by vote of two-thirds of the members of the board of directors pursuant to the authority established in subdivisions (h)(1) or (h)(2) of this Section, the board, upon written petition by unit owners with 20% of the votes of the association or resolutions adopted by the board of managers or board of directors of the condominium and common interest community associations which select 20% of the members of the board of directors of the master association, whichever is applicable, received within 30 days of the board action, shall call a meeting of the unit owners or the boards of the condominium and common interest community associations which select members of the board of directors of the master association within 30 days of the filing of the petition or receipt of the condominium and common interest community association resolution to consider the board action. Unless a majority of the votes of the unit owners of the association are cast at the meeting to reject the action, or board of managers or board of directors of condominium and common interest community associations which select over 50% of the members of the board of the master association adopt resolutions prior to the meeting rejecting the action of the board of directors of the master association, it is ratified whether or not a quorum is present.

(4) The procedures for amendments set forth in this subsection (h) cannot be used if such an amendment would materially or adversely affect property rights of the unit owners unless the affected unit owners consent in writing. This Section does not restrict the powers of the association to otherwise amend the declaration, bylaws, or other condominium instruments, but authorizes a simple

process of amendment requiring a lesser vote for the purpose of correcting defects, errors, or omissions when the property rights of the unit owners are not materially or adversely affected.

(5) If there is an omission or error in the declaration or other instruments that may not be corrected by an amendment procedure set forth in subdivision (h)(1) or (h)(2) of this Section, then the circuit court in the county in which the master association is located shall have jurisdiction to hear a petition of one or more of the unit owners thereon or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners in the association must be joined as parties to the action. Service of process on owners may be by publication, but the plaintiff shall furnish all unit owners not personally served with process with copies of the petition and final judgment of the court by certified mail, return receipt requested, at their last known address.

(6) Nothing contained in this Section shall be construed to invalidate any provision of a declaration authorizing the developer to amend an instrument prior to the latest date on which the initial membership meeting of the unit owners must be held, whether or not it has actually been held, to bring the instrument into compliance with the legal requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration or their respective successors and assigns.

(i) The provisions of subsections (c) through (h) are applicable to all declarations, other condominium instruments, and other duly recorded covenants establishing the powers and duties of the master association recorded under this Act. Any portion of a declaration, other condominium instrument, or other duly recorded covenant establishing the powers and duties of a master association which contains provisions contrary to the provisions of subsection (c) through (h) shall be void as against public policy and ineffective. Any declaration, other condominium instrument, or other duly recorded covenant establishing the powers and duties of the master association which fails to contain the provisions required by subsections (c) through (h) shall be deemed to incorporate such provisions by operation of law.

(j) (Blank).

#### **Section 18.6. Display of American flag or military flag.**

(a) Notwithstanding any provision in the declaration, bylaws, rules, regulations, or agreements or other instruments of a condominium association or a master association or a common interest community association or a board's construction of any of those instruments, a board may not prohibit the display of the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located. A board may adopt reasonable rules and regulations, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American flag and a board may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. A board may not prohibit the installation of a flagpole for the display of the American flag or a military flag, or both, on or

within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located, but a board may adopt reasonable rules and regulations regarding the location and size of flagpoles.

(b) As used in this Section:

"American flag" means the flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "American flag" does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

"Board" includes a board of managers or a board of a master association or a common interest community association.

"Military flag" means a flag of any branch of the United States armed forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "military flag" does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

#### **Section 18.7. Standards for community association managers.**

(a) "Community association" means an association in which membership is a condition of ownership or shareholder interest of a unit in a condominium, cooperative, townhouse, villa, or other residential unit that is part of a residential development plan as a master association or common interest community and that is authorized to impose an assessment and other costs that may become a lien on the unit or lot.

(b) "Community association manager" means an individual who administers for compensation the coordination of financial, administrative, maintenance, or other duties called for in the management contract, including individuals who are direct employees of a community association. A manager does not include support staff, such as bookkeepers, administrative assistants, secretaries, property inspectors, or customer service representatives.

(c) Requirements. To perform services as a community association manager, an individual must meet these requirements:

(1) shall have attained the age of 21 and be a citizen or legal permanent resident of the United States;

(2) shall not have been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other similar offense or offenses;

(3) shall have a working knowledge of the fundamentals of community association management, including the Condominium Property Act, the Illinois Not-for-Profit Corporation Act, and any other laws pertaining to community association management; and

(4) shall not have engaged in the following activities: failure to cooperate with any law enforcement agency in the investigation of a complaint; or failure to produce any document, book, or record in the possession or control of the community association manager after a request for production of that document, book, or record in the course of an investigation of a complaint.

(d) Access to community association funds. For community associations of 6 or more units, apartments, townhomes, villas or other residential units, a community association manager or the firm with whom the manager is employed shall not solely and exclusively have access to and disburse funds of a community association unless:

(1) There is a fidelity bond in place.

(2) The fidelity bond is in an amount not less than all monies of that association in the custody or control of the community association manager.

(3) The fidelity bond covers the community association manager and all partners, officers, and employees of the firm with whom the community association manager is employed during the term of the bond, as well as the community association officers, directors, and employees of the community association who control or disburse funds.

(4) The insurance company issuing the bond may not cancel or refuse to renew the bond without giving not less than 10 days' prior written notice to the community association.

(5) The community association shall secure and pay for the bond.

(e) A community association manager who provides community association management services for more than one community association shall maintain separate, segregated accounts for each community association. The funds shall not, in any event, be commingled with funds of the community association manager, the firm of the community association manager, or any other community association. The maintenance of these accounts shall be custodial, and the accounts shall be in the name of the respective community association.

(f) Exempt persons. Except as otherwise provided, this Section does not apply to any person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian acting under a court order or under the authority of a will or of a trust instrument.

(g) Right of Action.

(1) Nothing in this amendatory Act of the 95th General Assembly shall create a cause of action by a unit owner, shareholder, or community association member against a community association manager or the firm of a community association manager.

(2) This amendatory Act of the 95th General Assembly shall not impair any right of action by a unit owner or shareholder against a community association board of directors under existing law.

**Section 18.8. Use of technology.**

(a) Any notice required to be sent or received or signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this Act may be accomplished using acceptable technological means. This Section shall govern the use of technology in implementing the provisions of any condominium instrument or any provision of this Act concerning notices, signatures, votes, consents, or approvals.

(b) The association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this Act by use of acceptable technological means.

(c) A signature transmitted by acceptable technological means satisfies any requirement for a signature under any condominium instrument or any provision of this Act.

(d) Voting on, consent to, and approval of any matter under any condominium instrument or any provision of this Act may be accomplished by any acceptable technological means, provided that a record is created as evidence thereof and maintained as long as the record would be required to be maintained in nonelectronic form.

(e) Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this Act need be acknowledged before a notary public if the identity and signature of the signatory can otherwise be authenticated to the satisfaction of the board of directors or board of managers.

(f) If any person does not provide written authorization to conduct business using acceptable technological means, the association shall, at its expense, conduct business with the person without the use of acceptable technological means.

(g) This Section does not apply to any notices required: (i) under Article IX of the Code of Civil Procedure; or (ii) in connection with foreclosure proceedings in enforcement of any lien rights under this Act.

**Section 18.9. Common elements; rights of board.**

(a) Any provision in a condominium instrument is void as against public policy and ineffective if it limits or restricts the rights of the board of managers by:

(1) requiring the prior consent of the unit owners in order for the board of managers to take any action, including the institution of any action in court or a demand for a trial by jury; or

(2) notwithstanding Section 32 of this Act, requiring the board of managers to arbitrate or mediate a dispute with any one or more of all of the declarants under the condominium instruments or the developer or any person not then a unit owner prior to the institution of any action by the board of managers or a demand for a trial by jury.

(b) A provision in a declaration which would otherwise be void and ineffective under this Section may be enforced if it is approved by a vote of not less than 75% of the unit owners at any time after the election of the first unit owner board of managers.

**Section 18.10. Generally accepted accounting principles.**

An association subject to this Act that consists of 100 or more units shall use generally accepted accounting principles in fulfilling any accounting obligations under this Act.

**Section 19. Records of the association; availability for examination.**

(a) The board of managers of every association shall keep and maintain the following records, or true and complete copies of these records, at the association's principal office:

- (1) the association's declaration, bylaws, and plats of survey, and all amendments of these;
- (2) the rules and regulations of the association, if any;
- (3) if the association is incorporated as a corporation, the articles of incorporation of the association and all amendments to the articles of incorporation;
- (4) minutes of all meetings of the association and its board of managers for the immediately preceding 7 years;
- (5) all current policies of insurance of the association;
- (6) all contracts, leases, and other agreements then in effect to which the association is a party or under which the association or the unit owners have obligations or liabilities;
- (7) a current listing of the names, addresses, email addresses, telephone numbers, and weighted vote of all members entitled to vote;
- (8) ballots and proxies related to ballots for all matters voted on by the members of the association during the immediately preceding 12 months, including but not limited to the election of members of the board of managers; and
- (9) the books and records for the association's current and 10 immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts, expenditures, and accounts.

(b) Any member of an association shall have the right to inspect, examine, and make copies of the records described in subdivisions (1), (2), (3), (4), (5), (6) and (9) of subsection (a) of this Section, in person or by agent, at any reasonable time or times, at the association's principal office. In order to exercise this right, a member must submit a written request to the association's board of managers or its authorized agent, stating with particularity the records sought to be examined. Failure of an association's board of managers to make available all records so requested within 10 business days of receipt of the member's written request shall be deemed a denial.

Any member who prevails in an enforcement action to compel examination of records described in subdivisions (1), (2), (3), (4), (5), (6) and (9) of subsection (a) of this Section shall be entitled to recover reasonable attorney's fees and costs from the association.

(c-d) (Blank).

(d-5) As used in this Section, "commercial purpose" means the use of any part of a record or records described in subdivisions (7) and (8) of subsection (a) of this Section, or information derived from such records, in any form for sale, resale, or solicitation or advertisement for sales or services.

(e) Except as otherwise provided in subsection (g) of this Section, any member of an association shall have the right to inspect, examine, and make copies of the records described in subdivisions (7) and (8) of subsection (a) of this Section, in person or by agent, at any reasonable time or times but only for a purpose that relates to the association, at the association's principal office. In order to exercise this right, a member must submit a written request, to the association's board of managers or its authorized agent, stating with particularity the records sought to be examined. As a condition for exercising this right, the board of managers or authorized agent of the association may require the member to certify in writing that the information contained in the records obtained by the member will not be used by the member for any commercial purpose or for any purpose that does not relate to the association. The board of managers of the association may impose a fine in accordance with item (l) of Section 18.4 upon any person who makes a false certification. Subject to the provisions of subsection (g) of this Section, failure of an association's board of managers to make available all records so requested within 10 business days of receipt of the member's written request shall be deemed a denial; provided, however, that the board of managers of an association that has adopted a secret ballot election process as provided in Section 18 of this Act shall not be deemed to have denied a member's request for records described in subdivision (8) of subsection (a) of this Section if voting ballots, without identifying unit numbers, are made available to the requesting member within 10 business days of receipt of the member's written request.

Any member who prevails in an enforcement action to compel examination of records described in subdivisions (7) or (8) of subsection (a) of this Section shall be entitled to recover reasonable attorney's fees and costs from the association only if the court finds that the board of directors acted in bad faith in denying the member's request.

(f) The actual cost to the association of retrieving and making requested records available for inspection and examination under this Section may be charged by the association to the requesting member. If a member requests copies of records requested under this Section, the actual costs to the association of reproducing the records may also be charged by the association to the requesting member.

(g) Notwithstanding the provisions of subsection (e) of this Section, unless otherwise directed by court order, an association need not make the following records available for inspection, examination, or copying by its members:

(1) documents relating to appointment, employment, discipline, or dismissal of association employees;

(2) documents relating to actions pending against or on behalf of the association or its board of managers in a court or administrative tribunal;

(3) documents relating to actions threatened against, or likely to be asserted on behalf of, the association or its board of managers in a court or administrative tribunal;

(4) documents relating to common expenses or other charges owed by a member other than the requesting member; and

(5) documents provided to an association in connection with the lease, sale, or other transfer of a unit by a member other than the requesting member.

(h) The provisions of this Section are applicable to all condominium instruments recorded under this Act. Any portion of a condominium instrument that contains provisions contrary to these provisions shall be void as against public policy and ineffective. Any condominium instrument that fails to contain the provisions required by this Section shall be deemed to incorporate the provisions by operation of law.

**Section 20. Exemption from rules of property.** It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this Act.

**Section 21. Severability.** If any provision of this Act or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

**Section 22. Full disclosure before sale.** In relation to the initial sale or offering for sale of any condominium unit, the seller must make full disclosure of, and provide copies to the prospective buyer of, the following information relative to the condominium project:

(a) the Declaration;

(b) the Bylaws of the association;

(c) a projected operating budget for the condominium unit to be sold to the prospective buyer, including full details concerning the estimated monthly payments for the condominium unit, estimated monthly charges for maintenance or management of the condominium property, and monthly charges for the use of recreational facilities; and

(d) a floor plan of the apartment to be purchased by the prospective buyer and the street address of the unit, if any, and if the unit has no unique street address, the street address of the project.

(e) in addition, any developer of a conversion condominium shall include the following information:



(1) A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;

(2) Information, if available, on the actual expenditures made on all repairs, maintenance, operation, or upkeep of the subject building or buildings within the last 2 years, set forth tabularly with the proposed budget of the condominium and cumulatively, broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If such building or buildings have not been occupied for a period of 3 years then the information shall be set forth for the last 2 year period such building or buildings have been occupied;

(3) A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

(4) For developments of more than 6 units for which the notice of intent to convert is issued after the effective date of this amendatory Act of 1979, an engineer's report furnished by the developer as to the present condition of all structural components and major utility installations in the condominium, which statement shall include the approximate dates of construction, installation, major repairs and the expected useful life of such items, together with the estimated cost (in current dollars) of replacing such items; and

(5) Any release, warranty, certificate of insurance, or surety required by Section 9.1.

All of the information required by this Section which is available at the time shall be furnished to the prospective buyer before execution of the contract for sale. Thereafter, no changes or amendments may be made in any of the items furnished to the prospective buyer which would materially affect the rights of the buyer or the value of the unit without obtaining the approval of at least 75% of the buyers then owning interest in the condominium. If all of the information is not available at the time of execution of the contract for sale, then the contract shall be voidable at option of the buyer at any time up until 5 days after the last item of required information is furnished to the prospective buyer, or until the closing of the sale, whichever is earlier. Failure on the part of the seller to make full disclosure as required by this Section shall entitle the buyer to rescind the contract for sale at any time before the closing of the contract and to receive a refund of all deposit moneys paid with interest thereon at the rate then in effect for interest on judgments.

A sale is not an initial sale for the purposes of this Section if there is not a bona fide transfer of the ownership and possession of the condominium unit for the purpose of occupancy of such unit as the result of the sale or if the sale was entered into for the purpose of avoiding the requirements of this Section. The buyer in the first bona fide sale of any condominium unit has the rights granted to buyers under this Section. If the buyer in any sale of a condominium unit asserts that such sale is the first bona fide sale of that unit, the seller has the burden of proving that his interest was acquired through a bona fide sale.

**Section 22.1.** (a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and

shall make available for inspection to the prospective purchaser, upon demand, the following:

(1) A copy of the Declaration, by-laws, other condominium instruments and any rules and regulations.

(2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of this Act or the condominium instruments.

(3) A statement of any capital expenditures anticipated by the unit owner's association within the current or succeeding two fiscal years.

(4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board of Managers.

(5) A copy of the statement of financial condition of the unit owner's association for the last fiscal year for which such statement is available.

(6) A statement of the status of any pending suits or judgments in which the unit owner's association is a party.

(7) A statement setting forth what insurance coverage is provided for all unit owners by the unit owner's association.

(8) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are in good faith believed to be in compliance with the condominium instruments.

(9) The identity and mailing address of the principal officer of the unit owner's association or of the other officer or agent as is specifically designated to receive notices.

(b) The principal officer of the unit owner's association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within 30 days of the request.

(c) Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the owner of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can receive notices from the association. If a unit owner fails or refuses to inform the Board as required under subsection (c) then that unit owner shall be liable to the association for all costs, expenses and reasonable attorneys' fees and such other damages, if any, incurred by the association as a result of such failure or refusal.

A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information.

**Section 22.2. Resale approval.** In the event of a sale of a condominium unit by a unit owner, no condominium association shall exercise any right of refusal, option to purchase, or right to disapprove the sale, on the basis that the purchaser's financing is guaranteed by the Federal Housing Administration.

**Section 23. Encroachments.** If any portion of the common elements encroaches upon any unit, or if any unit encroaches upon any portion of the common elements or any other unit as a result of the construction, repair, reconstruction, settlement or shifting of any building, a valid mutual easement shall exist in favor of the owners of the common elements and the respective unit owners involved to the extent of the encroachment. A valid easement shall not exist in favor of any owner who creates an encroachment by his intentional, willful or negligent conduct or that of his agent.

**Section 24. Deposits by Purchaser.** Any deposit, payment or advance in the payment of the purchase price for the initial sale of a unit, received by the developer or his agent other than a payment made for extra work ordered in writing by the purchaser of a unit, shall be held in an escrow account until title is conveyed to the purchaser. The escrow funds shall be segregated in a separate account designated for this purpose. The developer shall deposit all the payments in an interest bearing account at a federally insured bank or savings and loan institution, which account shall be maintained within applicable federal insurance limits, and all the interest is to be credited to the purchaser on the purchase price of the unit. Such interest shall accrue from the time of the deposit, payment or advance in the payment of the purchase price of the unit. There shall be no interest however, if the transfer of title takes place 45 days from the time the contract to purchase is entered. In the event of a refund or default, the interest earned on such deposit, payment or advance shall follow the disposition of the deposit, payment or advance. Escrow funds shall not be subject to attachment by any creditor of a purchaser or of the developer or by the holder of a lien against any portion of the property.

The provisions of this Section shall not apply to any payment received on account for the purchase of a completed condominium unit under articles of agreement for deed, installment agreement for deed, or lease with option to purchase, if the agreement provides for conveyance of title more than one year after the date of execution of the agreement.

**Section 25. Add-on Condominiums.** The developer may reserve the right to add additional property to that which has been submitted to the provisions of this Act, and in the event of any addition, to reallocate percentage interests in the common elements in accordance with the provisions of this Act and the condominium instruments by: recording an amended plat in accordance with the provisions of Section 5 of this Act, together with an amendment to the declaration in accordance with Section 6 of this Act. Notwithstanding any other provisions of this Act requiring approval of unit owners, no approval shall be required if the developer complies with the requirements of this Section.

If the developer wishes to reserve the right to add additional property, the declaration shall contain:

- (a) an explicit reservation of an option to add additional property to the condominium;
- (b) a statement of the method by which the reallocation of percentage interests, adjustments to voting rights, and rights, and changes in liability for common expenses shall be determined if additional units are added;

(c) a legal description of all land which may be added to the property, herein referred to as 'additional land' whether the units are occupied or not;

(d) a time limit of 10 years from the date of the recording of the declaration, after which the option to add additional property shall no longer be in effect and a statement of the circumstances, if any, under which it may terminate. In all cases in which the option to add additional property is exercised, the contracts for construction and delivery of such additional property shall contain a date for the completion and delivery of the additional property to be constructed;

(e) a statement as to whether portions of the additional land may be added to the property at different times, and as to whether there are any limitations on the order thereof, or any limitations fixing the boundaries of these portions, or whether any particular portion of it must be added;

(f) a statement concerning limitations, if any, on the locations of improvements which may be made on the additional land added;

(g) a statement of the maximum number of units, if any, which may be created on the additional land. If portions of the additional land may be added to the property and the boundaries of those portions are fixed in accordance with paragraph (e) of this Section, the declaration shall also state the maximum number of units that may be created on each such portion to be added to the property. If portions of the additional land may be added to the property and the boundaries of those portions are not fixed in accordance with paragraph (e) of this Section, then the declaration shall also state the largest number of units which may be created on each acre of any portion added to the property;

(h) a statement of the extent to which structures, improvements, buildings and units will be compatible with the configuration of the property in relation to density, use, construction and architectural style; and

(i) any plat or site plans or other graphic material which the developer may wish to set forth in order to supplement or explain the information provided.

Subject to any restrictions and limitations specified by the condominium instruments, there shall be an appurtenant easement over and on the common elements for the purpose of making improvements on the additional land, and for the purpose of doing what is reasonably necessary and proper in conjunction therewith.

No provision of this Act shall be binding upon or obligate the developer to exercise his option to make additions or bind the land described in the condominium instruments. No provision of the condominium instruments shall be construed to be binding upon or obligate the developer to exercise his option to make additions, and the land legally described therein shall not be bound thereby, except in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement made with, or by, the developer, requiring the developer to add all or any portion of the additional land, or imposing any obligation with regard to anything that is or is not to be done thereon or with regard thereto, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the property or any portion thereof, this Section shall not be construed to nullify, limit, or otherwise affect any such obligation.

Any amendment to the declaration adding additional land may contain such complementary additions and modifications of the provisions of the declaration affecting the additional land which are necessary to reflect the differences in character, if any, of the additional land and the improvements thereto. In no event, however, shall any such amendment to a declaration revoke, modify or add to the covenants established by the declaration for the property already subject to the declaration.

**Section 26. Transfer of Limited Common Elements.** The use of limited common elements may be transferred between unit owners at their expense, provided that the transfer may be made only in accordance with the condominium instruments and the provision of this Act. Each transfer shall be made by an amendment to the declaration executed by all unit owners who are parties to the transfer and consented to by all other unit owners who have any right to use the limited common elements affected. The amendment shall contain a certificate showing that a copy of the amendment has been delivered to the board of managers. The amendment shall contain a statement from the parties involved in the transfer which sets forth any changes in the parties' proportionate shares. If the parties cannot agree upon a reapportionment of their respective shares, the board of managers shall decide such reapportionment. No transfer shall become effective until the amendment has been recorded. Rights and obligations in respect to any limited common element shall not be affected, nor shall any transfer of it be effective, unless a transaction is in compliance with the requirements of this Section.

Each limited common element may be identified on the plat by the distinguishing number or other symbol of the unit or units to which it is assigned, and its location in respect to the unit or units may also be shown or may be otherwise located in the declaration.

**Section 27. Amendments.**

(a) If there is any unit owner other than the developer, and unless otherwise provided in this Act, the condominium instruments shall be amended only as follows:

(i) upon the affirmative vote of 2/3 of those voting or upon the majority specified by the condominium instruments, provided that in no event shall the condominium instruments require more than a three-quarters vote of all unit owners; and

(ii) with the approval of, or notice to, any mortgagees or other lienholders of record, if required under the provisions of the condominium instruments. If the condominium instruments require approval of any mortgagee or lienholder of record and the mortgagee or lienholder of record receives a request to approve or consent to the amendment to the condominium instruments, the mortgagee or lienholder of record is deemed to have approved or consented to the request unless the mortgagee or lienholder of record delivers a negative response to the requesting party within 60 days after the mailing of the request. A request to approve or consent to an amendment to the condominium instruments that is required to be sent to a mortgagee or lienholder of record shall be sent by certified mail.

(b) (1) If there is an omission, error, or inconsistency in a condominium instrument, such that a provision of a condominium instrument does not conform to this Act or to another applicable statute, the association may correct the omission, error, or inconsistency to conform the condominium instrument to this Act or to another applicable statute by an amendment adopted by vote of two-thirds of the Board of Managers, without a unit owner vote. A provision in a condominium instrument requiring or allowing unit owners, mortgagees, or other lienholders of record to vote to approve an amendment to a condominium instrument, or for the mortgagees or other lienholders of record to be given notice of an amendment to a condominium instrument, is not applicable to an amendment to the extent that the amendment corrects an omission, error, or inconsistency to conform the condominium instrument to this Act or to another applicable statute.

(2) If through a scrivener's error, a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements which have been distributed or the sum total of the shares of the common expenses fail to equal 100%, or if it appears that more than 100% of the common elements or common expenses have been distributed, the error may be corrected by operation of law by filing an amendment to the declaration approved by vote of two-thirds of the members of the Board of Managers or a majority vote of the unit owners at a meeting called for this purpose which proportionately adjusts all percentage interests so that the total is equal to 100% unless the condominium instruments specifically provide for a different procedure or different percentage vote by the owners of the units and the owners of mortgages thereon affected by modification being made in the undivided interest in the common elements, the number of votes in the unit owners association or the liability for common expenses appertaining to the unit.

(3) If an omission or error or a scrivener's error in the declaration, bylaws or other condominium instrument is corrected by vote of two-thirds of the members of the Board of Managers pursuant to the authority established in paragraph (1) or (2) of this subsection (b), the Board upon written petition by unit owners with 20 percent of the votes of the association filed within 30 days of the Board action shall call a meeting of the unit owners within 30 days of the filing of the petition to consider the Board action. Unless a majority of the votes of the unit owners of the association are cast at the meeting to reject the action, it is ratified whether or not a quorum is present.

(4) The procedures for amendments set forth in this subsection (b) cannot be used if such an amendment would materially or adversely affect property rights of the unit owners unless the affected unit owners consent in writing. This Section does not restrict the powers of the association to otherwise amend the declaration, bylaws, or other condominium instruments, but authorizes a simple process of amendment requiring a lesser vote for the purpose of correcting defects, errors, or omissions when the property rights of the unit owners are not materially or adversely affected.

(5) If there is an omission or error in the declaration, bylaws, or other condominium instruments, which may not be corrected by an amendment procedure set forth in paragraphs (1) and (2) of this subsection (b) in the declaration

then the Circuit Court in the County in which the condominium is located shall have jurisdiction to hear a petition of one or more of the unit owners thereon or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners in the association must be joined as parties to the action. Service of process on owners may be by publication, but the plaintiff shall furnish all unit owners not personally served with process with copies of the petition and final judgment of the court by certified mail return receipt requested, at their last known address.

(6) Nothing contained in this Section shall be construed to invalidate any provision of a condominium instrument authorizing the developer to amend a condominium instrument prior to the latest date on which the initial membership meeting of the unit owners must be held, whether or not it has actually been held, to bring the instrument into compliance with the legal requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration or their respective successors and assigns.

**Section 29. Alterations within Units.** A unit owner owning 2 or more units shall have the right, subject to such reasonable limitations as the condominium instruments may impose, to remove or otherwise alter any intervening partition, so long as the action does not weaken, impair or endanger any common element or unit. The unit owner shall notify the board of managers of the nature of the removal or alteration at least 10 days prior to commencing work.

**Section 30. Conversion condominiums; notice; recording.**

(a)(1) No real estate may be submitted to the provisions of the Act as a conversion condominium unless (i) a notice of intent to submit the real estate to this Act (notice of intent) has been given to all persons who were tenants of the building located on the real estate on the date the notice is given. Such notice shall be given at least 30 days, and not more than 1 year prior to the recording of the declaration which submits the real estate to this Act; and (ii) the developer executes and acknowledges a certificate which shall be attached to and made a part of the declaration and which provides that the developer, prior to the execution by him or his agent of any agreement for the sale of a unit, has given a copy of the notice of intent to all persons who were tenants of the building located on the real estate on the date the notice of intent was given.

(2) If the owner fails to provide a tenant with notice of the intent to convert as defined in this Section, the tenant permanently vacates the premises as a direct result of non-renewal of his or her lease by the owner, and the tenant's unit is converted to a condominium by the filing of a declaration submitting a property to this Act without having provided the required notice, then the owner is liable to the tenant for the following:

- (A) the tenant's actual moving expenses incurred when moving from the subject property, not to exceed \$1,500;
- (B) three month's rent at the subject property; and
- (C) reasonable attorney's fees and court costs.

(b) Any developer of a conversion condominium must, upon issuing the notice of intent, publish and deliver along with such notice of intent, a schedule of selling prices for all units subject to the condominium instruments and offer to sell such unit to the current tenants, except for units to be vacated for rehabilitation subsequent to such notice of intent. Such offer shall not expire earlier than 30 days after receipt of the offer by the current tenant, unless the tenant notifies the developer in writing of his election not to purchase the condominium unit.

(c) Any tenant who was a tenant as of the date of the notice of intent and whose tenancy expires (other than for cause) prior to the expiration of 120 days from the date on which a copy of the notice of intent was given to the tenant shall have the right to extend his tenancy on the same terms and conditions and for the same rental until the expiration of such 120 day period by the giving of written notice thereof to the developer within 30 days of the date upon which a copy of the notice of intent was given to the tenant by the developer.

(d) Each lessee in a conversion condominium shall be informed by the developer at the time the notice of intent is given whether his tenancy will be renewed or terminated upon its expiration. If the tenancy is to be renewed, the tenant shall be informed of all charges, rental or otherwise, in connection with the new tenancy and the length of the term of occupancy proposed in conjunction therewith.

(e) For a period of 120 days following his receipt of the notice of intent, any tenant who was a tenant on the date the notice of intent was given shall be given the right to purchase his unit on substantially the same terms and conditions as set forth in a duly executed contract to purchase the unit, which contract shall conspicuously disclose the existence of, and shall be subject to, the right of first refusal. The tenant may exercise the right of first refusal by giving notice thereof to the developer prior to the expiration of 30 days from the giving of notice by the developer to the tenant of the execution of the contract to purchase the unit. The tenant may exercise such right of first refusal within 30 days from the giving of notice by the developer of the execution of a contract to purchase the unit, notwithstanding the expiration of the 120 day period following the tenant's receipt of the notice of intent, if such contract was executed prior to the expiration of the 120 day period. The recording of the deed conveying the unit to the purchaser which contains a statement to the effect that the tenant of the unit either waived or failed to exercise the right of first refusal or option or had no right of first refusal or option with respect to the unit shall extinguish any legal or equitable right or interest to the possession or acquisition of the unit which the tenant may have or claim with respect to the unit arising out of the right of first refusal or option provided for in this Section. The foregoing provision shall not affect any claim which the tenant may have against the landlord for damages arising out of the right of first refusal provided for in this Section.

(f) During the 30 day period after the giving of notice of an executed contract in which the tenant may exercise the right of first refusal, the developer shall grant to such tenant access to any portion of the building to inspect any of its features or systems and access to any reports, warranties, or other documents in the possession of the developer which reasonably pertain to the condition of the building. Such access shall be subject to reasonable limitations, including as to hours. The refusal of the developer to grant such access is a business offense



punishable by a fine of \$500. Each refusal to an individual lessee who is a potential purchaser is a separate violation.

(g) Any notice provided for in this Section shall be deemed given when a written notice is delivered in person or mailed, certified or registered mail, return receipt requested to the party who is being given the notice.

(h) Prior to their initial sale, units offered for sale in a conversion condominium and occupied by a tenant at the time of the offer shall be shown to prospective purchasers only a reasonable number of times and at appropriate hours. Units may only be shown to prospective purchasers during the last 90 days of any expiring tenancy.

(i) Any provision in any lease or other rental agreement, or any termination of occupancy on account of condominium conversion, not authorized herein, or contrary to or waiving the foregoing provisions, shall be deemed to be void as against public policy.

(j) A tenant is entitled to injunctive relief to enforce the provisions of subsections (a) and (c) of this Section.

(k) A non-profit housing organization, suing on behalf of an aggrieved tenant under this Section, may also recover compensation for reasonable attorney's fees and court costs necessary for filing such action.

(l) Nothing in this Section shall affect any provision in any lease or rental agreement in effect before this Act becomes law.

(m) Nothing in this amendatory Act of 1978 shall be construed to imply that there was previously a requirement to record the notice provided for in this Section.

**Section 30.5. Conversion of apartments.** In the case of the conversion of an apartment building into condominium units, a municipality shall have the right to inspect the apartment building prior to the conversion to condominium units and may require that each new proposed condominium unit comply with the current life safety, building, and zoning codes of the municipality.

**Section 31. Subdivision or combination of units.**

(a) As used in this Section, "combination of any units" means any 2 or more residential units to be used as a single unit as shown on the plat or amended plat, which may involve, without limitation, additional exclusive use of a portion of the common elements within the building adjacent to the combined unit (for example, without limitation, the use of a portion of an adjacent common hallway).

(b) Unless the condominium instruments expressly prohibit the subdivision or combination of any units, and subject to additional limitations provided by the condominium instruments, the owner or owners may, at their own expense, subdivide or combine and locate or relocate common elements affected or required thereby, in accordance with the provisions of the condominium instruments and the requirements of this Act. The owner or owners shall make written application to the board of managers, requesting an amendment to the condominium instruments, setting forth in the application a proposed reallocation to the new units

of the percentage interest in the common elements, and setting forth whether the limited common elements, if any, previously assigned to the unit to be subdivided should be assigned to each new unit or to fewer than all of the new units created and requesting, if desired in the event of a combination of any units, that the new unit be granted the exclusive right to use as a limited common element, a portion of the common elements within the building adjacent to the new unit. If the transaction is approved by a majority of the board of managers, it shall be effective upon (1) recording of an amendment to condominium instruments in accordance with the provisions of Sections 5 and 6 of this Act, and (2) execution by the owners of the units involved.

(c) In the event of a combination of any units, the amendment under subsection (b) may grant the owner of the combined unit the exclusive right to use, as a limited common element, a portion of the common elements within the building adjacent to the new unit. The request for the amendment shall be granted and the amendment shall grant this exclusive right to use as a limited common element if the following conditions are met:

(1) the common element for which the exclusive right to use as a limited common element is sought is not necessary or practical for use by the owners of any units other than the owner or owners of the combined unit; and

(2) the owner or owners of the combined unit are responsible for any and all costs associated with the renovation, modification, or other adaptation performed as a result of the granting of the exclusive right to use as a limited common element.

(d) If the combined unit is divided, part of the original combined unit is sold, and the grant of the exclusive right to use as a limited common element is no longer necessary, practical, or appropriate for the use and enjoyment of the owner or owners of the original combined unit, the board may terminate the grant of the exclusive right to use as a limited common element and require that the owner or owners of the original combined unit restore the common area to its condition prior to the grant of the exclusive right to use as a limited common element. If the combined unit is sold without being divided, the grant of the exclusive right to use as a limited common element shall apply to the new owner or owners of the combined unit, who shall assume the rights and responsibilities of the original owner or owners.

(e) Under this Section, the exclusive right to use as a limited common element any portion of the common elements that is not necessary or practical for use by the owners of any other units is not a diminution of the ownership interests of all other unit owners requiring unanimous consent of all unit owners under subsection (e) of Section 4 of this Act or any percentage set forth in the condominium instruments.

(f) Notwithstanding Section 27 of this Act and any other amendment provisions set forth in the condominium instruments, an amendment pursuant to this Section is effective if it meets the requirements set forth in this Section.

**Section 32. Alternate dispute resolution; mediation; arbitration.**

(a) The declaration or bylaws of a condominium association may require mediation or arbitration of disputes in which the matter in controversy has either no specific monetary value or a value of \$10,000 or less, other than the levying and collection of assessments, or that arises out of violations of the declaration, bylaws, or rules and regulations of the condominium association. A dispute not required to be mediated or arbitrated by an association pursuant to its powers under this Section, that is submitted to mediation or arbitration by the agreement of the disputants, is also subject to this Section.

(b) The Illinois Uniform Arbitration Act shall govern all arbitrations proceeding under this Section.

(b-5) The Uniform Mediation Act shall govern all mediations proceeding under this Section.

(c) The association may require the disputants to bear the costs of mediation or arbitration.

**Section 35. Compliance with the Condominium and Common Interest Community Ombudsperson Act.** Every unit owners' association must comply with the Condominium and Common Interest Community Ombudsperson Act and is subject to all provisions of the Condominium and Common Interest Community Ombudsperson Act. This Section is repealed July 1, 2022.

**COMMON INTEREST  
COMMUNITY ASSOCIATION ACT  
(765 ILCS 160/1-1, *et seq.*)**

# COMMON INTEREST COMMUNITY ASSOCIATION ACT

## INTRODUCTION

Prior to July 29, 2010, homeowner and townhome associations were only governed by the Illinois General Not For Profit Corporation Act and a portion of the Illinois Condominium Property Act. Illinois is now one of the few states that has a separate law governing these associations. This law provides a governing statute for what used to be an area of the law that was controlled by each association's governing document, with little standardization.

Master Associations are not subject to the Common Interest Community Association Act.

**FULL TEXT** (as of January 1, 2019):

## ARTICLE 1

**Section 1-1. Short title.** This Article may be cited as the Common Interest Community Association Act, and references in this Article to "this Act" mean this Article.

**Section 1-5. Definitions.** As used in this Act, unless the context otherwise requires:

"Acceptable technological means" includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability.

"Association" or "common interest community association" means the association of all the members of a common interest community, acting pursuant to bylaws or an operating agreement through its duly elected board of managers or board of directors.

"Board" means a common interest community association's board of managers or board of directors, whichever is applicable.

"Board member" or "member of the board" means a member of the board of managers or the board of directors, whichever is applicable.

"Board of directors" means, for a common interest community that has been incorporated as an Illinois not-for-profit corporation, the group of people elected by the members of a common interest community as the governing body to exercise for the members of the common interest community association all powers, duties, and authority vested in the board of directors under this Act and the common interest community association's declaration and bylaws.

"Board of managers" means, for a common interest community that is an unincorporated association or organized as a limited liability company, the group of people elected by the members of a common interest community as the governing

body to exercise for the members of the common interest community association all powers, duties, and authority vested in the board of managers under this Act and the common interest community association's declaration, bylaws, or operating agreement.

"Building" means all structures, attached or unattached, containing one or more units.

"Common areas" means the portion of the property other than a unit.

"Common expenses" means the proposed or actual expenses affecting the property, including reserves, if any, lawfully assessed by the common interest community association.

"Common interest community" means real estate other than a condominium or cooperative with respect to which any person by virtue of his or her ownership of a partial interest or a unit therein is obligated to pay for the maintenance, improvement, insurance premiums or real estate taxes of common areas described in a declaration which is administered by an association. "Common interest community" may include, but not be limited to, an attached or detached townhome, villa, or single-family home. A "common interest community" does not include a master association.

"Community instruments" means all documents and authorized amendments thereto recorded by a developer or common interest community association, including, but not limited to, the declaration, bylaws, operating agreement, plat of survey, and rules and regulations.

"Declaration" means any duly recorded instruments, however designated, that have created a common interest community and any duly recorded amendments to those instruments.

"Developer" means any person who submits property legally or equitably owned in fee simple by the person to the provisions of this Act, or any person who offers units legally or equitably owned in fee simple by the person for sale in the ordinary course of such person's business, including any successor to such person's entire interest in the property other than the purchaser of an individual unit.

"Developer control" means such control at a time prior to the election of the board of the common interest community association by a majority of the members other than the developer.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.

"Majority" or "majority of the members" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common elements. Any specified percentage of the members means such percentage in the aggregate in interest of such undivided ownership. "Majority" or "majority of the members of the board of the common interest community association" means more than 50% of the total number of persons constituting such board pursuant to the bylaws or operating agreement. Any specified percentage of the members of the

common interest community association means that percentage of the total number of persons constituting such board pursuant to the bylaws or operating agreement.

"Management company" or "community association manager" means a person, partnership, corporation, or other legal entity entitled to transact business on behalf of others, acting on behalf of or as an agent for an association for the purpose of carrying out the duties, responsibilities, and other obligations necessary for the day to day operation and management of any property subject to this Act.

"Meeting of the board" or "board meeting" means any gathering of a quorum of the members of the board of the common interest community association held for the purpose of conducting board business.

"Member" means the person or entity designated as an owner and entitled to one vote as defined by the community instruments. The terms "member" and "unit owner" may be used interchangeably as defined by the community instruments, except in situations in which a matter of legal title to the unit is involved or at issue, in which case the term "unit owner" would be the applicable term used.

"Membership" means the collective group of members entitled to vote as defined by the community instruments.

"Parcel" means the lot or lots or tract or tracts of land described in the declaration as part of a common interest community.

"Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

"Plat" means a plat or plats of survey of the parcel and of all units in the common interest community, which may consist of a three-dimensional horizontal and vertical delineation of all such units, structures, easements, and common areas on the property.

"Prescribed delivery method" means mailing, delivering, posting in an association publication that is routinely mailed to all members, electronic transmission, or any other delivery method that is approved in writing by the member and authorized by the community instruments.

"Property" means all the land, property, and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including any building and all easements, rights, and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit, or enjoyment of the members, under the authority or control of a common interest community association.

"Purchaser" means any person or persons, other than the developer, who purchase a unit in a bona fide transaction for value.

"Record" means to record in the office of the recorder of the county wherein the property is located.

"Reserves" means those sums paid by members which are separately maintained by the common interest community association for purposes specified by the declaration and bylaws of the common interest community association.

"Unit" means a part of the property designed and intended for any type of independent use.

"Unit owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit.

**Section 1-10. Applicability.** Unless expressly provided otherwise herein, the provisions of this Act are applicable to all common interest community associations in this State.

**Section 1-15. Construction, interpretation, and validity of community instruments.**

(a) Except to the extent otherwise provided by the declaration or other community instruments, the terms defined in Section 1-5 of this Act shall be deemed to have the meaning specified therein unless the context otherwise requires.

(b) (Blank).

(c) A provision in the declaration limiting ownership, rental, or occupancy of a unit to a person 55 years of age or older shall be valid and deemed not to be in violation of Article 3 of the Illinois Human Rights Act provided that the person or the immediate family of a person owning, renting, or lawfully occupying such unit prior to the recording of the initial declaration shall not be deemed to be in violation of such age restriction so long as they continue to own or reside in such unit.

(d) Every common interest community association shall define a member and its relationship to the units or unit owners in its community instruments.

**Section 1-20. Amendments to the declaration, bylaws, or operating agreement.**

(a) The administration of every property shall be governed by the declaration and bylaws or operating agreement, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration, bylaws, or operating agreement shall be valid unless the same is set forth in an amendment thereof and such amendment is duly recorded. An amendment of the declaration, bylaws, or operating agreement shall be deemed effective upon recordation, unless the amendment sets forth a different effective date.

(b) Unless otherwise provided by this Act, amendments to community instruments authorized to be recorded shall be executed and recorded by the president of the board or such other officer authorized by the common interest community association or the community instruments.

(c) If an association that currently permits leasing amends its declaration, bylaws, or rules and regulations to prohibit leasing, nothing in this Act or the declarations, bylaws, rules and regulations of an association shall prohibit a unit owner incorporated under 26 USC 501(c)(3) which is leasing a unit at the time of the prohibition from continuing to do so until such time that the unit owner voluntarily sells the unit; and no special fine, fee, dues, or penalty shall be assessed against the unit owner for leasing its unit.



(d) No action to incorporate a common interest community as a municipality shall commence until an instrument agreeing to incorporation has been signed by two-thirds of the members.

(e) If the community instruments require approval of any mortgagee or lienholder of record and the mortgagee or lienholder of record receives a request to approve or consent to the amendment to the community instruments, the mortgagee or lienholder of record is deemed to have approved or consented to the request unless the mortgagee or lienholder of record delivers a negative response to the requesting party within 60 days after the mailing of the request. A request to approve or consent to an amendment to the community instruments that is required to be sent to a mortgagee or lienholder of record shall be sent by certified mail.

**Section 1-25. Board of managers, board of directors, duties, elections, and voting.**

(a) Elections shall be held in accordance with the community instruments, provided that an election shall be held no less frequently than once every 24 months, for the board of managers or board of directors from among the membership of a common interest community association.

(b) (Blank).

(c) The members of the board shall serve without compensation, unless the community instruments indicate otherwise.

(d) No member of the board or officer shall be elected for a term of more than 4 years, but officers and board members may succeed themselves.

(e) If there is a vacancy on the board, the remaining members of the board may fill the vacancy by a two-thirds vote of the remaining board members until the next annual meeting of the membership or until members holding 20% of the votes of the association request a meeting of the members to fill the vacancy for the balance of the term. A meeting of the members shall be called for purposes of filling a vacancy on the board no later than 30 days following the filing of a petition signed by membership holding 20% of the votes of the association requesting such a meeting.

(f) There shall be an election of a:

(1) president from among the members of the board, who shall preside over the meetings of the board and of the membership;

(2) secretary from among the members of the board, who shall keep the minutes of all meetings of the board and of the membership and who shall, in general, perform all the duties incident to the office of secretary; and

(3) treasurer from among the members of the board, who shall keep the financial records and books of account.

(g) If no election is held to elect board members within the time period specified in the bylaws, or within a reasonable amount of time thereafter not to exceed 90 days, then 20% of the members may bring an action to compel compliance with the election requirements specified in the bylaws or operating agreement. If the court finds that an election was not held to elect members of the

board within the required period due to the bad faith acts or omissions of the board of managers or the board of directors, the members shall be entitled to recover their reasonable attorney's fees and costs from the association. If the relevant notice requirements have been met and an election is not held solely due to a lack of a quorum, then this subsection (g) does not apply.

(h) Where there is more than one owner of a unit and there is only one member vote associated with that unit, if only one of the multiple owners is present at a meeting of the membership, he or she is entitled to cast the member vote associated with that unit.

(h-5) A member may vote:

(1) by proxy executed in writing by the member or by his or her duly authorized attorney in fact, provided, however, that the proxy bears the date of execution. Unless the community instruments or the written proxy itself provide otherwise, proxies will not be valid for more than 11 months after the date of its execution; or

(2) by submitting an association-issued ballot in person at the election meeting; or

(3) by submitting an association-issued ballot to the association or its designated agent by mail or other means of delivery specified in the declaration or bylaws; or

(4) by any electronic or acceptable technological means.

Votes cast under any paragraph of this subsection (h-5) are valid for the purpose of establishing a quorum.

(i) The association may, upon adoption of the appropriate rules by the board, conduct elections by electronic or acceptable technological means. Members may not vote by proxy in board elections. Instructions regarding the use of electronic means or acceptable technological means for voting shall be distributed to all members not less than 10 and not more than 30 days before the election meeting. The instruction notice must include the names of all candidates who have given the board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or acceptable technological means the opportunity to cast votes for candidates whose names do not appear on the ballot. The board rules shall provide and the instructions provided to the member shall state that a member who submits a vote using electronic or acceptable technological means may request and cast a ballot in person at the election meeting, and thereby void any vote previously submitted by that member.

(j) Upon proof of purchase, the purchaser of a unit from a seller other than the developer pursuant to an installment contract for purchase shall, during such times as he or she resides in the unit, be counted toward a quorum for purposes of election of members of the board at any meeting of the membership called for purposes of electing members of the board, shall have the right to vote for the members of the board of the common interest community association and to be elected to and serve on the board unless the seller expressly retains in writing any or all of such rights.

**Section 1-30. Board duties and obligations; records.**

(a) The board shall meet at least 4 times annually.

(b) A common interest community association may not enter into a contract with a current board member, or with a corporation, limited liability company, or partnership in which a board member or a member of his or her immediate family has 25% or more interest, unless notice of intent to enter into the contract is given to members within 20 days after a decision is made to enter into the contract and the members are afforded an opportunity by filing a petition, signed by 20% of the membership, for an election to approve or disapprove the contract; such petition shall be filed within 20 days after such notice and such election shall be held within 30 days after filing the petition. For purposes of this subsection, a board member's immediate family means the board member's spouse, parents, siblings, and children.

(c) The bylaws or operating agreement shall provide for the maintenance, repair, and replacement of the common areas and payments therefor, including the method of approving payment vouchers.

(d) (Blank).

(e) The association may engage the services of a manager or management company.

(f) The association shall have one class of membership unless the declaration, bylaws, or operating agreement provide otherwise; however, this subsection (f) shall not be construed to limit the operation of subsection (c) of Section 1-20 of this Act.

(g) The board shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from members or unit owners for violations of the declaration, bylaws, operating agreement, and rules and regulations of the common interest community association.

(h) Other than attorney's fees and court or arbitration costs, no fees pertaining to the collection of a member's or unit owner's financial obligation to the association, including fees charged by a manager or managing agent, shall be added to and deemed a part of a member's or unit owner's respective share of the common expenses unless: (i) the managing agent fees relate to the costs to collect common expenses for the association; (ii) the fees are set forth in a contract between the managing agent and the association; and (iii) the authority to add the management fees to a member's or unit owner's respective share of the common expenses is specifically stated in the declaration, bylaws, or operating agreement of the association.

(i) Board records.

(1) The board shall maintain the following records of the association and make them available for examination and copying at convenient hours of weekdays by any member or unit owner in a common interest community subject to the authority of the board, their mortgagees, and their duly authorized agents or attorneys:

(i) Copies of the recorded declaration, other community instruments, other duly recorded covenants and bylaws and any amendments, articles of incorporation, articles of organization, annual reports, and any rules and regulations adopted by the board shall be available. Prior to the organization of the board, the developer shall maintain and make available the records set forth in this paragraph (i) for examination and copying.

(ii) Detailed and accurate records in chronological order of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the board shall be maintained.

(iii) The minutes of all meetings of the board which shall be maintained for not less than 7 years.

(iv) With a written statement of a proper purpose, ballots and proxies related thereto, if any, for any election held for the board and for any other matters voted on by the members, which shall be maintained for not less than one year.

(v) With a written statement of a proper purpose, such other records of the board as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986 shall be maintained.

(vi) With respect to units owned by a land trust, a living trust, or other legal entity, the trustee, officer, or manager of the entity may designate, in writing, a person to cast votes on behalf of the member or unit owner and a designation shall remain in effect until a subsequent document is filed with the association.

(2) Where a request for records under this subsection is made in writing to the board or its agent, failure to provide the requested record or to respond within 30 days shall be deemed a denial by the board.

(3) A reasonable fee may be charged by the board for the cost of retrieving and copying records properly requested.

(4) If the board fails to provide records properly requested under paragraph (1) of this subsection (i) within the time period provided in that paragraph (1), the member may seek appropriate relief and shall be entitled to an award of reasonable attorney's fees and costs if the member prevails and the court finds that such failure is due to the acts or omissions of the board of managers or the board of directors.

(j) The board shall have standing and capacity to act in a representative capacity in relation to matters involving the common areas or more than one unit, on behalf of the members or unit owners as their interests may appear.

### **Section 1-35. Member powers, duties, and obligations.**

(a) The provisions of this Act, the declaration, bylaws, other community instruments, and rules and regulations that relate to the use of an individual unit or the common areas shall be applicable to any person leasing a unit and shall be deemed to be incorporated in any lease executed or renewed on or after the effective date of this Act. Unless otherwise provided in the community instruments, with

regard to any lease entered into subsequent to the effective date of this Act, the unit owner leasing the unit shall deliver a copy of the signed lease to the association or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or 10 days after the lease is signed, whichever occurs first.

(b) If there are multiple owners of a single unit, only one of the multiple owners shall be eligible to serve as a member of the board at any one time, unless the unit owner owns another unit independently.

(c) Two-thirds of the membership may remove a board member as a director at a duly called special meeting.

(d) In the event of any resale of a unit in a common interest community association by a member or unit owner other than the developer, the board shall make available for inspection to the prospective purchaser, upon demand, the following:

(1) A copy of the declaration, other instruments, and any rules and regulations.

(2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing.

(3) A statement of any capital expenditures anticipated by the association within the current or succeeding 2 fiscal years.

(4) A statement of the status and amount of any reserve or replacement fund and any other fund specifically designated for association projects.

(5) A copy of the statement of financial condition of the association for the last fiscal year for which such a statement is available.

(6) A statement of the status of any pending suits or judgments in which the association is a party.

(7) A statement setting forth what insurance coverage is provided for all members or unit owners by the association for common properties.

The principal officer of the board or such other officer as is specifically designated shall furnish the above information within 30 days after receiving a written request for such information.

A reasonable fee covering the direct out-of-pocket cost of copying and providing such information may be charged by the association or the board to the unit seller for providing the information.

**Section 1-40. Meetings.**

(a) Notice of any membership meeting shall be given detailing the time, place, and purpose of such meeting no less than 10 and no more than 30 days prior to the meeting through a prescribed delivery method.

(b) Meetings.

(1) Twenty percent of the membership shall constitute a quorum, unless the community instruments indicate a lesser amount.

(2) The membership shall hold an annual meeting. The board of directors may be elected at the annual meeting.

(3) Special meetings of the board may be called by the president, by 25% of the members of the board, or by any other method that is prescribed in the community instruments. Special meetings of the membership may be called by the president, the board, 20% of the membership, or any other method that is prescribed in the community instruments.

(4) Except to the extent otherwise provided by this Act, the board shall give the members notice of all board meetings at least 48 hours prior to the meeting by sending notice by using a prescribed delivery method or by posting copies of notices of meetings in entranceways, elevators, or other conspicuous places in the common areas of the common interest community at least 48 hours prior to the meeting except where there is no common entranceway for 7 or more units, the board may designate one or more locations in the proximity of these units where the notices of meetings shall be posted. The board shall give members notice of any board meeting, through a prescribed delivery method, concerning the adoption of (i) the proposed annual budget, (ii) regular assessments, or (iii) a separate or special assessment within 10 to 60 days prior to the meeting, unless otherwise provided in Section 1-45 (a) or any other provision of this Act.

(5) Meetings of the board shall be open to any unit owner, except that the board may close any portion of a noticed meeting or meet separately from a noticed meeting: (i) to discuss litigation when an action against or on behalf of the particular association has been filed and is pending in a court or administrative tribunal, or when the common interest community association finds that such an action is probable or imminent, (ii) to discuss third party contracts or information regarding appointment, employment, engagement, or dismissal of an employee, independent contractor, agent, or other provider of goods and services, (iii) to interview a potential employee, independent contractor, agent, or other provider of goods and services, (iv) to discuss violations of rules and regulations of the association, (v) to discuss a member's or unit owner's unpaid share of common expenses, or (vi) to consult with the association's legal counsel. Any vote on these matters shall be taken at a meeting or portion thereof open to any member.

(6) The board must reserve a portion of the meeting of the board for comments by members; provided, however, the duration and meeting order for the member comment period is within the sole discretion of the board.

#### **Section 1-45. Finances.**

(a) Each member shall receive through a prescribed delivery method, at least 30 days but not more than 60 days prior to the adoption thereof by the board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes.

(b) The board shall provide all members with a reasonably detailed summary of the receipts, common expenses, and reserves for the preceding budget year. The board shall (i) make available for review to all members an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures

or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves or (ii) provide a consolidated annual independent audit report of the financial status of all fund accounts within the association.

(c) If an adopted budget or any separate assessment adopted by the board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, the common interest community association, upon written petition by members with 20% of the votes of the association delivered to the board within 14 days of the board action, shall call a meeting of the members within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the members are cast at the meeting to reject the budget or separate assessment, it shall be deemed ratified.

(d) If total common expenses exceed the total amount of the approved and adopted budget, the common interest community association shall disclose this variance to all its members and specifically identify the subsequent assessments needed to offset this variance in future budgets.

(e) Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the board without being subject to member approval or the provisions of subsection (c) or (f) of this Section. As used herein, "emergency" means a danger to or a compromise of the structural integrity of the common areas or any of the common facilities of the common interest community. "Emergency" also includes a danger to the life, health or safety of the membership.

(f) Assessments for additions and alterations to the common areas or to association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of a simple majority of the total members at a meeting called for that purpose.

(g) The board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by subsections (e) and (f) of this Section, the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

(h) The board of a common interest community association shall have the authority to establish and maintain a system of master metering of public utility services to collect payments in conjunction therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act.

(i) An association subject to this Act that consists of 100 or more units shall use generally accepted accounting principles in fulfilling any accounting obligations under this Act.

**Section 1-47. Successor developers.** Any assignment of a developer's interest in the property is not effective until the successor: (i) obtains the assignment in writing; and (ii) records the assignment.

**Section 1-50. Administration of property prior to election of the initial board of directors.**

(a) Until the election of the initial board whose declaration is recorded on or after the effective date of this Act, the same rights, titles, powers, privileges, trusts, duties, and obligations that are vested in or imposed upon the board by this Act or in the declaration or other duly recorded covenant shall be held and performed by the developer.

(b) The election of the initial board, whose declaration is recorded on or after the effective date of this Act, shall be held not later than 60 days after the conveyance by the developer of 75% of the units, or 3 years after the recording of the declaration, whichever is earlier. The developer shall give at least 21 days' notice of the meeting to elect the initial board of directors and shall upon request provide to any member, within 3 working days of the request, the names, addresses, and weighted vote of each member entitled to vote at the meeting. Any member shall, upon receipt of the request, be provided with the same information, within 10 days after the request, with respect to each subsequent meeting to elect members of the board of directors.

(c) If the initial board of a common interest community association whose declaration is recorded on or after the effective date of this Act is not elected by the time established in subsection (b), the developer shall continue in office for a period of 30 days, whereupon written notice of his or her resignation shall be sent to all of the unit owners or members.

(d) Within 60 days following the election of a majority of the board, other than the developer, by members, the developer shall deliver to the board:

(1) All original documents as recorded or filed pertaining to the property, its administration, and the association, such as the declaration, articles of incorporation, articles of organization, other instruments, annual reports, minutes, rules and regulations, and contracts, leases, or other agreements entered into by the association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual document recorded or filed.

(2) A detailed accounting by the developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance, and operation of the property, copies of all insurance policies, and a list of any loans or advances to the association which are outstanding.

(3) Association funds, which shall have been at all times segregated from any other moneys of the developer.

(4) A schedule of all real or personal property, equipment, and fixtures belonging to the association, including documents transferring the property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

(5) A list of all litigation, administrative action, and arbitrations involving the association, any notices of governmental bodies involving actions taken or which may be taken concerning the association, engineering and architectural drawings and specifications as approved by any governmental



authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any association requirements, copies of any documents relating to disputes involving members or unit owners, and originals of all documents relating to everything listed in this paragraph.

(6) If the developer fails to fully comply with this subsection (d) within the 60 days provided and fails to fully comply within 10 days after written demand mailed by registered or certified mail to his or her last known address, the board may bring an action to compel compliance with this subsection (d). If the court finds that any of the required deliveries were not made within the required period, the board shall be entitled to recover its reasonable attorney's fees and costs incurred from and after the date of expiration of the 10-day demand.

(e) With respect to any common interest community association whose declaration is recorded on or after the effective date of this Act, any contract, lease, or other agreement made prior to the election of a majority of the board other than the developer by or on behalf of members or underlying common interest community association, the association or the board, which extends for a period of more than 2 years from the recording of the declaration, shall be subject to cancellation by more than one-half of the votes of the members, other than the developer, cast at a special meeting of members called for that purpose during a period of 90 days prior to the expiration of the 2-year period if the board is elected by the members, otherwise by more than one-half of the underlying common interest community association board. At least 60 days prior to the expiration of the 2-year period, the board or, if the board is still under developer control, the developer shall send notice to every member notifying them of this provision, of what contracts, leases, and other agreements are affected, and of the procedure for calling a meeting of the members or for action by the board for the purpose of acting to terminate such contracts, leases or other agreements. During the 90-day period the other party to the contract, lease, or other agreement shall also have the right of cancellation.

(f) The statute of limitations for any actions in law or equity that the board may bring shall not begin to run until the members have elected a majority of the members of the board.

**Section 1-55. Fidelity insurance.** An association with 30 or more units shall obtain and maintain fidelity insurance covering persons who control or disburse funds of the association for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody or control of the association. All management companies which are responsible for the funds held or administered by the association shall maintain and furnish to the association a fidelity bond for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody of the management company at any time. The association shall bear the cost of the fidelity insurance and fidelity bond, unless otherwise provided by contract between the association and a management company.

**Section 1-60. Errors, omissions, and inconsistencies.**

(a) If a provision of the community instruments does not conform to this Act or to another applicable law because of an error, omission, or inconsistency in

the community instruments of the association, the association may correct the error, omission, or inconsistency to conform the community instruments to this Act or to another applicable law by an amendment adopted by vote of two-thirds of the board of directors, without a membership vote. A provision in the community instruments requiring members of record to vote to approve an amendment to the community instruments, or for the members of record to be given notice of an amendment to the community instruments, does not apply to an amendment that corrects an omission, error, or inconsistency to conform the community instruments to this Act or to another applicable law.

(b) If, through a scrivener's error, a unit has not been designated as owning an appropriate undivided share of the common areas or does not bear an appropriate share of the common expenses, or if all of the common expenses or all of the common elements have not been distributed in the declaration, so that the sum total of the shares of common areas which have been distributed or the sum total of the shares of the common expenses fail to equal 100%, or if it appears that more than 100% of the common elements or common expenses have been distributed, the error may be corrected by operation of law by filing an amendment to the declaration, approved by vote of two-thirds of the members of the board or a majority vote of the members at a meeting called for that purpose, which proportionately adjusts all percentage interests so that the total is equal to 100%, unless the declaration specifically provides for a different procedure or different percentage vote by the owners of the units and the owners of mortgages thereon affected by modification being made in the undivided interest in the common areas, the number of votes in the association or the liability for common expenses appertaining to the unit.

(c) If a scrivener's error in the declaration or other instrument is corrected by vote of two-thirds of the members of the board pursuant to the authority established in subsection (a) or subsection (b), the board, upon written petition by members with 20% of the votes of the association received within 30 days of the board action, shall call a meeting of the members within 30 days of the filing of the petition to consider the board action. Unless a majority of the votes of the members of the association are cast at the meeting to reject the action, it is ratified whether or not a quorum is present.

(d) Nothing contained in this Section shall be construed to invalidate any provision of a declaration authorizing the developer to amend an instrument prior to the latest date on which the initial membership meeting of the members must be held, whether or not it has actually been held, to bring the instrument into compliance with the legal requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Department of Veterans Affairs, or their respective successors and assigns.

**Section 1-65. Management company.** A management company holding reserve funds of an association shall at all times maintain a separate account for each association, unless by contract the board of managers of the association authorizes a management company to maintain association reserves in a single account with other associations for investment purposes. With the consent of the board of managers of the association, the management company may hold all operating funds of associations which it manages in a single operating account, but shall at all times

maintain records identifying all moneys of each association in such operating account. Such operating and reserve funds held by the management company for the association shall not be subject to attachment by any creditor of the management company. A management company that provides common interest community association management services for more than one common interest community association shall maintain separate, segregated accounts for each common interest community association. The funds shall not, in any event, be commingled with funds of the management company, the firm of the management company, or any other common interest community association. The maintenance of these accounts shall be custodial, and the accounts shall be in the name of the respective common interest community association.

**Section 1-70. Display of American flag or military flag.**

(a) Notwithstanding any provision in the declaration, bylaws, community instruments, rules, regulations, or agreements or other instruments of a common interest community association or a board's construction of any of those instruments, a board may not prohibit the display of the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located. A board may adopt reasonable rules and regulations, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American flag and a board may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. A board may not prohibit the installation of a flagpole for the display of the American flag or a military flag, or both, on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located, but a board may adopt reasonable rules and regulations regarding the location and size of flagpoles.

(b) As used in this Section:

"American flag" means the flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "American flag" does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

"Military flag" means a flag of any branch of the United States armed forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "military flag" does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

**Section 1-75. Exemptions for small common interest communities.**

(a) A common interest community association organized under the General Not for Profit Corporation Act of 1986 and having either (i) 10 units or less or (ii) annual budgeted assessments of \$100,000 or less shall be exempt from this

Act unless the association affirmatively elects to be covered by this Act by a majority of its directors or members.

(b) Common interest community associations which in their declaration, bylaws, or other governing documents provide that the association may not use the courts or an arbitration process to collect or enforce assessments, fines, or similar levies and common interest community associations (i) of 10 units or less or (ii) having annual budgeted assessments of \$50,000 or less shall be exempt from subsection (a) of Section 1-30, subsections (a) and (b) of Section 1-40, and Section 1-55 but shall be required to provide notice of meetings to members in a manner and at a time that will allow members to participate in those meetings.

**Section 1-80. Compliance.**

A common interest community association shall be in full compliance with the provisions of this Act no later than January 1, 2012.

**Section 1-85. Use of technology.**

(a) Any notice required to be sent or received or signature, vote, consent, or approval required to be obtained under any community instrument or any provision of this Act may be accomplished using acceptable technological means. This Section governs the use of technology in implementing the provisions of any community instrument or any provision of this Act concerning notices, signatures, votes, consents, or approvals.

(b) The common interest community association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any community instrument or any provision of this Act by use of acceptable technological means.

(c) A signature transmitted by acceptable technological means satisfies any requirement for a signature under any community instrument or any provision of this Act.

(d) Voting on, consent to, and approval of any matter under any community instrument or any provision of this Act may be accomplished by any acceptable technological means, provided that a record is created as evidence thereof and maintained as long as the record would be required to be maintained in nonelectronic form.

(e) Subject to other provisions of law, no action required or permitted by any community instrument or any provision of this Act need be acknowledged before a notary public if the identity and signature of the signatory can otherwise be authenticated to the satisfaction of the board of directors.

(f) If any person does not provide written authorization to conduct business using acceptable technological means, the common interest community association shall, at its expense, conduct business with the person without the use of acceptable technological means.

(g) This Section does not apply to any notices required: (i) under Article IX of the Code of Civil Procedure; or (ii) in connection with foreclosure proceedings in enforcement of any lien rights under this Act.

**Section 1-90. Compliance with the Condominium and Common Interest Community Ombudsperson Act.** Every common interest community association, except for those exempt from this Act under Section 1-75, must comply with the Condominium and Common Interest Community Ombudsperson Act and is subject to all provisions of the Condominium and Common Interest Community Ombudsperson Act. This Section is repealed July 1, 2022.

**CONDOMINIUM AND COMMON INTEREST  
COMMUNITY OMBUDSPERSON ACT**  
*(765 ILCS 615/1, et seq.)*

# CONDOMINIUM AND COMMON INTEREST COMMUNITY OMBUDSPERSON ACT

## INTRODUCTION

**FULL TEXT** (as of January 1, 2019):

**Section 1. Short title.** This Act may be cited as the Condominium and Common Interest Community Ombudsperson Act.

**Section 5. Applicability.** This Act applies to all condominium associations governed by the Condominium Property Act and all common interest community associations governed by the Common Interest Community Association Act.

**Section 10. Findings.** The General Assembly finds as follows:

(1) Managing condominium property or common interest community property is a complex responsibility. Unit owners and persons charged with managing condominium property or common interest community property may have little or no prior experience in managing real property, operating a not-for-profit association or corporation, complying with the laws governing condominium property or common interest community property, and interpreting and enforcing restrictions and rules imposed by applicable instruments or covenants. Unit owners may not fully understand their rights and obligations under the law or applicable instruments or covenants. Mistakes and misunderstandings are inevitable and may lead to serious, costly, and divisive problems. This Act seeks to educate unit owners, condominium associations, common interest community associations, boards of managers, and boards of directors about the Condominium Property Act and the Common Interest Community Association Act. Effective education can prevent or reduce the severity of problems within a condominium or common interest community.

(2) Anecdotal accounts of abuses within condominiums and common interest communities create continuing public demand for reform of condominium and common interest community property law. This results in frequent changes to the law, making it difficult to understand and apply, and imposes significant transitional costs on these communities statewide. By collecting empirical data on the nature and incidence of problems within these communities, this Act will provide a sound basis for prioritizing reform efforts, thereby increasing the stability of condominium and common interest community property law.

**Section 15. Definitions.** As used in this Act:

"Association" means a condominium association or common interest community association as defined in this Act.

"Board of managers" or "board of directors" means:

(1) a common interest community association's board of managers or board of directors, whichever is applicable; or

(2) a condominium association's board of managers or board of directors, whichever is applicable.

"Common interest community" means a property governed by the Common Interest Community Association Act.

"Common interest community association" has the meaning ascribed to it in Section 1-5 of the Common Interest Community Association Act.

"Condominium" means a property governed by the Condominium Property Act.

"Condominium association" means a unit owners' association as defined in subsection (o) of Section 2 of the Condominium Property Act or a master association as defined in subsection (u) of Section 2 of the Condominium Property Act.

"Declaration" has the meaning ascribed to it in:

(1) Section 1-5 of the Common Interest Community Association Act; or

(2) Section 2 of the Condominium Property Act.

"Department" means the Department of Financial and Professional Regulation.

"Director" means the Director of the Division of Real Estate.

"Division" means the Division of Real Estate within the Department of Financial and Professional Regulation.

"Office" means the Office of the Condominium and Common Interest Community Ombudsperson established under Section 20 of this Act.

"Ombudsperson" means the Condominium and Common Interest Community Ombudsperson named under Section 20 of this Act.

"Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation.

"Unit" means a part of the condominium property or common interest community property designed and intended for any type of independent use.

"Unit owner" has the meaning ascribed to it in:

(1) subsection (g) of Section 2 of the Condominium Property Act; or

(2) Section 1-5 of the Common Interest Community Association Act.

**Section 20. Office of the Condominium and Common Interest Community Ombudsperson.**



(a) There is created in the Division of Real Estate within the Department of Financial and Professional Regulation, under the supervision and control of the Secretary, the Office of the Condominium and Common Interest Community Ombudsperson.

(b) The Department shall name an Ombudsperson and other persons as necessary to discharge the requirements of this Act. The Ombudsperson shall have the powers delegated to him or her by the Department, in addition to the powers set forth in this Act.

(c) Neither the Ombudsperson nor the Department shall have any authority to consider matters that may constitute grounds for charges or complaints under the Illinois Human Rights Act or that are properly brought before the Department of Human Rights or the Illinois Human Rights Commission, before a comparable department or body established by a county, municipality, or township pursuant to an ordinance prohibiting discrimination and established for the purpose of investigating and adjudicating charges or complaints of discrimination under the ordinance, or before a federal agency or commission that administers and enforces federal anti-discrimination laws and investigates and adjudicates charges or complaints of discrimination under such laws.

(d) Information and advice provided by the Ombudsperson has no binding legal effect and is not subject to the provisions of the Illinois Administrative Procedure Act.

**Section 25. Training and education.** On or before July 1, 2017, the Ombudsperson shall offer training, outreach, and educational materials, and may arrange for the offering of courses to unit owners, associations, boards of managers, and boards of directors in subjects relevant to: (i) the operation and management of condominiums and common interest communities; and (ii) the Condominium Property Act and the Common Interest Community Association Act.

**Section 30. Website; toll-free number.**

(a) The Office shall maintain on the Department's website the following information:

(1) the text of this Act, the Condominium Property Act, the Common Interest Community Association Act, and any other statute, administrative rule, or regulation that the Ombudsperson determines is relevant to the operation and management of a condominium association or common interest community association;

(2) information concerning non-judicial resolution of disputes that may arise within a condominium or common interest community, including, but not limited to, alternative dispute resolution programs and contacts for locally-available dispute resolution programs;

(3) a description of the services provided by the Ombudsperson and information on how to contact the Ombudsperson for assistance; and

(4) any other information that the Ombudsperson determines is useful to unit owners, associations, boards of managers, and boards of directors.

(b) The Office may make available during regular business hours a statewide toll-free telephone number to provide information and resources on matters relating to condominium property and common interest community property.

**Section 35. Written policy for resolving complaints.**

(a) Each association, except for those outlined in subsection (b) of this Section, shall adopt a written policy for resolving complaints made by unit owners. The association shall make the policy available to all unit owners upon request. The policy must include:

(1) a sample form on which a unit owner may make a complaint to the association;

(2) a description of the process by which complaints shall be delivered to the association;

(3) the association's timeline and manner of making final determinations in response to a unit owner's complaint; and

(4) a requirement that the final determination made by the association in response to a unit owner's complaint be:

(i) made in writing;

(ii) made within 180 days after the association received the unit owner's original complaint; and

(iii) marked clearly and conspicuously as "final".

(b) Common interest community associations exempt from the Common Interest Community Association Act are not required to have a written policy for resolving complaints.

(c) No later than January 1, 2019, associations, except for those identified in subsection (b) of this Section, must establish and adopt the policy required under this Section.

(d) Associations first created after January 1, 2019, except for those identified in subsection (b) of this Section, must establish and adopt the policy required under this Section within 180 days following creation of the association.

(e) A unit owner may not bring a request for assistance under Section 40 of this Act for an association's lack of or inadequacy of a written policy to resolve complaints, but may notify the Department in writing of the association's lack of or inadequacy of a written policy.

**Section 40. Dispute resolution.**

(a) Beginning on July 1, 2020, and subject to appropriation, unit owners meeting the requirements of this Section may make a written request, as outlined in subsection (f) of this Section, to the Ombudsperson for assistance in resolving a dispute between a unit owner and an association that involves a violation of the Condominium Property Act or the Common Interest Community Association Act.

(b) The Ombudsperson shall not accept requests for resolutions of disputes with community association managers, supervising community association managers, or community association management firms, as defined in the Community Association Manager Licensing and Disciplinary Act.

(c) The Ombudsperson shall not accept requests for resolutions of disputes for which there is a pending complaint filed in any court or administrative tribunal in any jurisdiction or for which arbitration or alternative dispute resolution is scheduled to occur or has previously occurred.

(d) The assistance described in subsection (a) of this Section is available only to unit owners. In order for a unit owner to receive the assistance from the Ombudsperson described in subsection (a) of this Section, the unit owner must:

(1) owe no outstanding assessments, fees, or funds to the association, unless the assessments, fees, or funds are central to the dispute;

(2) allege a dispute that was initiated, or initially occurred, within the 2 calendar years preceding the date of the request;

(3) have made a written complaint pursuant to the unit owner's association's complaint policy, as outlined in Section 35, which alleged violations of the Condominium Property Act or the Common Interest Community Association Act;

(4) have received a final and adverse decision from the association and attach a copy of the association's final adverse decision marked "final" to the request to the Ombudsperson; and

(5) have filed the request within 30 days after the receipt of the association's final adverse decision.

(e) A unit owner who has not received a response, marked "final", to his or her complaint from the association within a reasonable time may request assistance from the Ombudsperson pursuant to subsection (a) of this Section if the unit owner meets the requirements of items (1), (2), and (3) of subsection (d) of this Section. A unit owner may not request assistance from the Ombudsperson until at least 90 days after the initial written complaint was submitted to the association. The Ombudsperson may decline a unit owner's request for assistance on the basis that a reasonable time has not yet passed.

(f) The request for assistance shall be in writing, on forms provided electronically by the Office, and include the following:

(1) the name, address, and contact information of the unit owner;

(2) the name, address, and contact information of the association;

(3) the applicable association governing documents unless the absence of governing documents is central to the dispute;

(4) the date of the final adverse decision by the association;

(5) a copy of the association's written complaint policy required under Section 35 of this Act;

(6) a copy of the unit owner's complaint to the association with a specific reference to the alleged violations of the Condominium Property Act or the Common Interest Community Association Act;

(7) documentation verifying the unit owner's ownership of a unit, such as a copy of a recorded deed or other document conferring title; and

(8) a copy of the association's adverse decision marked "final", if applicable.

(g) On receipt of a unit owner's request for assistance that the Department determines meets the requirements of this Section, the Ombudsperson shall, within the limits of the available resources, confer with the interested parties and assist in efforts to resolve the dispute by mutual agreement of the parties.

(h) The Ombudsperson shall assist only opposing parties who mutually agree to participate in dispute resolution.

(i) A unit owner is limited to one request for assistance per dispute. The meaning of dispute is to be broadly interpreted by the Department.

(j) The Department has the authority to determine whether or not a final decision is adverse under paragraph (4) of subsection (d) of this Section.

(k) The Department shall, on or before July 1, 2020, establish rules describing the time limit, method, and manner for dispute resolution.

(l) (Blank)

#### **Section 45. Confidentiality.**

(a) All information collected by the Department in the course of addressing a request for assistance or for any other purpose pursuant to this Act shall be maintained for the confidential use of the Department and shall not be disclosed. The Department shall not disclose the information to anyone other than law enforcement officials or regulatory agencies that have an appropriate regulatory interest as determined by the Secretary. Information and documents disclosed to a federal, State, county, or local law enforcement agency shall not be disclosed by that agency for any purpose to any other agency or person.

(b) A request for information made to the Department, or the Ombudsperson, under this Act does not constitute a request under the Freedom of Information Act.

(c) The confidentiality provisions of this Section do not extend to educational, training, and outreach material, statistical data, or operational information maintained by the Department in administering this Act.

#### **Section 50. Reports.**

The Department shall submit an annual written report on the activities of the Office to the General Assembly. The Department shall submit the first report no later than July 1, 2018. Beginning in 2019, the Department shall submit the report no later than October 1 of each year. The report shall include all of the following:

(1) annual workload and performance data, including (i) the number of requests for information; (ii) training, education, or other information

provided; (iii) the manner in which education and training was conducted; and (iv) the staff time required to provide the training, education, or other information. For each category of data, the report shall provide subtotals based on the type of question or dispute involved in the request; and

(2) where relevant information is available, analysis of the most common and serious types of concerns within condominiums and common interest communities, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

**Section 55. (Repealed).**

**Section 60. Rules.** The Department may, from time to time, adopt such rules as are necessary for the administration and enforcement of any provision of this Act. Any rule adopted under this Act is subject to the rulemaking provisions of the Illinois Administrative Procedure Act.

**Section 65. State Lawsuit Immunity Act.** Nothing in this Act shall be construed to constitute a waiver of the immunity of the State, Department, Division, Office, or Ombudsperson, or any officer, employee, or agent thereof under the State Lawsuit Immunity Act.

**Section 70. Repeal.** This Act is repealed on July 1, 2022.

**Section 999. Effective date.** This Act takes effect January 1, 2017.

**SELECTED SECTIONS FROM  
ILLINOIS GENERAL NOT FOR PROFIT  
CORPORATION ACT OF 1986  
(beginning at 805 ILCS 105/101.01)**

# SELECTED SECTIONS FROM ILLINOIS GENERAL NOT-FOR-PROFIT CORPORATION ACT OF 1986

## INTRODUCTION

The provisions of the Illinois General Not-For-Profit Corporation Act of 1986 generally govern all types of associations, including condominium, homeowner, and townhome associations. A corporation organized under this Act should not be confused with a corporation which has been granted tax exempt status from the IRS. A not for profit association is responsible for payment of taxes. Please consult with your Association accountant for a more detailed explanation of these differences.

A close review of the Illinois General Not-For-Profit Corporation Act will reveal many similarities with the other Acts governing associations. However, in the event of a conflict, the more specific Illinois Condominium Property Act and Common Interest Community Association Act generally take precedence over the general provisions of the Illinois General Not-For-Profit Corporation Act.

SELECTED SECTIONS (as of January 1, 2019)

*The full Not-For-Profit Act can be found on our website – [www.ksnlaw.com](http://www.ksnlaw.com).*

## ARTICLE 1. GENERAL PROVISIONS

**Section 101.01. Short title.** This Act shall be known and may be cited as the "General Not For Profit Corporation Act of 1986".

**Section 101.05. Powers of Secretary of State.** The Secretary of State shall have the power and authority reasonably necessary to administer this Act efficiently and to perform the duties therein imposed.

**Section 101.10. Forms, execution, acknowledgment and filing.**

(a) All reports required by this Act to be filed in the office of the Secretary of State shall be made on forms which shall be prescribed and furnished by the Secretary of State. Forms for all other documents to be filed in the office of the Secretary of State shall be furnished by the Secretary of State on request therefor, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

(b) Whenever any provision of this Act specifically requires any document to be executed by the corporation in accordance with this Section, unless otherwise specifically stated in this Act and subject to any additional provisions of this Act, such document shall be executed, in ink, as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators.

(2) All other documents shall be signed:

(i) By the president, a vice-president, the secretary, an assistant secretary, the treasurer, or other officer duly authorized by the board of directors of the corporation to execute the document and verified by him or her; or

(ii) If it shall appear from the document that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board; or

(iii) If it shall appear from the document that there are no such officers or directors, then by the members, or such of them as may be designated by the members at a lawful meeting; or

(iv) If the corporate assets are in the possession of a receiver, trustee or other court-appointed officer, then by the fiduciary or the majority of them if there are more than one.

(c) The name of a person signing the document and the capacity in which he or she signs shall be stated beneath or opposite his or her signature.

(d) Whenever any provision of this Act requires any document to be verified, such requirement is satisfied by either:

(1) The formal acknowledgment by the person or one of the persons signing the instrument that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. Such acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds and who, if he or she has a seal of office, shall affix it to the instrument; or

(2) The signature, without more, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

(e) Whenever any provision of this Act requires any document to be filed with the Secretary of State or in accordance with this Section, such requirement means that:

(1) The original signed document, and if in duplicate as provided by this Act, one true copy, which may be signed, or carbon or photocopy shall be delivered to the office of the Secretary of State.

(2) All fees and charges authorized by law to be collected by the Secretary of State in connection with the filing of the document shall be tendered to the Secretary of State.

(3) If the Secretary of State finds that the document conforms to law, he or she shall, when all fees and charges have been paid as in this Act prescribed:

(i) Endorse on the original and on the true copy, if any, the word "filed" and the month, day and year thereof;

(ii) File the original in his or her office;

(iii) (Blank); and



(iv) If the filing is in duplicate, he or she shall return the copy to the corporation or its representative.

(f) If another Section of this Act specifically prescribes a manner of filing or executing a specified document which differs from the corresponding provisions of this Section, then the provisions of such other Section shall govern.

**Section 101.11. Electronic filing.** Documents or reports submitted for filing electronically must include the name of the person making the submission. The inclusion shall constitute the affirmation or acknowledgement of the person, under penalties of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. Compliance with this Section shall satisfy the signature provisions of Section 101.10 of this Act, which shall otherwise apply.

**Section 101.50. Administrative Procedure Act.** The Illinois Administrative Procedure Act is expressly adopted and incorporated herein as if all of the provisions of that Act were included in this Act, except that the provision of subsection (d) of Section 10-65 of the Illinois Administrative Procedure Act which provides that at hearing the licensee has the right to show compliance with all lawful requirements for retention, continuation or renewal of the license is specifically excluded. For the purposes of this Act the notice required under Section 10-25 of the Illinois Administrative Procedure Act is deemed sufficient when mailed to the last known address of a party.

**Section 101.70. Application of Act.**

(a) Except as otherwise provided in this Act, the provisions of this Act relating to domestic corporations shall apply to:

- (1) All corporations organized hereunder;
- (2) All corporations heretofore organized under the "General Not for Profit Corporation Act", approved July 17, 1943, as amended;
- (3) All not-for-profit corporations heretofore organized under Sections 29 to 34, inclusive, of an Act entitled "An Act Concerning Corporations" approved April 18, 1872, in force July 1, 1872, as amended;
- (4) Each not-for-profit corporation, without shares or capital stock, heretofore organized under any general law or created by Special Act of the Legislature of this State for a purpose or purposes for which a corporation may be organized under this Act, but not otherwise entitled to the rights, privileges, immunities and franchises provided by this Act, which shall elect to accept this Act as hereinafter provided; and
- (5) Each corporation having shares or capital stock, heretofore organized under any general law or created by Special Act of the Legislature of this State prior to the adoption of the Constitution of 1870, for a purpose or purposes for which a corporation may be organized under this Act, which shall elect to accept this Act as hereinafter provided.

(b) Except as otherwise provided by this Act, the provisions of this Act relating to foreign corporations shall apply to:

(1) All foreign corporations which procure authority hereunder to conduct affairs in this State;

(2) All foreign corporations heretofore having authority to conduct affairs in this State under the "General Not for Profit Corporation Act", approved July 17, 1943, as amended; and

(3) All foreign not-for-profit corporations conducting affairs in this State for a purpose or purposes for which a corporation might be organized under this Act.

(c) The provisions of subsection (b) of Section 110.05 of this Act relating to revival of the articles of incorporation and extension of the period of corporate duration of a domestic corporation shall apply to all corporations organized under the "General Not for Profit Corporation Act", approved July 17, 1943, as amended, and whose period of duration has expired.

(d) The provisions of Section 112.45 of this Act relating to reinstatement following administrative dissolution of a domestic corporation shall apply to all corporations involuntarily dissolved after June 30, 1974, by the Secretary of State, pursuant to Section 50a of the "General Not for Profit Corporation Act", approved July 17, 1943, as amended.

(e) The provisions of Section 113.60 of this Act relating to reinstatement following revocation of authority of a foreign corporation shall apply to all foreign corporations which had their authority revoked by the Secretary of State pursuant to Section 84 or Section 84a of the "General Not for Profit Corporation Act", approved July 17, 1943, as amended.

#### **Section 101.75. Election to Accept Act.**

(a) Any not-for-profit corporation without shares or capital stock heretofore organized under any General Law or created by Special Act of the Legislature of this State, or any corporation having shares or capital stock organized under any General Law or created by Special Act of the Legislature of this State prior to the adoption of the Constitution of 1870, for a purpose or purposes for which a corporation may be organized under this Act, or any corporation formed for religious purposes under An Act Concerning Corporations, effective July 1, 1872, as amended, may elect to accept this Act in the following manner:

(1) Unless the articles of incorporation or the equivalent or the bylaws provide otherwise, where there are members or shareholders entitled to vote, the board of directors shall adopt a resolution recommending that the corporation accept this Act and directing that the question of such acceptance be submitted to a vote at a meeting of the members or shareholders entitled to vote, which may be either an annual or a special meeting. The members or shareholders entitled to vote may elect that such corporation accept this Act by the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy.

(2) Unless the articles of incorporation or the equivalent or the bylaws provide otherwise, where there are no members or shareholders having voting rights, election to accept this Act may be made at a meeting of the board of directors pursuant to a majority vote of the directors present and voting at a meeting at which a quorum is present.

(b) Upon complying with Subsection (a), the corporation shall execute and file in duplicate a statement, in accordance with Section 101.10 of this Act, and shall also file a copy of its articles of incorporation, if any, and all amendments thereto. Such statement shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of this Act;

(2) The specific purpose or purposes for which the corporation is organized, from among the purposes authorized in Section 103.05 of this Act;

(3) The address of the corporation's registered office and the name of its registered agent at that office;

(4) The names and respective addresses of its officers and directors;

(5) A statement that the attached copy, if any, of the articles of incorporation of the corporation is true and correct;

(6) A statement by the corporation that it has elected to accept this Act and that all reports have been filed and all fees, taxes and penalties due to the State of Illinois, accruing under any Act to which the corporation has theretofore been subject, have been paid;

(7) Where there are members or shareholders having voting rights, a statement setting forth the date of the meeting of the members or shareholders at which the election to accept this Act was made; that a quorum was present at such meeting, and that such acceptance was authorized either by the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, or in compliance with any different provision of the articles of incorporation or their equivalent or of the bylaws.

(8) Where there are no members or shareholders having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this Act was made, that a quorum was present at such meeting, and that such acceptance was authorized by majority vote of the directors present and voting at such meeting;

(9) A statement that, in addition, the corporation followed the requirements of its articles of incorporation and bylaws so far as applicable in effecting such acceptance;

(10) Where the corporation has issued shares of stock, a statement of such fact, including the number of shares theretofore authorized, the number issued and outstanding; and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the acceptance of this Act by the corporation becoming effective and that from and after the effective date of said acceptance, the authority to issue shares shall be thereby terminated.

(c) When the provisions of Subsection (b) have been complied with, the Secretary of State shall file the statement of acceptance.

(d) Upon the filing of a statement of acceptance, the election of the corporation to accept this Act shall become effective, and such corporation shall have the same powers and privileges, and be subject to the same duties, restrictions,

penalties and liabilities as though such corporation had been originally organized hereunder, and shall also be subject to any duty or obligation expressly imposed upon such corporation by its special charter; provided, however,

(1) That no amendment to the articles of incorporation adopted after such election to accept this Act shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of such special charter, or enlarge any right, power, or privilege granted any such corporation under a special charter except to the extent that such right, power or privilege might have been included in the articles of incorporation of a corporation organized under this Act; and

(2) That in the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the acceptance of this Act by the corporation becoming effective, shall have such rights as the election to accept this Act provides.

**Section 101.80. Definitions.** As used in this Act, unless the context otherwise requires, the words and phrases defined in this Section shall have the meanings set forth herein.

(a) "Anniversary" means that day each year exactly one or more years after:

(1) The date of filing the articles of incorporation prescribed by Section 102.10 of this Act, in the case of a domestic corporation;

(2) The date of filing the application for authority prescribed by Section 113.15 of this Act in the case of a foreign corporation;

(3) The date of filing the statement of acceptance prescribed by Section 101.75 of this Act, in the case of a corporation electing to accept this Act; or

(4) The date of filing the articles of consolidation prescribed by Section 111.25 of this Act in the case of a consolidation.

(b) "Anniversary month" means the month in which the anniversary of the corporation occurs.

(c) "Articles of incorporation" means the original articles of incorporation including the articles of incorporation of a new corporation set forth in the articles of consolidation or set forth in a statement of election to accept this Act, and all amendments thereto, whether evidenced by articles of amendment, articles of merger or statement of correction affecting articles. Restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto prior to the effective date of filing the articles of amendment incorporating the restated articles of incorporation. In the case of a corporation created by a Special Act of the Legislature, "Articles of incorporation" means the special charter and any amendments thereto made by Special Act of the Legislature or pursuant to general laws.

(d) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(f) "Corporation" or "domestic corporation" means a domestic not-for-profit corporation subject to the provisions of this Act, except a foreign corporation.

(g) "Delivered," for the purpose of determining if any notice required by this Act is effective, means:

(1) Transferred or presented to someone in person;

(2) Deposited in the United States mail addressed to the person at his, her or its address as it appears on the records of the corporation, with sufficient first-class postage prepaid thereon;

(3) Posted at such place and in such manner or otherwise transmitted to the person's premises as may be authorized and set forth in the articles of incorporation or the bylaws; or

(4) Transmitted by electronic means to the e-mail address, facsimile number, or other contact information appearing on the records of the corporation as may be authorized or approved in the articles of incorporation or the bylaws.

(h) "Foreign corporation" means a not-for-profit corporation as defined and organized under the laws other than the laws of this State, for a purpose or purposes for which a corporation may be organized under this Act.

(i) "Incorporator" means one of the signers of the original articles of incorporation.

(j) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of the conduct of its affairs.

(k) "Member" means a person or any organization, whether not for profit or otherwise, having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(l) "Net assets," for the purpose of determining the authority of a corporation to make distributions, is equal to the difference between the assets of the corporation and the liabilities of the corporation.

(m) "Not-for-profit corporation" means a corporation subject to this Act and organized solely for one or more of the purposes authorized by Section 103.05 of this Act.

(n) "Registered office" means that office maintained by the corporation in this State, the address of which is on file in the office of the Secretary of State, at which any process, notice or demand required or permitted by law may be served upon the registered agent of the corporation.

(o) "Special charter" means the charter granted to a corporation created by special act of the Legislature whether or not the term "charter" or "special charter" is used in such special act.

(p) Unless otherwise prohibited by the articles of incorporation or the bylaws of the corporation, actions required to be "written", to be "in writing", to have "written consent", to have "written approval" and the like by or of members, directors, or committee members shall include any communication transmitted or received by electronic means.

## **ARTICLE 2. FORMATION OF CORPORATIONS**

**Section 102.05. Incorporators.** One or more incorporators may organize a corporation under this Act. Each incorporator shall be either a corporation, domestic or foreign, whether not for profit or otherwise, or a natural person of the age of 18 years or more.

**Section 102.10. Articles of Incorporation.** The articles of incorporation shall be executed and filed in duplicate in accordance with Section 101.10 of this Act.

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of this Act;

(2) The specific purpose or purposes for which the corporation is organized, from among the purposes authorized in Section 103.05 of this Act;

(3) The address of the corporation's initial registered office and the name of its initial registered agent at that office;

(4) The name and address of each incorporator;

(5) The number of directors constituting the first board of directors and the names and addresses of each such director;

(6) With respect to any organization a purpose of which is to function as a club, as defined in Section 1-3.24 of "The Liquor Control Act of 1934", as now or hereafter amended, a statement that it will comply with the State and local laws and ordinances relating to alcoholic liquors;

(7) Whether the corporation is a condominium association as established under the Condominium Property Act, a cooperative housing corporation defined in Section 216 of the Internal Revenue Code of 1954 or a homeowner association which administers a common-interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedure.

(b) The articles of incorporation may set forth:

(1) Provisions not inconsistent with law with respect to:

(i) Managing and regulating the affairs of the corporation, including any provision for distribution of assets on final dissolution;

(ii) Providing that the corporation shall have no members, or shall have one or more classes of members;

(iii) Limiting, enlarging or denying the right of the members of any class or classes of members, to vote;

(iv) Defining, limiting, and regulating the rights, powers and duties of the corporation, its officers, directors and members; or

(v) Superseding any provision of this Act that requires for approval of corporation action a two-thirds vote of members or class of members entitled to vote by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on a matter shall vote, either in person or by proxy, at a meeting at which there is a quorum.

(2) Any provision that under this Act is required or permitted to be set forth in the articles of incorporation or bylaws.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

(d) The duration of a corporation is perpetual unless otherwise specified in the articles of incorporation.

(e) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of incorporation.

**Section 102.15. Effect of incorporation.** Upon the filing of articles of incorporation by the Secretary of State, the corporate existence shall begin, and such filing shall be conclusive evidence, except as against the State, that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

**Section 102.20. Organization of Corporation.**

(a) After filing the articles of incorporation, the first meeting of the board of directors shall be held at the call of a majority of the incorporators or of the directors for the purpose of:

- (1) Adopting bylaws;
- (2) Electing officers; and
- (3) Such other purposes as may come before the meeting.

In lieu of a meeting, director action may be taken by consent in writing, pursuant to Section 108.45 of this Act.

(b) If the corporation has members, a first meeting of the members may be held at the call of an officer or of a majority of the directors, for such purposes as shall be stated in the notice of the meeting.

If the corporation has members entitled to vote, then in lieu of a meeting, member action may be taken by consent in writing, pursuant to Section 107.10 of this Act.

(c) At least three days' written notice of an organizational meeting shall be given unless the persons entitled to such notice waive the same in writing, either before or after such meeting. An organizational meeting may be held either within or without this State.

**Section 102.25. Bylaws.** The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

**Section 102.35. Incorporation of an association or society.**

(a) When an unincorporated association or society, organized for any of the purposes for which a corporation could be formed under this Act, authorizes the incorporation of the association or society by the same procedure and affirmative vote of its voting members or delegates as its constitution, bylaws, or other fundamental agreement requires for an amendment to its fundamental agreement or, if no such vote is specified, by a majority vote of the voting members present at a duly convened meeting the purpose of which is stated in the notice of the meeting, then following the filing of articles of incorporation under Section 102.10 setting forth those facts and that the required vote has been obtained and upon the filing of the articles of incorporation, the association or society shall become a corporation and the members of the association or society shall become members of the corporation in accordance with provisions in the articles to that effect.

(b) Upon incorporation, all the rights, privileges, immunities, powers, franchise, authority, and property of the unincorporated association or society shall pass to and vest in the corporation, and all obligations of the unincorporated association or society shall become obligations of the corporation.

**ARTICLE 3. PURPOSES AND POWERS**

**Section 103.05. Purposes and authority of corporations; particular purposes; exemptions.**

(a) Not-for-profit corporations may be organized under this Act for any one or more of the following or similar purposes:

- (1) Charitable.
- (2) Benevolent.
- (3) Eleemosynary.
- (4) Educational.
- (5) Civic.
- (6) Patriotic.
- (7) Political.
- (8) Religious.
- (9) Social.
- (10) Literary.
- (11) Athletic.
- (12) Scientific.
- (13) Research.
- (14) Agricultural.
- (15) Horticultural.
- (16) Soil improvement.
- (17) Crop improvement.



(18) Livestock or poultry improvement.  
(19) Professional, commercial, industrial, or trade association.  
(20) Promoting the development, establishment, or expansion of industries.

(21) Electrification on a cooperative basis.  
(22) Telephone service on a mutual or cooperative basis.  
(23) Ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis.

(24) Ownership or administration of residential property on a cooperative basis.

(25) Administration and operation of property owned on a condominium basis or by a homeowner association.

(26) Administration and operation of an organization on a cooperative basis producing or furnishing goods, services, or facilities primarily for the benefit of its members who are consumers of those goods, services, or facilities.

(27) Operation of a community mental health board or center organized pursuant to the Community Mental Health Act for the purpose of providing direct patient services.

(28) Provision of debt management services as authorized by the Debt Management Service Act.

(29) Promotion, operation, and administration of a ridesharing arrangement as defined in Section 1-176.1 of the Illinois Vehicle Code.

(30) The administration and operation of an organization for the purpose of assisting low-income consumers in the acquisition of utility and telephone services.

(31) Any purpose permitted to be exempt from taxation under Sections 501(c) or 501(d) of the United States Internal Revenue Code, as now in or hereafter amended.

(32) Any purpose that would qualify for tax-deductible gifts under the Section 170(c) of the United States Internal Revenue Code, as now or hereafter amended. Any such purpose is deemed to be charitable under subsection (a)(1) of this Section.

(33) Furnishing of natural gas on a cooperative basis.

(34) Ownership and operation of agriculture-based biogas (anaerobic digester) systems on a cooperative basis including the marketing and sale of products produced from these, including but not limited to methane gas, electricity, and compost.

(b) A corporation may be organized hereunder to serve in an area that adjoins or borders (except for any intervening natural watercourse) an area located in an adjoining state intended to be similarly served, and the corporation may join any corporation created by the adjoining state having an identical purpose and organized as a not-for-profit corporation. Whenever any corporation organized under this Act so joins with a foreign corporation having an identical purpose, the corporation shall be permitted to do business in Illinois as one corporation; provided (1) that the name, bylaw provisions, officers, and directors of each corporation are identical, (2) that the foreign corporation complies with the provisions of this Act relating to the admission of foreign corporation, and (3) that the Illinois corporation files a statement with the Secretary of State indicating that it has joined with a foreign corporation setting forth the name thereof and the state of its incorporation.

**Section 103.10. General powers.** Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) To sue and be sued, complain and defend, in its corporate name, and shall have standing to sue when one or more of its members would otherwise have standing to sue in his or her own right, providing the interests it seeks to protect are germane to the corporation's purposes, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit;

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, provided that the affixing of a corporate seal to an instrument shall not give the instrument additional force or effect, or change the construction thereof, and the use of a corporate seal is not mandatory;

(d) To purchase, take, receive, lease as lessee, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, hold as trustee, use, and otherwise deal in and with any real or personal property, or any interest therein, situated in or out of this State;

(e) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;

(f) To lend money to its officers, employees and agents except as limited by Section 108.80 of this Act;

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals;

(h) To incur liabilities, to borrow money for its corporate purposes at such rates of interest as the corporation may determine without regard to the restrictions of any usury law of this State, to issue its notes, bonds and other obligations; to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, franchises, and income; and to make contracts, including contracts of guaranty and suretyship;

(i) To invest its funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

(j) To conduct its affairs, carry on its operations, and have offices within and without this State and to exercise in any other state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this Act;

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensations;

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, except as provided in Section 102.30 of this Act, for the administration and regulation of the affairs of the corporation;

(m) To make donations in furtherance of any of its purposes; to lend money to the State or Federal government; and to conduct any lawful affairs in aid of the United States;

(n) To cease its corporate activities and surrender its corporate franchise;

(o) To establish deferred compensation plans, pension plans, and other incentive plans for its directors, officers and employees and to make the payments provided for therein;

(p) To indemnify its directors, officers, employees or agents in accordance with and to the extent permitted by Section 108.75 of this Act and other applicable provisions of law;

(q) To be a promoter, partner, member, associate or manager of any partnership, joint venture or other enterprise; and

(r) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

**Section 103.15. Defense of Ultra Vires.** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member entitled to vote or by a director against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing shall allow to the corporation or the other parties, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or, to the extent provided for by Section 107.80 of this Act, through a member in a representative suit, against the officers or directors of the corporation for exceeding their authority; or

(c) In a proceeding by the State, as provided in this Act, to dissolve the corporation, or in a proceeding by the State to enjoin the corporation from the transaction of unauthorized affairs.

**Section 103.20. Unauthorized assumption of corporate powers.** All persons who assume to exercise corporate powers without authority to so do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

**Section 103.30. Homeowners' association; American flag or military flag.**

(a) Notwithstanding any provision in the association's declaration, covenants, bylaws, rules, regulations, or other instruments or any construction of any of those instruments by an association's board of directors, a homeowners' association incorporated under this Act may not prohibit the outdoor display of the American flag or a military flag, or both, by a homeowner on that homeowner's property if the American flag is displayed in a manner consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code and a military flag is displayed in accordance with any reasonable rules and regulations adopted by the association. An association may adopt reasonable rules and regulations, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American flag and an association may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. An association may not prohibit the installation of a flagpole for the display of the American flag or a military flag, or both, but the association may adopt reasonable rules and regulations regarding the location and size of flagpoles.

(b) As used in this Section:

"American flag" means the flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "American flag" does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

"Homeowners' association" includes a property owners' association, townhome association, and any similar entity, and "homeowner" includes a townhome owner.

"Military flag" means a flag of any branch of the United States armed forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "military flag" does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

**Section 103.35. Unemployment insurance; notice.** A not-for-profit corporation that is excluded from the definition of "nonprofit organization" under Section 211.2 of the Unemployment Insurance Act because it does not have in employment 4 or more individuals within each of 20 or more calendar weeks must provide a written notice to each employee, either in each employee's employment contract or in a written notice provided to employees who do not have employment contracts, and to each member of the board of directors that the employees of the not-for-profit corporation are not eligible to receive unemployment insurance benefits on the basis of their employment for the not-for-profit corporation.

## **ARTICLE 5. OFFICE AND AGENT**

### **Section 105.05. Registered office and registered agent.**

(a) Each domestic corporation and each foreign corporation having authority to conduct affairs in this State shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business in this State.

(2) A registered agent, which agent may be either an individual, resident in this State, whose business office is identical with such registered office, or a for profit domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership authorized to transact business in this State that is authorized by its statement of purpose to act as such agent, having a business office identical with such registered office.

(b) The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each corporation organized under this Act shall be stated in its articles of incorporation; and of each foreign corporation shall be stated in its application for authority to conduct affairs in this State.

(c) In the event of dissolution of a corporation, either voluntary, administrative, or judicial, the registered agent and the registered office of the corporation on record with the Secretary of State on the date of the issuance of the certificate or judgment of dissolution shall be an agent of the corporation upon whom claims can be served or service of process can be had during the two year post-dissolution period provided in Section 112.80 of this Act, unless such agent resigns or the corporation properly reports a change of registered office or registered agent.

(d) In the event of revocation of authority of a foreign corporation, the registered agent and the registered office of the corporation on record with the Secretary of State on the date of the issuance of the certificate of revocation shall be an agent of the corporation upon whom claims can be served or service of process can be had, unless such agent resigns.

### **Section 105.10. Change of registered office or registered agent.**

(a) A domestic corporation or a foreign corporation may from time to time change the address of its registered office. A domestic corporation or a foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if the corporation revokes the appointment of its registered agent.

(b) A domestic corporation or a foreign corporation may change the address of its registered office or change its registered agent, or both, by executing and filing in duplicate, in accordance with Section 101.10 of this Act, a statement setting forth:

(1) the name of the corporation;

(2) the address, including street and number, or rural route number, of its then registered office;

(3) if the address of its registered office be changed, the address, including street and number, or rural route number, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by the board of directors.

(c-d) (Blank).

(e) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Secretary of State.

**Section 105.15. Resignation of registered agent.** (a) A registered agent may at any time resign by filing in the office of the Secretary of State written notice thereof, and by mailing a copy thereof to the corporation at its principal office as such is known to said resigning agent, such notice to be mailed at least 10 days prior to the date of filing thereof with the Secretary of State.

(b) The notice shall set forth:

(1) The name of the corporation for which the registered agent is acting;

(2) The name of the registered agent;

(3) The address, including street and number, or rural route number, of the corporation's then registered office in this State;

(4) That the registered agent resigns;

(5) The effective date thereof which shall not be less than 30 days after the date of filing;

(6) The address of the principal office of the corporation as such is known to the registered agent;

(7) A statement that a copy of this notice has been sent to the principal office within the time and in the manner prescribed by this Section.

(c) Such notice shall be executed by the registered agent, if an individual, or, if a business entity, in the manner authorized by the governing statute.

**Section 105.20. Change of Address of Registered Agent.**

(a) A registered agent may change the address of the registered office of the domestic corporation or of the foreign corporation, for which he or she or it is

registered agent, to another address in this State, by filing, in duplicate, in accordance with Section 101.10 of this Act a statement setting forth:

- (1) the name of the corporation;
  - (2) the address, including street and number, or rural route number, of its then registered office;
  - (3) the address, including street and number, or rural route number, to which the registered office is to be changed;
  - (4) the name of its registered agent;
  - (5) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- (b) Such statement shall be executed by the registered agent.
- (c) The change of address of the registered office shall become effective upon the filing of such statement by the Secretary of State.

**Section 105.25. Service of process on domestic or foreign corporation.**

(a) Any process, notice, or demand required or permitted by law to be served upon a domestic corporation or a foreign corporation having authority to conduct affairs in this State may be served either upon the registered agent appointed by the corporation or upon the Secretary of State as provided in this Section.

(b) The Secretary of State shall be irrevocably appointed as an agent of a domestic corporation or of a foreign corporation having authority upon whom any process, notice or demand may be served:

(1) Whenever the corporation shall fail to appoint or maintain a registered agent in this State; or

(2) Whenever the corporation's registered agent cannot with reasonable diligence be found at the registered office in this State; or

(3) When a domestic corporation has been dissolved, the conditions of paragraph (1) or paragraph (2) exist, and an action, suit or proceeding is instituted against or affecting the corporation within the two years after the dissolution or the filing of a judgment of dissolution; or

(3.5) When a domestic corporation has been dissolved, the conditions of paragraph (1) or (2) exist, and a criminal proceeding has been instituted against or affecting the corporation; or

(4) When the authority of a foreign corporation to transact business has been revoked or withdrawn.

(c) Service under subsection (b) shall be made by:

(1) Service on the Secretary of State, or on any clerk having charge of the corporation division at his or her office, of a copy of the process, notice or demand, together with any papers required by law to be delivered in

connection with service, and a fee as prescribed by subsection (b) of Section 115.15 of this Act;

(2) Transmittal by the person instituting the action, suit or proceeding of notice of the service on the Secretary of State and a copy of the process, notice or demand and accompanying papers to the corporation being served, by registered or certified mail:

(i) At the last registered office of the corporation as shown by the records on file in the office of the Secretary of State; or

(ii) At such address the use of which the person instituting the action, suit or proceeding knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(3) Appendage by the person instituting the action, suit or proceeding of an affidavit of compliance with this Section in substantially such form as the Secretary of State may by rule or regulation prescribe, to the process, notice or demand.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

(e) The Secretary of State shall keep a record of all processes, notices, and demands served upon him or her under this Section, and shall record therein the time of such service and his or her action with reference thereto but shall not be required to retain such information for a period longer than five years from his or her receipt of the service.

**Section 105.30. Service of process on foreign corporation not authorized to conduct affairs in Illinois.**

If any foreign corporation conducts affairs in this State without having authority to conduct affairs, it shall be deemed that such corporation has designated and appointed the Secretary of State as an agent for process upon whom any notice, process or demand may be served. Service on the Secretary of State shall be made in the manner set forth in subsection (c) of Section 105.25 of this Act.

**ARTICLE 7. MEMBERS**

**Section 107.03. Members.**

(a) A corporation may have one or more classes of members or may have no members.

(b) If the corporation has one or more classes of members, the designation of the class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may provide for representatives or delegates of members and may establish their qualifications and rights.

(c) If the corporation is to have no members, that fact shall be set forth in the articles of incorporation or the bylaws.



(d) A corporation may issue certificate evidencing membership therein.

(e) The transfer of a certificate of membership in a not-for-profit corporation in which assets are held for a charitable, religious, eleemosynary, benevolent or educational purpose, shall be without payment of any consideration of money or property of any kind or value to the transferor in respect to such transfer. Any transfer in violation of this Section shall be void.

(f) Where the articles of incorporation or bylaws provide that a corporation shall have no members, or where a corporation has under its articles of incorporation, bylaws or in fact no members entitled to vote on a matter, any provision of this Act requiring notice to, the presence of, or the vote, consent or other action by members of the corporation in connection with such matter shall be satisfied by notice to, the presence of, or the vote, consent or other action of the directors of the corporation.

(g) A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall specifically set forth the qualifications and rights of its members in the Articles of Incorporation and the bylaws.

**Section 107.05. Meeting of members.**

(a) Meetings of members may be held either within or without this State, as may be provided in the bylaws or in a resolution of the board of directors pursuant to authority granted in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

(b) An annual meeting of the members entitled to vote may be held at such time as may be provided in the bylaws or in a resolution of the board of directors pursuant to authority granted in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation nor affect the validity of corporate action. If an annual meeting has not been held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting and if, after a request in writing directed to the president of the corporation, a notice of meeting is not delivered to members entitled to vote within 60 days of such request, then any member entitled to vote at an annual meeting may apply to the circuit court of the county in which the registered office or principal place of business of the corporation is located for an order directing that the meeting be held and fixing the time and place of the meeting. The court may issue such additional orders as may be necessary or appropriate for the holding of the meeting.

(c) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members entitled to vote as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to vote who are entitled to call a meeting, a special meeting of members entitled to vote may be called by such members having one-twentieth of the votes entitled to be cast at such meeting.

(d) Unless specifically prohibited by the articles of incorporation or bylaws, a corporation may allow members entitled to vote to participate in and act at any meeting through the use of a conference telephone or interactive technology, including but not limited to electronic transmission, Internet usage, or remote communication, by means of which all persons participating in the meeting can communicate with each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

(e) For meetings of a not-for-profit corporation organized for the purpose of residential cooperative housing, consisting of 50 or more single family dwellings with individual unit legal descriptions based upon a recorded plat of a subdivision, and located in a county containing a population between 780,000 and 3,000,000 inhabitants, any member may record by tape, film, or other means the proceedings at the meetings. The board or the membership may prescribe reasonable rules and regulations to govern the making of the recordings. The portion of any meeting held to discuss violations of rules and regulations of the corporation by a residential shareholder shall be recorded only with the affirmative assent of that shareholder.

**Section 107.10. Informal action by members entitled to vote.**

(a) Unless otherwise provided in the articles of incorporation or the bylaws, except for the dissolution of a not-for-profit corporation organized for the purpose of ownership or administration of residential property on a cooperative basis, any action required by this Act to be taken at any annual or special meeting of the members entitled to vote, or any other action which may be taken at a meeting of the members entitled to vote, may be taken by ballot without a meeting in writing by mail, e-mail, or any other electronic means pursuant to which the members entitled to vote thereon are given the opportunity to vote for or against the proposed action, and the action receives approval by a majority of the members casting votes, or such larger number as may be required by the Act, the articles of incorporation, or the bylaws, provided that the number of members casting votes would constitute a quorum if such action had been taken at a meeting. Voting must remain open for not less than 5 days from the date the ballot is delivered; provided, however, in the case of a removal of one or more directors, a merger, consolidation, dissolution or sale, lease or exchange of assets, the voting must remain open for not less than 20 days from the date the ballot is delivered.

(b) Such informal action by members shall become effective only if, at least 5 days prior to the effective date of such informal action, a notice in writing of the proposed action is delivered to all of the members entitled to vote with respect to the subject matter thereof.

(c) In the event that the action which is approved is such as would have required the filing of a certificate under any other Section of this Act if such action had been voted on by the members at a meeting thereof, the certificate filed under such other Section shall state, in lieu of any statement required by such Section concerning any vote of members, that an informal vote has been conducted in accordance with the provisions of this Section and that written notice has been delivered as provided in this Section.

(d) In addition, unless otherwise provided in the articles of incorporation or the bylaws, any action required by this Act to be taken at any annual or special

meeting of the members entitled to vote, or any other action which may be taken at a meeting of members entitled to vote, may also be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be approved by all the members entitled to vote with respect to the subject matter thereof.

**Section 107.15. Notice of members' meetings.** Written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 5 nor more than 60 days before the date of the meeting, or in the case of a removal of one or more directors, a merger, consolidation, dissolution or sale, lease or exchange of assets not less than 20 nor more than 60 days before the date of the meeting, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each member of record entitled to vote at such meeting. A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall, in addition to the other requirements of this Section, post notice of member's meetings in conspicuous places in the residential cooperative at least 48 hours prior to the meeting of the members.

**Section 107.20. Waiver of notice.** Whenever any notice whatever is required to be given under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of any corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

**Section 107.25. Fixing record date for voting.** For the purpose of determining members entitled to notice of or to vote at any meeting of members, or in order to make a determination of members for any other proper purpose, the board of directors of a corporation may fix in advance a date as the record date for any such determination of members, such date in any case to be not more than 60 days and, for a meeting of members, not less than 5 days, or in the case of a merger, consolidation, dissolution or sale, lease or exchange of assets, not less than 20 days, immediately preceding such meeting. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of members, the date on which notice of the meeting is delivered shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of members has been made as provided in this Section, such determination shall apply to any adjournment thereof. In lieu of the board of directors from time to time establishing record dates, the bylaws of the corporation may establish a mechanism for determining record dates in all or specified instances.

**Section 107.35. Inspectors.** At any meeting of members, the chairman of the meeting may, or upon the request of any members shall, appoint one or more persons as inspectors for such meeting, unless an inspector or inspectors shall have been previously appointed for such meeting in the manner provided by the bylaws of the corporation.

Such inspectors shall ascertain and report the number of votes represented at the meeting, based upon their determination of the validity and effect of proxies; count all votes and report the results; and do such other acts as are proper to conduct the election and voting with impartiality and fairness to all the members.

Each report of an inspector shall be in writing and signed by him or her or by a majority of them if there be more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of votes represented at the meeting and the results of the voting shall be prima facie evidence thereof.

**Section 107.40. Voting.**

(a) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his or her vote and to give one candidate a number of votes equal to his or her vote multiplied by the number of directors to be elected, or to distribute such votes on the same principle among as many candidates as he or she shall think fit.

(c) If a corporation has no members or its members have no right to vote with respect to a particular matter, the directors shall have the sole voting power with respect to such matter.

**Section 107.50. Proxies.** A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws explicitly prohibit, by proxy executed in writing by the member or by that member's duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Unless otherwise prohibited by the articles of incorporation or bylaws, the election of directors, officers, or representatives by members may be conducted by mail, e-mail, or any other electronic means as set forth in subsection (a) of Section 107.10.

**Section 107.60. Quorum of members entitled to vote.** Unless otherwise provided by the articles of incorporation or the bylaws, members holding one-tenth of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum for consideration of such matter at a meeting of members. If a quorum is present, the affirmative vote of a majority of the votes present and voted, either in person or by proxy, shall be the act of the members, unless the vote of a greater number or voting by classes is required by this Act, the articles of incorporation or the bylaws. The articles of incorporation or bylaws may require any number or percent greater or smaller than one-tenth up to and including a requirement of unanimity to constitute a quorum.

**Section 107.70. Voting agreements.** (a) Members entitled to vote may provide for the casting of their votes by signing an agreement for that purpose.

(b) A voting agreement created under this Section is specifically enforceable in accordance with the principles of equity.

**Section 107.75. Books and records.**

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. Any voting member shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account and minutes, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a voting member must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefor. If the corporation refuses examination, the voting member may file suit in the circuit court of the county in which either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as may be proper. If a voting member seeks to examine books or records of account the burden of proof is upon the voting member to establish a proper purpose. If the purpose is to examine minutes, the burden of proof is upon the corporation to establish that the voting member does not have a proper purpose.

(b) A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall keep an accurate and complete account of all transfers of membership and shall, on a quarterly basis, record all transfers of membership with the county clerk of the county in which the residential cooperative is located. Additionally, a list of all transfers of membership shall be available for inspection by any member of the corporation.

**Section 107.80. Derivative suits by voting members.** Nothing in this Act shall be construed to affect any pre-existing common law right of a voting member to bring an action in this State in the right of such corporation, nor shall this Act be construed to create any such right that did not exist prior to the effective date of this Act.

**Section 107.85. Nonliability of members.** The members of a corporation shall not be personally liable for any debt or obligation of the corporation.

**Section 107.90. Not-for-profit residential cooperative.**

(a) As used in this Section:

"Member" includes the plural "members", where a membership is jointly held.

"Membership agreement" means the contract and other documents that define the rights of the member to occupy, use, or possess a portion or all of a parcel of real estate exclusively.

"Class of membership" means a grouping of members based on the same privileges, rights, and manner of treatment by the corporation.

(b) The provisions of this Section apply only to a not-for-profit corporation organized for the purpose of residential cooperative housing consisting of 50 or more single family dwellings with individual unit legal descriptions based upon a recorded plat of a subdivision, located in a county containing a population between 780,000 and 3,000,000 inhabitants, and for which the title to one or more member's parcels is held by the corporation.

(c) If (i) title for real property occupied or controlled by a member under a membership agreement is held by or is transferred to that member; (ii) more than one class of membership exists; or (iii) the corporation fails to obtain recognition or loses recognition as a Cooperative Housing Corporation under Section 216 of the Internal Revenue Code of 1954, as amended, then:

(1) The board of directors shall issue notice to the members within 10 days after obtaining knowledge of (i), (ii), or (iii), or within 10 days after the effective date of this amendatory Act of the 91st General Assembly, if the board obtained such knowledge before the effective date of this amendatory Act of the 91st General Assembly.

(2) At the member's option, any member may receive a warranty deed for full title to the real property that he or she occupies issued by the not-for-profit corporation, upon presentation of a notarized and written request to the corporation, provided that the corporation holds the title.

(3) The member may withdraw from the corporation, at the member's option. The member shall retain his or her interest in any common property held by the corporation or may transfer his or her interest to the corporation for fair value, at the member's option.

## **ARTICLE 8. DIRECTORS AND OFFICERS**

### **Section 108.05. Board of directors.**

(a) Each corporation shall have a board of directors, and except as provided in articles of incorporation, the affairs of the corporation shall be managed by or under the direction of the board of directors.

(b) A director need not be a resident of this State or a member of the corporation unless the articles of incorporation or bylaws so prescribe. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

(c) Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, notwithstanding the provisions of Section 108.60 of this Act.

(d) No director may act by proxy on any matter.

### **Section 108.10. Number, election and resignation of directors.**

(a) The board of directors of a corporation shall consist of three or more directors. The number of directors shall be fixed by the bylaws, except the number of initial directors shall be fixed by the incorporators in the articles of incorporation.

In the absence of a bylaw fixing the number of directors, the number shall be the same as that fixed in the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws.

(b) The bylaws may establish a variable range for the size of the board by prescribing a minimum and maximum (which may not be less than 3 or exceed the minimum by more than 5) number of directors. If a variable range is established, unless the bylaws otherwise provide, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the directors without further amendment to the bylaws.

(c) The terms of all directors expire at the next meeting for the election of directors following their election unless their terms are staggered under subsection (e). The term of a director elected to fill a vacancy expires at the next annual meeting of the members entitled to vote at which his or her predecessor's term would have expired or in accordance with Section 108.30 of this Act. The term of a director elected as a result of an increase in the number of directors expires at the next annual meeting of members entitled to vote unless the term is staggered under subsection (e).

(d) Despite the expiration of a director's term, he or she continues to serve until the next meeting of members or directors entitled to vote on directors at which directors are elected. An amendment to the bylaws decreasing the number of directors or eliminating the position of a director elected or appointed by persons or entities other than the members may shorten the terms of incumbent directors; provided, however, such amendment has been approved by the party with the authority to elect or appoint such directors.

(e) The articles of incorporation or the bylaws may provide that directors may be divided into classes and the terms of office of several classes need not be uniform. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(f) If the articles of incorporation or bylaws authorize dividing the members into classes, the articles or bylaws may also authorize the election of all or a specified number or percentage of directors by one or more authorized classes of members.

(g) A director may resign at any time by written notice delivered to the board of directors, its chairman, or to the president or secretary of the corporation. A resignation is effective when the notice is delivered unless the notice specifies a future date. The pending vacancy may be filled before the effective date, but the successor shall not take office until the effective date.

**Section 108.15. Quorum of directors.** (a) Unless otherwise provided in the articles of incorporation or the bylaws, a majority of the directors then in office shall constitute a quorum; provided, that in no event shall a quorum consist of less than one-third of the directors then in office.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Unless specifically prohibited by the articles of incorporation or bylaws, directors or nondirector committee members may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

**Section 108.20. Place of directors' meetings.** Regular or special meetings of the board of directors may be held either within or without this State.

**Section 108.21.** Meetings of the board of directors of a not-for-profit homeowners association or residential cooperative not-for-profit corporation shall be open to any member, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the corporation has been filed and is pending in a court or administrative tribunal, or when the board of directors finds that such an action is probable or imminent, (ii) to consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the corporation. Any member may record by tape, film or other means the proceedings at such meetings or portions thereof required to be open by this Section. The board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of such meetings shall be mailed or delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice pursuant to the articles of incorporation, bylaws, other instrument before the meeting is convened. Copies of notices of meetings of the board of directors shall be posted in entranceways, elevators, or other conspicuous places at least 48 hours prior to the meeting of the board of directors. If there is no common entranceway for 7 or more units, the board of directors may designate one or more locations in the proximity of such units where the notices of meetings shall be posted. For purposes of this Section, "meeting of the board of directors" means any gathering of a quorum of the members of the board of directors held for the purpose of discussing business of the homeowners association or cooperative. The provisions of this Section shall apply to any homeowners association or residential cooperative situated in the State of Illinois regardless of where it may be incorporated.

**Section 108.25. Notice of directors' meetings.** Meetings of the board of directors shall be held upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Unless provided otherwise in the articles of incorporation or the bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, except that no special meeting of directors may remove a director under Section 108.35(b) of this Act unless written notice of the proposed removal is delivered to all directors at least twenty days prior to such meeting.

**Section 108.30. Vacancies.** Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws



provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

**Section 108.35. Removal of directors.**

(a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, the articles of incorporation or bylaws may provide that such directors may only be removed for cause.

(b) In the case of a corporation with no members or with no members entitled to vote on directors, a director may be removed by the affirmative vote of a majority of the directors then in office present and voting at a meeting of the board of directors at which a quorum is present.

(c) In the case of a corporation with members entitled to vote for directors, no director may be removed, except as follows:

(1) A director may be removed by the affirmative vote of two-thirds of the votes present and voted, either in person or by proxy.

(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is delivered to all members entitled to vote on removal of directors. Such notice shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.

(3) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed, with or without cause, if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors.

(4) If a director is elected by a class of voting members entitled to vote, directors or other electors, that director may be removed only by the same class of members entitled to vote, directors or electors which elected the director.

(d) The provisions of subsections (a), (b) and (c) shall not preclude the Circuit Court from removing a director of the corporation from office in a proceeding commenced either by the corporation or by members entitled to vote holding at least 10 percent of the outstanding votes of any class if the court finds (1) the director is engaged in fraudulent or dishonest conduct or has grossly abused his or her position to the detriment of the corporation, and (2) removal is in the best interest of the corporation. If the court removes a director, it may bar the director from reelection for a period prescribed by the court. If such a proceeding is commenced by a member entitled to vote, such member shall make the corporation a party defendant.

**Section 108.40. Committees.**

(a) If the articles of incorporation or bylaws so provide, a majority of the directors may create one or more committees and appoint directors or such other persons as the board designates, to serve on the committee or committees. Each

committee shall have two or more directors, a majority of its membership shall be directors, and all committee members shall serve at the pleasure of the board. However, committees appointed by the board or otherwise authorized by the bylaws relating to the election, nomination, qualification, or credentials of directors or other committees involved in the process of electing directors may be composed entirely of non-directors.

(b) Unless the appointment by the board of directors requires a greater number, a majority of any committee shall constitute a quorum, and a majority of committee members present and voting at a meeting at which a quorum is present is necessary for committee action. A committee may act by unanimous consent in writing without a meeting and, subject to the provisions of the bylaws or action by the board of directors, the committee by majority vote of its members shall determine the time and place of meetings and the notice required therefor.

(c) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 108.05 of this Act; provided, however, a committee may not:

(1) Adopt a plan for the distribution of the assets of the corporation, or for dissolution;

(2) Approve or recommend to members any act this Act requires to be approved by members, except that committees appointed by the board or otherwise authorized by the bylaws relating to the election, nomination, qualification, or credentials of directors or other committees involved in the process of electing directors may make recommendations to the members relating to electing directors;

(3) Fill vacancies on the board or on any of its committees;

(4) Elect, appoint or remove any officer or director or member of any committee, or fix the compensation of any member of a committee;

(5) Adopt, amend, or repeal the bylaws or the articles of incorporation;

(6) Adopt a plan of merger or adopt a plan of consolidation with another corporation, or authorize the sale, lease, exchange or mortgage of all or substantially all of the property or assets of the corporation; or

(7) Amend, alter, repeal or take action inconsistent with any resolution or action of the board of directors when the resolution or action of the board of directors provides by its terms that it shall not be amended, altered or repealed by action of a committee.

(d) The board of directors may create and appoint persons to a commission, advisory body or other such body which may or may not have directors as members, which body may not act on behalf of the corporation or bind it to any action but may make recommendations to the board of directors or to the officers.

**Section 108.45. Informal action by directors.**

(a) Unless specifically prohibited by the articles of incorporation or bylaws, any action required by this Act to be taken at a meeting of the board of

directors of a corporation, or any other action which may be taken at a meeting of the board of directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be approved in writing by all of the directors and all of any nondirector committee members entitled to vote with respect to the subject matter thereof, or by all the members of such committee, as the case may be.

(b) The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and provides a written record of approval. All the approvals evidencing the consent shall be delivered to the secretary to be filed in the corporate records. The action taken shall be effective when all the directors or the committee members, as the case may be, have approved the consent unless the consent specifies a different effective date.

(c) Any such consent approved in writing by all the directors or all the committee members, as the case may be, shall have the same effect as a unanimous vote and may be stated as such in any document filed with the Secretary of State under this Act.

**Section 108.50. Officers.** (a) A corporation shall have such officers as shall be provided in the bylaws. Officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person. One officer, in this Act generally referred to as the secretary, shall have the authority to certify the bylaws, resolutions of the members and board of directors and committees thereof, and other documents of the corporation as true and correct copies thereof.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such express authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws and such implied authority as recognized by the common law from time to time.

(c) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or any other person holding a particular office outside the corporation shall be a director or directors while he or she holds that office. Unless the articles of incorporation or the bylaws provide otherwise, such director or directors shall have the same rights, duties and responsibilities as other directors.

**Section 108.55. Removal of Officers.** Any officer or agent may be removed by the board of directors or other persons authorized to elect or appoint such officer or agent but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create any contract rights.

**Section 108.60. Director conflict of interest.**

(a) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director of the corporation is directly or indirectly a party to the transaction is not grounds for invalidating the transaction.

(b) In a proceeding contesting the validity of a transaction described in subsection (a), the person asserting validity has the burden of proving fairness unless:

(1) The material facts of the transaction and the director's interest or relationship were disclosed or known to the board of directors or a committee consisting entirely of directors and the board or committee authorized, approved or ratified the transaction by the affirmative votes of a majority of disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts of the transaction and the director's interest or relationship were disclosed or known to the members entitled to vote, if any, and they authorized, approved or ratified the transaction without counting the vote of any member who is an interested director.

(c) The presence of the director, who is directly or indirectly a party to the transaction described in subsection (a), or a director who is otherwise not disinterested, may be counted in determining whether a quorum is present but may not be counted when the board of directors or a committee of the board takes action on the transaction.

(d) For purposes of this Section, a director is "indirectly" a party to a transaction if the other party to the transaction is an entity in which the director has a material financial interest or of which the director is an officer, director or general partner; except that if a director is an officer or director of both parties to a transaction involving a grant or contribution, without consideration, from one entity to the other, that director is not "indirectly" a party to the transaction provided the director does not have a material financial interest in the entity that receives the grant or contribution.

(e) (Blank).

**Section 108.65. Liability of directors in certain cases.** (a) In addition to any other liabilities imposed by law upon directors of a corporation, they are liable as follows:

(1) The directors of a corporation who vote for or assent to any distribution not authorized by Section 109.10 or Article 12 of this Act shall be jointly and severally liable to the corporation for the amount of such distribution.

(2) If a dissolved corporation shall proceed to bar any known claims against it under Section 112.75 of this Act, the directors of such corporation who fail to take reasonable steps to cause the notice required by Section 112.75 of this Act to be given to any known creditor of such corporation shall be jointly and severally liable to such creditor for all loss and damage occasioned thereby.

(3) Unless dissolution is subsequently revoked pursuant to Section 112.25 of this Act, the directors of a corporation that conducts its affairs after the filing by the Secretary of State of articles of dissolution with respect to a voluntary dissolution authorized as provided by this Act, otherwise than as necessary or appropriate to wind up and liquidate its affairs, shall be jointly and severally liable to the creditors of such corporation for all debts and liabilities of the corporation incurred in so conducting its affairs. Directors of a corporation that conducts its affairs during a period of administrative dissolution shall not be liable under this paragraph (a)(3) if the Secretary of State subsequently files an application

for reinstatement under subsection (c) of Section 112.45, which reinstatement shall have the effect described in subsection (d) of Section 112.45.

(b) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is conclusively presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting or unless he or she files his or her written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof or forwards such dissent or abstention by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain does not apply to a director who voted in favor of such action.

(c) A director shall not be liable for a distribution of assets to any person in excess of the amount authorized by Section 109.10 or Article 12 of this Act if he or she relied and acted in good faith upon a balance sheet and profit and loss statement of the corporation represented to him or her to be correct by the president or the officer of such corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he or she be so liable if in good faith in determining the amount available for any such distribution he or she considered the assets to be of their book value.

(d) Any director against whom a claim is asserted under this Section and who is held liable thereon, is entitled to contribution from the other directors who are likewise liable thereon. Any director against whom a claim is asserted for the improper distribution of assets of a corporation, and who is held liable thereon, is entitled to contribution from the persons who knowingly accepted or received any such distribution in proportion to the amounts received by them respectively.

**Section 108.70. Limited Liability of directors, officers, board members, and persons who serve without compensation.**

(a) No director or officer serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct.

(b) No director of a corporation organized under this Act or any predecessor Act for the purposes identified in items (14), (19), (21) and (22) of subsection (a) of Section 103.05 of this Act, and exempt or qualified for exemption from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, unless: (1) such director earns in excess of \$25,000 per year from his duties as director, other than reimbursement for actual expenses; or (2) the act or omission involved willful or wanton conduct.

(b-5) Except for willful and wanton conduct, no volunteer board member serving without compensation, other than reimbursement for actual expenses, of a

corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, and no action may be brought, for damages resulting from any action of the executive director concerning the false reporting of or intentional tampering with financial records of the organization, where the actions of the executive director result in legal action.

This subsection (b-5) shall not apply to any action taken by the Attorney General (i) in the exercise of his or her common law or statutory power and duty to protect charitable assets or (ii) in the exercise of his or her authority to enforce the laws of this State that apply to trustees of a charity, as that term is defined in the Charitable Trust Act and the Solicitation for Charity Act.

(c) No person who, without compensation other than reimbursement for actual expenses, renders service to or for a corporation organized under this Act or any predecessor Act and exempt or qualified for exemption from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering such services, unless the act or omission involved willful or wanton conduct.

(d) (Blank).

(e) Nothing in this Section is intended to bar any cause of action against the corporation or change the liability of the corporation arising out of an act or omission of any director, officer or person exempt from liability for negligence under this Section.

**Section 108.75. Indemnification of officers, directors, employees and agents; insurance.**

(a) A corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

(b) A corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit

by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

(c) To the extent that a present or former director, officer or employee of a corporation has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, if that person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation.

(d) Any indemnification under subsections (a), (b), or (c) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case, upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsections (a), (b), or (c). Such determination shall be made with respect to a person who is a director or officer of the corporation at the time of the determination: (1) by the majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of such directors, even though less than a quorum, designated by a majority vote of such directors, (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the members entitled to vote, if any.

(e) Expenses (including attorney's fees) incurred by an officer or director of the corporation in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of such director or officer to repay such amount, unless it shall ultimately be determined that such person is entitled to be indemnified by the corporation as authorized in this Section. Such expenses (including attorney's fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid on such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by or granted under the other subsections of this Section shall not be deemed exclusive of

any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the articles of incorporation or a by-law shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(g) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this Section.

(h) In the case of a corporation with members entitled to vote, if a corporation indemnifies or advances expenses under subsection (b) of this Section to a director or officer, the corporation shall report the indemnification or advance in writing to the members entitled to vote with or before the notice of the next meeting of the members entitled to vote.

(i) For purposes of this Section, references to "the corporation" shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers, employees or agents, so that any person who was a director, officer, employee or agent of such merging corporation, or was serving at the request of such merging corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section with respect to the surviving corporation as such person would have with respect to such merging corporation if its separate existence had continued.

(j) For purposes of this Section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section.

(k) The indemnification and advancement of expenses provided by or granted under this Section shall, unless otherwise provided when authorized or



ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of that person.

(l) The changes to this Section made by this amendatory Act of the 92nd General Assembly apply only to actions commenced on or after the effective date of this amendatory Act of the 92nd General Assembly.

**Section 108.80. Prohibited loans to directors and officers.** Except as permitted by subsection (e) of Section 108.75, no loan shall be made by a corporation to a director or officer except that a loan may be made to a director or officer who is employed by the corporation if authorized by a majority of the non-employed directors and either (a) in the case of a corporation organized for and holding property for any charitable, religious, eleemosynary, benevolent, educational or similar purpose, the purpose of such loan is to provide financing for the principal residence of the employed director or officer upon receipt of adequate collateral consisting of marketable real estate or securities readily capable of valuation or (b) the loan is otherwise in furtherance of the purposes of the corporation and in the ordinary course of its affairs. The directors of a corporation who vote for or assent to the making of a loan to any non-employed director or non-employed officer of the corporation, or otherwise prohibited by this Section, and any other person knowingly participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

**Section 108.85. Act not exclusive.** This Act is not an exclusive statement of the duties and responsibilities of directors and officers. Directors and officers are subject to common law and other statutory duties and responsibilities.

## **ARTICLE 10. AMENDMENTS**

**Section 110.05. Authority to amend articles of incorporation.**

(a) A corporation may amend its articles of incorporation at any time and from time to time to add a new provision or to change or remove an existing provision, provided that the articles as amended contain only such provisions as are required or permitted in original articles of incorporation at the time of amendment. The articles as amended must contain all the provisions required by subsection (a) of Section 102.10 of this Act except that the names and addresses of the initial directors may be omitted and the names of the initial registered agent or the address of the initial registered office may be omitted.

(b) A corporation whose period of duration as provided in the articles of incorporation has expired may amend its articles of incorporation to revive its articles and extend the period of corporate duration, including making the duration perpetual, at any time within 5 years after the date of expiration.

**Section 110.15. Amendment by Directors.** Where a corporation has no members, or no members entitled to vote on amendments, one or more amendments shall be adopted by the board of directors upon receiving the affirmative vote of a majority of the directors in office.

**Section 110.20. Amendments by Directors and Members.** Where a corporation has members entitled to vote on amendments, one or more amendments shall be adopted in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote on amendments which may be either an annual or a special meeting;

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote on amendments at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, the proposed amendment, or a summary as aforesaid, may be included in the notice of such annual meeting;

(c) At such meeting, at which there is a quorum of members, a vote of the members entitled to vote on the proposed amendment shall be taken. The proposed amendment shall be adopted by receiving the affirmative vote of at least 2/3 of the votes present and voted either in person or by proxy, unless any class of members is entitled to vote as a class in respect thereof, in which event the proposed amendment shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy;

(d) The articles of incorporation or the bylaws of a corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on such amendment shall vote, either in person or by proxy, at a meeting at which there is a quorum.

**Section 110.30. Articles of amendment.**

(a) Except as provided in Section 110.40 of this Act, the articles of amendment shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If the amendment was adopted pursuant to Section 110.15 of

this Act:

(i) A statement that the amendment received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or

(ii) A statement that the amendment was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act;

(4) If the amendment was adopted pursuant to Section 110.20 of this Act:

(i) A statement that the amendment was adopted at a meeting of members entitled to vote by the affirmative vote of the members having

not less than the minimum number of votes necessary to adopt such amendment, as provided by this Act, the articles of incorporation or the bylaws, and the date of the meeting; or

(ii) A statement that the amendment was adopted by members entitled to vote having not less than the minimum number of votes necessary to adopt such amendment, as provided by this Act, the articles of incorporation, or the bylaws, in compliance with Section 107.10 of this Act.

(5) If the amendment restates the articles of incorporation, the amendment shall so state and shall set forth:

(i) The text of the articles as restated;

(ii) The date of incorporation, the name under which the corporation was incorporated, subsequent names, if any, that the corporation adopted pursuant to amendment of its articles of incorporation, and the effective date of any such amendments;

(iii) The address of the registered office and the name of the registered agent on the date of filing the restated articles.

The articles as restated must include all the information required by subsection (a) of Section 102.10 of this Act, except that the articles need not set forth the information required by paragraphs 3, 4 or 5 thereof. If any provision of the articles of incorporation is amended in connection with the restatement, the articles of amendment shall clearly identify such amendment.

(6) If, pursuant to Section 110.35 of this Act, the amendment is to become effective subsequent to the date on which the articles of amendment are filed, the date on which the amendment is to become effective.

(7) If the amendment revives the articles of incorporation and extends the period of corporate duration, the amendment shall so state and shall set forth:

(i) The date the period of duration expired under the articles of incorporation;

(ii) A statement that the period of duration will be perpetual, or, if a limited duration is to be provided, the date to which the period of duration is to be extended; and

(iii) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of amendment.

**Section 110.35. Effect of amendment.**

(a) The amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, as of the later of:

(1) The filing of the articles of amendment by the Secretary of State; or

(2) The time established under the articles of amendment, not to exceed 30 days after the filing of the articles of amendment by the Secretary of State.

(b) If the amendment is made in accordance with the provisions of Section 110.40 of this Act, upon the filing of the articles of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or members of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and members of the corporation.

(c) If the amendment restates the articles of incorporation, such restated articles of incorporation shall, upon such amendment becoming effective, supersede and stand in lieu of the corporation's preexisting articles of incorporation.

(d) If the amendment revives the articles of incorporation and extends the period of corporate duration, upon the filing of the articles of amendment by the Secretary of State, the amendment shall become effective and the corporate existence shall be deemed to have continued without interruption from the date of expiration of the original period of duration, and the corporation shall stand revived with such powers, duties and obligations as if its period of duration had not expired; and all acts and proceedings of its officers, directors and members, acting or purporting to act as such, which would have been legal and valid but for such expiration, shall stand ratified and confirmed.

(e) No amendment of the articles of incorporation of a corporation shall affect any existing cause of action in favor of or against such corporation, or any pending suit in which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall be abated for that reason.

**Section 110.40. Amendment pursuant to reorganization.** (a) The articles of incorporation of a corporation may be amended without director or member action to carry out a plan of reorganization ordered by a court of competent jurisdiction pursuant to any applicable statute of the United States if the articles after amendment contain only provisions required or permitted by Section 102.10 of this Act.

(b) The individual or individuals designated by the court shall execute, verify and deliver to the Secretary of State for filing in accordance with Section 101.10 of this Act, articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

## **ARTICLE 11. MERGER AND CONSOLIDATION**

**Section 111.05. Right to merge or consolidate.** Any two or more corporations may merge into one such corporation or consolidate into a new corporation by adopting a plan of merger or consolidation setting forth:

(a) The names of the corporations proposing to merge or consolidate, and in the case of a merger, the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation, or in the case of a consolidation, the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) The terms and conditions of the proposed merger or consolidation;

(c) In the case of a merger, a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger, or in the case of a consolidation and with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act; and

(d) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable, including provisions, if any, under which the proposed merger or consolidation may be abandoned prior to the filing of articles of merger or articles of consolidation by the Secretary of State.

**Section 111.10. Merger of Domestic Corporation into Body Corporate and Politic.** A domestic corporation which carries on athletic sports and promotes athletic interests among students of a State university with which it is affiliated may be merged into a body corporate and politic which manages and governs the State university. The domestic not-for-profit corporation and the body corporate and politic may accomplish such merger by adopting a plan of merger setting forth:

(a) The names of the domestic corporation and the body corporate and politic which propose to merge; and the name of the body corporate and politic into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) The terms and conditions of the proposed merger; and

(c) Such other provisions with respect to the proposed merger as are deemed necessary or desirable, including provisions, if any, under which the proposed merger may be abandoned prior to the filing of Articles of Merger in the office of the Secretary of State.

**Section 111.15. Merger or consolidation by directors.** Where a corporation has no members or no members entitled to vote on mergers or consolidations, a plan thereof shall be adopted at a meeting of the board of directors upon receiving the affirmative vote of a majority of the directors in office.

**Section 111.20. Merger or consolidation by directors and members.** Where a corporation has members entitled to vote on mergers or consolidations, a plan thereof shall be adopted in the following manner:

(a) The board of directors shall adopt a resolution approving the plan and directing that it be submitted to a vote at a meeting of members entitled to vote on mergers or consolidations, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, the proposed plan, or a summary as aforesaid, may be included in the notice of such annual meeting.

(c) At such meeting, at which there is a quorum of members, a vote of the members entitled to vote on the proposed plan shall be taken. The proposed plan shall be adopted by receiving the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, unless any class of members is entitled to vote as a class in respect thereof, in which event the proposed plan shall be adopted by receiving the affirmative vote of at least 2/3 of the votes of the class present and voted either in person or by proxy.

(d) The articles of incorporation or the bylaws of a corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on such merger or consolidation shall vote, either in person or by proxy, at a meeting at which there is a quorum.

**Section 111.25. Articles of merger or consolidation.**

(a) Articles of merger or consolidation shall be executed by each corporation and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

(1) the name of each corporation;

(2) the plan of merger or consolidation;

(3) as to each corporation where the plan of merger or consolidation was adopted pursuant Section 111.15 of this Act:

(i) a statement that the plan received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or

(ii) a statement that the plan was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act; and

(4) as to each corporation where the plan of merger or consolidation was adopted pursuant Section 111.20 of this Act:

(i) a statement that the plan was adopted at a meeting of members by the affirmative vote of members having not less than the minimum number of votes necessary to adopt the plan, as provided by this Act, the articles of incorporation, or the bylaws, and the date of the meeting; or

(ii) a statement that the plan was adopted by written consent, signed by members having not less than the minimum number of votes

necessary to adopt the plan, as provided by this Act, the articles of incorporation or the bylaws, in compliance with Section 107.10 of this Act.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of merger or consolidation.

**Section 111.35. Merger or consolidation of domestic and foreign corporations.**

One or more domestic corporations and one or more foreign corporations may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the State or country under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State or country under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State or country other than this State, it shall comply with the provisions of this Act with respect to foreign corporations if it is to conduct its affairs in this State, and in every case it shall file with the Secretary of State of this State:

(1) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(2) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except, if the surviving or new corporation is to be governed by the laws of any State or country other than this State, only to the extent that the laws of such other State or country shall otherwise provide.

**Section 111.37. Merger of domestic corporations and domestic or foreign corporations for profit.**

(a) One or more domestic corporations and one or more domestic or foreign corporations for profit may merge into one of such domestic corporations or consolidate into a new domestic corporation, provided that such merger or consolidation is permitted by the laws of the state or country under which each such foreign corporation for profit is organized.

(b) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation of domestic corporations, each domestic corporation for profit shall comply with the provisions of the Business Corporation Act of 1983, as amended, with respect to merger or consolidation of domestic corporations for profit, each foreign corporation for profit shall comply with the laws of the State or country under which it is organized, and each foreign corporation for profit having a certificate of authority to transact business in this State under the provisions of the Business Corporation Act of 1983, as amended,

shall comply with the provisions of such Act with respect to merger or consolidation of foreign corporations for profit.

(c) The plan of merger or consolidation shall set forth, in addition to all matters required by Section 111.05 of this Act, the manner and basis of converting shares of each merging or consolidating domestic or foreign corporation for profit into membership or other interests of the surviving domestic corporation, or into cash, or into property, or into any combination of the foregoing.

(d) The effect of a merger or consolidation under this Section shall be the same as in the case of a merger or consolidation of domestic corporations.

**Section 111.40. Effective date of merger or consolidation.** The merger or consolidation shall become effective upon the filing of the articles of merger or consolidation by the Secretary of State or on a later specified date, not more than 30 days subsequent to the filing of the articles of merger or consolidation by the Secretary of State, as may be provided for in the plan.

**Section 111.45. (Repealed).**

**Section 111.50. Effect of merger or consolidation.** When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, is that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, is the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation organized under this Act; however, this subsection (c) does not apply to a surviving corporation which manages and governs a State university.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public or private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the



property of any such corporations shall be impaired by such merger or consolidation.

(f) In case of a merger, the articles of incorporation of the surviving corporation are deemed to be amended to the extent, if any, that changes in its articles are stated in the articles of merger; and, in the case of a consolidation, the articles of incorporation of the new corporation are set forth in the articles of consolidation.

**Section 111.55. Sale, lease or exchange of assets in usual and regular conduct of its affairs; mortgage or pledge of assets.** The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the conduct of the affairs of the corporation, and a pledge or mortgage of the property and assets of a corporation, may be made upon such terms and conditions and for such considerations, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation for profit, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the members entitled to vote shall be required.

**Section 111.60. Sale, lease or exchange of assets, other than in usual and regular conduct of its affairs.** A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of the conduct of the affairs of the corporation, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) Where a corporation has no members or no members entitled to vote on the sale, lease or exchange of assets, such action may be adopted by the board of directors upon receiving the affirmative vote of a majority of the directors in office.

(b) Where a corporation has members entitled to vote on the sale, lease or exchange of assets, such action may be adopted if:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of members entitled to vote which may be either an annual or a special meeting.

(2) Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote within the time and in the manner provided by this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting.

(3) At such meeting the members entitled to vote on such matter may authorize such sale, lease, exchange, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of two-thirds of the votes present and voted either

in person or by proxy unless any class of members is entitled to vote at a class in respect thereof, in which event the proposed action shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy.

(4) After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members entitled to vote.

(5) The articles of incorporation or the bylaws of a corporation may supersede the two-thirds vote requirement of this Section by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on the matter shall vote, either in person or by proxy, at a meeting at which there is a quorum.

## **ARTICLE 12. DISSOLUTION**

**Section 112.05. Voluntary dissolution by directors.** Where a corporation has no members or no members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a majority of the directors provided that:

- (a) No debts of the corporation remain unpaid.
- (b) Written notice of the election to dissolve the corporation has been given to all directors, not less than three days before the execution of articles of dissolution.

**Section 112.10. Voluntary dissolution by written consent of members entitled to vote.** Except for the dissolution of a not-for-profit corporation organized for the purpose of ownership or administration of residential property on a cooperative basis, when a corporation has members entitled to vote on dissolution, the dissolution of a corporation may be authorized pursuant to Section 107.10 of this Act. Dissolution pursuant to this Section does not require any vote of the directors of the corporation.

**Section 112.12. Dissolution of residential cooperative housing corporations.** When a not-for-profit corporation organized for the purpose of ownership or administration of residential property on a cooperative basis has members entitled to vote on dissolution, there must be an open meeting and vote of those members before a dissolution may be authorized.

**Section 112.15. Voluntary dissolution by vote of members entitled to vote.** Where a corporation has members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a vote of members entitled to vote in the following manner:

- (a) The board of directors shall adopt a resolution, which may be with or without their recommendation, proposing that the corporation be dissolved voluntarily, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote on dissolution, if any, which may be either an annual or special meeting.

(b) Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the voluntary dissolution of the corporation, shall be given to each member entitled to vote on dissolution within the time and in the manner provided in this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting.

(c) At such meeting a vote of the members entitled to vote on dissolution shall be taken on the resolution to dissolve voluntarily the corporation. The resolution shall be adopted by receiving the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, unless any class of members is entitled to vote as a class in respect thereof, in which event the proposed action shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy.

(d) The articles of incorporation or the bylaws of any corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than majority of the votes which members entitled to vote on dissolution shall vote, either in person or by proxy, at a meeting at which there is a quorum.

**Section 112.16. Distribution of assets.** The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act;

(d) To the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions;

(e) Any remaining assets may be distributed to such societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in Section 112.17 of this Act.

**Section 112.17. Plan of distribution.** A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights on dissolution, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be delivered to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, unless any class of member is entitled to vote as a class in respect thereof, in which event the proposed plan of distribution shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy. The articles of incorporation or the bylaws may supersede the two-thirds vote requirement of this subsection by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on such matters shall vote, either in person or by proxy at a meeting at which there is a quorum.

(b) Where there are no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

**Section 112.20. Articles of dissolution.**

(a) When a voluntary dissolution has been authorized as provided by this Act, articles of dissolution shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

- (1) The name of the corporation.
- (2) The date dissolution was authorized.
- (3) A post-office address to which may be mailed a copy of any process against the corporation that may be served on the Secretary of State.
- (4) Where dissolution is authorized pursuant to Section 112.05 of this Act:

(i) A statement that the dissolution received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or

(ii) A statement that the dissolution was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act.

(5) If the dissolution was adopted pursuant to Section 112.10 or 112.15 of this Act:

(i) A statement that the dissolution was adopted at a meeting of members by the affirmative vote of the members having not less than the minimum number of votes necessary to adopt the dissolution, as provided by this Act, the articles of incorporation, or the bylaws, and the date of the meeting; or

(ii) A statement that the dissolution was adopted by written consent, signed by members having not less than the minimum number of

votes necessary to adopt the dissolution, as provided by this Act, the articles of incorporation, or the bylaws, in compliance with Section 107.10 of this Act.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of dissolution.

(c) The dissolution is effective on the date of the filing of the articles thereof by the Secretary of State.

**Section 112.25. Revocation of Dissolution.**

(a) A corporation may revoke its dissolution within 60 days of its effective date if the corporation has not begun to distribute its assets or has not commenced a proceeding for court supervision of its winding up under Section 112.50 of this Act.

(b) The corporation's board of directors may revoke the dissolution without action by members entitled to vote on dissolution.

(c) Within 60 days after the dissolution has been revoked by the corporation, articles of revocation of dissolution shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) A statement that the corporation has not begun to distribute its assets nor has it commenced a proceeding for court supervision of its winding up;
- (4) The date the revocation of dissolution was authorized;
- (5) A statement that the corporation's board of directors revoked the dissolution.

(d) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of revocation of dissolution. Failure to file the revocation of dissolution as required in subsection (c) hereof shall not be grounds for the Secretary of State to reject the filing, but the corporation filing beyond the time period shall pay a penalty as prescribed by this Act.

(e) The revocation of dissolution is effective on the date of the filing of the articles thereof by the Secretary of State and shall relate back and take effect as of the date of dissolution and the corporation may resume conducting affairs as if dissolution had never occurred.

**Section 112.30. Effect of dissolution.** (a) Dissolution of a corporation terminates its corporate existence and a dissolved corporation shall not thereafter conduct any affairs except that necessary to wind up and liquidate its affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its assets that will not be distributed in kind;
- (3) Giving notice in accordance with Section 112.75 of this Act and discharging or making provision for discharging its liabilities;

- (4) Distributing its remaining assets in accordance with this Act;
- and
- (5) Doing such other acts as are necessary to wind up and liquidate its affairs.

(b) After dissolution, a corporation may transfer good and merchantable title to its assets as authorized by its board of directors or in accordance with its bylaws.

(c) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's assets;
- (2) Effect any change in the bylaws of the corporation or otherwise affect the regulation of the affairs of the corporation except that all action shall be directed to winding up the affairs of the corporation;
- (3) Prevent suit by or against the corporation in its corporate name;
- (4) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

**Section 112.35. Grounds for administrative dissolution.** The Secretary of State may dissolve any corporation administratively if:

(a) It has failed to file its annual report as required by this Act before the first day of the anniversary month of the corporation of the year in which such annual report becomes due;

(b) It has failed to file in the office of the Secretary of State any report after the expiration of the period prescribed in this Act for filing such report;

(c) It has failed to pay any fees or charges prescribed by this Act;

(d) It has failed to appoint and maintain a registered agent in this State;

(e) It has misrepresented any material matter in any application, report, affidavit, or other document filed by the corporation pursuant to this Act;

(f) The Secretary of State receives notification from a local liquor commissioner, pursuant to Section 4-4(3) of "The Liquor Control Act of 1934," as now or hereafter amended, that an organization incorporated under this Act and functioning as a club has violated that Act by selling or offering for sale at retail alcoholic liquors without a retailer's license; or

(g) It has failed to elect and maintain at least 3 directors in accordance with Section 108.10 of this Act.

**Section 112.40. Procedure for administrative dissolution.**

(a) After the Secretary of State determines that one or more grounds exist under Section 112.35 of this Act for the administrative dissolution of a corporation, he or she shall send by regular mail to each delinquent corporation a Notice of Delinquency to its registered office, or, if the corporation has failed to maintain a registered office, then to the president or other principal officer at the last

known office of said officer. Failure to receive such notice shall not relieve the corporation of its obligation to pay the filing fee and any penalties due or invalidate the validity thereof.

(b) If the corporation does not correct the default within 90 days following such notice, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate in his or her office and mail one copy to the corporation at its registered office or, if the corporation has failed to maintain a registered office, then to the president or other principal officer at the last known office of said officer.

(c) The administrative dissolution of a corporation terminates its corporate existence and such a dissolved corporation shall not thereafter carry on any affairs, provided however, that such a dissolved corporation may take all action authorized under Section 112.75 of this Act or as otherwise necessary or appropriate to wind up and liquidate its affairs under Section 112.30 of this Act.

**Section 112.43. Administrative dissolution; corporate name.** The Secretary of State shall not allow another corporation to use the name of a domestic corporation that has been administratively dissolved until 3 years have elapsed following the date of issuance of the certificate of dissolution. If the domestic corporation that has been administratively dissolved is reinstated within 3 years after the date of issuance of the certificate of dissolution, the domestic corporation shall continue under its previous name without impacting its continuous legal status, unless the corporation petitions to change its name upon reinstatement.

**Section 112.45. Reinstatement following administrative dissolution.**

(a) A domestic corporation administratively dissolved under Section 112.40 of this Act may be reinstated by the Secretary of State following the date of issuance of the certificate of dissolution upon:

- (1) The filing of an application for reinstatement;
- (2) The filing with the Secretary of State by the corporation of all reports then due and theretofore becoming due;
- (3) The payment to the Secretary of State by the corporation of all fees and penalties then due and theretofore becoming due.

(b) The application for reinstatement shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

- (1) The name of the corporation at the time of the issuance of the certificate of dissolution;
- (2) If such name is not available for use as determined by the Secretary of State at the time of filing the application for reinstatement, the name of the corporation as changed; provided, however, that any change of name is properly effected pursuant to Section 110.05 and Section 110.30 of this Act;
- (3) The date of the issuance of the certificate of dissolution;

(4) The address, including street and number, or rural route number, of the registered office of the corporation upon reinstatement thereof, and the name of its registered agent at such address upon the reinstatement of the corporation, provided however, that any change from either the registered office or the registered agent at the time of dissolution is properly reported pursuant to Section 105.10 of this Act.

(c) When a dissolved corporation has complied with the provisions of this Section, the Secretary of State shall file the application for reinstatement.

(d) Upon the filing of the application for reinstatement, the corporate existence for all purposes shall be deemed to have continued without interruption from the date of the issuance of the certificate of dissolution, and the corporation shall stand revived with such powers, duties and obligations as if it had not been dissolved; and all acts and proceedings of its shareholders, members, officers, employees, and agents, acting or purporting to act in that capacity, and which would have been legal and valid but for such dissolution, shall stand ratified and confirmed.

(e) Without limiting the generality of subsection (d), upon filing of the application for reinstatement, no shareholder, director, or officer shall be personally liable, under Section 108.65 of this Act or otherwise, for the debts and liabilities of the corporation incurred during the period of administrative dissolution by reason of the fact that the corporation was administratively dissolved at the time the debts or liabilities were incurred.

**Section 112.50. Grounds for judicial dissolution.** A Circuit Court may dissolve a corporation:

- (a) In an action by the Attorney General, if it is established that:
- (1) the corporation filed its articles of incorporation through fraud;
  - (2) the corporation has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate the law, after notice of the same has been given to such corporation, either personally or by registered mail;
  - (3) any interrogatory propounded by the Secretary of State to the corporation, its officers or directors, as provided in this Act, has been answered falsely or has not been answered fully within 30 days after the mailing of such interrogatories by the Secretary of State or within such extension of time as shall have been authorized by the Secretary of State;
  - (4) the corporation has solicited money and failed to use the money for the purpose which it was solicited, or has fraudulently solicited money or fraudulently used the money solicited; or
  - (5) the corporation has substantially and willfully violated the provisions of the Consumer Fraud and Deceptive Business Practices Act.
- (b) In an action by a member entitled to vote, or a director, if it is established that:



(1) the directors are deadlocked, whether because of even division in the number thereof or because of greater than majority voting requirements in the articles of incorporation or the bylaws, in the management of the corporate affairs; the members are unable to break the deadlock; and irreparable injury to the corporation is thereby caused or threatened;

(2) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(3) the corporate assets are being misapplied or wasted; or

(4) the corporation is unable to carry out its purposes.

(c) In an action by a creditor, if it is established that:

(1) the creditor's claim has been reduced to judgment, the judgment has been returned unsatisfied, and the corporation is insolvent; or

(2) the corporation has admitted in writing that the creditor's claim is due and owing, and the corporation is insolvent.

(d) In an action by the corporation to dissolve under court supervision, if it is established that the corporation is unable to carry out its purposes.

**Section 112.55. Alternative remedies to judicial dissolution.** (a) In either an action for dissolution pursuant to Section 112.50 of this Act or in an action which alleges the grounds for dissolution set forth in Section 112.50 of this Act but which does not seek dissolution, the Circuit Court, in lieu of dismissing the action or ordering dissolution, may retain jurisdiction and:

(1) Appoint a provisional director; or

(2) Appoint a custodian.

(b) A provisional director may be appointed in the discretion of the court if it appears that such action by the court will remedy the grounds alleged by the complaining director or member entitled to vote to support the jurisdiction of the court under Section 112.50 of this Act. A provisional director may be appointed notwithstanding the fact that there is no vacancy on the board of directors and shall have all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors, until such time as the provisional director is removed by order of court or, unless otherwise ordered by court, removed by a vote of the members sufficient either to elect a majority of the board of directors or if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action.

(c) A custodian may be appointed in the discretion of the court if it appears that such action by the court will remedy the grounds alleged by the complaining director or member entitled to vote to support the jurisdiction of the court under Section 112.50 of this Act. Subject to any limitations which the court imposes, a custodian shall be entitled to exercise all the powers of the corporation's board of directors and officers to the extent necessary to manage the affairs of the corporation to the general advantage of its creditors and in furtherance of its purposes, until such time as such custodian shall be removed by order of court or, unless otherwise ordered by the court, removed by a vote of the members sufficient

either to elect a majority of the board of directors or, if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action. Such powers may be exercised directly, or through or in conjunction with the corporation's board of directors or officers, in the discretion of the custodian or as the court may order.

(d) Any custodian or provisional director shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's affairs, as the court shall direct. No custodian or provisional director shall be liable for any action taken or decision made in good faith. In addition, the custodian or provisional director shall submit to the court, if so directed, recommendations as to the appropriate disposition of the action. Whenever a custodian or provisional director is appointed, any officer or director of the corporation may, from time to time, petition the court for instructions clarifying the duties and responsibilities of such officer or director.

(e) In any proceeding under this Section, the court shall allow reasonable compensation to the custodian or provisional director for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation.

(f) If the court determines that any party in an action commenced under Section 112.50 of this Act has acted arbitrarily, vexatiously, or not in good faith in such action or in connection with any alternative relief provided in this Section, the court may, in its discretion, award attorneys' fees and other reasonable expenses to the other parties to the action who have been affected adversely thereby.

**Section 112.60. Practice in actions for judicial dissolution or removal and for alternative remedies.**

(a) The practice in actions for judicial dissolution or removal shall be the same as in other civil actions except as may be otherwise provided in this Act. Every action for judicial dissolution or removal shall be commenced in the Circuit Court of the county in which either the registered office or principal office of the corporation is located. Summons shall issue and be served as in other civil actions.

(b) In an action brought by the Attorney General under subsection (a) of Section 112.50 of this Act, if process is returned not found, the Attorney General shall cause publication to be made as in other civil actions in a newspaper of general circulation published in the county in which the action is filed. The publication shall contain a notice of the pendency of such action, the title of the court, the title of the case, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within 10 days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two consecutive weeks and the first publication thereof may begin at any time after summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than 30 days after the first publication of such notice.

(c) It is not necessary to make members of the corporation sought to be judicially dissolved parties to any such action or proceeding unless relief is sought

against them personally. The court, in its discretion, may order that the members be made parties.

(d) The circuit court in an action for judicial dissolution may issue injunctions, appoint an interim receiver with such powers and duties as the court, from time to time, may direct, and take such other action as is necessary or desirable to preserve the corporate assets and carry on the affairs of the corporation until a full hearing can be had.

(e) Upon a hearing and after finding that grounds for judicial dissolution exist, and after such notice as the court may direct to be given to all parties to the proceeding and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by members. Such liquidating receiver shall have authority, subject to order of court, to sell, convey, and dispose of all or any part of the assets of the corporation, either at public or private sale, and to take such other action as is necessary to wind up and liquidate the corporation's affairs under Section 112.30 of this Act and to notify known claimants under Section 112.75 of this Act. The order appointing such liquidating receiver shall state his or her powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(f) A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his or her own name as receiver of such corporation.

(g) A receiver shall in all cases be a resident of this State or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to conduct affairs in this State, and shall give such bond as the court may direct with such sureties as the court may require.

(h) During the pendency of the action, the court may redesignate a receiver as a custodian, or a custodian as a receiver, if such would be to the general advantage of the corporation or its creditors.

(i) The court shall allow reasonable compensation to the receiver for services rendered and reimbursement or direct payment of reasonable expenses from the assets of the corporation or the proceeds of sale of the assets.

(j) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or

organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) To the extent that the articles of incorporation or the bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

**Section 112.65. Order of dissolution.** (a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in Section 112.50 of this Act exists, it may enter an order dissolving the corporation and the clerk of the court shall deliver a certified copy of the order to the Secretary of State, who shall file the order.

(b) After entering the order of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with Sections 112.16 and 112.30 of this Act and the notification of its known claimants in accordance with Section 112.75 of this Act and shall retain jurisdiction until the same is complete.

**Section 112.70. Deposit of amount due.** Upon the distribution of the assets of a corporation, the distributive portion to which a person would be entitled who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be presumed abandoned and reported and delivered to the State Treasurer and become subject to the Revised Uniform Unclaimed Property Act. In the event such distribution is made other than in cash, such distributive portion of the assets shall be reduced to cash before being so reported and delivered.

**Section 112.75. Known claims against dissolved corporation.** (a) A dissolved corporation may bar any known claim against it, its directors, officers, employees or agents, or its members, by following the procedures set forth in subsections (b) and (c) of this Section. A claimant that does not deliver its claim by the deadline established pursuant to subsection (b) or that does not file suit by the deadline established pursuant to subsection (c) shall have no further rights against the dissolved corporation, its directors, officers, employees or agents, or its members.

(b) Within 60 days from the effective date of dissolution, the dissolved corporation shall send a notification to the claimant setting forth the following information:

(1) The corporation has been dissolved and the effective date thereof;

(2) The mailing address to which the claimant must send its claim and the essential information to be submitted with the claim;

(3) The deadline, not less than 120 days from the effective date of dissolution, by which the dissolved corporation must receive the claim; and

(4) A statement that the claim will be barred if not received by the deadline.

(c) If, after complying with the procedure in subsection (b), the dissolved corporation rejects the claim in whole or in part, the dissolved corporation shall notify the claimant of such rejection and shall also notify the claimant that the claim shall be barred unless the claimant files suit to enforce the claim within a deadline not less than 90 days from the date of the rejection notice.

(d) For purposes of this Section, "claim" does not include any contingent liability or a claim arising after the effective date of dissolution or a claim arising from the failure of the corporation to pay any tax, penalty, or interest related to any tax or penalty.

**Section 112.80. Survival of remedy after dissolution.** The dissolution of a corporation either (1) by filing articles of dissolution in accordance with Section 112.20 of this Act, (2) by the issuance of a certificate of dissolution in accordance with Section 112.40 of this Act, (3) by a judgment of dissolution by a Circuit Court of this State, or (4) by expiration of its period of duration, shall not take away nor impair any remedy available to or against such corporation, its directors, members or persons receiving distributions, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.

## **ARTICLE 14. REPORTS**

**Section 114.05. Annual report of domestic or foreign corporation.** Each domestic corporation organized under this Act, and each foreign corporation authorized to conduct affairs in this State, shall file, within the time prescribed by this Act, an annual report setting forth:

(a) The name of the corporation.

(b) The address, including street and number, or rural route number, of its registered office in this State, and the name of its registered agent at such address.

(c) The address, including street and number, if any, of its principal office.

(d) The names and respective addresses, including street and number, or rural route number, of its directors and officers.

(e) A brief statement of the character of the affairs which the corporation is actually conducting from among the purposes authorized in Section 103.05 of this Act.

(f) Whether the corporation is a Condominium Association as established under the Condominium Property Act, a Cooperative Housing Corporation defined in Section 216 of the Internal Revenue Code of 1954 or a Homeowner Association which administers a common-interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedure.

(g) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to administer this Act and to verify the proper amount of fees payable by the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein required by subsections (a) to (d), both inclusive, of this Section, shall be given as of the date of the execution of the annual report. It shall be executed by the corporation by any authorized officer and verified by him or her, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

**Section 114.10. Filing of annual report of domestic or foreign corporation.** Such annual report together with all fees and charges as prescribed by this Act, shall be delivered to the Secretary of State within 60 days immediately preceding the first day of the anniversary month of the corporation each year. Proof to the satisfaction of the Secretary of State that prior to the first day of the anniversary month of the corporation such report together with all fees and charges as prescribed by this Act, was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Secretary of State finds that such report conforms to the requirements of this Act, he or she shall file the same. If he or she finds that it does not so conform, he or she shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Secretary of State within 30 days of the date the report was returned for corrections.

## **ARTICLE 15. FEES AND CHARGES**

**Section 115.05. Fees and charges to be collected by Secretary of State.** The Secretary of State shall charge and collect in accordance with the provisions of this Act:

- (a) Fees for filing documents.
- (b) Miscellaneous charges.
- (c) Fees for filing annual reports.

**Section 115.10. Fees for filing documents.** The Secretary of State shall charge and collect for:

- (a) Filing articles of incorporation, \$50.
- (b) Filing articles of amendment, \$25, unless the amendment is a restatement of the articles of incorporation, in which case the fee shall be \$100.
- (c) Filing articles of merger or consolidation, \$25.
- (d) Filing articles of dissolution, \$5.
- (e) Filing application to reserve a corporate name, \$25.

(f) Filing a notice of transfer or cancellation of a reserved corporate name, \$25.

(g) Filing statement of change of address of registered office or change of registered agent, or both, \$5.

(h) Filing an application of a foreign corporation for authority to conduct affairs in this State, \$50.

(i) Filing an application of a foreign corporation for amended authority to conduct affairs in this State, \$25.

(j) Filing a copy of amendment to the articles of incorporation of a foreign corporation holding authority to conduct affairs in this State, \$25, unless the amendment is a restatement of the articles of incorporation, in which case the fee shall be \$100.

(k) Filing a copy of articles of merger of a foreign corporation holding authority to conduct affairs in this State, \$25.

(l) Filing an application for withdrawal and final report or a copy of articles of dissolution of a foreign corporation, \$5.

(m) Filing an annual report of a domestic or foreign corporation, \$10, of which \$5 must be deposited into the Charitable Trust Stabilization Fund.

(n) Filing an application for reinstatement of a domestic or a foreign corporation, \$25.

(o) Filing an application for use of an assumed corporate name, \$150 for each year or part thereof ending in 0 or 5, \$120 for each year or part thereof ending in 1 or 6, \$90 for each year or part thereof ending in 2 or 7, \$60 for each year or part thereof ending in 3 or 8, \$30 for each year or part thereof ending in 4 or 9, and a renewal fee for each assumed corporate name, \$150.

(p) Filing an application for change or cancellation of an assumed corporate name, \$5.

(q) Filing an application to register the corporate name of a foreign corporation, \$50; and an annual renewal fee for the registered name, \$50.

(r) Filing an application for cancellation of a registered name of a foreign corporation, \$5.

(s) Filing a statement of correction, \$25.

(t) Filing an election to accept this Act, \$25.

(u) Filing any other statement or report, \$5.

**Section 115.15. Miscellaneous charges.** The Secretary of State shall charge and collect:

(a) For furnishing a copy or certified copy of any document, instrument, or paper relating to a corporation, or for a certificate, \$5.

(b) At the time of any service of process, notice or demand on him or her as resident agent of a corporation, \$10, which amount may be recovered as taxable

costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

**Section 115.20. Expedited service fees.**

(a) The Secretary of State may charge and collect a fee for expedited services as follows:

Certificates of good standing or fact, \$10;

All filings, copies of documents, annual reports filed on or after January 1, 1984, and copies of documents of dissolved corporations having a file number over 5199, \$25.

(b) Expedited services shall not be available for a statement of correction or any request for copies involving annual reports filed before January 1, 1984 or involving dissolved corporations with a file number below 5200.

(c) All moneys collected under this Section shall be deposited into the Department of Business Services Special Operations Fund. No other fees or taxes collected under this Act shall be deposited into that Fund.

(d) As used in this Section, "expedited services" has the meaning ascribed thereto in Section 15.95 of the Business Corporation Act of 1983.

**Section 115.85. Effect of nonpayment of fees or taxes.** (a) The Secretary of State shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this Act until all fees and charges provided to be paid in connection therewith shall have been paid to him or her, or while the corporation is in default in the payment of any fees, charges or penalties herein provided to be paid by or assessed against it, or when the Illinois Department of Revenue has given notice that the corporation is in default in the filing of a return or the payment of any final assessment of tax, penalty or interest as required by any tax Act administered by the Department.

(b) The Secretary of State shall not file, with respect to any domestic or foreign corporation, any document required or permitted to be filed by this Act, which has an effective date other than the date of filing until there has been paid by such corporation to the Secretary of State all fees and charges due and payable on or before said effective date.

(c) No corporation required to pay a penalty under this Act shall maintain any civil action until all such penalties have been paid in full.

**ARTICLE 16. PENALTIES**

**Section 116.05. Penalties imposed upon corporations.** (a) Each corporation, domestic or foreign, that fails or refuses to file its annual report prior to the first day of its anniversary month shall pay a penalty of \$3.

(b) Any corporation, domestic or foreign, failing to pay the prescribed fee for assumed corporate name renewal when due and payable shall be given notice of such nonpayment by the Secretary of State by regular mail; and if such fee



together with a penalty fee of \$5 is not paid within 90 days after such notice is mailed, the right to use such assumed name shall cease.

(c) Any corporation which (i) puts forth any sign or advertisement, assuming any name other than that by which it is incorporated or otherwise authorized by law to act or (ii) violates Section 103.25, shall be guilty of a Class C misdemeanor and shall be deemed guilty of an additional offense for each day it shall continue to so offend.

(d) Each corporation, domestic or foreign, that fails or refuses (1) to answer truthfully and fully within the time prescribed by this Act interrogatories propounded by the Secretary of State in accordance with this Act, or (2) to perform any other act required by this Act to be performed by the corporation, is guilty of a Class C misdemeanor.

(e) Each corporation that fails or refuses to file articles of revocation of dissolution within the time period prescribed by this Act is subject to a penalty for each calendar month or part of the month that it is delinquent in the amount of \$25.00.

**Section 116.10. Penalties imposed upon officers and directors.** Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act to answer truthfully and fully interrogatories propounded to him or her by the Secretary of State in accordance with the provisions of this Act, or who signs any report or statement filed with the Secretary of State which is known to such officer or director to be false in any material statement or representation, or who votes for or consents to or otherwise knowingly participates in the making of a loan prohibited by Section 108.80 of this Act, commits a Class C misdemeanor.

## **ARTICLE 17. REPEALER**

**117.05. Specific repealer.** The "General Not for Profit Corporation Act", approved July 17, 1943, as amended, is repealed.









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