

DISTRICT OF COLUMBIA CONDOMINIUM ACT

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Subchapter I. General Provisions.

§ 42-1901.01. Applicability of chapter; corresponding terms; supersedure of prior law.

(a) This chapter shall apply to all condominiums created in the District of Columbia; provided, that except as otherwise expressly set forth in this chapter, any provision of this chapter that became effective after the creation of a condominium, horizontal property regime, or condominium project shall not invalidate an existing provision of the condominium instruments.

(b) For the purposes of this chapter:

- (1) The terms “horizontal property regime” and “condominium project” shall be deemed to correspond to the term “condominium”;
- (2) The term “co-owner” shall be deemed to correspond to the term “unit owner”;
- (3) The term “council of co-owners” shall be deemed to correspond to the term “unit owners’ association”;
- (4) The term “developer” shall be deemed to correspond to the term “declarant”; and
- (5) The term “general common elements” shall be deemed to correspond to the term “common elements.”

(c) This chapter shall supersede the Horizontal Property Act of the District of Columbia, approved December 21, 1963 (77 Stat. 449; D.C. Official Code § 42-2001 *et seq.*) (“Horizontal Property Act”), and Regulation 74-26 of the District of Columbia City Council, enacted October 18, 1974. No condominium shall be established except pursuant to this chapter after March 28, 1977. This chapter shall not be construed, however, to affect the validity of any provision of any condominium instrument complying with the requirements of the Horizontal Property Act and recorded before March 28, 1977. Except for § 42-1904.11, subchapter IV shall not apply to any condominium created before March 29, 1977. Any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before March 29, 1977, shall be valid and enforceable if the amendment would be permitted by this chapter and if the amendment was adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect when the amendment was adopted. If an amendment grants a person any right, power, or privilege permitted by this chapter, any correlative obligation, liability, or restriction in this chapter shall apply to that person.

(d) This chapter shall not apply to any condominium located outside the District of Columbia. Sections 42-1904.02 through 42-1904.08 and §§ 42-1904.12 through 42-1904.17 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless exempt under § 42-1904.01.

(e) Except as otherwise provided in this chapter, amendments to this chapter shall not invalidate any provision of any condominium instrument that was permitted under this chapter at the time the provision was recorded.

§ 42-1901.02. Definitions.

For the purposes of this chapter:

- (1) “Common elements” shall mean all portions of the condominium other than the units.
- (2) “Common expenses” shall mean all lawful expenditures made or incurred by or on behalf of the unit owners’ association, together with all lawful assessments for the creation and maintenance of reserves pursuant to the provisions of the condominium instruments. “Future common expenses” shall mean common expenses for which assessments are not yet due and payable.

- (3) Repealed.
- (4) “Condominium” shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions designated for separate ownership. Real estate shall not be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.
- (5) “Condominium instruments” shall mean the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.
- (6) “Condominium unit” shall mean a unit together with the undivided interest in the common elements appertaining to that unit.
- (7) “Contractable condominium” shall mean a condominium from which 1 or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of 1 or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.
- (8) “Conversion condominium” shall mean a condominium containing structures which before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.
- (9) “Convertible land” shall mean a building site; that is to say, a portion of the common elements, within which additional units or limited common elements, or both, may be created in accordance with the provisions of this chapter.
- (10) “Convertible space shall mean a portion of a structure within the condominium, which portion may be converted into 1 or more units or common elements, or both, in accordance with the provisions of this chapter.
- (11) “Declarant” shall mean any person or group of persons acting in concert who:
- (A) Offers to dispose of the person’s or group’s interest in a condominium unit not previously disposed of;
 - (B) Reserves or succeeds to any special declarant right; or
 - (C) Applies for registration of the condominium.
- (11A) (A) “Affiliate of a declarant” shall mean any person who controls, is controlled by, or shares common control with a declarant.
- (B) A person controls a declarant if the person:
 - (i) Is a general partner, officer, director, or employer of the declarant;
 - (ii) Directly or indirectly or acting in concert with at least 1 other person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies that represent more than 20% of the voting interest in the declarant;
 - (iii) Controls in any manner the election of a majority of the directors of the declarant; or
 - (iv) Has contributed more than 20% of the capital of the declarant.
 - (C) A person is controlled by a declarant if the declarant:
 - (i) Is a general partner, officer, director, or employer of the person;

- (ii) Directly or indirectly or acting in concert with another person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the person; or
 - (iii) Controls in any manner the election of a majority of the directors if the powers described in this paragraph are held solely as security for an obligation and are not exercised.
- (12) "Disposition" shall mean any voluntary transfer to a purchaser of a legal or equitable interest in a condominium unit, other than as a security for a debt or pursuant to a deed in lieu of foreclosure.
- (12A) "Domestic Partner" shall have the same meaning as provided in § 32-701(3)
- (12B) "Electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, which creates a record that may be:
- (A) Retained, retrieved, and reviewed by a recipient of the communications; and
 - (B) Reproduced directly in paper form by a recipient through an automated process.
- (13) "Executive Board" shall mean an executive and administrative entity, by whatever name denominated and designated in the condominium instruments to act for the unit owners' association in governing the condominium.
- (14) "Expandable condominium" shall mean a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.
- (15) "Identifying number" shall mean 1 or more letters or numbers, or both, that identify only 1 unit in the condominium.
- (16) "Institutional lender" shall mean 1 or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including but not limited to, real estate investment trusts, any other entity regularly engaged directly or indirectly in financing the purchase, construction, or improvement of real estate, or any combination of any of the foregoing entities.
- (17) Repealed.
- (18) "Leasehold condominium" shall mean a condominium all or any portion of which is subject to a lease, the expiration or termination of which will terminate the condominium or exclude a portion therefrom.
- (19) "Limited common element" shall mean a portion of the common elements reserved for the exclusive use of those entitled to use of 1 or more, but less than all, of the units.
- (19A) "Master association" shall mean an organization described in § 42-1903.18 whether or not the organization is an association described in § 42-1903.01.
- (20) "Mayor" shall mean the Mayor of the District of Columbia.
- (20A) "Mortgage Electronic Registration System" or "MERS" shall mean the process created by the mortgage banking industry that tracks mortgage ownership and servicing, is used by the real estate finance industry for residential and commercial mortgage loan trading, and that simplifies the mortgage process by using electronic commerce.
- (21) "Nonbinding reservation agreement" shall mean an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested to the declarant at any time prior to the execution of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other

provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

(21A) “Notice of Foreclosure Sale of Condominium Unit for Assessments Due” or “NFSCUAD” shall mean a notice sent to a condominium unit owner in default in the payment of condominium assessments, fees, charges, or other penalties owed by a unit owner that includes such information as the past due amount of assessments and other charges being foreclosed upon and the time, place, and date of the scheduled sale, sent pursuant to section 313(c).

(22) “Offer” shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, other than as security for a debt; provided, however, that “offer” shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any public broadcast medium. Nothing shall be considered an offer that expressly states that the condominium has not been registered with the Mayor and that no unit in the condominium can or will be offered for sale until the time the unit has been so registered.

(23) “Officer” shall mean any member of the executive board or official of the unit owners’ association.

(24) “Par value” shall mean a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners’ association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

(25) “Person” shall mean a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination of any of the foregoing.

(26) “Purchaser” shall mean any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer, acquires a legal or equitable interest in a condominium unit other than a leasehold interest, including a renewal option, of less than 20 years, or as security for an obligation.

(26A) “Real estate” or “land” shall mean any leasehold or other estate or interest in, over, or under land, including but not limited to, any structure, fixture, or any other improvement or interest which by custom, usage, or law passes with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term “real estate” or “land shall be deemed to include a parcel with or without an upper or lower boundary, and space that may be filled with air or water. Any requirement in the Condominium Amendment Act of a legally sufficient description shall be deemed to include a requirement that any upper or lower boundary of a parcel be identified with reference to established data.

(27) “Registered land surveyor” shall mean any person or firm permitted to prepare and certify surveys and subdivision plats in the District of Columbia, including but not limited to, registered civil engineers.

(28) “Size” shall mean the number of cubic feet or the number of square feet of ground or floor space, or both, within each unit as computed by reference to the plats and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, or garage space, may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

(28A) “Special declarant right” shall mean any right reserved for the benefit of a declarant or any person that becomes a declarant to:

- (A) Complete improvements indicated on plats and plans filed with the declaration pursuant to § 42-1902.14;
- (B) Expand an expandable condominium pursuant to § 42-1902.19;
- (C) Contract a contractable condominium pursuant to § 42-1902.20;
- (D) Convert convertible land, convertible space, or both pursuant to § 42-1902.17 or § 42-1902.18;
- (E) Elect, appoint, or remove any officer of the unit owners' association or master association or any executive board member pursuant to § 42-1903.02 during any period of declarant control;
- (F) Exercise any power or responsibility otherwise assigned by any condominium instrument or by the Condominium Amendment Act to the unit owners' association, any officer of the unit owners' association, or the executive board;
- (G) Use easements through the common elements to make improvements within the condominium or real estate that may be added to the condominium pursuant to § 42-1902.21;
- (H) Make the condominium subject to a master association pursuant to § 42-1903.18;
- (I) Make the condominium part of a larger condominium pursuant to § 42-1903.19; or
- (J) Maintain a sales office, management office, or model unit pursuant to § 42-1902.22.

(29) "Surveyor" shall mean the Office of the Surveyor of the District of Columbia.

(29A) "Time share" shall mean a right to occupy a condominium unit or any of several condominium units during 5 or more separate time periods over a period of at least 5 years including renewal options, whether or not the right is coupled with an estate or interest in a condominium or a specified portion of an estate or interest in a condominium.

(30) "Unit" shall mean a portion of the condominium designed and intended for individual ownership. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with § 42-1902.18(d).

(31) "Unit owner" shall mean a declarant or any person who owns a condominium unit. In the case of a leasehold condominium, "unit owner" shall mean a declarant or person whose leasehold interest in the condominium extends for the entire balance of the unexpired term. The term "unit owner" shall not include a person who has an interest in a condominium unit solely as a security for a debt.

(32) "Unit owner in good standing," unless otherwise defined in the condominium instruments, shall mean a unit owner who is not delinquent for more than 30 days in the payment of any amount owed to the unit owners' association, or a unit owner who has not been found by the unit owners' association or its executive board to be in violation of the condominium instruments or the rules of the unit owners' association.

§ 42-1901.03. Ownership of individual units.

Each condominium unit shall constitute for all purposes a separate parcel of real estate, distinct from all other condominium units. Any condominium unit may be owned by more than 1 person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real estate tenancy relationship recognized under the law of the District of Columbia.

§ 42-1901.04. Separate taxation.

If there is any unit owner other than the declarant, a tax or assessment shall not be levied on the condominium as a whole or against any common elements, but only on the individual condominium units. A condominium unit shall be carried on the records of the District of Columbia and assessed as a separate and distinct taxable entity.

§ 42-1901.05. Ordinances and regulations.

No zoning or other land use ordinance or regulation shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance or regulation which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance or regulation shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance or regulation is by its express terms made applicable thereto. Nothing in this section shall be construed to permit application of any provision of the building code which is not expressly applicable to condominiums by reason of the form of ownership inherent therein to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

§ 42-1901.06. Eminent domain; allocation of award; proportionate shares of common areas and redetermination thereof where units or parts of units taken; reallocation of voting rights, profits, and future liabilities; recordation of decree.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common elements, except that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than 1 unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned.

(b) If 1 or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree, reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not re-vested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for the unit owner's entire undivided interest in the common elements and for the unit owner's entire unit.

(e) Votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, with any units partially taken participating in such reallocation as though the voting strength in the unit owners' association, right to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, had been reduced in proportion to the reduction in their undivided interests in the common elements. But in any case where votes in the unit owners' association were originally assigned on the basis of equality (subject to the exception for convertible spaces) votes in the unit owners' association shall not be reallocated. The decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the District of Columbia.

§ 42-1901.07. Variation by agreement.

Except as expressly provided by this chapter, a provision of this chapter may not be varied by agreement and any right conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade a limitation or prohibition of this chapter or the condominium instruments.

§ 42-1901.08. Interpretation of chapter.

In the application or construction of the provisions of this chapter, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in states that have enacted the Uniform Condominium Act or any other condominium statute that contains provisions similar to the provisions of this chapter.

Subchapter II. Establishment of Condominiums.

§ 42-1902.01. Creation of condominiums; recordation of instruments; plats; contiguity of units.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections (a) and (b) of § 42-1902.14 The foreclosure of any mortgage, deed of trust or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.

§ 42-1902.02. Release of liens prior to conveyance of first unit; exemption; liens for labor or material applied to individual units or common areas; partial release.

(a) At the time of conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § 42-1903.02(a) has expired, and so long as the bylaws authorize the same.

(b) No labor performed or materials furnished with the consent of or at the request of a unit owner or such unit owner's agent or contractor or subcontractor shall be the basis for the filing of a lien pursuant to the provisions of § 40-301.1 against the property of any unit owner not expressly consenting to the same, except that such consent shall be deemed to be given by any unit owner in the case of emergency repairs to his unit. Labor performed or materials furnished for the common elements, if duly authorized by the unit owners' association or its executive board subsequent to any period of developer control pursuant to § 42-1903.02(a), shall be deemed to be performed or furnished with the express consent of every unit owner and shall be the basis for the filing of a lien pursuant to the provisions of § 40-301.1 against all of the condominium units. Notice of such lien shall be served on the principal officer of the unit owners' association or any member of the executive board.

(c) In the event that any lien, other than a deed of trust or mortgage, becomes effective against 2 or more condominium units subsequent to the creation of the condominium, any unit owner may remove such unit owner's condominium unit from that lien by payment of the amount attributable to that condominium unit, or, in the case of any mechanic's or materialman's lien, by filing a written undertaking for such amount with surety approved by the court as provided in § 40-303.16. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to § 42-1903.12(c). Subsequent to such payment, discharge or other satisfaction, or filing of bond, the unit owner of that condominium unit shall be entitled to have that lien released as to such unit owner's condominium unit, and the unit owners' association shall not assess, or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 42-1903.12 and 42-1903.13.

§ 42-1902.03. Description of condominium units; undivided interest in common elements automatically included.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium and the instrument number and date of recordation of the declaration and the condominium book and page number where the plats and plans are recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein.

§ 42-1902.04. Declaration, bylaws and amendments of each to be executed by owners and lessees.

The declaration and bylaws, and any amendments of either made pursuant to § 42-1902.19, shall be executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § 42-1902.19 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or curtesy interest, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common elements.

§ 42-1902.05. Recordation of condominium instruments; amendment and certification thereof.

All amendments and certifications of the condominium instruments shall set forth the instrument number and date of recordation of the declaration and, when necessary, shall set forth the condominium book and page number where the plats and plans are recorded. All condominium instruments and all amendments and certifications thereof shall set forth the name and address of the condominium and shall be so recorded. The Recorder of Deeds shall accept for recordation any executed and acknowledged condominium instrument or any executed and acknowledged amendment and certification without further review of a condominium instrument or the imposition of any additional requirement.

§ 42-1902.06. Construction of terms in instruments; designation of unit boundaries; division of property within and without unit boundary; common element serving single unit.

Except to the extent otherwise provided by the condominium instruments:

- (1) The terms defined in § 42-1901.02 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires;
- (2) To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all doors and windows therein, and all lath, wallboard, plastering, 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 shall be deemed a 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 1 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 this section, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit; and
- (5) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively.

§ 42-1902.07. Instruments construed together and incorporate one another; when conflict arises.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. If any conflict exists among the condominium instruments, the declaration controls, except that a construction consistent with this chapter controls in all cases over any inconsistent construction.

§ 42-1902.08. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint.

All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

§ 42-1902.09. Compliance with condominium chapter and instruments.

- (a) Any lack of compliance with this chapter or with any lawful provision of the condominium instruments shall be grounds for an action or suit to recover damages or injunctive relief, or for any other available remedy

maintainable by the unit owners' association, the unit owners' association's executive board, any managing agent on behalf of the unit owners' association, an aggrieved person on his or her own behalf, or, in an otherwise proper case, as a class action.

(b) The decisions and actions of the unit owners' association and its executive board shall be reviewable by a court using the "business judgment" standard. A unit owners' association shall have standing to sue in its own name for a claim or action related to the common elements. Unless otherwise provided in the condominium instruments, the substantially prevailing party in an action brought by a unit owners' association against a unit owner or by a unit owner against the unit owners' association shall be entitled to recover reasonable attorneys' fees and costs expended in the matter.

§ 42-1902.10. Contents of declaration; where condominium contains convertible land; expandable, contractable and leasehold condominiums; easements; additionally required descriptions.

(a) The declaration for every condominium shall contain:

(1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium";

(2) A legally sufficient description of the land submitted to this chapter;

(3) A description of delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

(4) A description or delineation of any limited common elements not covered by § 42-1902.06(5), showing or designating the unit or units to which each is assigned;

(5) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of § 42-1902.13 The description of the method whereby an assignment shall be made shall include the following information:

(A) The name of any person who may assign the limited common elements;

(B) The name of any person who must execute the assignment;

(C) Whether or not the deed to a condominium unit will reflect the assignment, if previously made; and

(D) If there is any limited common expense payable by the unit owners of a condominium unit to which the limited common elements pertain;

(6) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 42-1902.11; and

(7) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land the declaration shall also contain:

(1) A legally sufficient description of each convertible land within the condominium;

(2) A statement of the maximum number of units that may be created within each such convertible land;

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use;

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used and architectural style;

(5) A description of all other improvements that may be made in each convertible land within the condominium;

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein; and

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14 may be used to supplement information furnished pursuant to paragraphs (1), (4), (5), (6), and (7) of this subsection, and that paragraph (3) of this subsection need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium the declaration shall also contain:

(1) The explicit reservation of an option to expand the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be added to the condominium, henceforth referred to as "additional land";

(5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of limitations as to what portions may be added or a statement that there are no such limitations.

(6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions regulating the order in which they may be added to the condominium;

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard;

(8) A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with paragraph (6) of this subsection, the declaration shall also state the maximum number of units that may be created on each portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with paragraph (6) of this subsection, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium;

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use;

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards;

(11) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard;

(12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard; and

(13) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14 may be used to supplement information furnished pursuant to paragraphs (4), (5), (6), (7), (10), (11), (12) and (13) of this subsection, and that paragraph (9) of this subsection need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.

(d) If the condominium is a contractable condominium the declaration shall also contain:

(1) The explicit reservation of an option to contract the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be withdrawn from the condominium, henceforth referred to as "withdrawable land";

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions clearly delineating such portions and regulating the order in which such portions may be withdrawn from the condominium; and

(6) A legally sufficient description of all of the submitted land to which the option to contract the condominium does not extend; provided, that the plats recorded pursuant to § 42-1902.14(a) may be used to supplement information furnished pursuant to paragraphs (4), (5) and (6) of this subsection, and that paragraph (6) of this subsection shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 421902.27.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth:

(1) The instrument number and date of recordation of each such lease;

- (2) The date upon which each such lease is due to expire and the rights, if any, to renew such lease and the conditions pertaining to any such renewal;
- (3) A statement as to whether any land or improvements, or both, will be owned by the unit owners in fee simple, and if so, either:
 - (A) A description of the same, including without limitation a legally sufficient description of any such land; or
 - (B) A statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and
- (4) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights; provided, that after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain:

- (1) A description of the permitted use or uses;
- (2) If less than all of those entitled to the use of all the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization; and
- (3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estates therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats.

§ 42-1902.11. Allocation of interests in common elements; proportionate or equal shares; statement in declaration; no alteration nor disposition without unit; no partition.

- (a) The declaration may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 42-1902.14 an undivided interest in the common elements proportionate to either the size or par value of each unit.
- (b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all

units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) of this section shall add up to 1 if stated as fractions or 100 % if stated as percentages.

(d) If, in accordance with subsection (a) or (b) of this section, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) of this section shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing 3 columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated.

§ 42-1902.12. Allocation where condominium expandable or contains convertible land; reallocation following addition of land; where all convertible space converted to common elements; effect of reduction in number of units.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14; or

(2) Prohibits the creation of any units not described pursuant to § 42-1902.10(b)(6) (in the case of convertible lands) or § 42-1902.10(c)(12) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) No allocation of interest in the common elements to any units created within any convertible land or within any additional land shall be effective until plats and plans depicting such units are recorded pursuant to § 42-1902.14(c). The declarant shall reallocate the undivided interests in the common elements so that the units within the convertible land or additional land shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14. Promptly upon recording the amendment to the declaration, the declarant shall record an amendment to the plats and plans depicting the units created within the convertible land or additional land.

(c) If all of a convertible space is converted into common elements, then the undivided interest in the common elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements

appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

§ 42-1902.13. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.

(a) All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the extent that the condominium instrument expressly provided otherwise prior to the first assignment of that limited common element.

(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application of the condominium unit owners concerned to the principal officer of the unit owners' association or to any officer the condominium instruments may specify. The officer to whom the application is made shall prepare and execute an amendment to the condominium instruments that reassigns any right or obligation with respect to the limited common element involved. The amendment shall be executed by the unit owners of the condominium units concerned and shall be recorded by the unit owners' association upon payment by the unit owners of reasonable costs for preparation and acknowledgment of the amendment.

(c) A common element not previously assigned as a limited common element shall be assigned only pursuant to § 42-1902.10(a)(5). The assignment shall be made as follows:

(1) If the assignment is made by the declarant, the amendment to the declaration that makes an assignment shall be prepared, executed, and recorded by the declarant and a copy sent to the unit owners' association. Unless the declaration provides otherwise, the amendment shall be executed by the condominium unit owner of the unit concerned. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by § 42-1902.10(a)(5).

(2) If the assignment is made by the unit owners' association, the amendment to the declaration that makes an assignment shall be prepared and executed by the principal officer of the unit owners' association or any other officer the condominium instruments may specify. An amendment shall be executed by the condominium unit owner of the unit concerned, and upon payment by the unit owner for the reasonable costs for the preparation and acknowledgment of the amendment, the amendment shall be recorded by the unit owners' association. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by § 42-1902.10(a)(5).

(3) Any assignment made prior to March 8, 1991, shall be considered valid if the assignment would be permitted pursuant to this section.

§ 42-1902.14. Recordation of plat and plans; contents; certification; when new plat, survey, and recordation necessary; provisions applicable to limited common elements; filing with Office of Surveyor.

(a) There shall be recorded promptly upon recordation of the declaration, 1 or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the

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submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there be more than 1 such land the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as leased land. If there is more than 1 withdrawable land or more than 1 leased land, the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "not yet begun," and which, if any, have been begun but have not been substantially completed by the use of the phrase "not yet completed." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection (b) of this section are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified as to its accuracy and compliance with the provisions of this subsection by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

(b) There shall also be recorded, promptly upon recordation of the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting 1 or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer, and the said architect or engineer shall certify that all units or portions thereof depicted thereon have been substantially completed.

(c) When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record new plats of survey conforming to the requirements of subsection (a) of this section. In any case where less than all of a convertible land is being converted, such plats shall show the location and dimensions of the remaining portion or portions of such land in addition to otherwise conforming with the requirements of subsection (a) of this section. At the same time, the declarant shall record, with regard to any structures on the land being converted, or added, either plans conforming to the requirements of subsection (b) of this section, or certifications, conforming to the certification requirements of said subsection, of plans previously recorded pursuant to § 42-1902.15

(d) When converting all or any portion of any convertible space into 1 or more units or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible

space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer.

(e) For the purposes of subsections (a), (b), and (c) of this section, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of § 42-1902.06(5) make such designations unnecessary.

(f) The Office of the Surveyor shall receive plats and plans filed pursuant to this chapter. Unless such plats and plans are filed pursuant to § 42-1902.15, the Office of the Surveyor shall ascertain whether such plats and plans contain the certification required by subsections (a) and (b) of this section. If plats and plans are filed pursuant to § 42-1902.15 or if plats and plans are filed with the required certification, the Office of the Surveyor shall record such plats and plans without further certification or review. If plats and plans filed pursuant to § 42-1902.15 are thereafter certified as required by this section, the Office of the Surveyor shall record such certification with such plats and plans without further certification or review.

§ 42-1902.15. Preliminary recordation of plans.

Plans previously recorded pursuant to the provisos set forth in subsections (b) and (c) of § 42-1902.10 may be used in lieu of new plans to satisfy in whole or in part the requirements of §§ 42-1902.12(b), 42-1902.17(b) and 42-1902.19 if certifications thereof are recorded by the declarant in accordance with § 42-1902.14(b); and if such certifications are so recorded, the plans which they certify shall be deemed recorded pursuant to § 42-1902.14(c) within the meaning of the 3 sections aforesaid.

§ 42-1902.16. Easement for encroachments and support; where liability not relieved.

(a) To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; provided, however, such easement shall not relieve unit owners of liability in cases of willful and intentional misconduct by them or their agents or employees, nor shall the declarant or any contractor, subcontractor, or materialman be relieved of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

(b) Each unit and common element shall have an easement for support from every other unit and common element.

§ 42-1902.17. Conversion of convertible lands; recordation of appropriate instruments; character of convertible land; tax liability; time limitation on conversion.

(a) The declarant may convert all or any portion of any convertible land into 1 or more units or common elements, or both, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and § 42-1902.14(c).

(b) The declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with § 42-1902.12(b). Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(c) All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes shall be assessed against the declarant rather than the unit owners as to both the convertible land and any improvements thereon. No such conversion shall occur after 5 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

§ 42-1902.18. Conversion of convertible spaces; amendment of declaration and bylaws; recordation; status of convertible space not converted.

(a) The declarant may convert all or any portion of any convertible space into 1 or more units or common elements, or both, including without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and § 42-1902.14(d).

(b) Simultaneously with the recording of plats and plans pursuant to § 42-1902.14(d), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into 1 or more units in accordance with this section, the declarant shall prepare, execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with § 42-1902.26(d).

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit.

§ 42-1902.19. Expansion of condominiums; amendment of declaration; recordation; reallocation of interests in common element.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to § 42-1902.14(c) and the recordation of an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legally sufficient description of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of § 42-1902.12(b). Such amendment may create convertible or withdrawable lands within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to §§ 42-1902.10(d)(3) and 42-1902.17(c).

§ 42-1902.20. Contraction of condominiums; amendment of declaration; recordation; withdrawal of land after conveyance of unit.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to

the declaration, executed by the declarant, containing a legally sufficient description of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to § 42-1902.10(d)(5), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

§ 42-1902.21. Declarant's easement over common elements for purpose of improvements, etc.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

§ 42-1902.22. Sales offices, model units, etc.; authorization; when become common elements.

The declarant and the declarant's authorized agents, representatives, and employees may maintain sales offices, management offices, and model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office, management office, or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office, management office, or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

§ 42-1902.23. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improvements designated for such; liability for damages arising out of use of certain easements.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. In the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement that requires the declarant to add any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done with regard to the condominium or any portion of the condominium, this subsection shall not be construed to nullify, limit, or otherwise affect that obligation.

(b) The declarant shall complete all improvements labeled "not yet completed" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "not yet begun" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(c) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by §§ 42-1902.21 and 42-1902.22, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

§ 42-1902.24. Improvements or alterations within unit; exterior appearance not to be changed; merger of adjoining units.

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, if a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 42-1902.25.

§ 42-1902.25. Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a) Unless expressly prohibited in the condominium instruments, the boundaries between adjoining units may be relocated in accordance with:

- (1) The provisions of this section and other applicable law; and
- (2) Any lawful restrictions and limitations specified in the condominium instruments.

(b) If the unit owners of adjoining units whose mutual boundaries may be relocated, desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute the appropriate instruments pursuant to subsections (c), (d), and (e) of this section.

(c) An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain words of conveyance between those unit owners. If the unit owners of the units involved have specified in their written application, a reasonable allocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the unit owners of the units involved have specified in their written application reasonable allocations as between the units involved of the aggregate number of votes in the unit owners' association, rights to future surplus funds, or liabilities for future common expenses not specially assessed, then an amendment to the bylaws shall reflect any such reallocations.

(e) Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

- (1) By a registered land surveyor in the case of any plat; and
- (2) By a registered architect or registered engineer in the case of any plan.

(f) If appropriate instruments in accordance with the preceding subsections have been prepared, executed, and acknowledged, the instruments shall be executed and acknowledged by the unit owners of the units concerned and, upon payment by the unit owners of reasonable costs for the preparation and acknowledgment of the instruments, the instruments shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the relocation of boundaries effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocation made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Any relocation of boundaries between adjoining units shall be governed by this section and not by § 42-1902.26. Section 42-1902.26 shall apply only to such subdivisions of units as are intended to result in the creation of 2 or more units in place of the subdivided unit.

§ 42-1902.26. Subdivision of units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a) Unless expressly prohibited by the condominium instruments, a unit may be subdivided in accordance with:

- (1) The provisions of this section and other applicable law; and
- (2) Any lawful restrictions and limitations specified in the condominium instruments.

(b) If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d), and (e) of this section.

(c) An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common elements assigned to the subdivided unit exclusively should be assigned to 1 or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

(d) An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common profits formerly appertaining to the subdivided unit.

(e) Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

- (1) By a registered land surveyor in the case of any plat; and
- (2) By a registered architect or registered engineer in the case of any plan.

(f) If appropriate instruments in accordance with the preceding subsections of this section have been prepared, executed, and acknowledged, the instruments shall be executed by the sub-divider and, upon payment by the sub-divider of reasonable costs for the preparation and acknowledgment of the instrument, shall be

recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the subdivision effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocations made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Notwithstanding the provisions of §§ 42-1901.03 and 42-1902.18(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

§ 42-1902.27. Amendment of instruments.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon recordation if the amendment has been executed by the declarant. This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred by this section.

(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which 2/3 of the votes in the unit owners' association pertain, or any larger majority that the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than 1 year after the amendment is recorded.

(d) Any amendment to the condominium instruments required by this chapter to be recorded by the unit owners' association shall be prepared, executed, recorded, and certified on behalf of the unit owners' association by any officer designated for that purpose or, in the absence of designation, by the presiding officer of the executive board.

(e) Except to the extent expressly permitted or required by other provisions of this chapter, an amendment to the condominium instruments may not

- (1) Create or increase special declarant rights;
- (2) Increase the number of units;
- (3) Change the boundaries of any unit;
- (4) Change the undivided interest in the common elements, the liability for common expenses, the right to surplus funds, or the number of votes in the unit owners' association that pertains to any unit; or
- (5) Change the uses to which any unit is restricted, in the absence of the unanimous consent of the unit owners.

(f) (1) Notwithstanding any other provision of this section, within 5 years after the recordation of a condominium instrument that contains or creates a mistake, inconsistency, error, or ambiguity, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to:

- (A) Correct a mathematical mistake, an inconsistency, or a scrivener's error; or
- (B) Clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including without limitation recalculating the undivided interest in the common

elements, the liability for common expenses or right to surplus funds, or the number of votes in the unit owners' association that pertain to a unit.

(2) An amendment or supplement may not materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. The principal officer of the unit owners' association may unilaterally execute and record a corrective amendment or supplement upon a vote of 2/3 of the members of the executive board. Any corrective amendment or supplement shall be validated to the extent that the corrective amendment or supplement would have been permitted by this subsection.

(g) (1) Unless otherwise specified in the condominium instruments, if the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a unit to amend the condominium instruments, that provision shall be deemed satisfied if the procedures under this subsection are satisfied.

(2) If the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a residential unit to amend the condominium instruments, the unit owners' association shall cause a copy of a proposed amendment to the condominium instruments to be delivered to the last known address of each holder of a mortgage or deed of trust entitled to notice. Absent notice of written instructions of the contrary, the association may reasonably rely upon the address of each holder as contained in the recorded mortgage or deed of trust.

(3) If the holder of a mortgage or deed of trust of a residential unit that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days from the date the proposed amendment is mailed or delivered to the holder, the holder shall be deemed to have consented to the adoption of the amendment.

(4) The inadvertent failure to deliver a copy of any proposed amendment to the condominium instruments to each holder of a mortgage or deed of trust entitled to notice, despite good faith efforts by the unit owners' association, shall not invalidate any action taken pursuant to this section.

§ 42-1902.28. Termination of condominium.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. A termination shall become effective upon recordation if the termination has been executed by the declarant and recorded in the Office of the Surveyor. This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred.

(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated by the agreement of unit owners of units to which 4/5 of the votes in the unit owners' association pertain, or any larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement or ratification in the same manner as a deed by the requisite number of unit owners. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of the unit owners of units to which a majority of the votes in the unit owners' association pertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. A termination agreement and any ratification of the termination agreement shall be effective only upon recordation in the Office of the Surveyor.

(d) In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may provide that all the common elements and units of the

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condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium shall be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(e) In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale.

(f) On behalf of the unit owners, the unit owners' association may contract for the disposition of real estate in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections (b) and (c) of this section. If any real estate in the condominium shall be sold following termination, title to the real estate, upon termination, shall vest in the unit owners' association as trustee for the holders of all interests in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (i) of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the real estate, each unit owner or his or her successor in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of occupancy by the unit owner or his or her successor in interest, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

(g) If the real estate that constitutes the condominium shall not be sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the real estate in the condominium shall vest in the unit owners upon termination as tenants in common in proportion to the unit owners' respective interests as provided in subsection (i) of this section. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his or her successor in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

(h) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lienholders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lienholder. Any other creditor of the unit owners' association shall be treated as if he or she had perfected a lien on the units immediately before termination.

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

(1) Except as provided in paragraph (2) of this subsection, the respective interests of a unit owner shall be the fair market values of the unit owner's limited common elements, and common element interests immediately before the termination, as determined by an independent appraiser selected by the unit owners' association. The decision of the independent appraiser shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which 1/4 of the votes in the unit owners' association. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of the unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

(j) Except as provided in subsection (k) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw the portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

(k) If a lien or encumbrance against a portion of the real estate that comprises the condominium has priority over the condominium instruments, and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the real estate subject to the lien or encumbrance from the condominium.

§ 42-1902.29. Condominium lease; recordation; terms; leasehold payments; increases; sale or assignment; offer to unit owners' association; renewal.

(a) The declarant of a leasehold condominium shall record with the condominium instruments any lease pursuant to which the condominium is a leasehold condominium ("condominium lease"); provided, however, it shall be sufficient for the declarant to record a statement of the book, page and date of recordation of such lease if such lease has previously been recorded among the land records of the District of Columbia. Condominium instruments establishing a leasehold condominium containing more than 3 residential units shall not be effective unless the condominium lease(s) comply with the requirements of subsections (b), (c) and (d) of this section.

(b) (1) If a condominium is a leasehold condominium subject to the provisions of this section, any condominium lease shall be for a term of not less than 99 years with a right of renewal for consecutive additional terms of not less than 99 years. The lease shall provide for level, periodic payments which may not be increased during the first 10 years of the leasehold term. If provided in the lease, the lessor may petition the Mayor for an increase in leasehold payments to be effective beginning with the 11th year of the leasehold term, and the Mayor shall approve such increase if he finds that:

(A) Costs borne by the lessor in connection with the lease have increased; or

(B) Costs of living, as measured by a standard statistical index computed and published by the United States government and available for the period of the leasehold term, have increased; and

(C) The increase in the lease payments is in reasonable proportion to such increased costs.

(2) An increase in the lease payments shall be effective for a minimum period of 10 years, after which the lessor may again petition for an increase subject to the provisions of this subsection. The lessor shall not require or accept lease payments which do not meet the requirements of this subsection.

(c) A lessor of a condominium lease may sell or assign the lease only after offering the unit owners' association of the condominium the right to purchase the leasehold estate at a price and on terms offered to any other prospective purchaser. The lessor shall give the unit owners' association a period of at least 60 days within which to accept or reject the offer.

(d) The lessor of a condominium lease shall give the lessee of such lease a statement not less than 5 years prior to the expiration of such lease of whether the lease is to be renewed and on what terms the lease is to be renewed. If the lessor offers to renew the lease, the lessor shall give the lessee a period of at least 180 days within which to accept or reject the offer.

§ 42-1902.30. Transfer of special declarant rights.

- (a) A special declarant right created or reserved under this chapter may not be transferred except by an instrument that evidences the transfer recorded in the same manner as the condominium instruments. The instrument shall not be effective unless executed by the transferee.
- (b) Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:
- (1) A transferor shall not be relieved of any obligation or liability that arises before the transfer and shall remain liable for any warranty obligation imposed upon him or her by this chapter. Lack of privity shall not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.
 - (2) If a successor to a special declarant right is an affiliate of a declarant, the transferor shall be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.
 - (3) If a transferor retains a special declarant right, and transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall be liable for any obligation or liability imposed on a declarant by this chapter or by the condominium instruments that relates to the retained special declarant rights and that arises after the transfer.
 - (4) A transferor shall have no liability for any act or omission or any breach of a contractual or warranty obligation that arises from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.
- (c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure, mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of any unit owned by a declarant or real estate in a condominium subject to development rights, a person who acquires title to all the real estate being foreclosed or sold, upon his or her request, shall succeed to all special declarant rights related to the real estate held by the declarant, or to any rights reserved in the condominium instruments pursuant to § 42-1902.22 and held by the declarant to maintain models, sales offices, and signs. The judgment or instrument that conveys title shall provide for transfer of only the special declarant rights requested. For purposes of this subsection, the term “development rights” means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.
- (d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of all units and other real estate in a condominium owned by a declarant:
- (1) The declarant shall cease to have any special declarant rights; and
 - (2) The period of declarant control shall terminate unless the judgment or instrument that conveys title provides for transfer of all special declarant rights held by the declarant to a successor declarant.
- (e) The liability or obligation of a person who succeeds to special declarant rights shall be as follows:
- (1) A successor to any special declarant right who is an affiliate of a declarant shall be subject to any obligation or liability imposed on the transferor by this chapter or the condominium instruments.
 - (2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) of this subsection, who is not an affiliate of a declarant, shall be subject to any obligation or liability imposed by this chapter or the condominium instruments:
 - (A) On a declarant that relates to his or her exercise or non-exercise of special declarant rights; or
 - (B) On his or her transferor, other than:

- (i) A misrepresentation by a previous declarant;
- (ii) A warranty obligation on improvements made by a previous declarant or made before the condominium was created;
- (iii) A breach of a fiduciary obligation by a previous declarant or his or her appointee to the executive board; or
- (iv) Any liability or obligation imposed on the transferor's acts or omissions after the transfer.

(3) A successor who is not an affiliate of a declarant and whose sole right is a reservation in the condominium instruments to maintain models, sales offices, and signs may not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except a liability or obligation that arises under subchapter IV of this chapter that relates to disposition by the successor.

(4) If the transferor is not an affiliate of the successor to special declarant rights and the successor succeeded to all the special declarant rights pursuant to a deed in lieu of foreclosure or a judgment or instrument that conveys title to units under subsection (c) of this section, the successor may declare his or her intention in a recorded instrument to hold the rights solely for transfer to another person. Until the successor transfers all special declarant rights to any person who acquires title to any unit owned by the successor, or until the successor records an instrument that permits exercise of all special declarant rights, the successor may not exercise the special declarant rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of § 42-1903.02 for the duration of any period of declarant control. Any attempted exercise of special declarant rights other than a right held by the successor's transferor to control the executive board shall be void. For the period that a successor declarant may not exercise special declarant rights under this subsection, he or she shall not be subject to any liability or obligation as a declarant other than liability or obligation as a declarant for his or her acts or omissions under § 42-1903.02.

(f) Nothing in this section shall subject any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than a claim or obligation that arises under this chapter or the condominium instruments.

Subchapter III. Control and Governance of Condominiums.

§ 42-1903.01. Bylaws; recordation; unit owners' association and executive board thereof; powers and duties; officers; amendment and contents thereof; responsibility for insurance on common elements.

(a) There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

(b) The bylaws shall provide whether or not the unit owners' association shall have an executive board. The executive board, if any, shall, subsequent to the expiration of the period of declarant control specified pursuant to § 42-1903.02(a), be elected by the unit owners unless the unit owners vote to amend the bylaws to provide otherwise. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

(c) The bylaws shall provide whether or not there shall be officers in addition to the members of the executive board. If there are to be such additional officers, the bylaws shall specify the powers and responsibilities of the

same, the manner of their selection and removal, their number and their terms. The bylaws may delegate to such additional officers, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association.

(d) In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of § 42-1902.12, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate to the new units votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, on the same bases as were used for such allocations to the units depicted on plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14; or shall abolish the votes appertaining to former units and reallocate their rights to future surplus funds, and their liabilities for future common expenses not specially assessed, to the remaining units in proportion to the relative rights and liabilities of the remaining units immediately prior to the amendment.

(e) Repealed.

§ 42-1903.02. Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board; strict construction.

(a) The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or members of its executive board, or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant and no such authorization shall be valid after the time set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned to or to be assigned to all units registered with the Mayor according to § 42-1904.06. The time limit initially set by the condominium instruments shall not exceed 3 years in the case of an expandable condominium or a condominium containing convertible land, or 2 years in the case of any other condominium containing any convertible land, or 2 years in the case of any other condominium. Such period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

(b) (1) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, no contract or lease entered into with the declarant or an affiliate of a declarant, other than a lease subject to § 42-1902.10(e), management contract, employment contract, or lease of a recreational or parking area or facility, which is directly or indirectly made by or on behalf of the unit owners' association or the unit owners as a group, shall be entered into for a period in excess of 2 years. Any contract or agreement entered into after March 8, 1991, may be terminated without penalty by the unit owners' association or the executive board of the unit owners' association upon not less than 90 days written notice to the other party.

(2) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, any contract, lease or agreement, other than those subject to the provisions of paragraph (1) of this subsection, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

(c) If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this subchapter or the condominium instruments require or permit action by the unit owners' association, its executive board, or any officer or officers.

(d) Notwithstanding subsection (a) of this section, the bylaws shall provide that:

(1) Not later than the time that units to which 25% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 25% of the members of the executive board shall be selected by unit owners other than declarant; and

(2) Not later than the time units to which 50% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 33 1/3% of the members of the executive board shall be selected by unit owners other than declarant.

(e) Repealed.

(f) This section shall be strictly construed to protect the rights of the unit owners.

§ 42-1903.03. Meetings; electronic notice.

(a) Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the unit owners' association and shall be open to all unit owners of record in good standing. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of the meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units and to one other address as any of them may have designated in writing to the officer, or notice may be hand delivered by the officer; provided, that the officer certifies in writing that notice was hand delivered to the unit owner. Alternatively, notice may be sent by electronic means to any unit owner who requests delivery of notice in an electronic manner and who waives notice by mail or hand delivery, pursuant to subsection (e) of this section.

(b) (1) Except as otherwise provided in the condominium instruments, all meetings of the unit owners' association, committees of the unit owners' association, and the executive board shall be open for observation to all unit owners in good standing. Minutes shall be recorded and shall be available for examination and copying by unit owners in good standing. This right of examination may be exercised:

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

(B) Upon 5 days' written notice identifying the specific minutes requested.

(2) Notice, including the time, date, and place of each executive board meeting, shall be furnished to a unit owner who requests this information and published in a location reasonably calculated to be seen by unit owners. Requests by a unit owner to be notified on a continual basis must be made at least once a year in writing and include the unit owners' name, address, and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the executive board conducting the meeting.

(3) Unless otherwise exempt as relating to an executive session pursuant to paragraph (5) of this subsection, at least one copy of the agenda furnished to members of the executive board for a meeting shall be made available for inspection by unit owners.

(4) Meetings of the executive board may be conducted or attended by telephone conference or video conference or similar electronic means. If a meeting is conducted by telephone conference, video conference, or similar electronic means, the equipment or system used must permit any executive board member in attendance to hear and be heard by and to communicate what is said by all other executive board members participating in the meeting.

(5) (A) The executive board, upon a motion and an affirmative vote in an open meeting to assemble in executive session, may convene in executive session to consider:

- (i) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;
- (ii) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
- (iii) Pending or anticipated litigation;
- (iv) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement for the condominium instruments or rules and regulations promulgated by the executive board;
- (v) Consultation with legal counsel;
- (vi) Matters involving individual unit owners or members, including violations of the condominium instruments or rules and regulations promulgated pursuant to the condominium instruments and the personal liability of a unit owner to the unit owners' association; or
- (vii) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings

(B) For the purposes of subparagraph (A)(iii) of this paragraph, the term "anticipated litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

(6) The motion to assemble in executive session shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during an executive session to those purposes specifically set forth in the motion. A motion passed, or other formal action taken, in an executive session shall be recorded in the minutes of the open meeting, but this shall not require disclosure of any details that are properly the subject of confidential consideration in an executive session. The action or actions authorized by a motion passed in an executive session shall be reflected in minutes available to unit owners in good standing. The requirements of this section shall not require the disclosure of information in violation of law.

(c) Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period of time during each regularly scheduled meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics, or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

(d) The executive board may take action without a meeting by resolution issued with the unanimous written consent of the members of the executive board in support of the action being taken. A copy of the resolution shall be attached to the minutes of the next executive board meeting that occurs following its adoption.

(e) (1) Notwithstanding any language contained in the condominium instruments, the unit owners' association may provide notice of a meeting or deliver information to a unit owner by electronic transmission if:

- (A) The executive board authorizes the unit owners' association to provide notice of a meeting or deliver information by electronic transmission;
- (B) The unit owner provides the unit owners' association with prior written authorization to provide notice of a meeting or deliver material or information by electronic transmission; and

- (C) An officer or agent of the unit owners' association certifies in writing that the unit owners' association has provided notice of a meeting or delivery of material or information by electronic transmission as authorized by the unit owner pursuant to this subsection.
- (2) Notice or delivery by electronic transmission shall be considered ineffective if:
 - (A) The unit owners' association is unable to deliver 2 consecutive notices; and
 - (B) The inability to deliver the electronic transmission becomes known to the person responsible for the sending of the electronic transmission.
- (3) The inadvertent failure to deliver notice by electronic transmission shall not invalidate any meeting or other action.

§ 42-1903.04. Same — Executive board; quorums.

- (a) Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than the 33 1/3% of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 25%.
- (b) Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board if persons entitled to cast one half of the votes in that body are present at the beginning of such meeting.

§ 42-1903.05. Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.

- (a) The bylaws may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 42-1902.14 a number of votes in the unit owners' association proportionate to the liability for common expenses as established pursuant to § 42-1903.12(c).
- (b) Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.
- (c) Since a unit owner may be more than 1 person, if only 1 of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than 1 of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any 1 of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.
- (d) Notwithstanding any contrary provisions of the condominium instruments, this subsection establishes the requirements for the validity of proxies. The votes that pertain to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in a case where the unit owner is more than 1 person, by or on behalf of all those persons. A proxy may be revoked if a unit owner or 1 of the unit owners, in the case of a unit owned by more than 1 person, gives actual notice of revocation to the person who presides over the meeting. A proxy shall be void if the proxy is not dated, if the proxy purports to be revocable without notice, or if the

signatures of any person executing the proxy has not been witnessed by a person who shall sign his or her full name and address. A proxy shall terminate automatically upon the final adjournment of the first meeting held on or after the date of the proxy, but shall remain in effect during any recess or temporary adjournment of the meeting.

(e) If 50% or more of the votes in the unit owners' association appertain to 25% or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

(f) Notwithstanding anything in this section to the contrary, during any time that the unit owners' association is the owner of any condominium unit, the votes in the unit owners' association that pertain to the condominium unit shall be included in any calculation to determine the existence of a quorum at any meeting of the unit owners' association pursuant to § 42-1903.04, but otherwise shall be deemed to be cast in proportion to the affirmative and negative votes cast by all unit owners other than the unit owners' association at any meeting.

(g) (1) Notwithstanding any language contained in the condominium instruments, the executive board may authorize unit owners to submit votes or proxies by electronic transmission if the process used to provide notice of a vote and the means to submit votes or proxies are made in a consistent form approved by the executive board and available to all unit owners and the electronic transmission contains information that verifies that the vote or proxy is authorized by the unit owner or the unit owner's proxy.

(2) If the condominium instruments require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if unit owners have the option of casting printed secret ballots.

(3) The inadvertent failure to submit, receive, or count votes or proxies by electronic transmission shall not invalidate any meeting or other action; provided, that the persons responsible for facilitating electronic transmission shall make good-faith efforts to submit, receive, and count the votes or proxies and resolve problems when they become known.

§ 42-1903.06. Officers; disqualification.

(a) If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee or for a term or terms of 6 months or more shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

(b) If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of § 42-1902.06 (1), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person, which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection (a) of this section were it a natural person holding such office.

§ 42-1903.07. Maintenance, repair, etc., of condominiums; right of access for repair; liability for damages arising from exercise thereof; warranty against structural defects; limitations upon actions; bond or other security.

- (a) (1) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of a condominium shall belong to:
 - (A) The unit owners' association in the case of the common elements; and
 - (B) The individual unit owner in the case of any unit or any part of a unit.
- (2) Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either access to the owner's unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements or any unit that is accessed, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair of the damage. Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may elect to maintain, repair, or replace specified unit components, or limited common element components for which individual unit owners are responsible, using common expense funds, if failure to perform maintenance, repair, or replacement could have a material adverse effect on the common elements, the health, safety, or welfare of the unit owners, or the income and the common expenses of the unit owners' association. The maintenance, repair, or replacement may be at the expense of the unit owners' association or, in the reasonable judgment of the executive board, if a limited number of units is affected, at the expense of the unit owners affected. The expense will be considered for all purposes an assessment against any unit to which the limited common element appertains.
- (b) Repealed.
- (c) Repealed.

§ 42-1903.08. Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements.

- (a) Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified herein, the unit owners' association shall have the:
 - (1) Power to adopt and amend bylaws or rules and regulations;
 - (2) Power to adopt and amend a budget for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
 - (3) Power to hire or discharge a managing agent or other employees, agents, or independent contractors;
 - (4) Power to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit owners on any matter that affects the condominium;
 - (5) Power to make a contract or incur liability;
 - (6) Power to regulate the use, maintenance, repair, replacement, or modification of common elements;
 - (7) Power to cause an additional improvement to be made as a part of the common elements;
 - (8) Power to acquire, hold, encumber, or convey in the name of the unit owners' association any right, title, or interest to real or personal property;

- (9) Power to grant an easement, lease, license, or concession through or over the common elements;
- (10) Power to impose on and receive from individual unit owners any payment, fee, or charge for the use, rental, or operation of the common elements or for any service provided to unit owners;
- (11) Power to impose a charge for late payment of an assessment and, after notice and an opportunity to be heard, levy a reasonable fine for violation of the condominium instruments or rules and regulations of the unit owners' association;
- (12) Power to impose a reasonable charge for the preparation and recordation of an amendment to the condominium instruments, a statement concerning the resale of units required by § 42-1904.11, or a statement of an unpaid assessment;
- (13) Power to provide for the indemnification of officers or the executive board of the unit owners' association and maintain liability insurance for directors or officers;
- (14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments to the extent necessary for the reasonable performance of the unit owners' associations' duties and responsibilities, unless expressly prohibited in the condominium instruments;
- (14A) Power to reasonably restrict the leasing of residential units; provided, that any restriction described under this paragraph shall not apply to a unit that is leased at the time of any action taken to restrict the leasing of residential units until the unit is subsequently occupied by the owner or ownership transfers;
- (15) Power to exercise any other power conferred by the condominium instruments;
- (16) Power to exercise any other power that may be exercised in the District of Columbia by a legal entity of the same type as the unit owners' association; and
- (17) Power to exercise any other power necessary and proper for the governance or operation of the unit owners' association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any part thereof.

(c) The condominium instruments may not impose any limitation on the power of the unit owners' association to deal with the declarant that is more restrictive than the limitation imposed on the power of the unit owners' association to deal with any other person.

(d) In the performance of duties, an officer or member of the executive board shall exercise the care required of a fiduciary of the unit owners.

§ 42-1903.08a. Condominium Association Advisory Council.

(a) There is established a Condominium Association Advisory Council ("CAAC")

(b) The purpose of the CAAC shall be to serve as an advisory body to the Mayor, the Council, and District agencies on matters relating to condominiums located in the District.

(c) The CAAC shall be composed of 14 members appointed as follows:

- (1) One community representative from each of the 8 District wards, appointed by the Councilmember representing each respective ward;
 - (2) One community representative appointed by the chairperson of the Committee of the Council that oversees the Department of Housing and Community Development;
 - (3) One community representative appointed by the Mayor;
 - (4) The Director of the Department of Housing and Community Development, or his or her designee;
 - (5) A representative from the community association management industry with at least 7 years of experience in the profession, appointed by the Mayor;
 - (6) A representative from the mortgage industry with at least 5 years of experience in the profession, appointed by the Mayor; and
 - (7) A representative from the legal community who is an attorney licensed to practice in the District and has at least 5 years of experience representing community associations, appointed by the Mayor.
- (d)
- (1) Each community representative shall be a resident of the District who has been a member in good standing of a unit owners' association for at least one year, with a priority for community representatives with experience on a condominium board.
 - (2) A chairperson shall be elected from among the 10 community representatives, and shall serve for a term of 2 years.
 - (3)
 - (A) Each community representative member shall be appointed for a term of 3 years.
 - (B) Initial appointments shall be staggered with 3 members appointed for a one-year term, 4 members appointed for a 2-year term, and 3 members appointed for a 3 year term.
 - (C) The initial appointment terms shall be determined by lot at the first meeting of the CAAC.
 - (4) The 3 non-community members appointed by the Mayor shall each be appointed for a term of 3 years.
- (e) Meetings of the CAAC shall be open to the public and shall take place at a public location at least 4 times a year. The CAAC shall provide a public listing of members by ward, meeting notices, and meeting minutes on a CAAC website.

§ 42-1903.09. Tort and contract liability of association and declarant; judgment liens against common property and individual units.

- (a) An action for tort alleging a wrong done: (1) by any agent or employee of the declarant or of the unit owners' association; or (2) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the

case may be. No unit owner shall be precluded from bringing such an action by virtue of ownership of an undivided interest in the common elements or by reason of membership in the association or status as an officer.

(b) Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by §§ 42-1902.21 and 42-1902.22.

(c) An action arising from a contract made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to § 42-1903.02 (a). No unit owner shall be precluded from bringing such an action by reason of membership in the association or status as an officer.

(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the unit owners' association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to § 42-1903.12(c), but no unit owners shall be otherwise liable on account of a judgment and, after payment by the unit owner of his or her proportionate share, the association shall not assess or have a lien against the unit owner's condominium unit for any portion of the common expenses incurred in connection with the lien. If after payment by a unit owner of a proportionate share, the unit owners' association elects to pay the balance of the judgment from common funds, the unit owners' association shall reimburse the unit owner for the amount the unit owner paid separately. Any judgment shall be satisfied first out of the property of the unit owners' association. The judgment shall be otherwise subject to the provisions of Title 15.

§ 42-1903.10. Insurance obtained by association; notice to unit owners.

(a) When any insurance policy has been obtained by or on behalf of the unit owners' association, written notice of the procurement thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of the last sentence of § 42-1903.03.

(b) Unless the condominium instruments expressly provide otherwise, commencing no later than the time of the first conveyance of a condominium unit to a person other than a declarant, the unit owners' association shall maintain, to the extent reasonably available:

- (1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than 90% of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluded from property policies; and
- (2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the condominium instruments that covers all occurrences commonly insured against for death, bodily injury, or property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(c) If a building contains units that have horizontal boundaries described in the condominium instruments, the insurance maintained under subsection (b)(1) of this section, to the extent reasonably available, shall include the units, but need not include an improvement or betterment installed by unit owners.

(d) If the insurance described in subsections (b) and (c) of this section is not reasonably available, the unit owners' association shall promptly cause notice of unavailability of insurance to be hand-delivered or sent prepaid by the United States mail to all unit owners. The condominium instruments may require the unit owners' association to carry any other insurance the unit owners' association deems appropriate to protect the unit owners' association or the unit owners.

(d-1) Each unit owner shall, to the extent reasonably available, purchase condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage at a minimum of \$10,000 and condominium owner personal liability insurance coverage at a minimum of \$300,000; provided, that the executive board may increase the minimum amounts required under this subsection at a meeting properly noticed under this act.

(e) An insurance policy carried pursuant to subsection (b) of this section shall provide that:

(1) A unit owner is an insured person under the policy with respect to liability that arises out of the unit owner's interest in the common elements or membership in the unit owners' association;

(2) The insurer waives the insurer's right to subrogation under the policy against any unit owner or member of the unit owner's household;

(3) An act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the unit owners' association, shall not void the policy or be a condition to recovery under the policy; and

(4) If at the time of loss under the policy, there is other insurance in the name of a unit owner that covers the same risk covered by the policy, the unit owners' association's policy shall provide primary insurance.

(5) Repealed.

(f) Any loss covered by the property policy under subsections (b)(1) and (c) of this section shall be adjusted with the unit owners' association, but the insurance proceeds for the loss shall be payable to any insurance trustee designated to receive payments or otherwise to the unit owners' association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the unit owners' association shall hold any insurance proceeds in trust for unit owners or lienholders as the unit owners' or lienholders' interests may appear. Subject to the provisions of subsection (i) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property. A unit owner or lienholder shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(g) An insurance policy issued to the unit owners' association shall not prevent a unit owner from obtaining insurance for his or her own benefit.

(h) An insurer that has issued an insurance policy under this section shall issue certificates of memoranda of insurance to the unit owners' association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer that issues the policy may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the unit owners' association, any unit owner, and any mortgagee or beneficiary under the deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(i) Any portion of the condominium for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the unit owners' association unless the condominium is terminated, repair or replacement would be illegal under any health or safety statute, rule, or regulation, or 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense. If the entire condominium is not repaired, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium. The insurance proceeds attributable to the units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements appertained, or to lienholders, as their interests may appear. The remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the interests in the common elements appertaining to all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests shall be automatically reallocated upon the vote as if the unit had been condemned under § 42-1901.06, and the unit owners' association promptly shall prepare, execute, and record an amendment to the

condominium instruments reflecting the reallocations. Notwithstanding the provisions of this subsection, § 42-1902.28 governs the distribution of insurance proceeds if the condominium is terminated.

- (j) (1) The bylaws shall specify insurance coverage and limits with respect to any insurance policy that may be required on the common elements and shall indicate who shall be responsible for payment of any deductible amount in connection with the insurance policy.
 - (2) Unless the condominium instruments provide otherwise, if the cause of any damage to or destruction of any portion of a condominium originates from the common elements, the association's property insurance deductible shall be a common expense. If the bylaws do not indicate the entity responsible for payment of a deductible amount if the cause of damage to or destruction of a portion of a condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated shall be responsible for the association's property insurance deductible in an amount not to exceed \$5,000; provided, that the unit owners' association affords notice to unit owners of this responsibility before the damage is caused. If the owner is responsible for the association's property insurance deductible or an uncovered loss up to \$5,000, this amount shall be assessed against the owner's unit. Nothing in this section is intended to limit the rights of a unit owners' association to pursue its subrogation rights, if any, against a unit owner in whose unit the cause of the property or personal liability damage or destruction originated.
- (k) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

§ 42-1903.11. Rights to surplus funds.

Unless otherwise provided in the condominium instruments, any surplus funds of the unit owners' association that remain after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to the unit owners' liabilities for common expenses or credited to the unit owners to reduce the unit owners' future common expense assessments.

§ 42-1903.12. Liability for common expenses; special assessments; proportionate liability fixed in bylaws; installment payment of assessments; when assessment past due; interest thereon.

- (a) Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than 1 condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.
- (b) To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licenses or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases.
- (c) The amount of any common expense not specially assessed pursuant to subsection (a) or (b) of this section shall, subject to the provisions of subsection (f) of this section, be assessed against the condominium units, including the condominium units owned by the declarant, in accordance with the provisions of the condominium instruments. The bylaws may establish the fraction or percentage of liability for such expenses appertaining to each condominium unit proportionate to either the size or par value of such condominium unit. Otherwise, the bylaws shall allocate to each such condominium unit an equal liability for such expenses, subject to the following exception: each convertible space shall be allocated a liability for common expenses proportionate to the size of each such space, vis-a-vis the aggregate size of all units, while the remaining liability for common expenses shall

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be allocated equally to the other units. Such assessments shall be made by the unit owners' association annually or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

(d) If the condominium instruments provide for any common expense assessments to be paid in installments, such instruments may further provide that upon default in the payment of any 1 or more of such installments, the balance thereof shall be accelerated, or that the said balance may be accelerated at the option of the unit owners' association, its executive board, or the managing agent.

(e) Unless the condominium instruments provide otherwise, unpaid assessments for common expense and unpaid installments of such assessments shall become past due on the 15th day from the day such assessment or installment thereof first became due and payable, and any past due assessment or installment thereof shall bear interest at the lesser of 10% per annum or the maximum rate permitted to be charged in the District of Columbia to natural persons on first mortgage loans at the time such assessment or installment became past due.

(f) Unless the condominium instruments provide otherwise, the declarant may elect to pay all common expenses for a period not to exceed 1 year from the conveyance of the first condominium unit to a purchaser. If the declarant elects, common expenses shall not be assessed against any condominium unit or imposed upon or collected from any unit owner, and the declarant shall pay all the costs including the costs of any contributions to reserved accounts as set forth in the budget of the condominium described in § 42-1904.04.

§ 42-1903.12a. Notice of intention to take legal action to collect past due amounts.

The unit owners' association shall, when advising the unit owner of its intention to take legal action to collect any past due amount owed by a unit owner, provide a notice to the unit owner to include:

- (1) A statement of the account showing the total amount that is past due, including a breakdown of the categories of amounts claimed to be due and the dates those amounts accrued;
- (2) Contact information for the individual or office the unit owner must contact to settle the past due amount; and
- (3) An enclosure providing information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

**“FAILURE TO PAY PAST DUE AMOUNTS MAY RESULT IN LEGAL
ACTION, INCLUDING FORECLOSURE.
YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.”**

“The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].

The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting,

defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number].”

§ 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys’ fees; statement of unpaid assessments; liability upon transfer of unit.

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments, along with any applicable interest, late fees, reasonable expenses and legal fees actually incurred, costs of collection and any other reasonable amounts payable by a unit owner under the condominium instruments shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners’ association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

(A) A lien or encumbrance recorded prior to the recordation of the declaration;

(B) A first mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

(C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners’ association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien or recordation of a memorandum of lien against the title to the unit by the unit owners’ association. The provisions of this subsection shall not affect the priority of mechanics’ or materialmen’s lien.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim of lien for assessment shall be required.

(c) (1) The unit owners’ association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due. By accepting a deed to a condominium unit, the owner shall be irrevocably deemed to have appointed the chief executive officer of the unit owners’ association as trustee for the purpose of exercising the power of sale provided for herein. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners’ association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners’ association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charge or interest due and reasonable attorney’s fees and costs incurred in connection with the enforcement of the lien for the assessment.

(3) The power of sale may be exercised by the chief executive officer of the unit owners’ association, as trustee, upon the direction of the executive board, on behalf of the unit owners’ association, and the chief executive officer of the unit owners’ association shall have the authority as trustee to deed a unit sold at a

foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.

(4) (A) A foreclosure sale shall not be held until at least 31 days after a Notice of Foreclosure Sale of Condominium Unit for Assessments Due is recorded in the land records and sent by a delivery service providing delivery tracking confirmation and by first-class mail to a unit owner at the mailing address of the unit, any last known mailing address, and at any other address designated by the unit owner to the executive board for purposes of notice.

(B) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall:

(i) State the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure;

(ii) Expressly state that the foreclosure sale is for either:

(I) The 6-month priority lien as set forth in subsection (a)(2) of this section and not subject to the first deed of trust; or

(II) More than the 6-month priority lien set forth in subsection (a)(2) of this section and subject to the first deed of trust; and

(iii) Notify the unit owner that if the past due amount being foreclosed upon is not paid within 31 days after the date the NFSCUAD is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the NFSCUAD.

(C) Substantial compliance with the requirements of subparagraph (B) of this paragraph shall be sufficient until new forms are made available by the Recorder of Deeds.

(D) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be accompanied by an enclosure providing the following information:

(i) A statement of the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure sale;

(ii) A breakdown of the amount being foreclosed on, including amounts past due for assessments, accrued interest, late charges, all other categories of amounts past due, and the dates those amounts accrued;

(iii) A statement that the amount being foreclosed upon may not be the total amount owed to the unit owners' association and instructions on how the unit owner can request a full account statement;

(iv) Information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

**"FAILURE TO PAY AMOUNTS INDICATED IN THE
ENCLOSED NOTICE OF FORECLOSURE SALE OF
CONDOMINIUM UNIT FOR ASSESSMENTS DUE MAY
RESULT IN SALE OF YOUR UNIT.**

YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.”

“The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number],

The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number]."; and

- (v) Any other information the Mayor may prescribe by rule.
- (E) (i) At least 31 days in advance of the sale, a copy of the Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be sent by a delivery service providing delivery tracking confirmation and by first class mail to:
 - (I) The Mayor or the Mayor's designated agent;
 - (II) Any and all junior lien holders of record; and
 - (III) Any holder of a first deed of trust or first mortgage of record, their successors and assigns, including assignees, trustees, substitute trustees, and MERS.
- (ii) The unit owners' association shall be in compliance with this requirement if it sends notice as provided herein to the lienholders as their names and addresses appear in land records.
- (5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.
- (6) The proceeds of a sale shall be applied:
 - (A) To any unpaid assessment with interest or late charges;
 - (B) To the cost of foreclosure, including but not limited to, reasonable attorney's fees; and
 - (C) The balance to any person legally entitled to the proceeds.

(d) Unless the condominium instruments provide otherwise, the executive board shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive board may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for reasonable costs and attorneys' fees actually incurred by the unit owners' association.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to § 42-1902.09

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to § 42-1903.12 (c).

(j) In addition to any other right or power conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full.

§ 42-1903.14. Books, minutes, and records; inspection.

(a) The unit owners' association, or the declarant, the managing agent, or other person specified in the bylaws acting on behalf of the unit owners' association, shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the association's expenses related to the common elements and any other expenses incurred by or on behalf of the association.

(b) Subject to the provisions of subsection (c) of this section, books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, mailing addresses of unit owners, and financial records, including aggregate salary information of the unit owners' association employees, shall be available in the District of Columbia and within 50 miles of the District of Columbia, for examination and copying by a unit owner in good standing or such unit owner's authorized agent so long as the request is for a proper purpose related to the unit owner's membership in the unit owners' association, and not for pecuniary gain, commercial solicitation, or other purpose unrelated to the unit owner's membership in the unit owners' association. This right of examination may be exercised only during reasonable hours on business days. The books shall be subject to an independent audit upon the request of owners of units to which 33 1/3% of the votes in the unit owners' association pertain or a lower percentage as may be specified.

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- (c) (1) Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and their agents to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if the books and records concern:
- (A) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;
 - (B) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
 - (C) Pending or anticipated litigation;
 - (D) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;
 - (E) Communications with legal counsel;
 - (F) Disclosure of information in violation of law;
 - (G) Minutes or other records of an executive session of the executive board;
 - (H) Documentation, correspondence, management, or reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or
 - (I) Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.
- (2) For the purposes of paragraph (1)(C) of this subsection, the term "anticipated litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.
- (d) Before providing copies of any books or records, the unit owners' association may impose and collect a fee reflecting the actual costs of materials and labor for providing access to copies of the requests books and records.

§ 42-1903.15. Limitation on right of first refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of any of the condominium units, such rights and restraints shall be void unless the condominium instruments make provisions for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, its executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

§ 42-1903.16. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

(a) As used in this section, the term "structural defect" means a defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

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(b) A declarant shall warrant against structural defects in each of the units for 2 years from the date each unit is first conveyed to a bona fide purchaser, and all of the common elements for 2 years. The 2 years shall begin as to any portion of the common elements whenever the portion has been completed or, if later:

(1) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

(2) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;

(3) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or

(4) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

(c) A declarant of a conversion condominium may offer the units, common elements, or both in “as is” condition. If the conversion condominium is offered in “as is” condition, the declarant’s warranty against structural defects shall apply only to a defect in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

(d) Except with respect to a purchaser of a unit that may be used for residential purposes, the warranty against structural defects:

(1) May be excluded or modified by agreement of the parties; and

(2) Is excluded by an expression of disclaimer such as “as is”, “with all faults”, or other language that in common understanding calls the purchaser’s attention to the exclusion of warranties.

(e) (1) Prior to the declarant’s first conveyance of a residential unit to a purchaser, the declarant shall post a bond or letter of credit with the Mayor in the amount of 10% of the estimated construction or conversion costs, or shall provide any other form of security the Mayor shall approve to satisfy any costs that arise from the declarant’s failure to satisfy the requirements of this section. The other security may include a lien in favor of the Mayor against the declarant’s equity in any unsold units, including any non-residential units, in which event the unsold units will be valued, for purposes of computing the declarant’s equity, at 90 % of the current listed sales price of the units, or if not listed, then the current listed sales price of comparable units in the condominium. The bond, letter of credit, or other security shall be reduced at the declarant’s request in *pro rata* segments (based on the residential unit’s percentage interest in the residential portion of the condominium) 2 years after the conveyance of each unit; provided, however, that in no event shall the security be reduced below 50% of the original amount of the security until one year after transfer of control of the residential executive board of the condominium association to purchasing residential unit owners other than the declarant. For purposes of this subsection, “transfer of control” shall have occurred when 51% or more of the residential executive board is composed of residential unit owners other than the declarant, or successor declarant, or the declarant’s selections or nominees. At the end of 5 years from the conveyance of the first residential unit to a purchaser, and provided one year has passed following transfer of control by the declarant, the declarant may sell unsold residential units as resale units, in which event no warranty against structural defects in the units under this section shall be required and the bond shall be reduced *pro rata* as to those unsold units. The bonding requirements pursuant to this subsection and the warranties required under this section are applicable only to residential condominiums or the residential condominium portion of mixed use condominiums or mixed use projects. If residential condominium units are part of a mixed use condominium, the cost of the residential portion of the condominium shall include the residential condominium units’ *pro rata* share of common elements, based on the residential condominium units’ percentage interest in the common elements. If a residential condominium is part of a mixed use project, the cost of the residential condominium includes its *pro rata* share of those portions of the project directly supporting, enclosing or servicing the residential condominium.

(2) If claims for structural defects under this section are pending at the time the bond or other security posted would otherwise no longer be required, then the bond or other security shall be required to be maintained in the amount of the claim, until the claims have been finally resolved and the bond or other security has been made available to satisfy the declarant's responsibilities to the unit owners and association under this section. The bylaws and other condominium documents to be prepared by the declarant shall not restrict or hinder the residential executive board's right to assert claims under this section.

(f) As used in this section, the term "conveyance" shall mean the transfer of title by written instrument.

(g) (1) The Mayor shall issue proposed rules to implement the provisions of this section within 180 days of the effective date of the Condominium Amendment Act of 1999. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturday, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2) The Mayor shall report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year.

§ 42-1903.17. Statute of limitations for warranties.

A judicial proceeding for breach of any warranty that arises under § 42-1903.16 shall be commenced within 5 years after the date the warranty period began.

§ 42-1903.18. Master associations — Authorization; powers; rights and responsibilities of unit owners; election of executive board.

(a) If the condominium instruments for a condominium provide that any of the powers described in § 42-1903.08 are to be exercised by or may be delegated to a for-profit or nonprofit corporation or incorporated association that exercises the powers described in § 42-1903.08 or other powers on behalf of 1 or more condominiums or for the benefit of the unit owners of 1 or more condominiums, all provisions of this chapter applicable to unit owners' associations shall apply to the for-profit or nonprofit corporation or unincorporated association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in § 42-1903.04, it may exercise the powers set forth in § 42-1903.08(a)(2) only to the extent expressly permitted in the condominium instruments of condominiums that are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the condominium instruments of any condominium provide that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the powers following delegation.

(d) The rights or responsibilities of a unit owner with respect to the unit owners' association set forth in §§ 42-1903.02, 42-1903.03, 42-1903.04, 42-1903.05, and 42-1903.20 shall apply in the conduct of the affairs of a master association only to any person who elects the board of a master association, whether or not the person is otherwise a unit owner within the meaning of this chapter.

(e) Notwithstanding the provisions of § 42-1903.02(a) with respect to the election of the executive board of a unit owners' association by all unit owners after the period of declarant control ends, and regardless of whether a master association is an association described in § 42-1903.01, the certificate of incorporation or other instrument that creates the master association and the condominium instruments of each condominium, the powers of which are assigned by the condominium instruments or delegated to the master association, may provide that the

executive board of the master association shall be elected after the period of declarant control in any of the following ways:

- (1) All unit owners of all condominiums subject to the master association may elect all members of the executive board;
- (2) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board;
- (3) All unit owners of each condominium subject to the master association may elect specified members of the executive board; or
- (4) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board.

§ 42-1903.19. Merger or consolidation of condominiums.

(a) Any 2 or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, if 2 or more condominiums merge or consolidate the resultant condominium shall be, for all purposes, the legal successor of all of the preexisting condominiums, and the operations or activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association. The single unit owners' association shall hold any power, right, obligation, asset, or liability of all preexisting unit owners' associations.

(b) An agreement of 2 or more condominiums to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate the condominium.

(c) (1) A merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which the reallocations are based, or by stating the percentage of overall allocated interests of the new condominiums which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the condominium instruments of the preexisting condominium.

(2) For purposes of this section, the term "allocated interests" shall mean the individual interest in the common elements, the liability for common expenses, and the votes in the unit owners' association that pertain to each unit.

§ 42-1903.20. Conveyance or encumbrance of common elements.

(a) A portion of the common elements may be conveyed or subjected to a security interest by the unit owners' association if persons entitled to cast at least 80% of the votes in the unit owners' association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the condominium instruments specify, agree to convey or subject to a security interest. To convey or subject a limited common element to a security interest, all the owners of units to which any limited common element is allocated shall agree. The condominium instruments may specify a smaller percentage if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale shall be an asset of the unit owners' association.

(b) An agreement to convey or subject common elements to a security interest shall be evidenced by the execution and recordation of the agreement, or ratification of the agreement, in the same manner as a deed, and

by the requisite number of unit owners. The agreement shall specify a date after which the agreement shall be void unless recorded before that date.

(c) The unit owners' association, on behalf of the unit owners, may contract to convey or subject common elements to a security interest. The contract shall not be enforceable against the unit owners' association until approved pursuant to subsections (a) and (b) of this section. Upon approval, the unit owners' association shall have any power necessary and appropriate to effect the conveyance or encumbrance of the common elements, including the power to execute a deed or other instrument.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements pursuant to this section shall not deprive any unit of the unit's right of access or support.

(e) Unless the condominium instruments otherwise provide, a conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of a preexisting encumbrance.

§ 42-1903.21. Unit owners' association as trustee.

With respect to a third person that deals with the unit owners' association in the unit owners' association's capacity as a trustee, the existence and proper exercise of trust powers by the unit owners' association, may be assumed without inquiry. A third person shall not be bound to inquire whether the unit owners' association has the power to act as trustee or is properly exercising trust powers. A third person without actual knowledge that the unit owners' association is exceeding or improperly exercising its powers is fully protected in dealing with the unit owners' association as if the unit owners' association possessed and properly executed the powers the unit owners' association purports to exercise. A third person shall not be bound to assure the proper application of trust assets paid or delivered to the unit owners' association in its capacity as trustee.

Subchapter IV. Registration and Offering of Condominiums.

§ 42-1904.01. Exemptions.

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 42-1904.02, 42-1904.03, 42-1904.04, 42-1904.05, 42-1904.06, 42-1904.07, 42-1904.08, 42-1904.09, and 42-1904.12 do not apply to:

- (1) Dispositions in a condominium in which all units are restricted to commercial, industrial, or other nonresidential use;
- (2) Dispositions pursuant to court order;
- (3) Dispositions by any government or government agency;
- (4) Solicitation and acquisition by the declarant of nonbinding reservation agreements;
- (5) Gratuitous dispositions; or
- (6) Dispositions by foreclosure or deed in lieu of foreclosure.

§ 42-1904.02. No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.

(a) Neither declarant nor any person on behalf of declarant may offer or dispose of any interest in a condominium unit located in the District of Columbia, nor dispose in the District of Columbia of any interest in a

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condominium unit located without the District of Columbia prior to the time the condominium including such unit is registered in accordance with this chapter.

(b) During any period when registration of a condominium is required by this chapter or until the time that all units in the condominium have been initially disposed of to the bona fide purchasers, a declarant may not dispose of any interest in a condominium unit not previously disposed of unless there is delivered to the purchaser a current public offering statement by the time of the disposition. The disposition shall be expressly and without qualification or condition subject to cancellation by the purchaser before conveyance of the unit, within 15 days after the date of execution of the contract for the disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement shall not be current unless any necessary amendment is incorporated or attached. If the purchaser elects to cancel, he or she may cancel by notice hand-delivered or sent by United States mail, return receipt requested, to the seller. The cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

(c) The public offering statement and sales contract shall contain a clause and its Spanish equivalent in a form prescribed by the Mayor which shall clearly state the purchaser's right to cancel.

(d) A declarant shall be liable under this chapter for any false or misleading statement in a public offering statement or for any omission of a material fact with respect to the portion of the public offering statement that he or she prepared or caused to be prepared. If a declarant did not prepare or cause to be prepared any part of a public offering statement that he or she delivers, the declarant shall not be liable for any false or misleading statement or any omission of a material fact unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

§ 42-1904.03. Application for registration; contents; later registration of additional units; availability for public inspection; fee to be determined by Mayor.

(a) The application for registration of the condominium shall be filed as prescribed by the Mayor's rules and shall contain the following documents and information:

(1) An irrevocable appointment of an agent in the District of Columbia, and in the absence of such an agent, the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or applicant's personal representative;

(2) The states or jurisdictions in which an application for registration or similar document pertaining to the condominium has been filed, and any adverse order, judgment, or decree by any regulatory authority or by any court entered against declarant or any other person referred to in paragraph (3) of this subsection in connection with:

(A) Any registration, offer of sale of any condominium or condominium units;

(B) Any violation of any condominium statute or any lack of compliance with a condominium instrument; and

(C) Any breach of contract, fraud or misrepresentation perpetrated against any unit owner, unit owner association or unit purchaser;

(3) The name, address, and principal occupation for the past 5 years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of such person's interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;

(4) A statement, in a form acceptable to the Mayor, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the Mayor;

- (5) Copies of any management agreements, employment contracts or other contracts or agreements affecting the use or maintenance of, or access to, all or a part of the condominium;
- (6) Plats and plans of the condominium that comply with the provisions of §42-1902.14 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands; except that the Mayor may by regulation or order waive or modify this requirement or the requirements of §42-1902.14 for plats and plans of a condominium located outside the District of Columbia;
- (7) The proposed public offering statement; and
- (8) Any other information, including any current financial statement, which the Mayor by his regulations requires for the protection of purchasers.

(b) If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

(c) The declarant shall maintain a copy of the application for registration at the declarant's principal office at the condominium. The application for registration shall be made available for public inspection upon request at reasonable times; provided, however, that the Mayor may grant confidential status to any information required pursuant to § 42-1904.04(a)(11). The declarant shall promptly report any material changes in the information contained in an application for registration and amend the application accordingly.

(d) Each application shall be accompanied by a fee in an amount determined by the Mayor. The amount of such fee shall be established at a rate adequate to cover the costs related to processing such application and to provide additional funds to be available to defray the costs of administering this chapter.

§ 42-1904.04. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Mayor shall be in a form prescribed by his rules and shall include:

- (1) The name and principal address of the declarant and the condominium;
- (2) The applicant's name, address, and the form, date, and jurisdiction of organization, the address of each of its offices in the District of Columbia, the names and addresses of all general partners if applicant is a partnership, and all directors and owners of 10% or more of the beneficial interest in the stock of applicant if applicant is a corporation;
- (3) To the extent that such information is reasonably available to applicant, the names and addresses of the attorney primarily responsible for the preparation of the condominium documents, the general contractor, if any, all contractors who are primarily responsible for the construction, reconstruction or renovation of the electrical, plumbing or mechanical systems or the roof of the condominium, and the architect and engineer primarily responsible for the design, construction or renovation of the condominium;
- (4) A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and the number of units to be rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

- (5) A copy of the condominium instruments, with a brief narrative statement describing each and including:
- (A) Information on declarant control;
 - (B) A projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit);
 - (C) Provisions for enforcement of liens for assessments;
 - (D) A statement of the amount, or a statement that there is no amount, included in the projected budget as a reserve for repairs and replacement;
 - (E) The estimated 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 fees;
 - (F) A description of any restraints on alienation, including restrictions on the rental of units; and
 - (G) A description of any service not reflected in the proposed budget that the declarant shall provide or expenses that he or she shall pay, and that he or she expects may become, at any subsequent time, a common expense of the unit owners' association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
- (6) Copies of the deed that shall be delivered to a purchaser to evidence his or her interest in the unit and of the contract of sale that a purchaser shall be required to sign;
- (7) A copy of any management contract, lease of recreational areas, and any other contract or agreement substantially affecting the use or maintenance of, or access to all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, the condominium unit owners and the condominium, and a statement of the relationship, if any, between the declarant and the managing agent or firm;
- (8) A general statement of:
- (A) The status of construction;
 - (B) The project's compliance with zoning, site plan and building permit regulations;
 - (C) Source of financing available and the estimated amount necessary to complete all improvements shown on the plats and plans as "not yet completed" or "not yet begun" which declarant is obligated to complete; and
 - (D) The projected date of completion of construction or renovation of the major amenities of the condominium;
- (9) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;
- (10) The significant terms of any financing offered by or through the declarant to purchasers of units in the condominium;
- (11) The provisions and any significant limitations of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by §42-1903.07(b) [repealed];

(12) A statement that the contract purchaser of a condominium unit may, prior to conveyance, cancel the purchase transaction within 15 days following the date of execution of the contract by the purchaser or the receipt of a current public offering statement, whichever is later;

(13) A statement as to whether or not the condominium satisfies, or is expected to satisfy, the special requirements pertaining to condominiums established by federal, federally chartered or District of Columbia institutions which insure, guarantee or maintain a secondary market for condominium unit mortgages;

(14) Additional information required by the Mayor to assure full and fair disclosure to prospective purchasers; and

(15) Repealed.

(a-1) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by subsection (a) of this section:

(1) The total number of units in which time-share estates may be created;

(2) The total number of time-share estates that may be created in the condominium;

(3) The projected common expense assessment for each time-share estate and whether the assessment may vary seasonally;

(4) A statement that shall include:

(A) Any service that the declarant shall provide or any expense that the declarant shall pay, if the service or expense is not reflected in the budget and the declarant expects that the expense or service may later become a common expense of the unit owners' association; and

(B) The projected common expense assessment attributable to any expense or service listed pursuant to subparagraph (A) of this paragraph for each time-share estate;

(5) Repealed;

(6) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against the unit;

(7) The extent to which a suit for partition may be maintained against a unit owned in time-share estates; and

(8) The extent to which a time-share estate may become subject to a tax or other lien that arises out of claims against other time-share owners of the same unit.

(b) The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the Mayor approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement if such emphasis is intended to mislead the prospective purchaser or to otherwise conceal material facts, except that there may be a cover sheet for such public offering statement using such design, pictures and words as the Mayor may deem reasonable. The form, content, and layout of the public offering statement shall be subject to approval by the Mayor.

(c) The declarant shall file with the Mayor a statement of any material change in the information contained in the public offering statement. Such statement shall be filed within 15 days after the date on which the declarant knows or should have known about the change. The Mayor may require the declarant to amend the public offering statement if necessary to assure full and fair disclosure to prospective purchasers. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. Such amendments

must be mailed by United States registered mail, return receipt requested. Such receipt shall be kept on file for review.

(d) The provisions of this section shall be deemed to be complied with if the public offering statement filed pursuant to the provisions of paragraph (9) of subsection (a) of this section is for offers of units currently registered as securities with the Securities and Exchange Commission.

(e) In the case of a condominium situated wholly outside the District of Columbia, an application for registration or a proposed public offering statement filed with the Mayor, which has been approved by an agency in the state where the condominium is located and substantially complies with the requirements of this chapter, may not be rejected by the Mayor on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by rules and regulations issued by the Mayor pursuant to this chapter. The Mayor may require additional documents or information in a particular case to assure adequate and accurate disclosure to prospective purchasers.

§ 42-1904.05. Application for registration — Investigation by Mayor upon receipt.

Upon receipt of an application for registration in proper form, the Mayor may forthwith initiate an investigation to determine:

- (1) That there is reasonable assurance that the declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;
- (2) That there is reasonable assurance that all proposed improvements will be completed as represented;
- (3) That the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Mayor in its rules and afford full and fair disclosures;
- (4) Whether the declarant has, or if a corporation, its officers and principals have, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the United States or any foreign country within the past 10 years, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and
- (5) The public offering statement requirements of this chapter have been satisfied.

§ 42-1904.06. Same — Notice of filing; registration or rejection; notice of need for rejection; hearing.

(a) Upon receipt of the application for registration in proper form, the Mayor shall, within 5 business days, issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the Mayor shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the Mayor affirmatively determines, upon inquiry and examination, that the requirements of § 42-1904.05 have been met, he shall enter an order registering the condominium and may require any additions, deletions, or modifications in and to the public offering statement in order to assure full and fair disclosure.

(c) If the Mayor determines upon inquiry and examination, that any of the requirements of § 42-1904.05 have not been met, he shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days or such longer period as he may prescribe. If the requirements are not met within the time allowed the Mayor shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after the lapse of the aforesaid period during which 20-day period the applicant may petition for reconsideration and shall be entitled to a hearing to contest the particulars specified in the Mayor's notice. Such order of rejection shall not take effect during the pendency of a hearing, if requested.

§ 42-1904.07. Registration; annual updating report by declarant; termination.

The declarant shall, during any period of control of the condominium by the declarant pursuant to § 42-1903.02 file a report in the form prescribed by the rules of the Mayor within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration. In the event that the annual report reveals that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the Mayor shall issue an order terminating the registration of the condominium.

§ 42-1904.08. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate.

(a) Any declarant of a conversion condominium shall include in his public offering statement, in addition to the requirements of § 42-1904.04:

(1) Repealed;

(2) (A) A statement by the declarant based upon a report of a qualified architect or engineer as to the present condition of all structural components and major utility installations in the condominium. The statement shall include:

(i) The approximate dates of construction, installation, and major repairs of structural components and major utility installations and a general description of each installed system as particularly suitable or unsuitable for use in a conversion condominium;

(ii) An evaluation of the adequacy of each system to perform its intended function both before and after completion of the condominium conversion; and

(iii) The estimated life of the system components, and the estimated cost (in current dollars) of replacing each component that has a rated life that is evaluated to be less than the rated life of the entire structure.

(B) The architect's or engineer's report upon which the statement required by this subsection is based shall be filed with the Mayor as a part of the application for registration.

(b) In the case of a conversion condominium:

(1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this chapter at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved. The notice shall be in such form as the Mayor may require and shall set forth generally the rights of tenants and subtenants pursuant to this section. Such notice shall be hand-delivered or sent by United States mail, return receipt requested. Such notice shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease;

(2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with declarant or declarant's predecessor in interest to lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit, during the second 60 days of such 120-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the

purchase of such apartment units shall be on terms and conditions at least as favorable to the tenants or subtenants as those being offered by declarant to the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apartment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than 1 tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than 1 subtenant occupying the apartment unit, then each such subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed;

(3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

(c) Each declarant of a conversion condominium shall assure that the budget established for the unit owners' association and upon which common expense assessments are made shall include an adequate provision for reasonable reserves to cover future maintenance, repair*, or replacement costs associated with the common elements.

§ 42-1904.09. Escrow of deposits; to bear interest; not subject to attachment.

(a) Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until either delivered at settlement or returned to the prospective purchaser. Such escrow funds shall be deposited in a separate account for each condominium in a financial institution the accounts of which are insured by a federal or state agency. These deposits shall bear interest at the passbook rate then prevailing in the District of Columbia beginning with the first business day after the date deposited with declarant or declarant's agent. Earned interest shall be credited to the prospective purchaser's deposit. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

(b) The declarant of a condominium may:

(1) Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the District, in the form and amount set forth in subsection (e) of this section; or

(2) Obtain and maintain an irrevocable letter of credit issued by a financial institution insured by the federal government, in the form and amount set forth in subsection (f) of this section.

(c) Except as provided in subsection (d) of this section, the declarant shall maintain the surety bond or letter of credit until the first of the following occurs:

(1) A deed to the unit is granted to the purchaser;

(2) The purchaser defaults under a purchase contract for the unit entitling the declarant to retain the deposit; or

(3) The deposit is refunded to the purchaser.

(d) The declarant may make withdrawals from an escrow account established under subsection (a) of this section that consists of sum received to finance the construction of a unit to pay, in accordance with a draw schedule agreed to by the purchaser in writing, documented claims of persons who have furnished labor or material for the construction of the unit.

(e) The surety bond shall be payable to the District for the use and benefit of every person protected under the provisions of this act. The declarant shall file the bond with the Department of Housing and Community Development. The surety bond may either be in the form of an individual bond for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount of the bond shall be equal to the amount of the deposits.

(f) The letter of credit shall be payable to the District for the use and benefit of persons protected under the provisions of this act. The declarant shall file the letter of credit with the Department of Housing and Community Development. The letter of credit may be in the form of an individual letter of credit for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount of the letter of credit shall be equal to the amount of the deposits.

(g) For the purpose of determining the amount of any blanket bond or blanket letter of credit that a declarant maintains, the total amount of deposits considered held by the declarant shall be determined as of May 31 of any given calendar year, and the amount of the bond or letter of credit shall be in accordance with the amount of deposits held as of that May 31 until May 31 of the following calendar year.

(h) Nothing in this section shall be construed to modify or limit the requirements imposed on a declarant by § 42-1903.16.

§ 42-1904.10. Copies of documents to be furnished to purchaser by declarant; Department of Housing and Community Development website publication.

(a) Unless previously furnished, an exact copy of the recorded declaration, bylaws and Condominium Association Bill of Rights and Responsibilities shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in §§ 42-1902.01 and 42-1902.05.

(b) The Condominium Association Bill of Rights and Responsibilities shall read as follows:

“Condominium Association Bill of Rights and Responsibilities

Every unit owner who is a member in a unit owners' association has certain rights and responsibilities under the D.C. Condominium Act, with some of those rights and responsibilities restated here:

(1) The right to attend and participate in meetings of the unit owners' association held in accordance with the provisions of the unit owners' association's condominium instruments at least once each year, according to and subject to the provisions of D.C. Official Code § 42-1903.03(a).

(2) The right to observe all meetings of the unit owners' association, committees of the unit owners' association, and the executive board, except for those meetings held lawfully in executive session, and to examine and copy minutes recorded at meetings, according to and subject to the provisions of D.C. Official Code § 42-1903.03(b).

(3) The right to an opportunity to comment on any matter relating to the unit owners' association during each regularly scheduled meeting, according to and subject to the provisions of D.C. Official Code § 42-1903.03(c).

(4) The right to have meetings of the unit owners' association and executive board only be conducted with a quorum present as provided in the governing documents of the association.

(5) The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's voting interest, according to and subject to the provisions of D.C. Official Code § 42-1903.05.

(6) The right to an executive board that in the performance of its duties, is obligated to exercise the care required of a fiduciary consistent with business judgment standard, subject to the provisions of D.C. Official Code § 42-1903.08(d) and § 42-1903.09(b).

(7) The right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due amounts owed, according to and subject to the provisions of D.C. Official Code § 42-1903.13(c).

(8) The right to request a statement that sets forth the amount of unpaid assessments currently levied against the unit owner, according to and subject to the provisions of D.C. Official Code § 42-1903.13(h).

(9) The right of access to all books and records kept by or on behalf of the unit owners' association., subject to the provisions and limitations of D.C. Official Code § 42-1903.14 and the unit owners' associations' condominium instruments.

(c) A copy of a Condominium Association Bill of Rights and Responsibilities shall be made available on the Department of Housing and Community Development website, in at least 12 point type.

§ 42-1904.11. Resale by unit owner; seller to obtain appropriate statements from association and furnish to purchaser; scope of provisions.

(a) In the event of a resale of a condominium unit by a unit owner other than the declarant, the unit owner shall obtain from the unit owners' association and furnish to the purchaser, on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, a copy of the condominium instruments and a certificate setting forth the following:

(1) Appropriate statements pursuant to § 42-1903.13(h) and, if applicable, § 42-1903.15, which need not be in recordable form;

(2) A statement of any capital expenditures approved by the unit owners' association planned at the time of the conveyance that are not reflected in the current operating budget disclosed under paragraph (4) of this subsection;

(3) A statement of the status and amount of any reserves for capital expenditures, contingencies, and improvements, and any portion of such reserves earmarked for any specified project by the executive board;

(4) A copy of the statement of financial condition for the unit owners' association for the then most recent fiscal year for which such statement is available and the current operating budget, if any;

(5) A statement of the status of any pending suits or any judgments to which the unit owners' association is a party;

(6) A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and a statement whether such coverage includes public liability, loss or damage, or fire and extended coverage insurance with respect to the unit and its contents;

(7) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

(8) A statement of the remaining term of any leasehold estate affecting the condominium or the condominium unit and the provisions governing any extension or renewal thereof; and

(9) The date of issuance of the certificate.

(a-1) (1) If the condominium instruments and certificate prescribed pursuant to subsection (a) of this section are not furnished to the purchaser on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, the purchaser shall have the right to cancel the contract by giving notice in writing to the seller prior to receipt of the condominium instruments and certificate, but not after conveyance under the contract.

(2) Except as provided pursuant to paragraph (5) of this subsection, the purchaser shall have the right for a period of 3-business days following the purchaser's receipt of the condominium instruments and certificate prescribed pursuant to subsection (a) of this section, whether or not such receipt occurs within the time period described in subsection (a) of this section, to cancel the contract by giving notice in writing and returning the condominium instruments and certificate to the seller, provided that the purchaser may not so cancel the contract after conveyance under the contract.

(3) If the purchaser cancels the contract pursuant to paragraph (1) or (2) of this subsection, the purchaser shall receive back any earnest money or other deposit without delay or deduction.

(4) From and after the earlier of (i) the expiration of the 3-business-day period for review prescribed pursuant to paragraph (2) of this subsection, or an extension of the 3-business-day period agreed to by the parties in a signed writing, or (ii) conveyance under the contract, if the purchaser has not exercised the right to cancel, the contract shall not be cancellable by the purchaser under this subsection.

(5) If the condominium instruments and certificate are furnished to the purchaser on or prior to execution of the contract of sale by the purchaser, the 3 business-day period for review prescribed pursuant to paragraph (2) of this subsection shall commence when the contract is executed by the purchaser.

(b) The principal officer of the unit owners' association or such other officer or officers as the condominium instruments may specify, shall furnish the certificate prescribed by subsection (a) of this section upon the written request of any unit owner or purchaser within 10 days of the receipt of such request.

(c) Subject to the provisions of § 42-1904.01, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of Chapter 20 of this title.

§ 42-1904.12. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.

(a) This chapter shall be administered by the Mayor or his designee. The Mayor shall prescribe reasonable rules which shall be adopted, amended or repealed in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code § 2-501 et seq.). The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and such other rules as are necessary and proper to accomplish the purposes of this chapter. The initial regulations shall be promulgated by the Mayor within 120 days after March 29, 1977.

(b) The Mayor by regulation, rule or order, after reasonable notice and hearing may require the filing of advertising material relating to condominiums prior to the distribution of such material.

(c) The Mayor may by regulation, rule or order approve the filing and use of an abbreviated public offering statement if the agency determines that the public interest and the interests of purchasers would best be served thereby. The Mayor shall determine whether or not such abbreviated disclosure will be permitted based upon consideration of the following factors among others:

- (1) The total number of units being offered is small, which shall mean generally less than 10;
- (2) Adequate disclosure of relevant information will otherwise be readily available to prospective purchasers;
- (3) The class of purchasers will be comprised substantially of persons having the ability to protect their own interests (such as the present tenants); and
- (4) In the case of a conversion condominium, no substantial renovation or remodeling of the units will be done.

(d) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation or order hereunder, the Mayor, with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(e) The Mayor may intervene in any suit involving the rights and liabilities of declarant with respect to the condominium being registered and any transactions related thereto. The Mayor may require the declarant to notify the Mayor of any suit by or against the declarant involving a condominium established or sold by the declarant.

(f) The Mayor may:

- (1) Accept registrations filed in other jurisdictions or with the federal government;
- (2) Contract with similar agencies in this or other jurisdictions to perform investigative functions;
and
- (3) Accept grants-in-aid from any governmental source.

(g) The Mayor shall notify the Rental Accommodations Commission whenever an application is made to register a conversion condominium and at such time as any application to register a conversion condominium is approved.

(h) With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with § 42-1904.03, the agency shall send the lawful process by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in the application or any annual report.

§ 42-1904.13. Investigations and proceedings; powers of Mayor; enforcement through courts.

(a) The Mayor may make necessary public or private investigations in accordance with law within or outside of the District of Columbia to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, and upon the Mayor's own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is

relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge or relevant facts or any other matter reasonably calculated to lead to the discovery or material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance.

§ 42-1904.14. Cease and desist and affirmative action orders; temporary cease and desist orders; prior notice thereof.

(a) If the Mayor determines after notice and hearing that a person has: (1) violated any provision of this chapter; (2) directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional, or sales method to offer or dispose of a unit; (3) made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency; (4) disposed of any units which have not been registered with the agency; or (5) violated any lawful order or rule of the agency, the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in his judgment will carry out the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order to the person affected. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent.

§ 42-1904.15. Revocation of registration; notice; hearing; written finding of fact; cease and desist order as alternative.

(a) (1) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

(A) Failed to comply with the terms of a cease and desist order;

(B) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(C) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(D) Failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(E) Made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the Mayor finds after notice and hearing that the declarant has been guilty of a violation for which revocation could be ordered, the agency may issue a cease and desist order instead.

§ 42-1904.16. Judicial review of mayoral actions.

Proceedings for judicial review of mayoral actions shall be subject to and be in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, § 2-501 et seq.) applicable to “rule-making”; provided, however, that review of mayoral actions pursuant to § 42-1904.06 shall be subject to provisions applicable to “contested cases.”

§ 42-1904.17. Penalties; prosecution by Attorney General.

(a) Any person who willfully violates any provision of this chapter or any rule adopted under or order issued pursuant to § 42-1904.12 or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is larger but not more than \$50,000; or such person may be imprisoned for not more than 6 months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel or his assistants.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

§ 42-1904.18. Severability.

If any provision of this chapter, or any paragraph, section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, paragraph, section, sentence, clause, phrase or word in any circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable.