

**THE RHODE ISLAND  
CONDOMINIUM ACT**

**Rhode Island General Laws Chapter 34-36.1**

*Compliments of*

**MARCUS, ERRICO, EMMER & BROOKS, P.C.**

**MEEB**

**Attorneys at Law**

**45 Braintree Hill Office Park, Suite 107  
Braintree, Massachusetts 02184**

**Telephone:**

**MA: (781) 843-5000 \* NH: (603) 891-2006 \* RI: 401-351-2221**

**Fax (781) 843-1529**

**law@meeb.com \* www.meeb.com**

# The Rhode Island Condominium Act

## Rhode Island General Laws Chapter 34-36.1

(including amendments through Chapter 491 of the 2012 Regular Session)

**Note:** Chapters 459 and 479 of the Acts of 2008 effected significant changes in the Rhode Island Condominium Act, giving condominium associations a “super-lien” over first mortgages to secure the payment of common expenses. These changes were passed and made effective July 8, 2008. MEEB Attorneys Edmund A. Allcock and Janet Oulousian Aronson were significantly involved in the drafting and passage of this important legislation, which makes Rhode Island one of only 16 states in the Country with similar protection for condominium associations. If you need additional information about how this new legislation affects your condominium or the process for compliance with the new legislation, you should consult an attorney.

## TABLE OF CONTENTS

ARTICLE I. GENERAL PROVISIONS .....	1
§ 34-36.1-1.01. Short title .....	1
§ 34-36.1-1.02. Applicability .....	1
§ 34-36.1-1.03. Definitions .....	2
§ 34-36.1-1.04. Variation by agreement .....	6
§ 34-36.1-1.05. Separate titles and taxation .....	6
§ 34-36.1-1.06. Applicability of local ordinances, regulations, and building codes .	7
§ 34-36.1-1.07. Eminent domain .....	7
§ 34-36.1-1.08. Supplemental general principles of law applicable .....	8
§ 34-36.1-1.09. Severability .....	8
§ 34-36.1-1.10. Unconscionable agreement or term of contract .....	8
§ 34-36.1-1.11. Obligation of good faith .....	9
§ 34-36.1-1.12. Remedies to be liberally administered .....	9
ARTICLE II. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS ....	9
§ 34-36.1-2.01. Creation of condominium .....	9
§ 34-36.1-2.02. Unit boundaries .....	10
§ 34-36.1-2.03. Construction and validity of declaration and bylaws .....	10
§ 34-36.1-2.04. Description of units .....	11
§ 34-36.1-2.05. Contents of declaration .....	11
§ 34-36.1-2.06. Leasehold condominiums .....	12
§ 34-36.1-2.07. Allocation of common element interest, votes, and common expense liabilities .....	13
§ 34-36.1-2.08. Limited common elements .....	14
§ 34-36.1-2.09. Plats and plans .....	15
§ 34-36.1-2.10. Exercise of development rights .....	16
§ 34-36.1-2.11. Alterations of units .....	18
§ 34-36.1-2.12. Relocation of boundaries between adjoining units .....	18
§ 34-36.1-2.13. Subdivisions of units .....	19
§ 34-36.1-2.14. Easement for encroachments .....	19
§ 34-36.1-2.15. Use for sales purposes .....	19
§ 34-36.1-2.16. Easement rights .....	19
§ 34-36.1-2.17. Amendment of declaration .....	20
§ 34-36.1-2.18. Termination of a condominium .....	20
§ 34-36.1-2.19. Rights of secured lenders .....	23
§ 34-36.1-2.20. Master associations .....	23
§ 34-36.1-2.21. Merger or consolidation of condominiums .....	24

ARTICLE III. MANAGEMENT OF CONDOMINIUM.....	25
§ 34-36.1-3.01. Organization of unit owners' association.....	25
§ 34-36.1-3.02. Powers of unit owners' association.....	25
§ 34-36.1-3.03. Executive board members and officers.....	26
§ 34-36.1-3.04. Transfer of special declarant rights.....	28
§ 34-36.1-3.05. Termination of contracts and leases of declarant.....	30
§ 34-36.1-3.06. Bylaws.....	31
§ 34-36.1-3.07. Upkeep of condominium.....	31
§ 34-36.1-3.08. Meetings.....	32
§ 34-36.1-3.09. Quorums.....	32
§ 34-36.1-3.10. Voting--Proxies.....	32
§ 34-36.1-3.11. Tort and contract liability.....	33
§ 34-36.1-3.12. Conveyance or encumbrance of common elements.....	33
§ 34-36.1-3.13. Insurance.....	34
§ 34-36.1-3.14. Surplus funds.....	36
§ 34-36.1-3.15. Assessments for common expenses.....	36
§ 34-36.1-3.16. Lien for assessments.....	37
§ 34-36.1-3.17. Other liens affecting the condominium.....	39
§ 34-36.1-3.18. Association records.....	40
§ 34-36.1-3.19. Association as trustee.....	40
§ 34-36.1-3.20. Enforcement of declaration, by-laws and rules.....	40
§ 34-36.1-3.21. Foreclosure of condominium lien.....	41
 ARTICLE IV. PROTECTION OF CONDOMINIUM PURCHASERS.....	 43
§ 34-36.1-4.01. Applicability-Waiver.....	43
§ 34-36.1-4.02. Liability for public offering statement requirements.....	44
§ 34-36.1-4.03. Public offering statement-General provisions.....	44
§ 34-36.1-4.04. Public offering statement-Condominiums subject to development rights.....	47
§ 34-36.1-4.05. Public offering statement-Time shares.....	49
§ 34-36.1-4.06. Public offering statement-Condominiums containing conversion buildings.....	49
§ 34-36.1-4.07. Public offering statement-Condominium securities.....	49
§ 34-36.1-4.08. Purchaser's rights to cancel.....	50
§ 34-36.1-4.09. Resale of units.....	50
§ 34-36.1-4.10. Escrow of deposits.....	51
§ 34-36.1-4.11. Release of liens.....	52
§ 34-36.1-4.12. Conversion buildings.....	52
§ 34-36.1-4.13. Express warranties of quality.....	53
§ 34-36.1-4.14. Implied warranties of quality.....	54
§ 34-36.1-4.15. Exclusion or modification of implied warranties of quality.....	55
§ 34-36.1-4.16. Statute of limitations for warranties.....	55
§ 34-36.1-4.17. Effect of violations on rights of action-Attorney's fees.....	56
§ 34-36.1-4.18. Labeling of promotional material.....	56
§ 34-36.1-4.19. Declarant's obligation to complete and restore.....	56
§ 34-36.1-4.20. Substantial completion of units.....	56

**ARTICLE I.**  
**GENERAL PROVISIONS**

**§ 34-36.1-1.01. Short title**

This act shall be known and may be cited as the “Rhode Island Condominium Act”.

**§ 34-36.1-1.02. Applicability**

(a) (1) This chapter applies to all condominiums created within this state after July 1, 1982, except that any condominium created within this state prior to July 1, 1982, may voluntarily accept the provisions of this chapter in lieu of the provisions under which it was originally organized. Acceptance shall be evidenced by an agreement in writing executed by and in behalf of the condominium association and by all of the owners of all of the individual condominium units within the condominium, in which agreement it is clearly stated that they all accept the provisions of this chapter in lieu of those in the statute under which the condominium was organized and wish to be governed in the future by the provisions of this chapter. The agreement shall be recorded in the land evidence records of each and every town or city where all or any part of the land in the condominium concerned may be located and shall become effective when first so recorded. The acceptance shall only apply to the governance of the condominium concerned as to all matters which are prospective or executory in nature; and nothing herein shall be deemed to abrogate, amend, limit, effect, or impair the continued effectiveness, legality, or validity of all actions lawfully taken by or in behalf of the condominium prior to the effective date of the acceptance, including, but without limitation, the condominium declaration and all amendments thereto, the by-laws of the condominium and/or of its association, all deeds, mortgages, leases and any further documents affecting the titles or rights of unit owners, or of the condominium or the prior lawful acts or deeds of any kind, of the condominium association, its officers, directors, or members.

(2) Sections 34-36.1-1.05 (separate titles and taxation), 34-36.1-1.06 (applicability of local ordinances, regulations, and building codes), 34-36.1-1.07 (eminent domain), 34-36.1-2.03 (construction and validity of declaration and bylaws), 34-36.1-2.04 (description of units), 34-36.1-3.02(a)(1) – (6) and (11) – (17) (powers of unit owners' association), 34-36.1-3.11 (tort and contract liability), 34-36.1-3.16 (lien for assessments), 34-36.1-3.18 (association records), 34-36.1-4.09 (resale of units), and 34-36.1-4.17 (effect of violation on rights of action; attorney's fees), § 34-36.1-3.20 (enforcement of declaration, bylaws and rules), and 34-36.1-1.03 (definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1982; but those sections apply only with respect to events and circumstances occurring after July 1, 1982 and do not invalidate existing provisions of the declaration, bylaws, plats, or plans of those condominiums.

(3) A condominium created as an additional phase by amendment of a condominium created prior to July 1, 1982, if the original declaration contemplated the amendment, shall be deemed to be a condominium created prior to July 1, 1982; provided, however, the provisions of subdivision (a)(2) shall apply as defined therein.

(4) Section 34-36.1-3.21 (foreclosure of condominium lien) applies, with respect to all condominiums created in this state prior to June 19, 1991, only with respect to events and circumstances occurring after June 18, 1991, does not invalidate existing provisions of the declarations, bylaws, plats, or plans of those condominiums, and applies in all respects to all condominiums created in this state after June 18, 1991.

(b) The provisions of the Condominium Ownership Act, chapter 36 of this title, do not apply to condominiums created after July 1, 1982 and do not invalidate any amendment to the declaration, bylaws, plats, and plans of any condominium created before July 1, 1982 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 36 of this title. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this state, but the public offering statement provisions (sections 34-36.1-4.02 -- 34-36.1-4.07) apply to all contracts for the disposition thereof signed in this state by any party unless exempt under section 34-36.1-4.01(b).

### **§ 34-36.1-1.03. Definitions**

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

(1) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant.

(i) A person “controls” a declarant if the person:

- (A) Is a general partner, officer, director, or employer of the declarant,
- (B) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant,
- (C) Controls in any manner the election of a majority of the directors of the declarant, or
- (D) Has contributed more than twenty percent (20%) of the capital of the declarant.

- (ii) A person “is controlled by” a declarant if the declarant:
    - (A) Is a general partner, officer, director, or employer of the person,
    - (B) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person,
    - (C) Controls in any manner the election of a majority of the directors of the person, or
    - (D) Has contributed more than twenty percent (20%) of the capital of the person.
  - (iii) Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.
- (2) “Allocated interests” means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.
- (3) “Association” or “unit owners’ association” means the unit owners’ association organized under § 34-36.1-3.01.
- (4) “Common elements” means all portions of a condominium other than the units.
- (5) “Common expenses” means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- (6) “Common expense liability” means the liability for common expenses allocated to each unit pursuant to § 34-36.1-2.07.
- (7) (i) “Condominium” means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.
- (ii) Provided that each unit owner has a vested, undivided interest in the common elements greater than 0.0 percent, no minimum percentage interest in the common elements is otherwise required by this chapter.
- (8) “Conversion building” means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.
- (9) “Declarant” means any person or group of persons acting in concert who:

- (i) As part of a common promotional plan, offers to dispose of his, her or its interest in a unit not previously disposed of; or
  - (ii) Reserves or succeeds to any special declarant right.
- (10) “Declaration” means any instruments, however denominated, that create a condominium, and any amendments to those instruments.
- (11) “Development rights” means any right or combination of rights reserved by a declarant in the declaration to:
- (A) Add real estate to a condominium,
  - (B) Create units, common elements, or limited common elements within a condominium,
  - (C) Subdivide units or convert units into common elements, or
  - (D) Withdraw real estate from a condominium.
- (12) “Person with a disability” means any person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months or any person having an impairment of mobility or vision which is expected to be of at least twelve (12) months duration, and is a substantial impediment to his or her ability to live independently.
- (13) “Dispose” or “disposition” means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.
- (14) “Executive board” means the body, regardless of name, designated in the declaration to act on behalf of the association.
- (15) Deleted by P.L, 1999, ch. 83, § 80; P.L. 1999, ch. 130, § 80.
- (16) “Identifying number” means a symbol or address that identifies only one unit in a condominium.
- (17) “Land only units” shall mean units designated as land only units on the plats and plans which units may be comprised entirely or partially of unimproved real property and the air space above the real property. The boundaries of a land only unit are to be described pursuant to § 34-36.1-2.05(a)(5). Land only units may, but need not, contain a physical structure. The declaration may provide for the conversion of land only units to other types of units and/or common elements provided the conversion shall be effective only upon the recording of an amendment to the declaration which amendment will include new plats and plans identifying any portion of the land only unit converted to another type of unit and/or common element.



(18) “Leasehold condominium” means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(19) “Limited common element” means a portion of the common elements allocated by the declaration or by operation of § 34-36.1-2.02(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(20) “Master association” means an organization described in § 34-36.1-2.20, whether or not it is also an association described in § 34-36.1-3.01.

(21) “Offering” means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(22) “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. (In the case of a land trust, however, “person” means the beneficiary of the trust rather than the trust or the trustee.)

(23) “Purchaser” means 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 unit other than:

- (i) A leasehold interest including renewal options of less than twenty (20) years, or
- (ii) As security for an obligation.

(24) “Real estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. “Real estate” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

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

(26) “Special declarant rights” means rights reserved for the benefit of a declarant to:

- (i) Complete improvements indicated on plats and plans filed with the declaration, (§ 34-36.1-2.09),
- (ii) To exercise any development right, (§ 34-36.1-2.10),

- (iii) To maintain sales offices, management offices, signs advertising the condominium, and models, (§ 34-36.1-2.15),
- (iv) To use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium, (§ 34-36.1-2.16),
- (v) To make the condominium part of a larger condominium or a planned community, (§ 34-36.1-2.21),
- (vi) To make the condominium subject to a master association, (§ 34-36.1-2.20),
- (vii) Or to appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control, (§ 34-36.1-3.03(d)),

(27) “Time share” means a right to occupy a unit or any of several units during five (5) or more separated time periods over a period of at least five (5) years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

(28) “Unit” means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 34-36.1-2.05(a)(5).

(29) “Unit owner” means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

#### **§ 34-36.1-1.04. Variation by agreement**

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights 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 the limitations or prohibitions of this chapter or the declaration.

#### **§ 34-36.1-1.05. Separate titles and taxation**

(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

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

(c) Any portion of the common elements for which the declarant has reserved any development rights must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

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

**§ 34-36.1-1.06. Applicability of local ordinances, regulations, and building codes**

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership, or otherwise regulate the creation, governance, or existence of the condominium form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

**§ 34-36.1-1.07. Eminent domain**

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

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

- (1) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and
- (2) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

(d) The court decree shall be recorded in every municipality in which any portion of the condominium is located.

#### **§ 34-36.1-1.08. Supplemental general principles of law applicable**

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

#### **§ 34-36.1-1.09. Severability**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

#### **§ 34-36.1-1.10. Unconscionable agreement or term of contract**

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

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

- (1) The commercial setting of the negotiations;
- (2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;
- (3) The effect and purpose of the contract or clause; and

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

**§ 34-36.1-1.11. Obligation of good faith**

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

**§ 34-36.1-1.12. Remedies to be liberally administered**

- (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.
- (b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

**ARTICLE II.**  
**CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS**

**§ 34-36.1-2.01. Creation of condominium**

- (a) A condominium may be created pursuant to this chapter only by recording a declaration in the municipal land evidence records. The declaration must be recorded in every municipality in which any portion of the condominium is located, and must be indexed in the grantees index in the name of the condominium and the association and in the grantor's index in the name of each person executing the declaration.
- (b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of the building containing or comprising any units thereby created are substantially completed in accordance with the plans of that building, as evidenced by a certificate of completion executed by an independent registered engineer or architect which shall be recorded in the local land evidence records. No provision of this chapter shall be construed as prohibiting the recording of a declaration or amendment to a declaration which creates a condominium containing land only units or adds land only units to an existing condominium.
- (c) A declaration or an amendment to a declaration creating land only units shall set forth restrictions on the development of such land only units which address at a minimum the following items:

- (1) Floor area square footage,
- (2) Lot coverage,
- (3) Height,
- (4) Set backs from unit boundaries,
- (5) Use, and
- (6) Architectural and design standards.

**§ 34-36.1-2.02. Unit boundaries**

Except as provided by the declaration:

- (1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.
- (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
- (3) Subject to the provisions of subdivision (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

**§ 34-36.1-2.03. Construction and validity of declaration and bylaws**

- (a) All provisions of the declaration and bylaws are severable, except a housing restriction as set forth in § 34-39.1-3, may not be severed from the declaration and bylaws.
- (b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to § 34-36.1-3.02(a)(1).
- (c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

#### **§ 34-36.1-2.04. Description of units**

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the municipality, city or town, in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

#### **§ 34-36.1-2.05. Contents of declaration**

- (a) The declaration for a condominium must contain:
- (1) The name of the condominium, which must include the word “condominium” or be followed by the words “a condominium,” and the association;
  - (2) The name of every municipality in which any part of the condominium is situated;
  - (3) A legally sufficient description of the real estate included in the condominium;
  - (4) A statement of the maximum number of units which the declarant reserves the right to create;
  - (5) A description of the boundaries of each unit created by the declaration, including the unit’s identifying number;
  - (6) A description of any limited common elements, other than those specified in § 34-36.1-2.02(2) and (4), or as provided in § 34-36.1-2.09(b)(10);
  - (7) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in § 34-36.1-2.02(2) and (4), together with a statement that they may be so allocated;
  - (8) A description of any development rights and other special declarant rights (§ 34-36.1-1.03(26)) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

- (9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
    - (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and
    - (ii) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
  - (10) Any other conditions or limitations under which the rights described in subdivision (8) may be exercised or will lapse;
  - (11) An allocation to each unit of the allocated interests in the manner described in § 34-36.1-2.07;
  - (12) Any restrictions on use, occupancy, and alienation of the units, including any housing restrictions as set forth in § 34-39.1-3;
  - (13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and
  - (14) All matters required by §§ 34-36.1-2.06, 34-36.1-2.07, 34-36.1-2.08, 34-36.1-2.09, 34-36.1-2.15, 34-36.1-2.16, and 34-36.1-3.03(d).
- (b) The declaration may contain any other matters the declarant deems appropriate.

**§ 34-36.1-2.06. Leasehold condominiums**

- (a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:
- (1) The recording data for the lease (or a statement of where the complete lease may be inspected);
  - (2) The date on which the lease is scheduled to expire;
  - (3) A legally sufficient description of the real estate subject to the lease;
  - (4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;



- (5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights;
- (6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights; and
- (7) Any housing restriction as set forth in § 34-39.1-3, and the details thereof.

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

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

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with § 34-36-7(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

**§ 34-36.1-2.07. Allocation of common element interest, votes, and common expense liabilities**

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit including land only units and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant, but may discriminate in favor of units subject to a housing restriction as set forth in § 34-39.1-3. Except as set forth in § 34-36.1-1.03(7), no minimum percentage interest in the common elements is otherwise required.

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

(c) The declaration may provide: (i) That different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) For cumulative voting only for the purpose of electing members of the executive board; and (iii) For the class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent (100%) if stated as percentages. In the event of discrepancy between an allocated interest and the results derived from application of the pertinent formula, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

(f) Subject to the provisions of the declaration and other provisions of law, and except as provided in § 34-36.1-2.12 which provides for the relocation of boundaries between adjoining units, the owners of any two (2) or more units may apply for a reallocation of their respective allocated interests to the executive board; but their application shall not attempt to alter common element interests except as they relate to the proposed reallocation of unit interests. Unless the executive board determines within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

#### **§ 34-36.1-2.08. Limited common elements**

(a) Except for the limited common elements described in § 34-36.1-2.02(2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment shall be recorded in the names of the parties and the condominium.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with § 34-36.1-2.05(a)(7). The allocations shall be made by amendments to the declaration.

**§ 34-36.1-2.09. Plats and plans**

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

- (1) The name and a boundary survey of the entire condominium;
- (2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;
- (3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;
- (4) The extent of any encroachments by or upon any portion of the condominium;
- (5) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;
- (6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;
- (7) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;
- (8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";
- (9) The distance between noncontiguous parcels of real estate comprising the condominium;
- (10) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in § 34-36.1-2.02(2) and (4);
- (11) In the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either “MUST BE BUILT” or “NEED NOT BE BUILT”.

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

- (1) The location and dimensions of the vertical boundaries of each unit, and that unit’s identifying number, provided, that if two (2) or more units have the same vertical boundaries one plan may be used for such units if so designated;
- (2) Any horizontal unit boundaries; with reference to an established datum, and that unit’s identifying number; and
- (3) Any units in which the declarant has reserved the right to create additional units or common elements (§ 34-36.1-2.10), identified appropriately.

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

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any certification of a plat or plan required by this section or § 34-36.1-2.01(b) must be made by an independent registered surveyor, architect, or engineer.

#### **§ 34-36.1-2.10. Exercise of development rights**

(a) To exercise any development right reserved under § 34-36.1-2.05(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration (§ 34-36.1-2.17) and comply with § 34-36.1-2.09. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created; and, except in the case of subdivision or conversion of units described in subsection (c), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by § 34-36.1-2.08.

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by §§ 34-36.1-2.05 or 34-36.1-2.06 as the case may be, and the plats and plans include all matters required by § 34-36.1-2.09. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to § 34-36.1-2.05(a)(8).

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

- (1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit has been taken by eminent domain § 34-36.1-1.07.
- (2) If the declarant subdivides the unit into two (2) or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.
- (3) The time limit set forth in the declaration within which any development rights and other special declarant rights reserved by the declarant must be exercised pursuant to § 34-36.1-2.05(a)(8) may be extended by an affirmation of seventy-five percent (75%) of unit owners and their mortgagees (if any).
- (4) Development rights and other special declarant rights reserved by the declarant that expire unexercised shall become the property of the unit owners' association which unit owners' association shall have the power and right by vote or agreement of seventy-five percent (75%) of unit owners and their mortgagees (if any) to establish a new time limit within which each of such unexercised rights must be exercised by the unit owners' association or its assignee.

(d) If the declarant provides, pursuant to § 34-36.1-2.05(a)(8), that all or a portion of the real estate is subject to the development right of withdrawal:

- (1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and
- (2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

(e) Development rights and other special declarant rights reserved by the declarant that have expired unexercised and which have become the property of the association and which have already received a vote or agreement of seventy-five percent (75%) of unit owners and their mortgagees (if any) to establish a new time limit within which each of such unexercised rights must be exercised by the unit owners' association or its assignee may be included upon any new plat plan or real estate added to the condominium as an amendment to the declaration as described in subsection (b) of this section. An amendment to the declaration pursuant to this section permitting real estate to be added to the condominium property shall require that the association receive a vote or agreement of fifty-one percent (51%) of unit owners.

#### **§ 34-36.1-2.11. Alterations of units**

Subject to the provisions of the declaration and other provisions of law, a unit owner:

- (1) May make any improvements or alterations to his or her unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;
- (2) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;
- (3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subdivision is not an alteration of boundaries.

#### **§ 34-36.1-2.12. Relocation of boundaries between adjoining units**

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

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

**§ 34-36.1-2.13. Subdivisions of units**

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

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interest formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

**§ 34-36.1-2.14. Easement for encroachments**

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

**§ 34-36.1-2.15. Use for sales purposes**

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

**§ 34-36.1-2.16. Easement rights**

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

**§ 34-36.1-2.17. Amendment of declaration**

(a) Except in cases of amendments that may be executed by a declarant under § 34-36.1-2.09(f) or 34-36.1-2.10; the association under § 34-36.1-1.07, 34-36.1-2.06(d), 34-36.1-2.07(f), 34-36.1-2.08(c), 34-36.1-2.12(a), or 34-36.1-2.13; or certain unit owners under § 34-36.1-2.07(f), 34-36.1-2.08(b), 34-36.1-2.12, 34-36.1-2.13(b), or 34-36.1-2.18(b), and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every municipality in which any portion of the condominium is located, and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of the parties executing the amendment.

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

(e) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) A declaration and bylaws may require that amendments to any sections dealing with housing restrictions as set forth in § 34-39.1-3, may also require notice to and/or consent of the restriction holder before such amendments shall take effect.

**§ 34-36.1-2.18. Termination of a condominium**

(a) Except in the case of a taking of all the units by eminent domain § 34-36.1-1.07, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.



(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every municipality in which a portion of the condominium is situated, and is effective only upon recordation.

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

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

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

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

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

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

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

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

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

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

### **§ 34-36.1-2.19. Rights of secured lenders**

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

- (1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or
- (2) Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceedings, or receiving and distributing any insurance proceeds except pursuant to § 34-36.1-3.13.

### **§ 34-36.1-2.20. Master associations**

(a) If the declaration for a condominium provides that any of the powers described in § 34-36.1-3.02 are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to the 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 § 34-36.1-3.01, it may exercise the powers set forth in § 34-36.1-3.02(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

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

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in §§ 34-36.1-3.03, 34-36.1-3.08 – 34-36.1-3.10, and 34-36.1-3.12 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(e) Notwithstanding the provisions of § 34-36.1-3.03(f) with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in § 34-36.1-3.01 the certificate of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive

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

**§ 34-36.1-2.21. Merger or consolidation of condominiums**

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

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

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

- (1) By stating the reallocations or the formulas upon which they are based; or
- (2) By stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentage 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 declaration of the preexisting condominium.

**ARTICLE III.**  
**MANAGEMENT OF CONDOMINIUM**

**§ 34-36.1-3.01. Organization of unit owners' association**

A unit owners' association must be organized no later than the date the first unit in the condominium is conveyed to a purchaser. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under § 34-36.1-2.18, or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. In the case of an unincorporated association, a certificate evidencing the names of the executive board members and mailing address for the association shall be recorded with the municipal land records department for the city or town in which the condominium is located, which shall be updated as often as necessary to reflect any changes in the composition of the executive board.

**§ 34-36.1-3.02. Powers of unit owners' association**

- (a) Except as provided in subsection (b), and subject to the provisions of the declaration, the association, even if unincorporated, may:
- (1) Adopt and amend bylaws and rules and regulations;
  - (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
  - (3) Hire and discharge managing agents and other employees, agents and independent contractors;
  - (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the condominium;
  - (5) Make contracts and incur liabilities;
  - (6) Regulate the use, maintenance, repair, replacement and modification of common elements;
  - (7) Cause additional improvements to be made as a part of the common elements;
  - (8) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, but common elements may be conveyed or subjected to a security interest or mortgage only pursuant to § 34-36.1- 3.12;

- (9) Grant easements, leases, licenses and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in § 34-36.1-2.02(2) and (4) and for services provided to unit owners;
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association as provided in § 34-36.1-3.20;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by § 34-36.1-4.09 or statements of unpaid assessments;
- (13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- (14) Borrow funds including the right to assign and/or pledge its right to future income, including the right to receive common expense assessments;
- (15) Exercise any other powers conferred by the declaration or bylaws;
- (16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the powers of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

**§ 34-36.1-3.03. Executive board members and officers**

(a) Except as provided in the declaration, the bylaws, subsection (b), or in other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the offices and members of the executive board are required to exercise:

- (1) If appointed by the declarant, the care required of fiduciaries of the unit owners; and
- (2) If elected by the unit owners, ordinary and reasonable care.

- (b) The executive board may not act on behalf of the association to amend the declaration (§ 34-36.1-2.17), to terminate the condominium, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.
- (c) Within thirty (30) days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.
- (d) (1) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:
- (i) Sixty (60) days after conveyance of eighty percent (80%) of the units which may be created to unit owners other than a declarant;
  - (ii) Two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business; or
  - (iii) Two (2) years after any development right to add new units was last exercised.
- (2) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before terminations of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.
- (e) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units which may be created to unit owners other than a declarant, not less than one-third (1/3) of the members of the executive board must be elected by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

#### **§ 34-36.1-3.04. Transfer of special declarant rights**

(a) No special declarant right created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every municipality in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

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

- (1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by this chapter. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligations of the transferor.
- (2) If the successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.
- (3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.
- (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the federal Bankruptcy Code, 11 U.S.C. §101 et seq., or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration



pursuant to § 34-36.1-2.15 and held by that declarant to maintain models, sales and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the federal Bankruptcy Code, 11 U.S.C. §101 et seq., or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

- (1) The declarant ceases to have any special declarant rights, and
- (2) The period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) (1) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

- (i) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.
- (ii) A successor to any special declarant right, other than a successor described in subdivision (e)(2) or (3), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this chapter or the declaration:
  - (A) On a declarant which relates to his or her exercise or nonexercise of special declarant rights; or
  - (B) On his or her transferor, other than:
    - (I) Misrepresentations by any previous declarant;
    - (II) Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;
    - (III) Breach of any fiduciary obligations by any previous declarant or his or her appointees to the executive board; or
    - (IV) Any liability or obligations imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

- (2) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if he or she is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligations to provide a public offering statement and any liability arising as a result thereof.
- (3) A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his or her transferor to control the executive board in accordance with the provisions of § 34-36.1-3.03(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under § 34-36.1-3.03(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

#### **§ 34-36.1-3.05. Termination of contracts and leases of declarant**

If entered into before the executive board elected by the unit owners pursuant to § 34-36.1-3.03(f) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to § 34-36.1-3.03(f) takes office upon not less than ninety (90) days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

**§ 34-36.1-3.06. Bylaws**

- (a) The bylaws of the association must provide for:
- (1) The number of members of the executive board and the titles of the officers of the association;
  - (2) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
  - (3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
  - (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
  - (5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and
  - (6) The method of amending the bylaws.
- (b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

**§ 34-36.1-3.07. Upkeep of condominium**

- (a) Except to the extent provided by the declaration, subsection (b), or § 34-36.1-3.13(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his or her unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.
- (b) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

### **§ 34-36.1-3.08. Meetings**

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

### **§ 34-36.1-3.09. Quorums**

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

### **§ 34-36.1-3.10. Voting--Proxies**

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

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

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (1) the provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (2) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (3) lessees are entitled to notice of meetings, access to records, and other

rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in § 34-36.1-3.08, of all meetings at which lessees may be entitled to vote.

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

#### **§ 34-36.1-3.11. Tort and contract liability**

Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) for all tort losses not covered by insurance suffered by the association or that unit owner, and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by § 34-36.1-3.17.

#### **§ 34-36.1-3.12. Conveyance or encumbrance of common elements**

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

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

(c) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

### **§ 34-36.1-3.13. Insurance**

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

- (1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
- (2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and any property owned or leased by the association.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

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

- (d) Insurance policies carried pursuant to subsection (a) must provide that:
- (1) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;
  - (2) The insurer waives its right to subrogation under the policy against any unit owner or member of the owners household;
  - (3) No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and
  - (4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.
- (e) Any loss covered by the property policy under subdivision (a)(1) and subsection (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completed, repaired or restored, or the condominium is terminated.
- (f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his or her own benefit.
- (g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.
- (h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) eighty percent (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 unless insurance proceeds are adequate to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced,

(1) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (3) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under § 34-36.1-1.07(a) and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, § 34-36.1-2.18 governs the distribution of insurance proceeds if the condominium is terminated.

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

#### **§ 34-36.1-3.14. Surplus funds**

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liability or credited to them to reduce their future common expense assessments.

#### **§ 34-36.1-3.15. Assessments for common expenses**

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

(b) (1) Except for assessments under subsections (c)--(e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to § 34-36.1-2.07(a). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding twenty-one percent (21%) per year.

(2) Except in the case of a condominium in which all units are restricted to non-residential use, the declarant must pay common expense assessments to the association on all units it owns once a common expense assessment is imposed; the obligation of the declarant to pay common expense assessments on the units it owns shall commence when the declaration or an amendment to a declaration adding units to a condominium is recorded, for those units referenced in the declaration or in any amendment to the declaration, pursuant to § 34-36.1- 2.01.



- (c) To the extent required by the declaration:
- (1) Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;
  - (2) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and
  - (3) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.
- (d) Assessments to pay a judgment against the association may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.
- (e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his or her unit.
- (f) If common expenses liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.
- (g) (1) Whenever an assessment for common expenses has remained unpaid for a period of sixty (60) days, and the condominium unit is occupied by a tenant, the association may subject to the rights of a superior lienholder make demand upon the tenant for payment of the amount in arrears, and for payment of succeeding assessments on a monthly basis. All amounts paid directly to the association shall be used as a credit against the rent owed for occupancy of the unit.
- (2) Acceptance by an association of payments made by a tenant shall not constitute a waiver of any other rights an association may have with respect to the collection of assessments.

### **§ 34-36.1-3.16. Lien for assessments**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in accordance with and subject to the provisions of § 34-36.1-3.21. Unless the declaration otherwise provides, attorney's fees, charges, late charges, fines, and interest charged pursuant to § 34-36.1-3.02(a)(10)-(12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) (1) A lien under this section is prior to all other liens and encumbrances on a unit except:

- (i) Liens and encumbrances recorded before the recordation of the declaration and not subordinated to the declaration;
- (ii) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
- (iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) The lien is also prior to any mortgage or deed of trust described in subdivision (b)(1)(ii) of this section to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to § 34-36.1-3.15(a) which would have become due in the absence of acceleration during the six (6) months immediately preceding the foreclosure of the interest of the unit owner including any costs and reasonable attorney's fees not to exceed two thousand five hundred dollars (\$2,500), incurred in the collection of any delinquent assessment or other charges by legal proceedings or otherwise and all costs of foreclosure held pursuant to § 34-36.1-3.21, including but not limited to, publication, advertising and auctioneer costs, said foreclosure costs not to exceed five thousand dollars (\$5,000) (for a total aggregate of attorneys' fees and costs of \$7,500).

(3) The priority amount under subdivision (b)(2) above shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest assessed by the association.

(4) When any portion of the unit owner's share of the common expenses has been delinquent for at least sixty (60) days the association shall first send a notice stating the amount of the delinquency to the unit owner by certified mail, return receipt requested, and first class mail. The association shall also send a notice by certified mail, return receipt requested, and first class mail, stating the amount of the delinquency to the holder of the first mortgage or deed of trust as it appears in the land evidence records at the address appearing in the mortgage or deed of trust or such other address as the first mortgagee may provide in writing to the association.

(5) The failure of the association to send the first mortgagee the notice of sixty (60) days delinquency of common expense assessments, as described in subsection (b)(4) above, shall not affect the priority of the lien for up to six (6) months common expense assessments, but the priority amount shall not include any costs or attorney's fees.

(6) This subsection does not affect the priority of mechanics or materialmen's liens, or the priority of liens for other assessments made by the association.

- (c) Unless the declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.
- (d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required but is permitted.
- (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the assessments becomes due.
- (f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.
- (g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.
- (h) The association, upon written request shall furnish to a unit owner or the holder of a first mortgage or deed of trust granted with respect to such unit owner's unit a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the association, the executive board, and every unit owner.
- (i) The association may take action for failure of a unit owner to pay any assessment or other charges pursuant to this section. The delinquent unit owner shall be obligated to pay all expenses of the executive board, including reasonable attorney's fees, incurred in the collection of the delinquent assessment or other charges by legal proceedings or otherwise, such attorney's fees and other charges also being a lien on the unit. The delinquent unit owner shall also be obligated to pay any amounts paid by the executive board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

**§ 34-36.1-3.17. Other liens affecting the condominium**

- (a) Except as provided in subsection (b), a judgment for money against the association if recorded is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.
- (b) If the association has granted a security interest in the common elements to a creditor or the association pursuant to § 34-36.1-3.12, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

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

(d) A judgment against the association must be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.

#### **§ 34-36.1-3.18. Association records**

The association shall keep financial records sufficiently detailed to enable the association to comply with § 34-36.1-4.09. All financial and other records shall be made reasonably available for examination by any unit owner and his or her authorized agent.

#### **§ 34-36.1-3.19. Association as trustee**

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

#### **§ 34-36.1-3.20. Enforcement of declaration, by-laws and rules**

(a) An executive board may impose and assess fines against a unit owner as a method of enforcing the association's declaration, bylaws, and rules and regulations. Such fines may include, but are not limited to, daily fines for continued violative conduct in the future. Notice and the opportunity for a hearing must be provided to an alleged violator before a fine is imposed and assessed. All fines shall be a lien on the unit charged.

(b) Daily fines imposed and assessed pursuant to this section shall be no more than one hundred dollars (\$100) per day for residential condominiums nor more than five hundred dollars (\$500) per day for commercial condominiums.

(c) Fines other than daily fines imposed and assessed pursuant to this section shall be no more than five hundred dollars (\$500) for residential condominiums and no more than one thousand dollars (\$1,000) for commercial condominiums.

(d) Any condominium declaration, bylaw, rule or regulation which purports to establish a maximum fine or daily fine shall be invalid.

(e) Hearings conducted pursuant to this section shall be before the executive board or a person designated by the executive board.

(f) A decision in a hearing held pursuant to this section must include costs in all cases and reasonable attorney's fees, if the prevailing party is represented by a member of the Rhode Island Bar. Such attorney's fees and costs shall also be a lien on the unit charged.

### **§ 34-36.1-3.21. Foreclosure of condominium lien**

(a) (1) If a condominium unit owner shall default in the payment of any assessment, fine, or any other charge which is a lien on the unit in favor of the association or its assigns, then it shall be lawful for the association or its assigns, through its executive board, to sell the unit of any defaulting unit owner and the benefit and equity of redemption of the defaulting unit owner and his or her heirs, executors, administrators, and assigns therein, at public auction upon the premises or at such other place, if any, as may be designated for that purpose by the association or its assigns.

(2) The association must first mail written notice of the time and place of sale to the defaulting unit owner, at his or her last known address and the holder of the first mortgage or deed of trust of record at the address for service required by subdivision 34-36.1-3.16(b)(4), both by certified mail, return receipt requested, at least twenty (20) days prior to publishing said notice; second, the association must publish the same at least once each week for two (2) successive weeks in a public newspaper. The time of sale shall be at least fifteen (15) days after the publication of the first notice in a public newspaper. Publication shall be as follows:

- (i) If the condominium is situated in the city of Central Falls, in a public newspaper published daily in the city of Pawtucket;
- (ii) If the condominium is situated in the town of North Providence, in a public newspaper published daily in the city of Providence;
- (iii) If the condominium is situated in any of the towns of Cumberland, Lincoln, Smithfield or North Smithfield, in a public newspaper published daily in either the city of Pawtucket, Woonsocket, or Providence;

- (iv) If the condominium is situated in the county of Providence elsewhere than in the above last named cities and towns, in a public newspaper published daily in the city of Providence;
- (v) If the condominium is situated in the county of Newport, in a public newspaper published daily in the city of Newport; but if there be no such newspaper so published, then in some public newspaper published anywhere in the county of Newport;
- (vi) If the condominium is situated in any of the counties of Bristol, Kent, or Washington, in a public newspaper published daily in the city or town in which the condominium is situated; or in some public newspaper published daily in the county in which the condominium is situated or in a public newspaper published daily in the city of Providence.

(3) The sale may be adjourned from time to time, provided that publishing of the notice shall be continued, together with a notice of the adjournment or adjournments, at least once each week in the same newspaper; and third, the association must mail written notice of the same to any person or entity having an interest of record in the unit, recorded not later than thirty (30) days prior to the date originally scheduled for the sale, including without limitation, the holder of any mortgage or deed of trust with respect to the unit, to the address of the person or entity may have provided for that purpose in the land evidence records or at any other address the person or entity may have provided the association in writing, such notice to be given by regular or certified mail, return receipt requested, at least ten (10) days prior to the date originally scheduled for such sale; and in his or her or their own name or names, or as the attorney or attorneys of the defaulting unit owner (for that purpose by these presents duly authorized and appointed with full power of substitution and revocation) to make, execute, and deliver to the purchaser or purchasers at the sale a good and sufficient deed or deeds of the defaulted condominium unit, in fee simple, and to receive the proceeds of the sale or sales, and from the proceeds to retain all sums secured by the lien in favor of the association as of the date of such sale together with all expenses incident to such sale or sales, or for making deeds hereunder, and for fees of counsel and attorneys, and all costs or expenses incurred in the exercise of such powers, and all taxes, assessments, and premiums for insurance, if any, either theretofore paid by the association, or its assigns, or then remaining unpaid upon the defaulted condominium unit, rendering and paying the surplus of the proceeds of sale, if any there be, over and above the amounts to be retained, and paid to other encumbrances of record, together with a true and particular account of such sale or sales, expenses, and charges, to the defaulting unit owner, or his or her heirs, executors, administrators or assigns. The sale or sales shall forever be a perpetual bar against the defaulting unit owner and his or her heirs, executors, administrators and assigns, and all persons claiming the defaulted condominium unit, so sold, by, through or under him, her, them or any of them.

(4) Within 7 days after the foreclosure sale, the association shall send an additional written notice to the holder of the first mortgage or deed of trust of record as appears in the land evidence records, as provided in subdivision 34-36.1-3.16 (b)(4) by certified mail, return receipt requested, and first class mail, identifying the name of highest bidder and the amount of the bid.

(b) Any foreclosure sale held by the association pursuant to subsection (a) above, and the title conveyed to any purchaser or purchasers pursuant to such sale, shall be subject to any lien or encumbrance entitled to a priority over the lien of the association pursuant to § 34-36.1-3.16(b).

(c) Any foreclosure sale held by the association pursuant to subsection (a) above, shall be subject to a thirty (30) day right of redemption running in favor of the holder of the first mortgage or deed of trust of record. The right of redemption shall be exercisable by tendering payment to the association in full of all assessments due on the unit together with all attorney fees and costs incurred by the association in connection with the collection and foreclosure process within thirty days of the date of the post-foreclosure sale notice sent by the association pursuant to subdivision (a)(4) above. Otherwise, the right of redemption shall terminate thirty (30) days from the date of the post-foreclosure sale notice sent by the association pursuant to subdivision (a)(4) above.

(d) Upon request the association shall provide to any person or entity having an interest of record in the unit: (1) an itemized statement of the amounts owed the association by the defaulting unit owner, separating common expense assessments referred to in § 34-36.1-3.1 6(b)(2) from interest, attorney's fees, fines and other charges secured by the lien of the association; and (2) a copy of the most recent periodic budget adopted by the association pursuant to § 34-36.1-3.15(a).

#### **ARTICLE IV.** **PROTECTION OF CONDOMINIUM PURCHASERS**

##### **§ 34-36.1-4.01. Applicability-Waiver**

(a) This article applies to all units subject to this chapter except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

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

- (1) A gratuitous disposition of a unit;
- (2) A disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure;

- (5) A disposition to a person in the business of selling real estate who intends to offer those units to purchasers or;
- (6) A disposition that may be cancelled at any time and for any reason by the purchaser without penalty.

**§ 34-36.1-4.02. Liability for public offering statement requirements**

(a) Except as provided in subsection (b), a declarant, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of §§ ~~34-36.1-4.03~~--~~34-36.1-4.06~~.

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

(c) Any declarant or other person in the business of selling real estate who offers a unit for his or her own account to a purchaser shall deliver a public offering statement in the manner prescribed in § ~~34-36.1-4.08(a)~~. As between the declarant or other person specified in subsection (b), the person who prepared all or a part of the public offering statement is liable under §§ ~~34-36.1-4.08~~--~~34-36.1-4.17~~ for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which declarant prepared. If a declarant did not prepare any part of a public offering statement that he or she delivers, he or she is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of §§ ~~34-36.1-4.03~~--~~34-36.1-4.06~~ as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two (2) or more public offering statements.

**§ 34-36.1-4.03. Public offering statement-General provisions**

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

- (1) The name and principal address of the declarant and of the condominium;



- (2) A general description of the condominium, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that declarant anticipates including in the condominium;
- (3) The number of units in the condominium;
- (4) Copies and a brief narrative description of the significant features of the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 34-36.1-3.05;
- (5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:
  - (i) An annual amount to establish a sufficient reserve for the painting and/or staining of exterior wood surfaces, replacement of roof shingles, resurfacing of roadways, and replacement of other items subject to deterioration which shall include but not be limited to, exterior wooden decks and mulch;
  - (ii) An itemization of the life-span and expense for restraining or repainting the exterior wood surfaces, resurfacing the roadways, and reshingling the roof, replacing exterior wooden decks, and replacing mulch, said expenses to be defined as annual and monthly sums per unit as part of the common expense assessment;
  - (iii) The projected common expense assessment by category of expenditures for the association; and
  - (iv) The projected monthly common expense assessment for each type of unit;
- (6) Any services not reflected in the budget that the declarant provides, or expenses that he or she pays, and that he or she expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

- (7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
- (8) A description of any liens, defects, or encumbrances on or affecting the title to the condominium;
- (9) A description of any financing offered or arranged by the declarant;
- (10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;
- (11) A statement that:
  - (i) Within ten (10) days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;
  - (ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent (10%) of the sales price of the unit; and
  - (iii) If a purchaser receives the public offering statement more than ten (10) days before signing a contract, he or she cannot cancel the contract;
- (12) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;
- (13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 34-36.1-4.08, together with the name and address of the escrow agent;
- (14) Any restraints on alienation of any portion of the condominium;
- (15) A description of the insurance coverage provided for the benefit of unit owners;
- (16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;
- (17) The extent to which financial arrangements have been provided for completion of all improvements labeled “MUST BE BUILT” pursuant to § 34-36.1-4.19;

- (18) A brief narrative description of any zoning and other land use requirements affecting the condominium; and
- (19) All unusual and material circumstances, features, and characteristics of the condominium and the units.

(b) If a condominium composed of not more than twelve (12) units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, a public offering statement may, but need not, include the information otherwise required by subdivisions (a)(9), (10), and (15)-(19) and the narrative descriptions of documents required by subdivision (a)(4).

(c) If a condominium composed of not more than twelve (12) units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, a declarant who owns units for more than two (2) years from the date of the sale of the first unit shall not be required to issue a public offering statement pursuant to this section for those units owned for more than two (2) years.

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

**§ 34-36.1-4.04. Public offering statement-Condominiums subject to development rights**

If the declaration provides that a condominium is subject to any development rights, the public offering statement must disclose, in addition to the information required by § 34-36.1-4.03:

- (1) The maximum number of units, and the maximum number of units per acre, that may be created;
- (2) A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;
- (4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

- (5) A statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subdivision (3);
- (6) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
- (7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;
- (8) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;
- (9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;
- (10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;
- (11) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and
- (12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

**§ 34-36.1-4.05. Public offering statement-Time shares**

If the declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by § 34-41-4.03:

- (1) The number and identity of units in which time shares may be created;
- (2) The total number of time shares that may be created;
- (3) The minimum duration of any time shares that may be created; and
- (4) The extent to which the creation of time shares will or may affect the enforceability of the associations lien for assessments provided in § 34-36.1-3.16.

**§ 34-36.1-4.06. Public offering statement-Condominiums containing conversion buildings**

(a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by § 34-36.1-4.03:

- (1) A statement by the declarant, based on a report prepared by a registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;
- (2) A statement by the declarant of the expected useful life of each item reported on in subdivision (a)(1) or a statement that no representations are made in that regard; and
- (3) A list of any outstanding notices of incurred violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

**§ 34-36.1-4.07. Public offering statement-Condominium securities**

If an interest in a condominium is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser a copy of the public offering statement filed with the securities and exchange commission.

**§ 34-36.1-4.08. Purchaser's rights to cancel**

(a) A person required to deliver a public offering statement pursuant to § 34-36.1-4.02(c) shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before conveyance of that unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than ten (10) days before execution of a contract for the purchase of a unit the purchaser, before conveyance, may cancel the contract within ten (10) days after first receiving the public offering statement.

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

(c) If a person required to deliver a public offering statement pursuant to § 34-36.1-4.02(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent (10%) of the sales price of the unit.

**§ 34-36.1-4.09. Resale of units**

(a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under § 34-36.1-4.01(b) a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than the plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

- (1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;
- (2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;
- (3) A statement of any other fees payable by unit owners;
- (4) A statement of any capital expenditures anticipated by the association for the current and two (2) next succeeding fiscal years;
- (5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

- (6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
- (7) The current operating budget of the association;
- (8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
- (9) A statement describing any insurance coverage provided for the benefit of unit owners;
- (10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;
- (11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and
- (12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) The association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

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

#### **§ 34-36.1 -4.10. Escrow of deposits**

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to § 34-36.1-4.02(c) shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an attorney, a licensed real estate broker, an independent bonded escrow company, or any financial institution whose deposits are insured until:

- (1) Delivered to the declarant at closing;
- (2) Delivered to the declarant because of purchaser's default under a contract to purchase the unit; or
- (3) Refunded to the purchaser.

**§ 34-36.1-4.11. Release of liens**

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to § 34-36.1-4.02(c) a seller shall, before conveying a unit, record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association the declarant shall have that real estate released from:

- (1) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and
- (2) All other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

**§ 34-36.1-4.12. Conversion buildings**

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



(b) For sixty (60) days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. Tenants shall have the right to cancel their lease and receive no penalties for the cancellation as long as all obligations of the lease have been met. If a tenant fails to purchase the unit during that sixty (60) day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty (180) days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit for conversion.

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

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of chapter 18 of this title the notice also constitutes a notice to vacate specified by that statute.

(e) (1) Notwithstanding the notice provisions of subsection (a) herein any tenant who has continuously resided in the unit for ten (10) years or more or any tenant who has attained the age of sixty-two (62) shall be given one year notice. Rents shall not be increased during the notice period. A tenant as described in this subsection shall have one hundred eighty (180) days within which to purchase the unit as provided for in subsection (b) and the remaining provisions of that subsection shall apply.

(2) The owner or developer shall pay reasonable moving expenses and costs, to any tenant who is disabled or has attained the age of sixty-two (62), within a fifty (50) mile radius.

(f) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

#### **§ 34-36.1-4.13. Express warranties of quality**

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

(1) Any written or printed affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium, creates an

express warranty that the unit and related rights and uses will conform to the affirmation or promise;

- (2) Any model or description of the physical characteristics of the condominium, including plans and specifications of or for improvements, creates an express warranty that the condominium will substantially conform to the model or description;
- (3) Any description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and
- (4) A provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

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

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

#### **§ 34-36.1-4.14. Implied warranties of quality**

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

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

- (1) Free from defective materials; and
- (2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) In addition, a declarant and any person in the business of selling real estate for his or her own account warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in § 34-36.1-4.15.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all of the declarants implied warranties of quality.

**§ 34-36.1-4.15. Exclusion or modification of implied warranties of quality**

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

- (1) May be excluded or modified by agreement of the parties; and
- (2) Are excluded by expression of disclaimer, such as “as is,” “with all faults,” or other language which in common understanding calls the buyer’s attention to the exclusion of warranties.

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

**§ 34-36.1-4.16. Statute of limitations for warranties**

(a) A judicial proceeding for breach of any obligation arising under § 34-36.1-4.13 or § 34-36.1-4.14 must be commenced within six (6) years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two (2) years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

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

- (1) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and
- (2) As to each common element, at the time the common element is completed or, if later:

- (i) As to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or
- (ii) As to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

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

**§ 34-36.1-4.17. Effect of violations on rights of action-Attorney’s fees**

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney’s fees.

**§ 34-36.1-4.18. Labeling of promotional material**

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

**§ 34-36.1-4.19. Declarant’s obligation to complete and restore**

(a) The declarant shall complete all improvements labeled “MUST BE BUILT” on plats or plans prepared pursuant to § 34-36.1-2.09.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by §§ 34-36.1-2.10--34-36.1-2.13, 34-36.1-2.15 and 34-36.1-2.16.

**§ 34-36.1-4.20. Substantial completion of units**

In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect or engineer, or by issuance of a certificate of occupancy authorized by law.