

**To: New Jersey Law Revision Commission**

**From: John Cannel**

**Re: Common Interest Ownership**

**Date: December 2, 2015**

## **M E M O R A N D U M**

---

A few sections of UCIOA were left open after the November meeting. Some were held because they needed more discussion among interested parties. The definition of “common interest community” and the section on scope were left to be considered after other sections were more settled. One, 2-117, Amendment of Declaration, was discussed at some length, and I have attempted a redraft following the Commission’s guidance. For every section other than 2-117, I have indicated any changes with strikeouts and underlines. In some sections there are no changes; any reservations that I had about the UCIOA text have been resolved. I have done a complete redraft of 2-117. That made marking changes impractical. The UCIOA and 2005 bill versions are included in the commentary.

### **SECTION 1-103. DEFINITIONS**

a. Common interest community means real estate described in a declaration with respect to which a person, ~~by virtue of the person’s ownership of a unit,~~ is obligated by virtue of unit ownership to pay for a share of:

(1) real estate taxes;

(2) insurance premiums;

(3) maintenance; or

(4) improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration.

b. Common interest community ~~also~~ includes any condominium, cooperative or planned unit development or any other real estate development composed of individually owned property units and common property jointly owned and managed by the unit owners.

c. The term does not include an arrangement described in Section 1-209 or 1-210.

d. For purposes of this ~~paragraph~~ section, ownership of a unit does not include holding a leasehold interest of less than 20 years in a unit, including renewal options.

#### **COMMENT**

The underlined, added, language is the definition from UCIOA. It is included at the strong insistence of CAI representatives and has been reordered and reformatted slightly. There are a number of problems with this definition. First, it does not include any coops or those condominiums that were established before this is enacted. Neither is established by a “declaration”. I also am not sure that a unit owner in a coop is obligated to “pay a share” rather than obligated to pay a maintenance fee established by the board. I have the same question whether

communities with limited common real estate would be covered. But more important, the definition is unnecessarily unclear. An ordinary person cannot read the definition and know that a planned unit development is covered. This definition probably distinguishes common interest communities from other property arrangements, but because it is not based on the essence of what these communities are, it is confusing. It is like the definition criticized by Aristotle, defining man as a featherless biped. It might work but it misses the essence. However any problem with the orthodox UCIOA definition is obviated by the un-underlined language that was before the Commission in July and September.

#### **SECTION 1-105. SEPARATE TITLES AND TAXATION.**

a. In a condominium or planned community:

(1) 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.

(2) 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.

b. Any portion of the common elements for which the declarant has reserved any development right 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 common interest community may be taxed and assessed in any manner provided by law.

##### **COMMENT**

Subsection (a) of UCIOA has been deleted. It states that unit ownership in a cooperative is personalty. The findings of the Cooperative Recording Act state that a cooperative is a hybrid of real and personal property. In addition, interest in a cooperative involves stock (traditionally, personal property) and a proprietary lease (leases generally are real property).

#### **SECTION 1-201. APPLICABILITY TO COMMON INTEREST COMMUNITIES.**

a. Except as otherwise provided in this section, this act applies to all common interest communities within this state.

b. This act shall not make any action taken before its effective date invalid of illegal.

c. If a common interest community was validly established before the effective date, this act shall not require the community to file a declaration.

d. This act shall not alter the rights and responsibilities of declarants of common interest communities established before the effective date of this act.

##### **COMMENT**

This section applies the act to all common interest communities with the exceptions expressed. It differs from UCIOA which would generally apply only to communities established after the effective date of the act. This version was before the Commission in July and September.

#### **SECTION 2-103. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.**

a. All provisions of the declaration and bylaws are severable.

b. The rule against perpetuities and limitations on restraints on alienation do ~~does~~ not apply to defeat any provision of the declaration, bylaws or rules.

c. If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this act.

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

*COMMENT*

The phrase “and limitations on restraints on alienation” in subsection (b) is not in UCIOA; it derives from section 28 of the 2005 bill. In subsection (d), the 2005 bill deletes the second sentence.

## **SECTION 2-101. CREATION OF COMMON INTEREST COMMUNITIES.**

a. A common interest community may be created pursuant to this act only by recording a declaration executed in the same manner as a deed ~~and, in a cooperative, by conveying the real estate subject to that declaration to the association.~~ The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed ~~in the grantee’s index in the name of~~ treating the common interest community as the grantee and ~~the association and in the grantor’s index in the name of each person executing the declaration as the grantors.~~

~~(b) In a condominium, a declaration, or an amendment to a declaration, adding units may not be recorded unless (i) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent [registered] engineer, surveyor, or architect [, or (ii) unless the agency has approved the declaration or amendment in the manner prescribed in Section 5-103(b)].~~

*COMMENT*

*Small changes in subsection (a) conform the indexing requirements to the New Jersey title recording law. The inclusion of cooperatives in the requirement for establishment by declaration is consonant with the Cooperative Recording Act and reflects the Commission’s decision that this act apply generally to all common interest communities. Because the section is prospective (see Section 1-201) it will not disturb existing cooperatives. Subsection (b) requires that units be built before the declaration is filed. That requirement is different from New Jersey practice and was deleted in the 2005 bill drafted in consultation between OLS and CAI (hereafter, 2005 bill).*

## **SECTION 2-104. DESCRIPTION OF UNITS.**

A description of a unit which sets forth the name of the common interest community, the recording data for the declaration, ~~the [county] in which the common interest community is located,~~ and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

*COMMENT*

The deletion recognizes that “recording data” necessarily includes the county in which the community is located.

## **SECTION 2-105. CONTENTS OF DECLARATION.**

a. The declaration must contain:

(1) the names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) the name of every county in which any part of the common interest community is situated;

(3) a legally sufficient description of the real estate included in the common interest community;

(4) a statement of the maximum number of units that the declarant reserves the right to create;

(5) in a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(6) a description of any limited common elements, other than those specified in Section 2-102(2) and (4), as provided in Section 2-109(b)(10) and, in a planned community, any real estate that is or must become common elements;

(7) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in Section 2-102(2) and (4), together with a statement that they may be so allocated;

(8) a description of any development right and other special declarant rights 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:

(A) 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

(B) 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 paragraph (8) may be exercised or will lapse;

(11) an allocation to each unit of the allocated interests in the manner described in Section 2-107;

(12) any restrictions on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to Section 3-120(d) and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(13) the recording data for recorded easements and licenses appurtenant to or included in the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(14) any authorization pursuant to which the association may establish and enforce construction and design criteria and aesthetic standards as provided in Sections 3-106 and 3-120; and

(15) Provisions concerning reserves that:

(A) mandate that the association create and maintain reserves for the replacement or repair of the common elements, together with a statement of the basis on which those reserves are to be calculated and funded;; or

(B) allow that the association may, but is not required to, create and maintain reserves;

(16) all matters required by Sections 2-106, 2-107, 2-108, 2-109, 2-115, 2-116, and 3-103.

b. The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

#### *COMMENT*

With the exception of subsection (a)(15), this section is substantively identical to that of UCIOA. The added subsection is derived from section 30 of the 2005. The 2005 bill also adds provisions on, display of flag, limitations on the permitted use of units and restrictions on design. This section was before the Commission in July, September and October.

### **SECTION 2-109. PLATS AND PLANS.**

a. Plats and plans are a part of the declaration, and are required for all common interest communities except cooperatives. Separate plats and plans are not required by this [act] if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

b. Each plat must show or project:

(1) the name and a survey or general schematic map of the entire common interest community;

(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, but plats and plans need not designate or label which development rights are applicable to each parcel if that information is clearly delineated in the declaration;

(4) the extent of any encroachments by or upon any portion of the common interest community;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(6) except as otherwise provided in subsection (h), the approximate 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) except as otherwise provided in subsection (h), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) 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 non-contiguous parcels of real estate comprising the common interest community;

(10) the approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements, and show or contain a narrative description of any other limited common elements; and

(11) for 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 common interest community. Any contemplated improvement shown must be labeled either **MUST BE BUILT** or **NEED NOT BE BUILT**.

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

(1) the approximate location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(2) the approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) the approximate location of any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

e. Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside 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. A certification of a plat or plan required by this section or Section 2-101(b) must be made by an independent [registered] surveyor, architect, or engineer.

h. Plats and plans need not show the location and dimensions of the units' boundaries or their limited common elements if:

(1) the plat shows the location and dimensions of all buildings containing or comprising the units; and

(2) the declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.

*COMMENT*

This section is substantively identical to that of UCIOA. This section was accepted by the 2005 bill without substantive change. This version of the section was before the Commission in July, September and October.

## **SECTION 2-116. EASEMENT AND USE RIGHTS**

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

b. Subject to ~~Sections 3-102(a)(6) and 3-112~~, community association regulation on the use, maintenance, repair, replacement, and modification of common elements the unit owners have an easement in the common elements for access to their units.

c. Subject to the declaration and rules, the unit owners have a right to use the common elements that are not limited common elements and all real estate that must become common elements for the purposes for which they were intended.

*COMMENT*

The change removes the problematic cross reference and substitutes the subjects included in the cross-referenced provisions. The 2005 (section 42) bill provision is substantively similar to this provision but refers to the limits in later sections on unit owners in planned communities on use of common elements for access.

## **SECTION 2-117. AMENDMENT OF DECLARATION.**

a. Except in cases of amendments that may be executed by a declarant under Section 2-109(f) or 2-110, the association under Section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or certain unit owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), or by the executive board in accordance with subsection b. of section 53 of P.L. , c. (C. ) (pending before the Legislature as this bill)), and except as limited by subsection c. of this section, the declaration, including any plats and plans, shall be amended only by vote or agreement of unit owners of units representing at least 67 percent of a quorum of the members, which quorum shall, unless the declaration requires a larger percentage, be 50 percent of the membership in the association qualified to vote,

b. Within 24 months following assumption by the owners of control of the executive board, the executive board shall re-examine the bylaws, declaration and rules of the association

and present such proposed amendments as the executive board may deem appropriate, as well as any amendments proposed by initiative signed by persons eligible to cast at least 20 percent of the votes, for approval by vote of the unit owners. Any proposed amendment shall be unambiguous and consistent with applicable law and with the provisions of the governing documents that are not proposed to be amended. Notwithstanding the terms of the declaration or bylaws, an amendment to an existing bylaw, rule, or declaration, and subject to the limitations expressed in subsection (c), may be adopted by the lesser of: (1) a majority of votes that are entitled to be cast by all unit owners; or (2) 67 percent of the votes actually cast, provided not less than a majority of the eligible votes have been cast. At least 30 days advance notice of any referendum, including the text of any new bylaw or amendment or repeal of an existing provision to be voted on, shall be given to all unit owners by registered or certified mail, or by personal delivery.

c. Limitations on amendments.

(1) A proposed amendment shall not effect a unit owner's property rights to the owner's unit or limited common elements without consent of that unit owner.

(2) A proposed amendment that seeks to prohibit a previously permitted use of a unit must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted. An amendment that seeks to prohibit a previously permitted use in a unit, shall require approval by a vote of at least 67 percent of the total allocated votes in the association.

(3) Except to the extent expressly permitted or required by other provisions of this act, an amendment shall not create or increase special declarant rights, increase the number of units or change the boundaries of any unit or the allocated interests of a unit in the absence of unanimous consent of the unit owners.

(4) The time limits specified in the declaration within which reserved development rights must be exercised shall be extended, and additional development rights may be created, only if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement to extend the time limits shall be effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded, unless all the persons holding the affected special declarant rights or security interest in those rights:

(A) record a written objection within that 30-day period, in which case the amendment shall be void; or

(B) consent in writing at the time the amendment is recorded, in which case the amendment shall be effective when recorded.

d. An action to challenge the validity of an amendment adopted by an association pursuant to this section, other than an action by a governmental official or entity authorized to do so by statute or regulation adopted pursuant to statute, shall not be brought more than one year after the amendment is recorded.

e. Every amendment to a declaration shall be recorded in every county in which any portion of the common interest community is located and shall be effective only upon recordation. An amendment, except an amendment pursuant to subsection a. of Section



2-112(a), shall be indexed in the name of the common interest community and the association as grantees and in the name of the parties executing the amendment as grantors. Amendments to the declaration required 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. If any provision of the declaration of any common interest community in this State, whether created before or after the effective date of this act, requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is granted if no written refusal to consent is received by the association within 45 days after the association delivers notice of the proposed amendment to the holder of the interest or mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last-recorded security interest of record in delivering or mailing notice to the holder of that interest.

g. If the declaration of the common interest community, whether created before or after the effective date of this act, contains a provision requiring that amendments may be adopted only by the vote or agreement of unit owners of units to which more than 80% of the votes in the association are allocated, such a proposed amendment shall be deemed approved if:

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

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

(C) Notice of the proposed amendment is delivered to the unit owners holding the votes in the association that have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within 30 days after the association delivers notice; or

(2) Unit owners of units to which at least 80% of the votes in the association are allocated vote for or agree to the proposed amendment, but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in the Superior Court against all objecting unit owners, the court finds that the objecting unit owners do not have a unique minority interest, different in kind from the interests of the unit owners, that the voting requirement of the declaration is intended to protect.

#### COMMENT

The substance of this section is based on the 2005 bill. However the restrictions on amendments (subsection (c)) generally reflect those in UCIOA. Subsection (c)(1) is new but it seems to be implied by both UCIOA and the 2005 bill. Subsection (c)(2) is substantially that of UCIOA and thus does not take the more restrictive approach of part of the 2005 bill. In addition, the section has been rearranged for clarity. The first subsections establish the power, the next, limitations and last, procedure.

The UCIOA version is:

#### SECTION 2-117. AMENDMENT OF DECLARATION

(a) Except in cases of amendments that may be executed by a declarant under Section 2-109(f) or 2-110, the association under Section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or certain unit owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as limited by subsections (d), (f), (g), and (h), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least [67] percent of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

(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 [county] in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to Section 2-112(a), must be indexed [in the grantee's index] in the name of the common interest community 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 [act], no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this [act] to be recorded by the association must 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) An amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by unit owners of units having at least 80 percent of the votes of a specified group of units that would be affected by the amendment. An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to Section 2-105(a)(8) within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

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

(i) If any provision of this [act] or of the declaration requires the consent of a holder of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if a refusal to consent in a record is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided to the association an address for notice, the association shall provide notice to the address in the security interest of record. Notwithstanding this section, an amendment to the declaration that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

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

(1) if:

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

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

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

(2) unit owners of units to which at least 80 per cent of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in [insert appropriate court] against all objecting unit owners, the court finds that the objecting unit owners do not have an interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.

The 2005 bill version is:

43. (New section) a. Except in cases of amendments that may be executed by a declarant under subsection f. of section 34 or section 35 of P.L. , c. (C. ) (pending before the Legislature as this bill); or by the association under section 7, subsection d. of section 31, subsection c. of section 33, or subsection a. of section 37 of P.L. , c. (C. ) (pending before the Legislature as this bill); or by certain unit owners under subsection b. of section 33, subsection a. of section 37, or subsection b. of section 39 of P.L. , c. (C. ) (pending before the Legislature as this bill); or by the executive board in accordance with subsection b. of section 53 of P.L. , c. (C. ) (pending before the Legislature as this bill)), and except as limited by subsection d. of this section, the declaration, including any plats and plans, shall be amended only by vote or agreement of unit owners of units representing at least 67 percent of a quorum of the members, which quorum shall, unless the declaration requires a larger percentage, be 50 percent of the membership in the association qualified to vote, provided the proposed amendment does not seek to prohibit a previously permitted use in a unit. In the case of an amendment that seeks to prohibit a previously permitted use in a unit, the amendment must be approved by a vote of at least 67 percent of the total allocated votes in the association. The declaration may specify a smaller percentage of votes or a smaller quorum, or both, only if all of the units are restricted exclusively to non-residential use.

b. An action to challenge the validity of an amendment adopted by an association pursuant to this section, other than an action by a governmental official or entity authorized to do so by statute or regulation adopted pursuant to statute, shall not be brought more than one year after the amendment is recorded.

c. Every amendment to a declaration shall be recorded in every county in which any portion of the common interest community is located and shall be effective only upon recordation. An amendment, except an amendment pursuant to subsection a. of section 37 of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be indexed in the grantee's index in the name of the common interest community 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 P.L. , c. (C. ) (pending before the Legislature as this bill), an amendment shall not create or increase special declarant rights, increase the number of units or change the boundaries of any unit or the allocated interests of a unit in the absence of unanimous consent of the unit owners.

e. Amendments to the declaration required by P.L. , c. (C. ) (pending before the Legislature as this bill) 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. Within 24 months following assumption by the owners of control of the executive board, the executive board shall re-examine the bylaws, declaration and rules of the association and present such proposed amendments as the executive board may deem appropriate, as well as any amendments proposed by initiative signed by persons eligible to cast at least 20 percent of the votes, for approval by vote of the unit owners; provided, however, that any such proposed amendment shall be unambiguous and consistent with applicable law and with the provisions of the governing documents that are not proposed to be amended. Notwithstanding the terms of the declaration or bylaws, an amendment to an existing bylaw, rule, or declaration, except an amendment that proposes to prohibit a previously permitted use, may be adopted pursuant to this section by the lesser of: (1) a majority of votes that are entitled to be cast by all unit owners; or (2) 67 percent of the votes actually cast, provided not less than a majority of the eligible votes have been cast. An amendment that proposes to prohibit a previously permitted use shall be adopted only in accordance with the terms of subsection a. of this section. At least 30 days advance notice of any referendum, including the text of any new bylaw or amendment or repeal of an existing provision to be voted on, shall be given to all unit owners by registered or certified mail, or by personal delivery. Changes to declarations, bylaws, and rules shall be applied prospectively and shall not be construed as depriving any unit owner of a right exercised prior to the time that the change is made; provided, however, that any right relating to personal property, a physical

improvement, or a pet, that was exercised prior to the adoption of any change to the declaration, bylaws, or rules shall apply only to the specific item of personal property, physical improvement, or pet existing or present at the unit on the effective date of the change. An item of personal property or a physical improvement that violates the terms of a change to the declaration, bylaws, or rules shall not continue to be maintained after suffering damage to more than 50 percent of its value.

g. The time limits specified in the declaration pursuant to paragraph (7) of subsection a. of section 30 of P.L. , c. (C. ) (pending before the Legislature as this bill) within which reserved development rights must be exercised shall be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement to extend the time limits shall be effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded, unless all the persons holding the affected special declarant rights or security interest in those rights:

(1) record a written objection within that 30-day period, in which case the amendment shall be void; or

(2) consent in writing at the time the amendment is recorded, in which case the amendment shall be effective when recorded.

h. If any provision of the declaration of any common interest community in this State, whether created before or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is granted if no written refusal to consent is received by the association within 45 days after the association delivers notice of the proposed amendment to the holder of the interest or mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last-recorded security interest of record in delivering or mailing notice to the holder of that interest.

i. If the declaration of the common interest community, whether created before or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), contains a provision requiring that amendments may be adopted only by the vote or agreement of unit owners of units to which more than 80% of the votes in the association are allocated, such a proposed amendment shall be deemed approved if:

(1) (a) Unit owners of units to which at least 80% of the votes in the association are allocated vote for or agree to the proposed amendment;

(b) No unit owner votes against the proposed amendment; and

(c) Notice of the proposed amendment is delivered to the unit owners holding the votes in the association that have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within 30 days after the association delivers notice; or

(2) Unit owners of units to which at least 80% of the votes in the association are allocated vote for or agree to the proposed amendment, but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in the Superior Court against all objecting unit owners, the court finds that the objecting unit owners do not have a unique minority interest, different in kind from the interests of the unit owners, that the voting requirement of the declaration is intended to protect.

## **SECTION 2-120. MASTER ASSOCIATIONS.**

a. If the declaration provides that any of the powers ~~described in Section 3-102~~ of the unit owners association are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities, all provisions of this act applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.

b. Unless it is acting in the capacity of an unit owners association ~~described in Section 3-101~~, a master association may exercise ~~the powers over budgets and finances set forth in Section 3-102(a)(2)~~ only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

c. If the declaration of any common interest community 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 Sections 3-103, 3-108, 3-109, 3-110, and 3-112~~ apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this act.

e. Even if a master association is also an association described in Section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, 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 common interest communities subject to the master association may elect all members of the master association's executive board.

(2) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(3) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(4) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

#### COMMENT

*The changes indicated delete references to Article 3 of UCIOA, provisions that are now outside of the scope of the project. The 2005 bill (section 46) provision is substantively identical to this provision, except that the 2005 bill adds a subsection (f) clarifying when declarant control ends where a master association is in place.*