



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Relating to Uniform Common Interest Ownership Act**

**September 15, 2016**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted. Please consult the New Jersey statutes in order to determine the law of the State.

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# Uniform Common Interest Ownership Act

## Introduction

The Commission first approved a report recommending the New Jersey Common Interest Ownership Act in 2000. While that Act was based on UCIOA, it added provisions providing protections for unit owners and made some improvement in style. That act proved controversial, and though it received consideration by the Legislature, it was not enacted. In 2007, the Commission returned to condominium law. The focus was on what appeared to be the most pressing problems, the relationship between unit owners and boards. That Report has not been acted on by the Legislature.

Shortly after the Commission released its report, the Uniform Law Commission released the updated UCIOA. Common Interest law is of paramount importance. It has been claimed that more than one in seven residences in New Jersey live in common interest communities. The current condominium law, 46:8B-1 et seq. was enacted in 1969. It was amended or supplemented in 1975, 1979, 1980, 1985, 1991, 1995, 1996, 1997 and 2007, but these changes are narrow and deal with very particular issues. The current law does not provide comprehensive rules for condominiums. It also does not cover cooperatives, and whether it covers other common interest communities called “planned unit developments” (PUDs) remains a question.

The trouble with drafting a law on common interest communities is that a condominium is more than a free association and less than a governmental unit. It must have the power to make, change and enforce rules concerning unit owners. However, in a real sense, owners are not free to leave if they do not like the rules. Although a condominium may exercise something analogous to governmental power, it is not a government and is not subject to governmental limitations. Drafting a statute that balances these interests is difficult.

The Commission decided that rather than attempt to deal with the whole of UCIOA, it would concentrate on the first two Articles. These articles will form a framework of law for all of the different kinds of common interest communities. They felt that the contentious issues (mainly in Article 3 of UCIOA) would be best handled with a number of small projects on particular issues (elections, meetings, alternative dispute resolution, etc.). This Tentative Report takes that approach.

## SECTION 1-101. SHORT TITLE.

This act may be cited as the New Jersey Common Interest Ownership Act.

### COMMENT

The title, New Jersey Common Interest Ownership Act, reflects that while this is based on the Uniform Common Interest Ownership Act (UCIOA), it includes only a part of that act and contains a number of significant differences.

## SECTION 1-102. DEFINITIONS.

In this act:

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

(A) a person controls a declarant if the person:

(i) is a general partner, officer, director, or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20 percent of the capital of the declarant.

(B) a person is controlled by a declarant if the declarant:

(i) is a general partner, officer, director, or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20 percent of the capital of the person; and

(C) control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) “**Allocated interests**” means the following interests allocated to each unit:

(A) in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(B) in a cooperative, the common expense liability, the ownership interest, and votes in the association; and

(C) in a planned community, the common expense liability and votes in the association.

(3) “**Assessment**” means the sum attributable to each unit and due to the association for common expenses.

(4) “**Bylaws**” means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association regardless of the form in which the association is organized, including any amendments to the instruments.

(5) “**Common elements**” means:

(A) in the case of:

(i) a condominium or cooperative, all portions of the common interest community other than the units; and

(ii) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit; and

(B) in all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration.

(6) “**Common interest community**” means real estate described in a declaration with respect to which a person is obligated by virtue of unit ownership to pay for a share of:

(A) real estate taxes;

(B) insurance premiums;

(C) maintenance; or

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

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

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

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

(7) “**Common expense liability**” means the liability for common expenses allocated to each unit pursuant to Section 2-107.

(8) “**Common expenses**” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(9) “**Condominium**” means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(10) “**Cooperative**” means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member’s ownership interest in the association to exclusive possession of a unit.

(11) “**Dealer**” means a person in the business of selling units for the person’s own account.

(12) “**Declarant**” means any person or group of persons acting in concert that:

(A) as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of;

(B) reserves or succeeds to any special declarant right; or

(C) applies for registration of a common interest community under.

(13) “**Declaration**” means the instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

(14) “**Development rights**” means any right or combination of rights reserved by a declarant in the declaration to:

(A) add real estate to a common interest community;

(B) create units, common elements, or limited common elements within a common interest community;

(C) subdivide units or convert units into common elements; or

(D) withdraw real estate from a common interest community.

(15) “**Dispose**” means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) “**Executive board**” means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

(17) “**Identifying number**” means a symbol or address that identifies only one unit in a common interest community.

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

(19) “**Limited common element**” means a portion of the common elements allocated by the declaration or by operation of Section 2-102(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 Section 2-120.

(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 common interest community 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 common interest community is located.

(22) “**Person**” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.[In

the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.]

(23) “**Planned community**” means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(24) “**Proprietary lease**” means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(25) “**Purchaser**” means a person, other than a declarant or a dealer, that by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

(A) a leasehold interest, including renewal options, of less than 20 years,; or

(B) as security for an obligation.

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

(27) “**Record**”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(29) “**Rule**” means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

(30) “**Security interest**” means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

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

(A) complete improvements indicated on plats and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement;

(B) exercise any development right;

(C) maintain sales offices, management offices, signs advertising the common interest community, and models;

(D) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community;

(E) make the common interest community subject to a master association;

(F) merge or consolidate a common interest community with another common interest community of the same form of ownership

(G) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control;

(H) control any construction, design review, or aesthetic standards committee or process;

(I) attend meetings of the unit owners and, except during an executive session, the executive board; and

(J) have access to the records of the association to the same extent as a unit owner.

(32) “**Unit**” means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 2-105(a)(5). If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association’s interest in that unit is not thereby affected.

(33) “**Unit owner**” means a declarant or other person that owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

#### COMMENT

These definitions are identical to those in UCIOA Section 103. Four definitions of words or phrases that do not appear in this draft have been deleted, and the definitions have been renumbered. Most of the definition of Common interest community, subsection (6), is derived from UCIOA. However, problems with the UCIOA definition have been obviated by the addition of a paragraph which clearly includes all condominiums, cooperatives and planned unit developments

### **SECTION 1-104. NO VARIATION BY AGREEMENT.**

Except as expressly provided in this act, the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as otherwise provided in Section 1-207, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this act or the declaration.

#### COMMENT

This section is identical to UCIOA 1-104. Section 1-104 is basic to the theory of the law; where UCIOA states a right definitively, it controls over the master deed.

### **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 1-106. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES.**

a. A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership.

b. In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

c. Except as provided in subsections (a) and (b), the provisions of this act do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

#### COMMENT

This section is identical to UCIOA 1-106 and continues current New Jersey law. See e.g. 40:55D-58. Condominiums and cooperative structures and uses; 40:67-23.3. Municipality to reimburse private community for services or provide services; *Bridge Park Co. v. Borough of Highland Park*, 113 N.J. Super. 219, 221-222 (App. Div. 1971). The limitation of subsection (b) has some basis in current law. A municipal restriction against a development involving ownership of common elements was upheld in *Bonner Properties, Inc. v. Franklin Tp. Plan. Bd.*, 185 N.J. Super. 553 (Law Div. 1982) on the basis that it might be difficult to collect taxes from the association if the individual units were not involved.

### **SECTION 1-107. EMINENT DOMAIN.**

a. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the judgment 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, (i) 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 (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to 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 divided among the owners of the units to which that limited common element was allocated at the time of acquisition in proportion to their rights in the limited common elements.

d. The Declaration of Taking or other document evidencing a transfer of title to the condemning authority must be recorded in every county in which any portion of the common interest community is located.

COMMENT

This section is substantively identical to UCIOA 1-107 except for an addition to subsection (c) recognizing that unit's interests in limited common elements may not be equal and a wording changes in subsection (d.)

**SECTION 1-108. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.**

The principles of law and equity, including the law of corporations, any other form of organization authorized by the law of this state and unincorporated associations, the law of real estate, 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 act, except to the extent inconsistent with this act.

COMMENT

This section is substantively identical to UCIOA 1-108.

**SECTION 1-109. CONSTRUCTION AGAINST IMPLICIT REPEAL**

This act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

COMMENT

This section is substantively identical to UCIOA 1-109.

## **SECTION 1-111. SEVERABILITY.**

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

### **COMMENT**

This section is substantively identical to UCIOA 1-111.

## **SECTION 1-113. OBLIGATION OF GOOD FAITH.**

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

### **COMMENT**

This section is substantively identical to UCIOA 1-113.

## **SECTION 1-114. REMEDIES TO BE LIBERALLY ADMINISTERED.**

The remedies provided by this act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.

### **COMMENT**

This section is substantively identical to the first sentence of UCIOA 1-114. The second sentence of the UCIOA provision has been deleted as ambiguous and, to the extent that it limits consequential and other damages, foreign to New Jersey law.

## **SECTION 1-116. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

### **COMMENT**

This section is substantively identical to UCIOA 1-116.

## **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 or 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.

e. The Condominium Act (N.J.S. 46:8B-1 et seq.), the Cooperative Recording Act (N.J.S. 46:8D-1 et seq.) and Planned Real Estate Development Full Disclosure Act (N.J.S.

45:22A-21 et seq.) shall continue to apply to the respective associations and developers except to the extent (a) this Act contains provisions inconsistent with any of those Acts in which case the terms of this Act shall be controlling.

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.

**ARTICLE 2 -- CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES**

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

A common interest community may be created pursuant to this act only by a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed treating the common interest community as the grantee and the each person executing the declaration as the grantors.

COMMENT

This section is based on subsection (a) of the UCIOA except that small changes have been made in the subsection to conform with the indexing requirements of 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) of the UCIOA provision required that units be built before the declaration is filed. That requirement is different from New Jersey practice and has been deleted.

**SECTION 2-102. UNIT BOUNDARIES.**

Except as provided by the declaration:

a. 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.

b. 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.

c. Subject to paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

d. 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.

COMMENT

This section is substantively identical to that of UCIOA.

**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 will not defeat any provision of the declaration, bylaws or rules.
- c. limitations on restraints on alienation will only defeat provisions of the declaration restricting sales or leasing of units if they violate the Law Against Discrimination.
- d. If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this act.
- e. 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

With the exception of subsection (c), the section is substantively identical to UCIOA. Section 28 of the 2005 bill added the phrase “and limitations on restraints on alienation” to subsection (b). The Commission considered that that change made the provision too broad. Instead it added subsection (c) which preserves only the common restrictions on sale and leasing from challenge as restraints on alienation.

**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, 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

This section deletes the requirement of the UCIOA provision that a description include the county because “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;

(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; and

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

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 bill.

**SECTION 2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.**

a. Any lease the expiration or termination of which may terminate the common interest community or reduce its size must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

(1) the recording data for the lease;

(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; and

(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.

b. After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's 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 in a condominium or planned community 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 common interest community, the allocated interests must be reallocated in accordance with Section 1-107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

COMMENT

The 2005 bill provision is substantively identical to this provision

**SECTION 2-107. ALLOCATION OF ALLOCATED INTERESTS.**

a. The declaration must allocate to each unit:

(1) in a condominium, 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;

(2) in a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association; and

(3) in a planned community, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association.

b. The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

c. If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

d. 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 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 [act] nor may units constitute a class because they are owned by a declarant.

e. Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

f. In a condominium, 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.

g. In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

COMMENT

The section is substantively identical to that of UCIOA.

## **SECTION 2-108. LIMITED COMMON ELEMENTS.**

a. Except for the limited common elements described in Section 2-102(2) and (4), the declaration must specify to which unit or units each limited common element is allocated. An 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 must be recorded in the names of the parties and the common interest community.

c. A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with Section 2-105(a)(7). The allocations must be made by amendments to the declaration.

### **COMMENT**

The section is substantively identical to that of UCIOA.

## **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.

## **SECTION 2-110. EXERCISE OF DEVELOPMENT RIGHTS**

a. To exercise any development right reserved under Section 2-105(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration (Section 2-117) and in a condominium or planned community comply with Section 2-109. 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 (b), 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 Section 2-108 (Limited Common Elements).

b. Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by Section 2-105 or 2-106, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by Section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Section 2-105(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 had been taken by eminent domain (Section 1-107); and

(2) if the declarant subdivides the unit into two 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.

d. If the declaration provides, pursuant to Section 2-105(a)(8), that all or a portion of the real estate is subject to a 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 any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

### **COMMENT**

The section is substantively identical to that of UCIOA.

## **SECTION 2-111. ALTERATIONS OF UNITS.**

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

a. may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community;

b. may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common interest community, without permission of the association;

c. 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 common interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

COMMENT

The section is substantively identical to that of UCIOA.

**SECTION 2-112. RELOCATION OF UNIT BOUNDARIES.**

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

b. Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.

c. The association (i) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers, and (ii) in a cooperative shall prepare and record amendments to the declaration, including any plans necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

COMMENT

The section is substantively identical to that of UCIOA.

### **SECTION 2-113. SUBDIVISION OF UNITS.**

a. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the declaration and law other than this act, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration including, in a condominium or planned community, 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 interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

#### **COMMENT**

The section is substantively identical to that of UCIOA.

### **SECTION 2-114. MONUMENTS AS BOUNDARIES**

The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.]

#### **COMMENT**

The section is substantively identical to Alternative B of UCIOA. Alternative A OF UCIOA would give only an easement for encroachments.

### **SECTION 2-115. USE FOR SALES PURPOSES**

A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. In a cooperative or condominium, any sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the common interest community 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 common interest community. This section is subject to the provisions of other state law and to local ordinances.

#### **COMMENT**

The section is substantively identical to that of UCIOA.

## **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 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 section is substantively identical to that of UCIOA. In subsection (b), cross-references to Article 3 have been replaced with the subjects of those references.

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

### **a. Procedural requirements for amendment.**

(1) The declaration, including any plats and plans, may 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 not be less than 50 percent of the membership in the association qualified to vote.

(2) The limitations of subsection (a)(1) shall not apply in cases of amendments that are executed by:

(A) a declarant under Section 2-109(f) or 2-110,

(B) the association under Section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113,

(C) certain unit owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b),

or

(D) the executive board to render an inconsistent portion of the declaration to be consistent with applicable law.

**b. Re-examination after assumption of control.** 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, or where the unit owner consents, by electronic communication.

**c. Limitations on amendments.**

(1) A proposed amendment shall not reduce the boundaries of a unit or its limited common elements without consent of that unit owner.

(2) A proposed amendment shall not violate a clear mandate of public policy.

(3) 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.

(4) 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.

(5) 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. Limitation on challenges.** 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. Recording.** 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 60 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

Most of 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. Subsection (c)(2) is new. It forbids amendments that violate “a clear mandate of public policy.” That phrase is taken from the Supreme Court opinion in *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58 (1980). The phrase is defined to be limited to the matters of policy announced in such sources as legislation, administrative rules and decisions and judicial decisions. The time limit for refusal to consent in subsection (f) was extended from 45 days to 60 to be consonant with Fannie Mae guidelines.

### **SECTION 2-118. TERMINATION OF COMMON INTEREST COMMUNITY**

a. Except for a taking of all the units by eminent domain, foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in Section 2-124, a common interest community may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies, and with any other approvals required by the declaration. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

b. An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. A termination agreement and all ratifications of it must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

c. Except as provided in subsection (d), a termination agreement shall provide that all of the common elements and units of the common interest community must be sold following termination and set forth the minimum terms of the sale.

d. If a unit meets zoning and planning requirements as an independent parcel of real estate at the time of termination, a termination agreement may provide that the owner retain ownership of that unit.

e. The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsection (a). Upon termination, the assets of the association, title to real estate and proceeds vest in the association as trustee for the holders of all interests in the units. Until the sale has been concluded and the proceeds distributed, the association continues in existence with all powers it had before termination.

f. On termination of the common interest community, proceeds, after payment of valid liens, shall be paid to unit owners in proportion to the fair market value immediately before termination of their units including the value of allocated interests and limited common elements.

g. Following termination of a condominium or planned community, creditors of the association holding liens on the units, which were docketed before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

h. In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were docketed before termination may enforce their liens in the same manner as any lien holder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) the lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(2) any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(3) the amount of the lien of an association's creditor described in paragraphs (1) and (2) against each of the unit owners' interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(4) the lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected;

(5) the assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above; and

(6) creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.



i. In a condominium or planned community, except as otherwise provided in subsection (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

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

#### COMMENT

Parts of this section differ from that of UCIOA. Subsection (a), (b) and (e) are substantively identical to the equivalent subsections in UCIOA. However, subsections (c) and (d) embody substantive differences from UCIOA. UCIOA would allow the owner of any unit that is divided from others by vertical boundaries (that is a unit that is not above or below another) to retain ownership. This provision allows, but not requires, the termination agreement to provide that an owner retain ownership of a unit only when the unit meets zoning and planning standards. Subsection (f) replaces the complicated rules of subsection (j) of UCIOA. Subsection (g), (h), (i) and (j) are identical to subsections (h), (i), (k) and (l) of UCIOA.

### **SECTION 2-119. RIGHTS OF SECURED LENDERS**

a. The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association 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 (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds.

b. A lender who has extended credit to an association secured by an assignment of income or an encumbrance on the common elements may enforce its security agreement in accordance with its terms, subject to the requirements of this act and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection (a).

#### COMMENT

The section is substantively identical to that of UCIOA.

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

a. If the declaration provides that any of the powers 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, a master association may exercise powers over budgets and finances 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 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 a unit owners association, 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 section is substantively identical to that of UCIOA. The only changes delete references to Article 3 of UCIOA, provisions that are now outside of the scope of the project and substitute the subjects of those references.

## **SECTION 2-121. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES.**

a. Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the pre-existing common interest communities, and the operations and activities of all associations of the pre-existing common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

b. An agreement of two or more common interest communities 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 pre-existing common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community 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 common interest community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the pre-existing common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing common interest community.

### **COMMENT**

The 2005 bill (section 47) provision is substantively identical to this provision. However the 2005 bill adds a subsection requiring that merges of nonprofit corporations comply with N.J.S.15A:10-1 and -2.

## **SECTION 2-122. ADDITION OF UNSPECIFIED REAL ESTATE**

In a planned community, if the right is originally reserved in the declaration, the declarant in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but, the amount of real estate added to the planned community pursuant to this section may not exceed 10 percent of the real estate described in Section 2-105(a)(3) and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to Section 2-105(a)(5).

### **COMMENT**

The section is substantively identical to that of UCIOA.

## **SECTION 2-123. MASTER PLANNED COMMUNITIES**

a. The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least 300 units that may be used for residential purposes and has obtained preliminary site plan or subdivision approval permitting the declarant to construct at least 300 residential units pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

b. If the requirements of subsection (a) are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by Section 2-105(a)(3) through (14) until the declaration is amended under subsection (c).

c. When each unit in a master planned community is conveyed to a purchaser, the declaration must contain:

(1) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser; and

(2) all the information required by Section 2-105(a)(3) through (14) with respect to that real estate.

d. Notwithstanding any other provision of this act:

(1) The only real estate in a master planned community which shall be subject to this act is that which comprises:

(A) units that have been declared or which are being offered for sale; and

(B) any other real estate described pursuant to subsection (c) of this section;

(2) Other real estate that is or may become part of the master planned community shall be subject only to other applicable laws and to any other restrictions and limitations that appear of record; and

(3) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements shall apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described in subsection c. of this section.

e. Limitations in this act on the addition of unspecified real estate do not apply to a master planned community.

f. The period of declarant control of the association for a master planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving notice in a record to all the unit owners, voluntarily surrenders all rights to control the activities of the association.

### **COMMENT**

Subsection (a) is derived from the 2005 bill. It is similar to that of UCIOA but reduces the acreage amount and refers to New Jersey land use law. Subsections (b) and (c) are substantively identical to that of UCIOA. Subsection (d) is derived from the 2005 bill. It is substantively similar to that of UCIOA but more specific. Subsection (e) of UCIOA has been deleted as it concerns matters beyond the scope of this project. Subsection (e) of this section is derived from subsection (f) of UCIOA. Subsection (f) of this section is derived from subsection (g) of UCIOA.

## **SECTION 2-124. TERMINATION FOLLOWING CATASTROPHE**

If substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice ~~under Section 3-121~~ of a meeting of unit owners to consider termination under Section 2-118 will not likely result in receipt of the notice, the executive board or any other interested person may commence an action seeking to terminate the common interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may issue any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

### **COMMENT**

The section is substantively identical to that of UCIOA.