

MISSOURI

448.010. As used in sections 448.005 to 448.210, unless the context otherwise requires, the following terms mean:

- (1) "Common elements", all portions of the property except the units;
- (2) "Declaration", the instrument and amendments thereto by which the property is submitted to the provisions of sections 448.005 to 448.210, as hereinafter provided, and the declaration as from time to time amended;
- (3) "Developer", the person, firm, or corporation who establishes a condominium through the recording of a declaration, bylaws, and plat. In the event the developer transfers the property prior to completion of the construction program, the developer shall include any transferee who acquires the property for purposes of completing the construction as shown on the plat or amended plats;
- (4) "Majority" or "majority of the unit owners", the owners of more than fifty percent in the aggregate in interest of the undivided ownership of the common elements. Any specified percentage of the unit owners means such percentage in the aggregate in interest of the undivided ownership;
- (5) "Parcel", the lot or lots, tract or tracts of land, including additional tracts added by subsequent amendment described in the declaration or amendments thereto, submitted to the provisions of sections 448.005 to 448.210;
- (6) "Person", a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property;
- (7) "Plat", a plat or plats of survey or surveys together with amendments thereto of the parcel or parcels and of all units which are proposed for inclusion in the property or properties submitted to the provisions of sections 448.005 to 448.210, which plat or plats may consist of a three-dimensional horizontal and vertical delineation of all such units;
- (8) "Property", all the land, property or properties and space comprising the parcel or parcels, all improvements and structures erected, constructed or contained therein or thereon, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the unit owners, submitted to the provisions of sections 448.005 to 448.210;
- (9) "Record", to record in the office of the recorder of deeds of the county wherein the property is located;
- (10) "Unit", a part of the property including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and having lawful access to a public way;
- (11) "Unit owner", the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit.

448.020. Whenever the owners in fee simple of a parcel intend to submit such property to the provisions of sections 448.005 to 448.210, they shall do so by recording a declaration, duly executed and acknowledged, expressly stating such intent and setting forth the particulars enumerated in section 448.030.

Declaration, contents--amendments.

448.030. 1. The declaration shall set forth the following particulars:

- (1) The legal description of the parcel or parcels;
- (2) The legal description of each unit, which may consist of the identifying number or symbol of the unit as shown on the plat;

(3) The percentage of ownership interest in the common elements allocated to each unit. The percentages shall be computed by taking as a basis the value of each unit in relation to the value of the property as a whole, and having once been determined and set forth as herein provided, such percentages shall remain constant unless thereafter changed by agreement of all unit owners; except that, if there is a change in the number of units or in the size or dimensions of any units, the developer shall determine the changes required in the percentages of ownership by virtue of the changes in the number of units or in the size or dimensions of any units, and shall file of record in the office of the recorder of deeds in which the declaration was filed an instrument setting forth the changes in percentages of ownership;

(4) Such other lawful provisions not inconsistent with the provisions of sections 448.005 to 448.210 as the owners or developers may deem desirable in order to promote and preserve the cooperative aspect of ownership of the property and to facilitate the proper administration thereof.

2. The developer with the consent of all unit owners may file an amendment or amendments to the declaration to include an additional parcel or parcels or to delete any parcel or portion thereof and to change the number of units and to amend the percentage of ownership interests in the common elements allocated to each unit, but no amendment shall be made to include a parcel or parcels which are not contiguous to the parcel or parcels described in either the original declaration or amendments thereto. Parcels shall be considered to be contiguous although separated by roads or easements.

Declaration and plat to be recorded--plat, contents--amendment may be recorded, when.

448.040. Simultaneously with the recording of the declaration there shall be recorded a plat as defined in section 448.010, which plat shall be made by a registered Missouri land surveyor and shall set forth all angular and linear data along the exterior boundaries of the parcel; the linear measurements and location, with reference to the exterior boundaries, of the building or buildings located or to be located on the parcel; and the elevations or proposed elevations at, above, or below official datum of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the actual or proposed finished or unfinished interior surfaces of the perimeter walls, and lateral extensions thereof, of every unit or proposed unit in the building or buildings, and the locations or proposed locations of such wall surfaces with respect to the exterior boundaries of the parcel projected vertically upward. Every such unit shall be identified on the plat by a distinguishing number or other symbol. If the plat is recorded as a separate document, a statement shall appear thereon identifying it with the declaration provided for in section 448.030, which statement shall be signed and acknowledged by the same persons executing the declaration. An amendment or amendments to a plat may be recorded by the developer to include an additional parcel or parcels and additional units or to delete any parcel or parcels and reduce the number of units or to reflect accurately any changes in the locations, elevations, measurements or dimensions of any prior recorded plat, provided all the unit owners have consented thereto.

Units can be conveyed--common elements, owned, how--units not to be separated or subdivided.

448.050. 1. Upon compliance with sections 448.020, 448.030 and 448.040, and upon recording of the declaration and plat, the property shall become subject to the provisions of sections 448.005 to 448.210, and all units shall thereupon be capable of ownership in fee simple or any lesser estate, and may thereafter be conveyed, leased, mortgaged or otherwise dealt with in the same manner as other real property, but subject, however, to the limitations imposed by sections 448.005 to 448.210.

2. Each unit owner shall be entitled to the percentage of ownership in the common elements appertaining to such unit as computed and set forth in the declaration pursuant to subdivision (3) of section 448.030, and ownership of such unit and of the owner's corresponding percentage of ownership in the common elements shall not be separated, nor shall any unit, by deed, plat, court decree or otherwise, be subdivided or in any other manner separated into tracts or parcels smaller than the whole unit as shown on the plat.

Instrument affecting unit affects ownership of common elements.

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

Common elements to remain undivided--exceptions.

448.070. As long as the property is subject to the provisions of sections 448.005 to 448.210 the common elements shall, except as provided in section 448.140, remain undivided, and no unit owner shall bring any action for partition or division of the common elements. Any covenant or agreement to the contrary shall be null and void. Nothing contained herein, however, shall prevent partition of a unit as between co-owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind.

(L. 1963 p. 648 § 8, A.L. 1983 H.B. 177)

Common element costs to be paid by unit owners--unpaid amount to constitute lien--foreclosure.

448.080. 1. Every unit owner shall pay his proportionate share of the expenses of administration, maintenance and repair of the common elements and of any other expense lawfully agreed upon. Such proportionate share shall be in the same ratio as his percentage of ownership in the common elements as set forth in the declaration. Payment thereof shall be in the amounts and at the times as determined by the unit owners or the board of managers, as hereinafter provided.

2. If any unit owner fails or refuses to make any payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of such unit owner in the property, and upon the recording of notice thereof by the manager or board of managers shall be a lien upon such unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded; except only taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state and other state or federal taxes which by law are a lien on the interest of such unit owner prior to preexisting recorded encumbrances thereon, and encumbrances on the interest of such unit owner recorded prior to the date such notice is recorded which by law would be a lien thereon prior to subsequently recorded encumbrances, but only if such prior recorded encumbrance contains a statement of a mailing address in the state of Missouri where notice may be mailed to the encumbrancer thereunder. Any encumbrancer whose lien is junior to the lien of the common expenses herein provided may from time to time request in writing a written statement from the manager or board of managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance and unless the request is complied with within twenty days, all unpaid common expenses which became due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance.

3. The lien to secure payment of common expenses shall be in favor of the members of the board of managers and their successors in office and shall be for the benefit of all other unit owners, and may be foreclosed by an action brought in the name of the board of managers in like manner as a mortgage of real property, as provided in sections 443.190 to 443.310, RSMo. Unless otherwise provided in the declaration, the members of the board of managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

4. In the event any person acquires or is entitled to the issuance of a sheriff's or other official deed in foreclosure of the lien for common expenses above provided, the deed conveying the interest of any unit owner and the interest so acquired shall be subject to all of the provisions of sections 448.005 to 448.210 and to the terms, provisions, covenants, conditions and limitations contained in the declaration, the plat, the bylaws or any deed affecting such interest then in force.

Liens, against what--consent, how given.

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

2. No labor performed or materials furnished with the consent of or at the request of a unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the interest of any other unit owner, or against any part thereof, unless such other owner has expressly consented to or requested the same. Express consent shall be deemed to have been given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common elements, if duly authorized by the board of managers, shall be deemed to be performed with the express consent of each unit owner and shall be the basis for the filing of a lien against the property, and shall be subject to the provisions of subsection 1.

Taxes, assessed and levied against units.

448.100. Real property taxes, special assessments, and any other special taxes or charges of the state of Missouri or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed against and levied upon real property shall be assessed against and levied upon each unit and the owner's corresponding percentage of ownership in the common elements as a tract, and not upon the property as a whole.

Interest acquired by tax deed, subject to what.

448.110. In the event any person acquires or is entitled to the issuance of a tax deed conveying the interest of any unit owner, the interest so acquired shall be subject to all the provisions of sections 448.005 to 448.210 and to the terms, provisions, covenants, conditions and limitations contained in the declaration, the plat, the bylaws or any deed affecting such interest then in force.

Insurance, how obtained--named insured--who adjusts--loss payable clause, form of--premiums, how paid.

448.120. The manager or the board of managers shall obtain insurance for the property against loss or damage by fire and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the common elements and the units. The insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the manager or the board of managers, as trustee for each of the unit owners in the percentages established in the declaration or amended declaration, if any. The policy of insurance may contain a loss payable clause containing the words, "To the holder or holders of mortgages or deeds of trust of record, if any, as their interests may appear" without specifically naming the holder or holders in the clause, in which event the proceeds shall thereupon be payable jointly to the manager or the board of managers and the holder or holders of mortgages or deeds of trust of record, as trustees for each of the unit owners in the percentages established in the declaration or any amended declaration. The trustees shall have full power to adjust all insurance losses by suit or otherwise and payment accepted by the trustees hereunder shall constitute a discharge to the insurer. Premiums for the insurance shall be common expenses.

Insurance proceeds used for reconstruction--reconstruction defined.

448.130. In case of fire or any other disaster the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. "Reconstruction of the building", as used in this and section 448.140, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

Insurance proceeds insufficient to reconstruct, effect.

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

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

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

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

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

Sale of property, authorized, how--dissenting owner entitled to interest, value of interest defined.

448.150. Unless a greater percentage is provided for in the declaration or bylaws, and notwithstanding the provisions of sections 448.130 and 448.140, a majority of the unit owners where the property contains two units, or not less than sixty-six and two-thirds percent where the property contains three units, and not less than seventy-five percent where the property contains four or more units may, by affirmative vote at a meeting of unit owners duly called for such purpose, elect to sell the property. Such action shall be binding upon all unit owners, and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Any unit owner who did not vote in favor of such action and who has filed written objection thereto with the manager or board of managers within twenty days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, less the amount of any unpaid assessments or charges due and owing from such unit owner. The "value of such interest", for the purposes of sections 448.005 to 448.210, shall be that percentage of the total value of the property determined by fair appraisal which represents the ownership percentage of the common elements allocated to the unit owned by such objecting owner.

Property removed from condominium law, how, effects.

448.160. All of the unit owners may remove the property from the provisions of sections 448.005 to 448.210 by an instrument to that effect, duly recorded if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner. Upon such removal the property shall be deemed to be owned in common by all the owners. The undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common elements.

Bylaws, amendments.

448.170. The administration of every property shall be governed by bylaws, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration or bylaws shall be valid unless the same is set forth in an amendment thereof and such amendment is duly recorded.

Bylaws, contents.

448.180. The bylaws shall provide for at least the following:

- (1) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent;
- (2) Method of calling meetings of the unit owners; what percentage of the unit owners, if other than a majority, shall constitute a quorum;
- (3) Election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners;

- (4) Election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who shall, in general, perform all the duties incident to the office of secretary;
- (5) Election of a treasurer, who shall keep the financial records and books of account;
- (6) Maintenance, repair and replacement of the common elements and payments therefor, including the method of approving payment vouchers;
- (7) Method of estimating the amount of the annual budget, and the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses, and of any other expenses lawfully agreed upon;
- (8) That upon ten days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner;
- (9) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements;
- (10) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners;
- (11) Method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements;
- (12) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.

Managers may act for owners--actions--service of process--managers proper parties, when, duties.

448.190. 1. Whenever in sections 448.005 to 448.210, or in any declaration or bylaw executed in accordance with sections 448.005 to 448.210, the board of managers or the members thereof are authorized or directed to acquire, hold, lease, mortgage or convey any part of or interest in the property, or to acquire any lien thereon, or to acquire or receive the proceeds of any policy of insurance or other moneys, goods or chattels, with respect to the property, such actions shall be carried out in the names of the members of the board of managers and their successors in office from time to time, as trustees, on behalf of some or all of the unit owners, as the case may be. Without limiting the rights of any unit owner, actions may be brought in the names of the members of the board of managers on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one unit. Service of process on two or more unit owners in any action relating to the common elements or more than one unit may be made on any member of the board of managers in the manner provided by the statute.

2. Without limiting the rights of any unit owner, the board of managers shall be considered a proper party, both to sue and be sued, in any cause of action relating to the condominium. The board of managers shall annually record with the recorder of deeds of each county in which any portion of the condominium is located a statement containing the name and address of each member of the board of managers. All information contained in such statement shall be available to the general public.

Condemnation proceedings, board of managers to represent all unit owners.

448.195. Whenever the state, a political subdivision, or any other corporation, agency, or authority having the power of eminent domain shall seek to acquire any of the common elements of condominium property, such authority may conduct negotiations with the board of managers as representatives of all unit owners, and the said board of managers may execute and deliver the appropriate conveyance on behalf of all owners in return for the agreed consideration. Said board of managers shall allocate such consideration, whether received through negotiation or condemnation, to the common elements or to unit owners in proportion to their respective interests. In the event negotiations shall fail, the condemning authority may join the board of managers as party

defendants in lieu of naming all unit owners having an interest in the common elements, and such proceedings shall bind all unit owners; however, any unit owner having an interest in the common elements may be made a party defendant in such proceedings.

(L. 1969 H.B. 372)

Managers to keep records, open to owners.

448.200. The manager or board of managers, as the case may be, shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of week days.

Rule against perpetuities--restraints on alienation.

448.210. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of sections 448.005 to 448.210.

Applicability.

448.1-102. 1. Sections 448.1-101 to 448.4-120 apply to all condominiums created within this state after September 28, 1983. Sections 448.1-103, 448.1-105, 448.1-106, 448.1-107, 448.2-103, 448.2-104, and subdivisions (1) through (6) and (11) through (16) of subsection 1 of section 448.3-102, and sections 448.3-111, 448.3-115, 448.3-116, 448.4-105, and 448.4-113, to the extent necessary in construing any of those sections, apply to all condominiums created in this state before September 28, 1983; but those sections apply only with respect to events and circumstances occurring after September 28, 1983, and do not invalidate existing provisions of the declaration, bylaws, or plats of those condominiums.

2. The provisions of sections 448.005 to 448.210 do not apply to condominiums created after September 28, 1983, and do not invalidate any amendment to the declaration, bylaws, and plats of any condominium created before September 28, 1983, if the amendment would be permitted by sections 448.1-101 to 448.4-120. The amendment shall be adopted in conformity with the procedures and requirements specified by those instruments and by sections 448.005 to 448.210. If the amendment grants to any person any rights, powers, or privileges permitted by sections 448.1-101 to 448.4-120, all correlative obligations, liabilities, and restrictions in sections 448.1-101 to 448.4-120 also apply to that person.

3. Sections 448.1-101 to 448.4-120 do not apply to condominiums or units located outside this state, but the original sale certificate provisions of sections 448.1-101 to 448.4-120 apply to all contracts for the dispositions thereof signed in this state by any party.

Definitions.

448.1-103. In the declaration and bylaws of each condominium, unless specifically provided otherwise or the context requires otherwise, and in sections 448.1-101 to 448.4-120:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (a) is a general partner, officer, director, or employer of the declarant, (b) directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests in the declarant, (c) controls in any manner the election of a majority of the directors of the declarant, or (d) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is a general partner, officer, director, or employer of the person, (b) directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests in the person, (c) controls in any manner the election of a majority of the directors of the

- person, or (d) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised;
- (2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit;
- (3) "Association" or "unit owners' association" means the unit owners' association organized under section 448.3-101;
- (4) "Common elements" means all portions of a condominium other than the units;
- (5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves;
- (6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 448.2-108;
- (7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;
- (8) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers;
- (9) "Declarant" means any person, or group of persons acting in concert, who (a) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of, or (b) reserves or succeeds to any special declarant right;
- (10) "Declaration" means any instruments, however denominated, which create a condominium, and any amendments to those instruments;
- (11) "Development rights" means any right, or combination of rights, reserved by a declarant in the declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a condominium;
- (12) "Disabled" means any person who meets the requirements of subdivision (19) of this section relating to a low or moderate income tenant and is totally and permanently disabled or blind and receiving federal social security disability benefits, federal supplemental security income benefits, veterans administration benefits, a state blind pension pursuant to sections 209.010 to 209.160, RSMo, state aid to blind persons pursuant to section 209.240, RSMo, or state supplemental payments pursuant to section 208.030, RSMo;
- (13) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest;
- (14) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association;
- (15) "Identifying number" means a symbol or address which identifies only one unit in a condominium;
- (16) "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size;
- (17) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision (2) or (4) of section 448.2-102 for the exclusive use of one or more but fewer than all of the units;

(18) "Low or moderate income elderly tenant" means any person who has reached the age of sixty-eight or over and whose annual net income is less than eighty percent of the median income of the area as set forth in regulations promulgated from time to time by the federal department of Housing and Urban Development pursuant to section eight of the housing act of 1937 as amended, and who occupies a conversion building;

(19) "Low or moderate income tenant" means any person whose annual net income is less than eighty percent of the median income for the area as set forth in regulations promulgated from time to time by the federal department of Housing and Urban Development pursuant to section eight of the housing act of 1937 as amended, and who occupies a conversion building;

(20) "Master association" means an organization described in section 448.2-120, whether or not it is also an association described in section 448.3-101;

(21) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity; provided, however, that in the case of a land trust, "person" means the beneficiary of the trust rather than the trust or the trustee;

(22) "Plan" means a drawing prepared by a registered architect or engineer which contains the information required by the provisions of subsection 4 of section 448.2-109;

(23) "Plat" means a drawing prepared by a registered land surveyor which contains the information required by the provisions of subsection 2 of section 448.2-109;

(24) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for his own account, who 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 twenty years, or (b) as security for an obligation;

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

(26) "Residential purposes" means use for dwelling or recreational purposes, or both;

(27) "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration; to exercise any development right; to maintain sales offices, management offices, signs advertising the condominium, and models; to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium; to make the condominium part of a larger condominium or a planned community; to make the condominium subject to a master association; or to appoint or remove any officer of the association or any master association, or any executive board member during any period of declarant control;

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

(29) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to subdivision (5) of subsection 1 of section 448.2-105;

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

Variation by agreement.

448.1-104. Except as expressly provided in sections 448.1-101 to 448.4-120, no provision of sections 448.1-101 to 448.4-120 may be varied by agreement, and no rights conferred by sections 448.1-101 to 448.4-120 may be waived. No declarant may act under a power of attorney, nor use any other device, to evade the limitations or prohibitions of sections 448.1-101 to 448.4-120 or the declaration.

Separate titles and taxation.

448.1-105. 1. If there is any unit owner other than a declarant, each unit which 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 shall 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.

3. Any portion of the common elements for which the declarant has reserved any development right shall be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

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

Applicability of local ordinances, regulations, and building codes.

448.1-106. 1. Except as provided in subsection 2 of this section, no zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of sections 448.1-101 to 448.4-120 invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

2. Subsection 1 of this section shall not apply to any ordinance, rule, regulation, charter provision, or contract provision relating to the financing of housing construction, rehabilitation, or purchases provided by or through a housing finance program established and operated pursuant to state or federal law by a state or local agency or local unit of government or to any ordinance which has as its purpose the application or enforcement of minimum housing standards.

3. For purposes of providing marketable title, a statement in the declaration showing that the condominium is not subject to an ordinance or showing that any conditions required under an ordinance have been complied with shall be prima facie evidence that the condominium was not created in violation of such ordinance.

4. A violation of an ordinance adopted pursuant to the provisions of subsection 2 of this section shall not affect the validity of a condominium. This subsection shall not be construed to in any way limit the power of a county or municipality to enforce the provisions of an ordinance adopted pursuant to subsection 2 of this section.

Eminent domain.

448.1-107. 1. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for his unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as provided in subsection 1 of this section, if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its interest in the common elements,

whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

4. The court decree shall be recorded in every county in which any portion of the condominium is located.

Supplemental general principles of law applicable.

448.1-108. The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of sections 448.1-101 to 448.4-120, except to the extent inconsistent with sections 448.1-101 to 448.4-120.

Construction against implicit repeal.

448.1-109. Sections 448.1-101 to 448.4-120 being a general act intended as a unified coverage of its subject matter, no provisions shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Uniformity of application and construction.

448.1-110. Sections 448.1-101 to 448.4-120 shall be applied and construed so as to effectuate their general purpose to make uniform the law with respect to the subject of sections 448.1-101 to 448.4-120 among states enacting it.

Severability.

448.1-111. If any provision of sections 448.1-101 to 448.4-120 or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of sections 448.1-101 to 448.4-120 which can be given effect without the invalid provisions or application, and to this end the provisions of sections 448.1-101 to 448.4-120 are severable.

Unconscionable agreement or term of contract.

448.1-112. 1. The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

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

(1) The commercial setting of the negotiations;

(2) Whether a party has knowingly taken advantage of the inability of the other party to reasonably protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(3) The effect and purpose of the contract or clause; and

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

Obligation of good faith.

448.1-113. Every contract or duty governed by sections 448.1-101 to 448.4-120 imposes an obligation of good faith in its performance or enforcement.

Remedies to be liberally administered.

448.1-114. 1. The remedies provided by sections 448.1-101 to 448.4-120 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. However, consequential, special, or punitive damages may not be awarded except as specifically provided in sections 448.1-101 to 448.4-120 or by other rule of law.

2. Any right or obligation declared by sections 448.1-101 to 448.4-120 is enforceable by judicial proceeding.

Creation of condominium.

448.2-101. 1. A condominium shall be created pursuant to sections 448.1-101 to 448.4-120 only by recording a declaration executed in the same manner as a deed. The declaration shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the condominium and each person executing the declaration.

2. No declaration or amendment to a declaration adding units to a condominium shall be recorded unless 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 a registered and licensed engineer or architect.

Unit boundaries.

448.2-102. Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;

(3) Subject to the provisions of subdivision (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit;

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Construction and validity of declaration and bylaws.

448.2-103. 1. All provisions of the declaration and bylaws are severable.

2. The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, or rules and regulations adopted pursuant to subdivision (1) of subsection 1 of section 448.3-102.

3. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with sections 448.1-101 to 448.4-120.

4. 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 sections 448.1-101 to 448.4-120. Whether or not a substantial failure impairs marketability shall not be affected by sections 448.1-101 to 448.4-120.

Description of units.

448.2-104. A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

Contents of declaration.

448.2-105. 1. The declaration for a condominium shall contain:

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

(2) The name of every county in which any part of the condominium is situated;

(3) A legally sufficient description of the real estate included in the condominium;

(4) A statement of the maximum number of units which the declarant reserves the right to create;

(5) A description of the boundaries of each unit created by the declaration, including each unit's identifying number;

(6) A description of any limited common elements, other than those specified in subdivisions (2) and (4) of section 448.2-102, as provided in section 448.2-109;

(7) A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in subdivisions (2) and (4) of section 448.2-102, together with a statement that they may be so allocated;

(8) A description of any development rights 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 shall 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 shall be exercised in all or in any other portion of the remainder of that real estate;

(10) Any other conditions or limitations under which the rights described in subdivision (8) of this section may be exercised or will lapse;

(11) An allocation to each unit of the allocated interests in the manner described in section 448.2-107;

(12) Any restrictions on use, occupancy, and alienation of the units;

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

(14) All matters required by sections 448.2-106, 448.2-107, 448.2-108, 448.2-109, 448.2-115, and 448.2-116 and subsection 4 of section 448.3-103.

2. The declaration may contain any other matters the declarant deems appropriate.

Leasehold condominiums.

448.2-106. 1. Any lease, the expiration or termination of which may terminate the condominium or reduce its size, shall be recorded. Every lessor of such leases shall sign the declaration, and the declaration shall 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.

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

3. 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.

4. If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with subsection 1 of section 448.1-107 as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Allocation of common element interests, votes, and common expense liabilities.

448.2-107. 1. The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Such allocations may not discriminate in favor of units owned by the declarant.

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

3. The declaration may provide: (1) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (2) for cumulative voting only for the purpose of electing members of the executive board; and (3) 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 sections 448.1-101 to 448.4-120, nor may units constitute a class because they are owned by a declarant.

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

5. 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.

Limited common elements.

448.2-108. 1. Except for the limited common elements described in subdivisions (2) and (4) of section 448.2-102, the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

2. 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 such copy. The amendment shall be recorded in the names of the parties and the condominium.

3. No common element not previously allocated as a limited common element may be so allocated except pursuant to provisions in the declaration made in accordance with subdivision (7) of section 448.2-105. The allocations shall be made by amendments to the declaration.

Plats and plans.

448.2-109. 1. Plats and plans are a part of the declaration. Separate plans are not required by sections 448.1-101 to 448.4-120 if all the information required by this section is contained in the plat. Each plat and plan shall be clear and legible and contain a certification that the plat or plan contains all information required by this section. All surveys and plats required by this section shall be made in compliance with the minimum standards for property boundary surveys as established by rule of the department of natural resources.

2. Each plat shall show:

(1) The name and a survey or general schematic map of the entire condominium;

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) The extent of any encroachments by or upon any portion of the condominium;

(5) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;

(6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection 4 of this section and that unit's identifying number;

(7) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection 4 of this section and that unit's identifying number;

(8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) The distance between noncontiguous parcels of real estate comprising the condominium;

(10) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in subdivisions (2) and (4) of section 448.2-102;

(11) In the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

3. A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "SHALL BE BUILT" or "NEED NOT BE BUILT".

4. To the extent not shown or projected on the plats plans of the units shall show or project:

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

(2) Any horizontal unit boundaries, with reference to established datum, and each unit's identifying number; and

(3) To the extent not shown or projected on the plats, any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

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

6. Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections 1, 2, and 4 of this section, or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of subsections 1, 2, and 4.

7. Any certification of a plat required by this section shall be made by a registered and licensed surveyor, and any certification of a plan required by subsection 2 of section 448.2-101 shall be made by an architect or engineer.

8. A plat shall be amended to show alterations to the boundaries of any unit, common element, or, pursuant to subdivision (10) of subsection 2 of this section, limited common element.

Exercise of development rights.

448.2-110. 1. To exercise any development right reserved under subdivision (1) of section 448.2-105, the declarant shall prepare, execute, and record an amendment to the declaration and comply with section 448.2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection 2 of this section, reallocate the allocated interests among all units. The amendment shall describe any common elements or 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 448.2-108.

2. Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 448.2-105 or section 448.2-106, as the case may be, and the plats and plans include all matters required by subsection 2 of section 448.2-109. This provision

does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to subsection 1 of section 448.2-105.

3. When 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 shall reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain.

(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 shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

4. If the declaration provides, pursuant to subsection 1 of section 448.2-105, that all or a portion of the real estate is subject to the development right of withdrawal:

(1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Alterations of units.

448.2-111. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) 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 condominium;

(2) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subdivision is not an alteration of boundaries.

Relocation of boundaries between adjoining units.

448.2-112. 1. 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 shall state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and, upon recordation, is indexed in the name of the grantor and the grantee.

2. The association shall cause to be prepared and shall record any plats necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

Subdivision of units.

448.2-113. 1. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare or cause to be prepared, execute, and record an amendment to the declaration, including the plats, subdividing that unit.

2. The amendment to the declaration shall be executed by the owner of the unit to be subdivided, shall assign an identifying number to each unit created, and shall 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.

Monuments as boundaries.

448.2-114. The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the original plats and plans thereof, become the boundaries of such unit rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building. This section does not relieve a unit owner of liability in case of his willful misconduct, nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

Use for sale purposes.

448.2-115. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state laws and to local ordinances.

Easement rights.

448.2-116. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under sections 448.1-101 to 448.4-120 or reserved in the declaration.

Amendment of declaration.

448.2-117. 1. Except in cases of amendments that may be executed by a declarant under subsection 6 of section 448.2-109, or section 448.2-110; the association, under section 448.1-107, subsection 4 of section 448.2-106, subsection 3 of section 448.2-108, or subsection 1 of section 448.2-112, or section 448.2-113; or certain unit owners under subsection 2 of section 448.2-108, subsection 1 of section 448.2-112, subsection 2 of section 448.2-113, or subsection 2 of section 448.2-118, and except as limited by subsection 4 of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. 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.

3. Every amendment to the declaration shall be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation. Every amendment shall be indexed in the name of the condominium, the association, and the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of sections 448.1-101 to 448.4-120, no amendment may create or increase special declarant rights, increase the number of units, or change the

boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

5. Amendments to the declaration required by sections 448.1-101 to 448.4-120 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.

Termination of a condominium.

448.2-118. 1. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

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

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

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

5. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections 1 and 2 of this section. If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection 8 of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate which formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by sections 448.1-101 to 448.4-120 or the declaration.

6. If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium vests upon termination in the unit owners as tenants in common in proportion to their respective interests as provided in subsection 8 of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate which formerly constituted his unit.

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

8. The respective interests of unit owners referred to in subsections 3, 4, and 5 of this section are as follows:

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

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

9. Except as provided in subsection 10 of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium.

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

Rights of secured lenders.

448.2-119. The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (2) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to section 448.3-113.

Master associations.

448.2-120. 1. If the declaration for a condominium provides that any of the powers described in section 448.3-102 are to be exercised by or may be delegated to a profit or not for profit corporation or unincorporated association which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of sections 448.1-101 to 448.4-120 applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.

2. Unless a master association is acting in the capacity of an association described in section 448.3-101, it may exercise the powers set forth in subdivision (2) of subsection 1 of section 448.3-102 only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from such condominiums to the master association.

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

4. The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 448.3-103, 448.3-108, 448.3-109, 448.3-110, and 448.3-112 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not such persons are otherwise unit owners within the meaning of sections 448.1-101 to 448.4-120.

5. Notwithstanding the provisions of section 448.3-103 with respect to the election of the executive board of an association, and even if a master association is also an association described in section 448.3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association shall be elected in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board;

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board;

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board; or

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

Merger or consolidation of condominiums.

448.2-121. 1. Any two or more condominiums may, by agreement of the unit owners as provided in subsection 2 of this section, be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

2. An agreement of two or more condominiums to merge or consolidate pursuant to subsection 1 of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in every county in which a portion of the condominium is located, and is not effective until so recorded.

3. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (1) by stating such reallocations or the formulas upon which they are based or (2) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of such percentages allocated to each unit formerly comprising a part of such preexisting condominium shall be equal to the percentages of allocated interests allocated to such unit by the declaration of the preexisting condominium.

Organization of unit owners' association.

448.3-101. A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 448.2-118, or their heirs, successors, or assigns. The association shall be organized as a profit or not for profit corporation or as an unincorporated association.

Powers of unit owners' association.

448.3-102. 1. Subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

- (3) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided, that common elements may be conveyed or subjected to a security interest only pursuant to section 448.3-112;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subdivisions (2) and (4) of section 448.2-102 and services provided to unit owners;
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 448.4-109, or statements of unpaid assessments;
- (13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- (14) Assign its rights to future income, including the right to receive common expense assessments, but only to the extent expressly provided in the declaration;
- (15) Exercise any other powers conferred by the declaration or bylaws;
- (16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.

2. Notwithstanding the provisions of subsection 1 of this section, the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Executive board members and officers.

448.3-103. 1. Except as provided in the declaration, the bylaws, subsection 2 of this section, or other provisions of sections 448.1-101 to 448.4-120, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (1) if appointed by the declarant, the care required of fiduciaries of the unit owners, and (2) if elected by the unit owners, ordinary and reasonable care.

2. The executive board may not act on behalf of the association to amend the declaration, to terminate the condominium, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

3. Within thirty days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget, which date shall be not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners, or any larger vote specified in the declaration, reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

4. Subject to subsection 5, the declaration may provide for a period of declarant control of the association, during which period a declarant, or person designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (1) sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (2) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (3) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

5. Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board shall be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board shall be elected by unit owners other than the declarant.

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

7. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds majority vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board.

Transfer of special declarant rights.

448.3-104. 1. No special declarant rights created or reserved under sections 448.1-101 to 448.4-120 may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

2. Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by sections 448.1-101 to 448.4-120. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor;

(2) If the successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium;

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is also liable for any obligations and liabilities relating to the retained special declarant rights, imposed on a declarant by sections 448.1-101 to 448.4-120 or by the declaration arising after the transfer;

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

3. Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the federal Bankruptcy Code or receivership proceedings, of any units owned by a declarant, or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate which are held by that declarant, or only to any rights reserved in the declaration pursuant to section 448.2-115 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

4. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the federal Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights; and

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

5. The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by sections 448.1-101 to 448.4-120 or by the declaration;

(2) A successor to any special declarant right, other than a successor described in subdivision (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by sections 448.1-101 to 448.4-120 or the declaration:

(a) On a declarant which relate to his exercise or nonexercise of special declarant rights; or

(b) On his transferor, other than:

a. Misrepresentations by any prior declarant;

b. Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

c. Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

d. Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide an original sale certificate, and any liability arising as a result thereof;

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection 3, may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of subsection 4 of section 448.3-103 for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant

may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under subsection 4 of section 448.3-103.

6. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under sections 448.1-101 to 448.4-120 or the declaration.

Termination of contracts and leases of declarant.

448.3-105. If entered into before the executive board elected by the unit owners pursuant to subsection 6 of section 448.3-103 takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to subsection 6 of section 448.3-103 takes office upon not less than ninety days' notice to the other party. This subsection does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

Bylaws.

448.3-106. 1. The bylaws of the association shall provide for:

- (1) The number of members of the executive board and the titles of the officers of the association;
- (2) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
- (6) The method of amending the bylaws subject to the following:
 - (a) Unless the declarant otherwise agrees in writing to permit an amendment to the bylaws in accordance with paragraph (b) of this subdivision, for so long as a declarant is the owner of units representing an aggregate of ten percent or more of the units in which votes in the association are allocated, the bylaws may only be amended with the affirmative vote of at least sixty-seven percent of the unit owners of units to which votes in the association are allocated; and
 - (b) After the declarant ceases to own ten percent or more of the units to which votes in the association are allocated, the bylaws may only be amended with the affirmative vote of a majority of the unit owners of units to which the votes in the association are allocated.

2. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

Upkeep of condominium.

448.3-107. 1. Except to the extent provided by the declaration, subsection 2 of this section, or subsection 8 of section 448.3-113, the association is responsible for maintenance, repair, and replacement of the common

elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability which a declarant has under sections 448.1-101 to 448.4-120 as a unit owner, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

Meetings.

448.3-108. A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president or by twenty percent, or any lower percentage specified in the bylaws, of either the executive board or the unit owners. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

Quorums.

448.3-109. 1. Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

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

Voting--proxies.

448.3-110. 1. If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

2. Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. No unit owner may revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

3. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (1) the provisions of subsections 1 and 2 of this section apply to lessees as if they were unit owners; (2) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice in the manner provided in section 448.3-108 of all meetings at which lessees may be entitled to vote.

4. No votes allocated to a unit owned by the association may be cast.

Tort and contract liability.

448.3-111. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association shall be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control, and if the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) for all tort losses not covered by insurance suffered by the association or that unit owner, and (2) for all costs which the association would not have incurred but for the breach of contract or other wrongful act or omission. In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 448.3-117.

Conveyance or encumbrance of common elements.

448.3-112. 1. Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; provided, that all the owners of units to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

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

3. The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections 1 and 2 of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

4. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of common elements, unless made pursuant to this section or pursuant to subsection 2 of section 448.3-117, is void.

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

6. Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect preexisting encumbrances.

Insurance.

448.3-113. 1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

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

3. If the insurance described in subsections 1 and 2 of this section is not reasonably available, the association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

4. Insurance policies carried pursuant to subsection 1 of this section shall provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its rights to subrogation under the policy against any unit owner or members of his household;

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

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

5. Any loss covered by the property policy under subdivision (1) of subsection 1 of this section and under subsection 2 of this section shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection 8 of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

6. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

7. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. No insurer issuing the policy may cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8. Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, and (3) the remainder of the

proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under subsection 1 of section 448.1-107, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 448.2-118 governs the distribution of insurance proceeds if the condominium is terminated.

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

Surplus funds.

448.3-114. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to their common expense liability or credited to them to reduce their future common expense assessments.

Assessments for common expenses.

448.3-115. 1. Until the association makes a common expense assessment, the declarant shall pay all the common expenses. After any assessment has been made by the association, assessments thereafter shall be made at least annually and shall be based on a budget adopted at least annually by the association.

2. Except for assessments under subsections 3 and 4 of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsection 1 of section 448.2-107. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association not exceeding eighteen percent per year.

3. To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense, or portion thereof, benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

4. Assessments to pay a judgment against the association shall be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

5. If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

6. If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

Lien for assessments.

448.3.116. 1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate or a power of sale pursuant to chapter 443, RSMo. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (10), (11), and (12) of subsection 1 of section 448.3-102 are enforceable as assessments pursuant to this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien pursuant to this section is prior to all other liens and encumbrances on a unit except:

(1) Liens and encumbrances recorded before the recordation of the declaration;

(2) A mortgage and deed of trust for the purchase of a unit recorded before the date on which the assessment sought to be enforced became delinquent;

(3) Liens for real estate taxes and other governmental assessments or charges against the unit;

(4) Except for delinquent assessments or fines, up to a maximum of six months' assessments or fines, which are due prior to any subsequent refinancing of a unit or for any subsequent second mortgage interest.

This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien pursuant to this section is not subject to the provisions of section 513.475, RSMo.

3. Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment pursuant to this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

6. This section shall not prohibit actions to recover sums for which subsection 1 of this section creates a lien, or prohibit an association from taking a deed in lieu of foreclosure.

7. A judgment or decree in any action brought pursuant to this section shall include costs and reasonable attorney's fees for the prevailing party.

8. The association shall furnish to a unit owner, upon written request, a recordable statement setting forth the amount of unpaid assessments against the unit owner's unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

Other liens affecting the condominium.

448.3-117. 1. A judgment for money against the association, if recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

2. Notwithstanding the provisions of subsection 1 of this section, if the association has granted a security interest in the common elements to a creditor of the association pursuant to section 448.3-112, the holder of that security interest shall exercise his right against the common elements before his judgment lien on any unit may be enforced.

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

4. A judgment against the association shall be indexed in the name of the condominium and the association and, if so indexed, is notice of the lien against the units

Association records.

448.3-118. The association shall keep financial records sufficiently detailed to enable the association to comply with section 448.4-107*. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

Association as trustee.

448.3-119. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Applicability--waiver.

448.4-101. 1. Sections 448.4-101 to 448.4-120 apply to all units subject to sections 448.1-101 to 448.4-120, except as provided in subsection 2 of this section or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

2. Neither an original sale certificate nor a resale certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition to a person in the business of selling real estate who intends to offer those units to purchasers or to renters; or

(6) A disposition which may be canceled at any time and for any reason by the purchaser without penalty.

Liability for public offering statement requirements.

448.4-102. 1. Except as provided in subsection 2 of this section, a declarant shall, prior to the offering of any interest in a unit to the public, prepare an original sale certificate conforming to the requirements of sections 448.4-103, 448.4-104, 448.4-105, and 448.4-106.

2. A declarant may transfer responsibility for preparation of all or a part of the original sale certificate to a successor declarant or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor shall provide the transferee with the information necessary to enable the transferee to fulfill the requirements of subsection 1 of this section.

3. Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver an original sale certificate in the manner prescribed in subsection 1 of section 448.4-108. The person who prepared all or a part of the original sale certificate is liable under sections 448.4-108 and 448.4-113 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the original sale certificate which he prepared. If a declarant did not prepare any part of an original sale certificate that he delivers, he is not liable for any false or misleading statement set forth

therein or for any omission of material fact therefrom unless he had actual knowledge of such statement or omission or, in the exercise of reasonable care, should have known of such statement or omission.

Original sale certificate, general provisions.

448.4-103. 1. An original sale certificate shall contain or fully and accurately disclose:

- (1) The name and principal address of the declarant and of the condominium;
- (2) A general description of the condominium, including, to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings and amenities which the declarant anticipates including in the condominium;
- (3) The total number of units in the condominium;
- (4) Copies or a brief narrative description of the significant features of the following documents relating to the condominium: the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions, and reservations, excluding utility easements, affecting the condominium; the bylaws and any rules and regulations of the association; any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant;
- (5) A projected budget for the association for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include:
 - (a) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;
 - (b) A statement of any other reserves;
 - (c) The projected common expense assessment by category of expenditures for the association;
 - (d) The projected monthly common expense assessment for each type of unit;
 - (e) A statement that under a particular circumstance the budget may not include maintenance charges for a particular amenity or facility if such amenity or facility is not constructed;
- (6) Any services not reflected in the budget that the declarant provides, or expenses that he pays, and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
- (7) Any initial or special fee, other than customary closing costs, due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
- (8) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;
- (9) A statement that:
 - (a) Within ten days after receipt of an original sale certificate, or within five days after execution of the sale contract, whichever is longer, and before conveyance, a purchaser may cancel any contract for purchase of a unit from the declarant; and
 - (b) If a purchaser receives the original sale certificate more than ten days before signing a contract, he may not cancel the contract;

- (10) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;
- (11) A statement that any deposit made in connection with the purchase of a unit will be held in escrow for five days after receipt of the original sale certificate and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 448.4-108, together with the name and address of the escrow agent;
- (12) Any restraints on alienation of any portion of the condominium;
- (13) A description of the insurance coverage provided for the benefit of unit owners;
- (14) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;
- (15) Any contingencies related to development or sales achievements of the condominium contained in financial arrangements which declarant has obtained for improvements labeled "SHALL BE BUILT" pursuant to section 448.4-119 but incomplete at the time of the execution of the sales contract, together with the name of the institution offering such financial arrangements;
- (16) A list of all improvements contemplated in the condominium which the declarant reserves the right not to build, and a list of all improvements contemplated in the condominium which the declarant is obligated to build, as provided in sections 448.4-118 and 448.4-119.

Original sale certificate, condominiums subject to development rights.

448.4-104. If the declaration provides that a condominium is subject to any development rights, the original sale certificate shall disclose, in addition to the information required by section 448.4-103:

- (1) The maximum number of units, and the maximum number of units per acre, to the extent reasonably ascertainable, which may be created;
- (2) A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) If any of the units which may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units which may be created therein, which are not restricted exclusively to residential use;
- (4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;
- (5) A statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subdivision (3) of this section;
- (6) A statement of the extent to which any buildings or other improvements which may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
- (7) General descriptions of all other improvements which may be made and limited common elements which may be created within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;
- (8) A statement of any limitations as to the locations of any building or other improvement which may be made within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

(10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units shall apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations which may be made as to those units, or a statement that no assurances are made in that regard; and

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

Original sale certificate, time-shares.

448.4-105. If the declaration provides that ownership or occupancy of any units is or may be in time-shares, the original sale certificate shall disclose, in addition to the information required by section 448.4-103:

(1) The number and identity of units in which time-shares may be created;

(2) The total number of time-shares which may be created;

(3) The minimum duration of any time-shares which may be created; and

(4) The extent to which the creation of time-shares will or may affect the enforceability of the association's lien for assessments provided in section 448.3-116.

Original sale certificate, condominiums containing conversion buildings.

448.4-106. 1. The original sale certificate of a condominium containing any conversion building shall contain, in addition to the information required by section 448.4-102:

(1) A statement of work done, including the nature thereof, on the foundation, structural members, roof, chimney, gutters and downspouts, exterior and interior walls, ceilings, floors, windows, attic and wall insulation (including installer's statement of present "R" value), sewers and stacks, plumbing system and related fixtures, electrical system and related fixtures, and furnace and heating system (including the manufacturer's energy efficiency ratio of any new heating or refrigeration equipment); and

(2) A list of any outstanding notices of uncured violations of building code or other municipal regulations.

2. This section applies only to buildings containing units which may be occupied for residential use.

Original sale certificate, condominium securities.

448.4-107. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of an original sale certificate of sections 448.1-101 to 448.4-120 if he delivers to the purchaser a copy of the original sale certificate filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the laws of this state.

Purchaser's right to cancel.

448.4-108. A person required to deliver an original sale certificate pursuant to subsection 3 of section 448.4-102 shall provide a purchaser of a unit with a copy of the original sale certificate and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the original sale certificate more than ten days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within ten days after first receiving the original sale certificate or five days after execution of the contract, whichever is longer.

Resales of units.

448.4-109. 1. Except in the case of a sale where delivery of an original sale certificate is required, or unless exempt under subsection 2 of section 448.4-101, a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate containing: a copy of the declaration, other than the plats and plans; the bylaws; and the rules or regulations of the association. Such resale certificate shall disclose:

- (1) The effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;
- (2) The amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;
- (3) Any other fees payable by unit owners;
- (4) Any capital expenditures anticipated by the association for the current and two next succeeding fiscal years;
- (5) The amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
- (6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
- (7) The current operating budget of the association;
- (8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
- (9) A statement describing any insurance coverage provided for the benefit of unit owners;
- (10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration; and
- (11) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

2. The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection 1 of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

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

Escrow of deposits.

448.4-110. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver an original sale certificate pursuant to subsection 3 of section 448.4-102 shall be placed in escrow and held either in this state or in the state where the unit is located until refunded to purchaser pursuant to section 448.4-108 or the cancellation period provided therein expires.

Release of liens.

448.4-111. 1. In the case of a sale of a unit where delivery of an original sale certificate is required pursuant to subsection 3 of section 448.4-102, a seller shall, before conveying a unit, record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien. This subsection does not apply to any real estate which the declarant has the right to withdraw.

2. Before conveying real estate to the association, the declarant shall have that real estate released from:

(1) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and

(2) All other liens on that real estate unless the original sale certificate describes certain real estate which may be conveyed subject to liens in specified amounts.

Conversion buildings--low or moderate income elderly tenants and disabled tenants, rights of.

448.4-112. 1. A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his own account who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion no later than one hundred twenty days before the declarant will require the tenants and any subtenant in possession to vacate, and the declarant shall further provide those persons with the original sale certificate not less than sixty days before the termination of such one hundred twenty-day period nor less than sixty days before the declarant will require those persons to vacate, whichever is the later date. The notice shall set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to each unit or mailed by prepaid United States mail to the tenant and subtenant at the address of each unit or any other mailing address provided by a tenant. No tenant or subtenant may be required by the declarant to vacate upon less than the later of one hundred twenty days' notice or upon notice less than sixty days after receipt of the original sale certificate, except by reason of nonpayment of rent, waste, or conduct which disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure of a declarant to give notice as required by this section is a defense to an action for possession.

2. The notice required by subsection 1 of this section shall be accompanied by any form requesting age, income, and any other information of residential tenants which the local government entity may provide to declarant for the purpose of gathering data on the low or moderate income tenant affected by condominium conversions.

3. (1) Subject to the provisions of subdivisions (2) and (3) of this subsection 3, any low or moderate income elderly tenant of a conversion building on the date the notice of conversion was submitted pursuant to subsection 1 of this section shall have the right to occupy his unit as provided in this section for a three-year period with an option to renew for no more than four successive periods. Any disabled tenant of a conversion building on the date said notice of conversion was given shall have the right to occupy his unit as provided in this section for a one-year period with the option to renew for no more than two successive periods. To exercise the right to occupy, the tenant shall notify the declarant in writing within thirty days of receipt of the notice of conversion. If a tenant dies after exercising a right under this section, the surviving spouse, if qualified as a low or moderate income elderly or disabled tenant at the time of the decedent spouse's death, shall succeed to that right under the same terms and with the obligations of the decedent tenant. All rights and obligations under this subdivision shall terminate upon the tenant's abandonment of the unit or by his death or the death of his successor, if any. All rights of such tenant may be waived in a written agreement with the declarant or successor unit owner, if the notice of conversion discloses fully and completely the rights and obligations provided elderly and disabled tenant under this subsection, including the applicability only to conversion buildings of six or more

units, the limitation of number of units eligible in the building to be converted, the rent for which the tenant will be obligated, and the qualification requirements for Missouri housing development commission financing.

(2) Any unit of a conversion building which is used for residential purposes and which is occupied by one or more low or moderate income elderly or disabled tenants at the time the notice of conversion is submitted pursuant to subsection 1 of this section, shall be retained by the declarant or successor unit owner as a rental unit for occupancy by such tenants under subdivision (1) of this subsection 3. Rent to be charged tenants under this subsection shall not exceed an amount equal to the carrying costs, replacement reserve, real property taxes, return on equity not to exceed ten percent per annum, and the portion of common expenses and insurance allocable to the unit. This subsection shall only apply to condominiums consisting of six or more units used for residential purposes at any time during the twelve months immediately preceding submission of the notice of conversion. In such condominium, no more than ten percent of the total number of units, but not less than one unit in any condominium consisting of six to ten units, with fractions rounded to the nearest whole, shall be required to be retained as rental units under this subsection.

(3) Any declarant retaining such rental unit pursuant to subdivision (2) of this subsection 3 shall be eligible to apply for financial assistance, including but not limited to, a permanent loan, for the acquisition, plans, rehabilitation, or other expenses related to the development of such unit, from the Missouri housing development commission; provided, that the declarant shall have no obligation and such low or moderate income elderly or disabled tenant shall have no rights under this subsection 3 if financial assistance, in an amount sufficient to limit the tenant's rental obligations to thirty percent of the tenant's annual gross income, under this subdivision (3) is unavailable. For the purposes of this subsection 3, the Missouri housing development commission may allocate ten percent of its unobligated fund balances to provide financial assistance to any declarant whose application contains qualifying tenants and who otherwise meets the review criteria of the Missouri housing development commission, subject to the provisions of chapter 215, RSMo. For the purposes of this subdivision (3), "fund balances" shall mean those funds in the operating account of the Missouri housing development commission or available for transfer to the operating fund as certified by the certified public accountants of the Missouri housing development commission. In the event of an excess of qualifying tenants over the number of units for which financial assistance is available, the Missouri housing development commission shall consider the factors of age, income, length of occupancy in the unit and disability in determining preference for receipt of the financial assistance under this subdivision (3).

4. For sixty days after delivery or mailing of the original sale certificate, the declarant shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit; provided, that in the case of a low or moderate income tenant who is seeking to purchase the unit through a government assistance program, such period may be extended by mutual agreement of the tenant and declarant. If a tenant fails to purchase the unit during that sixty-day period, the declarant may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant unless declarant first notifies and offers the tenant the same terms, after which the tenant has ten days to accept or reject such offer. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

5. If a declarant, in violation of subsection 4 of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection 4 of this section to purchase that unit if the deed states that the seller has complied with subsection 4 of this section, but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection 4 of this section.

6. If a notice of conversion specifies a date by which a unit or proposed unit shall be vacated, and otherwise complies with the provisions of sections 441.050 and 441.060, RSMo, the notice also constitutes a notice to vacate specified by those sections.

7. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

8. The declarant shall submit written notice of conversion to the department in charge of building codes or the equivalent in any incorporated city, town, or village in which any portion of any building to be converted into a condominium is located. Such notice shall be filed at the time the declarant gives notice of conversion to tenant under this section.

Express warranties of quality.

448.4-113. 1. Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) Any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium which would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(2) Any model or description of the physical characteristics of the condominium, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description;

(3) Any description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(4) A provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

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

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

Implied warranties of quality.

448.4-114. 1. A declarant and any person in the business of selling real estate for his own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

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

(1) Free from defective materials; and

(2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

3. In addition, a declarant warrants to a purchaser of a unit which may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

4. Warranties imposed by this section may be excluded or modified as specified in section 448.4-115.

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

6. Any conveyance of a unit transfers to the purchaser all of any declarant's implied warranties of quality.

Exclusion or modification of implied warranties of quality.

448.4-115. 1. Except as limited by subsection 2 of this section with respect to a purchaser of a unit which may be used for residential use, implied warranties of quality:

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

(2) Are excluded by expression of disclaimer, such as "as is", "with all faults", or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

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

Statute of limitations for warranties.

448.4-116. 1. A judicial proceeding for breach of any obligation arising under section 448.4-113 or 448.4-114 shall be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit which may be occupied for residential use, an agreement to reduce the period of limitation shall be evidenced by a separate instrument executed by the purchaser.

2. Subject to subsection 3 of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

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

(2) As to each common element, at the time the common element is completed or, if later, (a) as to a common element which may be added to the condominium, or any portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (b) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

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

Effect of violations on rights of action--attorney's fees.

448.4-117. If a declarant or any other person subject to sections 448.1-101 to 448.4-120 fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by such failure to comply has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful, wanton and malicious failure to comply with any provision of sections 448.1-101 to 448.4-120. The court, in an appropriate case, may award reasonable attorney's fees.

Labeling of promotional material.

448.4-118. If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material shall be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT".

Declarant's obligation to complete and restore.

448.4-119. 1. The declarant shall complete all improvements labeled "SHALL BE BUILT" on plats or plans prepared pursuant to section 448.2-109.

2. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 448.2-110, 448.2-111, 448.2-112, 448.2-113, 448.2-115, and 448.2-116.

Substantial completion of units.

448.4-120. In the case of a sale of a unit where delivery of an original sale certificate is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by a registered and licensed architect or engineer, or by issuance of a certificate of occupancy authorized by law.