

## **NEW MEXICO**

### **47-7A-1. Short title.**

This act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] may be cited as the "Condominium Act."

### **47-7A-2. Applicability.**

A. The Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] applies to all condominiums created within this state after the effective date of that act.

B. The provisions of the Building Unit Ownership Act [ [47-7-1](#) to [47-7-25](#), [47-7-26](#) to [47-7-28](#) NMSA 1978] do not apply to condominiums created after the effective date of the Condominium Act. Any provisions of the declaration, bylaws, plats or plans of a condominium created before the effective date of the Condominium Act, which provisions are not expressly authorized by the Building Unit Ownership Act but which would have been authorized by the Condominium Act, had it been in effect, are hereby ratified. A condominium subject to the provisions of the Building Unit Ownership Act shall become subject to the Condominium Act and not the Building Unit Ownership Act if a resolution to that effect is approved by a majority of the unit owners and is then recorded as are instruments creating interests in real property. The declaration, bylaws, plats or plans of a condominium created before the effective date of the Condominium Act shall be amended in conformity with the procedures and requirements specified by those instruments and by the Building Unit Ownership Act. If the amendment grants to any person any rights, powers or privileges not expressly authorized by the Building Unit Ownership Act but permitted by the Condominium Act, all correlative obligations, liabilities and restrictions in the Condominium Act also apply to that person.

### **47-7A-3. Definitions.**

As used in the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] and declaration and bylaws, unless the context otherwise requires or otherwise specifically provided:

A. "affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant. For the purpose of this subsection:

(1) a person "controls" a declarant if the person is a general partner, officer, director or employer of the declarant; 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 interest in the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than twenty percent of the capital of the declarant; and

(2) a person "is controlled by" a declarant if the declarant is a general partner, officer, director or employer of the person; 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 interest in the person; controls in any manner the election of a majority of the directors of the

person; or has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised;

B. "allocated interests" means the undivided interest in the common elements, the common expense liability and votes in the association allocated to each unit;

C. "association" or "unit owners' association" means the unit owners' association organized under Section 34 [ [47-7C-1](#) NMSA 1978] of the Condominium Act;

D. "common elements" means all portions of a condominium other than the units;

E. "common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves;

F. "common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 19 [ [47-7B-7](#) NMSA 1978] of the Condominium Act;

G. "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;

H. "conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers or persons who occupy with the consent of purchasers, and shall for the purposes of Sections 64 and 65 [ [47-7D-12](#) and [47-7D-17](#) NMSA 1978] only of the Condominium Act include mobile housing parks;

I. "declarant" means any person or group of persons acting in concert who:

(1) as part of a common promotional plan, offers to dispose of its interest in a unit not previously disposed of;

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

(3) executes and records a declaration;

J. "declaration" means any instruments, however denominated, that create a condominium, and any amendments to such instruments;

K. "development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(1) add real estate to a condominium;

(2) create units, common elements or limited common elements within a condominium;

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

(4) withdraw real estate from a condominium;

L. "dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but such term does not include the transfer or release of a security interest;

M. "executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association;

N. "identifying number" means a symbol or address that identifies only one unit in a condominium;

O. "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;

P. "limited common element" means a portion of the common elements allocated by the declaration or by operation of Subsections B and D of Section 14 [ [47-7B-2](#) NMSA 1978] of the Condominium Act for the exclusive use of one or more but fewer than all of the units;

Q. "master association" means an organization described in Section 32 [ [47-7B-20](#) NMSA 1978] of the Condominium Act, whether or not it is also an association described in Section 34 [ [47-7C-1](#) NMSA 1978] of the Condominium Act;

R. "mobile housing park" means any site used for the business of renting, leasing or providing, for any form of compensation, a mobile housing unit for occupancy on property not owned by the mobile housing unit's occupant or providing space and facilities for a mobile housing unit owned by the occupant;

S. "mobile housing unit" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width, constructed to be towed on its own chassis and designed so as to be installed without a permanent foundation for human occupancy as a residence which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit; except that the definition does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property;

T. "offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation or in any broadcast medium to the general public of a condominium not located in New Mexico is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located;

U. "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal or commercial entity;

V. "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:

- (1) a leasehold interest, including renewal options, of less than twenty years; or
- (2) as security for obligation;

W. "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, and includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water;

X. "residential purposes" means use for dwelling or recreational purposes, or both;

Y. "special declarant rights" means rights reserved for the benefit of a declarant to:

- (1) complete improvements indicated on plats and plans filed with the declaration;
- (2) exercise any development right;
- (3) maintain sales offices, management offices, signs advertising the condominium and models;
- (4) 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;
- (5) make the condominium part of a larger condominium or a planned community;
- (6) make the condominium subject to a master association; or
- (7) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control;

Z. "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;

AA. "unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 17 [14] [ [47-7B-2](#) NMSA 1978] of the Condominium Act; and

BB. "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.

#### **47-7A-4. Variation by agreement.**

Except as expressly provided in the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978], the provisions of that act shall not be varied by agreement, and the rights conferred by the Condominium Act shall not be waived. A

declarant shall not evade the limitations or prohibitions of that act or the declaration by use of a power of attorney or any other device.

#### **47-7A-5. Taxation.**

A. The association of unit owners shall elect whether:

(1) the entire property shall be deemed a single parcel for the purposes of assessment and taxation, in which event the association shall promptly notify the unit owners of the payment of the taxes. For purposes of assessment or valuation and taxation under this paragraph, the association shall be deemed to be the owner as defined in [Section 7-35-2](#) NMSA 1978; or

(2) each unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments.

B. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and only the declarant is liable for payment of such taxes.

C. 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 the Property Tax Code [\[Articles 35 to 38, Chapter 7](#) NMSA 1978].

#### **47-7A-6. Applicability of local ordinances, regulations and building codes.**

No provision of the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] invalidates or modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation; provided, however, a zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon the same development under a different form of ownership.

#### **47-7A-7. Eminent domain.**

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for his unit and his 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 prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

B. Except as provided in Subsection A 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 the unit's 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 reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and 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 the unit's reduced allocated interests.

C. Unless the declaration provides otherwise, 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.

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

#### **47-7A-8. Supplemental general principles of law applicable.**

Except to the extent inconsistent with the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978], the principles of law and equity, including the law of corporations, 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 that act.

#### **47-7A-9. Construction against implicit repeal, amendment or expansion.**

The Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] is a general act intended as a unified coverage of its subject matter; no part of it shall be deemed impliedly repealed, amended or expanded by subsequent legislation if that construction can reasonably be avoided.

#### **47-7A-10. Reserved.**

#### **47-7A-11. Severability.**

If any part or application of the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

#### **47-7A-12. Unconscionable agreement or term of contract.**

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

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

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

#### **47-7A-13. Obligation of good faith.**

Every contract or duty governed by the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] imposes an obligation of good faith in its performance or enforcement.

#### **47-7A-14. Remedies to be liberally administered.**

A. The remedies provided by the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] shall be liberally administered in order that the aggrieved party is placed in as good a position as if the other party had fully performed. However, consequential, special or punitive damages shall not be awarded except as specifically provided in the Condominium Act or by other law.

B. Any right or obligation declared by the Condominium Act is enforceable by judicial proceeding.

#### **47-7B-1. Creation of condominium.**

A. A condominium may be created pursuant to the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] only by recording a declaration executed in the same manner as a deed. The declaration shall be recorded in each county in which any portion of the condominium is located and shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of each person executing the declaration.

B. A declaration or an amendment to a declaration adding units to a condominium shall not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by a licensed engineer, architect, the appropriate building inspection authority or by the declarant. This section does not apply to a conversion building restricted in its entirety to uses other than for residential purposes.

#### **47-7B-2. Unit boundaries.**

Except as provided by the declaration:

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

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

C. subject to the provisions of Subsection B of this section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit;

D. any shutters, awnings, window boxes, doorsteps or stoops 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; and

E. any porches, balconies or patios designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

#### **47-7B-3. Construction and validity of declaration and bylaws.**

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

B. The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to Section 35 [ [47-7C-2](#) NMSA 1978] of the Condominium Act.

C. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978].

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

#### **47-7B-4. Description of units.**

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.

#### **47-7B-5. Contents of declaration.**

A. The declaration for a condominium shall contain:

(1) the names 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 description, legally sufficient for conveyance, of the real estate included in the condominium;
- (4) a statement of the maximum number of units which the declarant reserves the right to create;
- (5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;
- (6) a description of any limited common elements, other than those specified in Subsections B, D and E of [Section 47-7B-2](#) NMSA 1978, as provided in [Section 47-7B-9](#) NMSA 1978;
- (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 Subsections B, D and E of [Section 47-7B-2](#) NMSA 1978, 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 must be exercised;
- (9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with 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 a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
- (10) any other conditions or limitations under which the rights described in Paragraph (8) of this subsection shall be exercised or they shall lapse;
- (11) an allocation to each unit of the allocated interests in the manner described in [Section 47-7B-7](#) NMSA 1978;
- (12) any restrictions on use, occupancy and alienation of the units; and
- (13) all matters required by [Sections 47-7B-6](#) through [47-7B-9](#), [47-7B-15](#), [47-7B-16](#) and Subsection D of [Section 47-7C-3](#) NMSA 1978.

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

#### **47-7B-6. Leasehold condominiums.**

A. With respect to any condominium created on a leasehold estate, the declaration shall state:

- (1) the recording data for the lease, or a copy of the lease shall be attached as an exhibit;
- (2) the date on which the lease is scheduled to expire;

- (3) a legally sufficient description of the real estate subject to the lease;
- (4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;
- (5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and
- (6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

B. 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.

C. 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 A of Section 6 [ [47-7A-7](#) NMSA 1978] of the Condominium Act 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.

**47-7B-7. Allocation of common element interests; votes; common expense liabilities.**

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

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

C. The declaration may provide:

- (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 the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978], nor may units constitute a class because they are owned by a declarant.

D. Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units 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 formula, the allocated interest prevails.

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

#### **47-7B-8. Limited common elements.**

A. Except for the limited common elements described in Subsections B, D and E of [Section 47-7B-2](#) NMSA 1978, the declaration shall specify to which unit or units each limited common element is allocated. That allocation shall not be altered without the consent of the unit owners whose units are affected.

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

C. A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with Paragraph (7) of Subsection A of [Section 47-7B-5](#) NMSA 1978. The allocations shall be made by amendments to the declaration.

#### **47-7B-9. Plats and plans.**

A. Plats and plans are a part of the declaration. Separate plats and plans are not required by the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] if all the information required by this section is contained in either a plat or plan. 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.

B. Each plat shall show:

- (1) the name of the condominium and a survey or a general schematic map of the condominium;
- (2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;
- (3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;
- (4) the extent of any encroachments by or upon any portion of the condominium;
- (5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;

- (6) the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to Subsection D 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 D 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, other than the limited common elements described in Subsections B and D of Section 14 [ [47-7B-2](#) NMSA 1978] of the Condominium Act; and
- (11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

C. A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown shall be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." Any certification of a plat required by this section shall be made by a licensed surveyor.

D. To the extent not shown or projected on the plats, plans of the units must show or project:

- (1) the location and dimensions of the vertical boundaries of each unit and that unit's identifying number;
- (2) any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and
- (3) any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

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

F. Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of Subsections A, B and D of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

G. Any certification of a plan required by this section shall be made by a licensed surveyor, architect or engineer.

#### **47-7B-10. Exercise of development rights.**

A. To exercise any development right reserved under Paragraph (8) of Subsection A of Section 17 [ [47-7B-5](#) NMSA 1978] of the Condominium Act, the declarant shall prepare, execute and record an amendment to the declaration and comply with Section 21 [ [47-7B-9](#) NMSA 1978] of the Condominium Act. 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 C of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 20 [ [47-7B-8](#) NMSA 1978] of the Condominium Act.

B. Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by Section 17 or 18 [ [47-7B-5](#) or [47-7B-6](#) NMSA 1978] of the Condominium Act as the case may be, and the plats and plans include all matters required by Section 21 [ [47-7B-9](#) NMSA 1978] of that act. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Paragraph (8) of Subsection A of Section 17 [ [47-7B-5](#) NMSA 1978] of that act.

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

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration shall reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides, pursuant to Paragraph (8) of Subsection A of Section 17 [ [47-7B-5](#) NMSA 1978] of the Condominium Act, 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 shall be withdrawn after a unit in that portion has been conveyed to a purchaser.

#### **47-7B-11. Alterations of units.**

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

- A. may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;
- B. 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; and
- C. after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.

#### **47-7B-12. Relocation of boundaries between adjoining units.**

- A. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application 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.
- B. The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

#### **47-7B-13. Subdivision of units.**

- A. 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, execute and record an amendment to the declaration, including the plats and plans, subdividing that unit.
- B. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

#### **47-7B-14. Easement for encroachments.**

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his

willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

**47-7B-15. Use for sales purposes.**

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium if the declaration so provides. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances.

**47-7B-16. Easement rights.**

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] or reserved in the declaration.

**47-7B-17. Amendment of declaration.**

A. Except in cases of amendments that may be executed by a declarant under [Section 47-7B-9](#) or [47-7B-10](#) NMSA 1978, the association under [Section 47-7B-6](#), [47-7B-7](#), [47-7B-8](#), [47-7B-12](#) or [47-7B-13](#) NMSA 1978 or certain unit owners under [Section 47-7B-8](#), [47-7B-12](#), [47-7B-13](#) or [47-7B-18](#) NMSA 1978 and except as limited by Subsection D of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent 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.

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

C. Every amendment to the declaration shall be recorded in each county in which any portion of the condominium is located and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of the parties executing the amendment.

D. Except to the extent expressly permitted or required by other provisions of the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978], no amendment shall 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.

E. Amendments to the declaration required by the Condominium Act to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

F. No amendment to the declaration which would limit, prohibit or eliminate the exercise of a special declarant right shall be effective, during the period of the reservation, without the concurrence of the declarant.

**47-7B-18. Termination of condominium.**

A. 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.

B. 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 must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in each county in which a portion of the condominium is situated and is effective only upon recordation.

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

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

E. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to Subsections A and B 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 H 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 that formerly constituted their 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 the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] or the declaration.

F. If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in Subsection H 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 that formerly constituted their unit.

G. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder.

H. The respective interests of unit owners referred to in Subsections E, F and G of this section are as follows:

(1) except as provided in Paragraph (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; and

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

I. Except as provided in Subsection J 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, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

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

#### **47-7B-19. Rights of secured lenders.**

The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units or vendors of units under installment sales contracts 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 deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board or 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 46 [ [47-7C-13](#) NMSA 1978] of the Condominium Act.

**47-7B-20. Master associations.**

- A. If the declaration for a condominium provides that any of the powers described in Section 35 [ [47-7C-2](#) NMSA 1978] of the Condominium Act are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of that act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.
- B. Unless a master association is acting in the capacity of an association described in Section 34 [ [47-7C-1](#) NMSA 1978] of the Condominium Act, it may exercise the powers set forth in Section 35 [ [47-7C-2](#) NMSA 1978] of that act only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.
- C. If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.
- D. The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 36, 41, 42, 43 and 45 [ [47-7C-3](#), [47-7C-8](#) to [47-7C-10](#) and [47-7C-12](#) NMSA 1978] of the Condominium Act apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of that act.
- E. Notwithstanding the provisions of Section 36 [ [47-7C-3](#) NMSA 1978] of the Condominium Act with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in Section 34 [ [47-7C-1](#) NMSA 1978] of that act, 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 after the period of declarant control in any of the following ways:
- (1) all unit owners of all condominiums subject to the master association shall elect all members of that executive board;
  - (2) all members of the executive boards of all condominiums subject to the master association shall elect all members of that executive board;
  - (3) all unit owners of each condominium subject to the master association shall elect specified members of that executive board; and

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

**47-7B-21. Merger or consolidation of condominiums.**

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

B. An agreement of two or more condominiums to merge or consolidate pursuant to Subsection A of this section shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the 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 each county in which a portion of the condominium is located and is not effective until recorded.

C. 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 by stating the reallocations or the formulas upon which they are based or by stating the percentage of overall allocated interests of the new condominium which is allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

**47-7C-1. Organization of unit owners' association.**

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 30 [ [47-7B-18](#) NMSA 1978] of the Condominium Act or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

**47-7C-2. Powers of unit owners' association.**

A. Except as provided in Subsection B of this section, and subject to the provisions of the declaration, the association may:

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

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

- (3) hire and discharge managing agents and other employees, agents and independent contractors;
- (4) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (5) make contracts and incur liabilities;
- (6) regulate the use, maintenance, repair, replacement and modification of common elements;
- (7) cause additional improvements to be made as a part of the common elements;
- (8) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but common elements shall be conveyed or subjected to a security interest only pursuant to Section 45 [ [47-7C-12](#) NMSA 1978] of the Condominium Act;
- (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 Subsections B and D of Section 14 [ [47-7B-2](#) NMSA 1978] of the Condominium Act, and for services provided to the 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 61 [ [47-7D-9](#) NMSA 1978] of the Condominium Act 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 right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
- (15) exercise any other powers conferred by the declaration or bylaws;
- (16) exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and
- (17) exercise any other powers necessary and proper for the governance and operation of the association.

B. The declaration shall not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

### **47-7C-3. Executive board members and officers.**

A. Except as provided in the declaration, the bylaws or other provisions of the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978], 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, if appointed by the declarant, the care required of fiduciaries of the unit owners and, if elected by the unit owners, ordinary and reasonable care.

B. The executive board shall 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 shall fill vacancies in its membership for the unexpired portion of any term.

C. 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 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.

D. Subject to Subsection E of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

- (1) one hundred eighty days after conveyance of ninety 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) five 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.

E. Not later than sixty days after conveyance of fifty 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 appointed by the declarant from among the unit owners. No member so appointed shall be an affiliate of the declarant if such persons are available.

F. 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.

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

#### **47-7C-4. Transfer of special declarant rights.**

A. No special declarant right created or reserved under the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] shall be transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

B. Upon transfer [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. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;
- (2) if a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;
- (3) if a transferor retains any special declarant right but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by the Condominium Act or by the declaration relating to the retained special declarant rights and arising after the transfer; and
- (4) a transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale or sale under bankruptcy laws 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 held by that declarant, or only to any rights reserved in the declaration pursuant to Section 27 [ [47-7B-15](#) NMSA 1978] of the Condominium Act 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.

D. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under bankruptcy laws 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 of instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The obligations and liabilities of a person who succeeds 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 the Condominium Act or by the declaration;

- (2) a successor to any special declarant right, other than a successor described in Paragraph (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by the Condominium Act 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:

- 1) misrepresentations by any previous declarant;

- 2) warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

- 3) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

- 4) 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 obligations to provide a disclosure statement; and

- (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 C of this section 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 shall 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 Section 36 [ [47-7C-3](#) NMSA 1978] of the Condominium Act 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 obligation or liability as a declarant other than liability for his acts and omissions under Section 36 [ [47-7C-3](#) NMSA 1978] of the Condominium Act.

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under the Condominium Act or the declaration.'

**47-7C-5. Termination of contracts and leases of declarant.**

If entered into before the executive board elected by the unit owners pursuant to Section 36 [ [47-7C-3](#) NMSA 1978] of the Condominium Act takes office, any management contract, employment contract or lease of recreational or parking areas or facilities, any other contract or lease between the association and a declarant or an affiliate of a declarant or 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 Section 36 [ [47-7C-3](#) NMSA 1978] of that act takes office, upon not less than ninety days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

**47-7C-6. Bylaws.**

A. 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.

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

**47-7C-7. Upkeep of condominium.**

A. Except to the extent provided by the declaration, Subsection B of this section or Section 46 [ [47-7C-13](#) NMSA 1978] of the Condominium Act, 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.

B. In addition to the liability that a declarant as a unit owner has under the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978], 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 fro

#### **47-7C-8. Meetings.**

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten days 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.

#### **47-7C-9. Quorums.**

A. Unless the bylaws provide otherwise, a quorum is 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.

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

#### **47-7C-10. Voting; proxies.**

A. 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 a majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

B. Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy

is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

C. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units:

(1) the provisions of Subsections A and B 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 41 [ [47-7C-8](#) NMSA 1978] of the Condominium Act, of all meetings at which lessees may be entitled to vote.

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

#### **47-7C-11. Tort and contract liability.**

Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, any 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 the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association shall indemnify the association or any unit owner other than an affiliate of the declarant for all judgments paid which are not covered by insurance, which judgments resulted from a breach of control or other wrongful act or omission on the part of the declarant. Whenever the declarant is liable under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees. Any statute of limitation affecting the association's right of indemnification 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 50 [ [47-7C-17](#) NMSA 1978] of the Condominium Act.

#### **47-7C-12. Conveyance or encumbrance of common elements.**

A. 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, but 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.

B. 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 each county in which a portion of the condominium is situated, and is effective only upon recordation.

C. The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to Subsections A and B 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.

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

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

F. A conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

#### **47-7C-13. Insurance.**

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

(1) property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent 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.

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

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

D. Insurance policies carried pursuant to Subsection A of this section must 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 right to subrogation under the policy against any unit owner or member 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, shall 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 the unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

E. Any loss covered by the property policy under Paragraph (1) of Subsection A and Subsection B of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of Subsection H 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.

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

G. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until thirty 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 his last known address.

H. Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance or 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, 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, and the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and 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 the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under

Subsection A of Section 6 [ [47-7A-7](#) NMSA 1978] of the Condominium Act, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

I. Notwithstanding the provisions of Subsection H of this Section, Section 30 [ [47-7B-18](#) NMSA 1978] of the Condominium Act governs the distribution of insurance proceeds if the condominium is terminated.

J. Unless the declaration otherwise provides, the provisions of this section do not apply to a condominium all of whose units are restricted to nonresidential use.

#### **47-7C-14. Surplus funds.**

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

#### **47-7C-15. Assessments for common expenses.**

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

B. Except for assessments under Subsections C, D and E 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 A of Section 19 [ [47-7B-7](#) NMSA 1978] of the Condominium Act. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent per year.

C. 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.

D. 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.

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

F. 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.

**47-7C-16. Lien for assessments.**

A. The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to [Section 47-7C-2](#) NMSA 1978 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

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

C. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of the claim of lien for assessment under this section is required.

D. 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.

E. This section does not prohibit actions to recover sums for which Subsection A of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

F. A judgment or decree in any action brought under this section may include costs and reasonable attorney's fees for the prevailing party.

G. The association upon written request shall furnish at a unit owner's request a recordable statement setting forth the amount of unpaid assessments against his 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.

H. To the extent provided in the declaration, the lien established by this section shall be subordinate to other liens or encumbrances.

**47-7C-17. Other liens affecting the condominium.**

A. Except as provided in Subsection B of this section, a judgment for money against the association 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 transcript of judgment was recorded. No other property of a unit owner is subject to the claims of creditors of the association.

B. If the association has granted a security interest in the common elements to a creditor of the association pursuant to [Section 47-7C-12](#) NMSA 1978, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

C. Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two 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 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 shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

D. Subsequent to recording the declaration as provided in the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] and while the real estate remains subject to that act, no lien shall arise or be effective against the real estate. During the period, liens or encumbrances shall only arise or be created against each unit and the percentage of undivided interest in the common elements, appurtenant to the unit, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership; provided, however, that no labor performed or materials furnished, with the consent 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 pursuant to law against the unit or other property of another unit owner not expressly consenting to or requesting the same; except that express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs. Labor performed or materials furnished for the common elements, if duly authorized by the association of unit owners, the manager or board of directors in accordance with the Condominium Act, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to law against each of the units.

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

#### **47-7C-18. Association records.**

The association shall keep financial records sufficiently detailed to enable the association to comply with Section 61 [ [47-7D-9](#) NMSA 1978] of the Condominium Act. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

#### **47-7C-19. Association as trustee.**

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

#### **47-7D-1. Requirement for disclosure statement.**

A. Except as provided in Subsection B of this section, Sections 53 through 72 of the Condominium Act apply to all units restricted to residential use subject to that act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978].

B. Neither a disclosure statement nor a resale certificate need be prepared or delivered in the case of:

- (1) a gratuitous disposition of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition to a person in the business of selling real estate who intends to offer those units to purchasers;
- (6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;
- (7) a disposition to a nonresident alien; or
- (8) a disposition of a unit restricted to nonresidential use.

#### **47-7D-2. Liability for disclosure statement requirements.**

A. Except as provided in Subsection B of this section, prior to the offering of any interest in a unit to the public, a declarant shall prepare a disclosure statement conforming to the requirements of Sections 55 through 58 [ [47-7D-3](#) to [47-7D-6](#) NMSA 1978] of the Condominium Act.

B. A declarant may transfer responsibility for preparation of all or part of the disclosure statement to a successor declarant or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of Subsection A of this section. The transferor is not liable for insuring that the transferee complies with the requirements of Sections 55 through 58 [ [47-7D-3](#) to [47-7D-6](#) NMSA 1978] of the Condominium Act.

C. 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 a disclosure statement in the manner prescribed in Subsection A of Section 60 [ [47-7D-8](#) NMSA 1978] of the Condominium Act. The declarant or any other person specified in Subsection B of this section who prepared all or part of the disclosure statement is liable under Sections 60 and 69 [65] [ [47-7D-8](#) and [47-7D-17](#) NMSA 1978] of that act for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the disclosure statement which he prepared. If a declarant did not prepare any part of a disclosure statement 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 the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

D. If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a disclosure statement is required under the laws of this state, a single disclosure statement conforming to the requirements of Sections 55 through 58 [ [47-7D-3](#) to [47-7D-6](#) NMSA 1978] of the Condominium Act as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more disclosure statements.

**47-7D-3. Disclosure statement; general provisions.**

A. Except as provided in Subsection B of this section, a disclosure statement must contain or fully and accurately disclose:

- (1) the name and principal address of the declarant and of the condominium;
- (2) a general description of the condominium, including to the extent possible the types, number and declarant's schedule of commencement and completion of construction of buildings and amenities that the declarant anticipates including in the condominium;
- (3) the number of units in the condominium;
- (4) copies of the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under Section 38 [ [47-7C-5](#) NMSA 1978] of the Condominium Act;
- (5) any current balance sheet and a projected budget for the association, either within or as an exhibit to the disclosure statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include without limitation:
  - (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; and
  - (d) the projected monthly common expense assessment for each type of unit;
- (6) any services not reflected in the budget that the declarant provides, or expenses that he 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 due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
- (8) a description of any liens, defects or encumbrances on or affecting the title to the condominium;
- (9) a description of any financing offered or arranged by the declarant;
- (10) the terms and significant limitations of any warranties provided by the declarant and limitations on the enforcement thereof or on damages;
- (11) a statement that:
  - (a) within seven days after receipt of a disclosure statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;
  - (b) if a declarant fails to provide a disclosure statement to a purchaser before conveying a unit, that purchaser may rescind the purchase within six months from the date of conveyance;
  - (c) shall set forth the procedures set forth in Subsection C of Section 60 [ [47-7D-8](#) NMSA 1978] of the Condominium Act; and
  - (d) if a purchaser receives the disclosure statement more than seven days before signing a contract to purchase a unit, he cannot cancel the contract;
- (12) a statement of any unsatisfied judgments or pending suits against the association and the status of any pending suits material to the condominium of which a declarant has actual knowledge;
- (13) a statement that any deposit made in connection with the purchase of a unit shall be held in an escrow account until closing and shall be returned to the purchaser if the purchaser cancels the contract pursuant to Section 60 [ [47-7D-8](#) NMSA 1978] of the Condominium Act, together with the name and address of the escrow agent;
- (14) any restraints on alienation of any portion of the condominium;
- (15) a description of the insurance coverage provided for the benefit of unit owners;
- (16) any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and
- (17) the extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to Section 21 [ [47-7B-9](#) NMSA 1978] of the Condominium Act.

B. If a condominium composed of not more than twenty-five units is not subject to any development rights and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, a public offering statement may but need not include the information otherwise required by Paragraphs (9), (10) and (15) through (17) of Subsection A of this section.

C. A declarant promptly shall amend the disclosure statement to report any material change in the information required by this section.

#### **47-7D-4. Condominiums subject to development rights.**

If the declaration provides that a condominium is subject to any development rights, the disclosure statement shall disclose, in addition to the information required by Section 55 [ [47-7D-3](#) NMSA 1978] of the Condominium Act:

A. the maximum number of units and the maximum number of units per acre that may be created;

B. a statement of how many or what percentage of the units which may be created shall be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

C. if any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

D. 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;

E. 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 Subsection C of this section;

F. a statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium shall 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 that regard;

G. general descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

H. a statement of any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

I. a statement that any limited common elements created pursuant to any development right reserved by the declarant shall 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;

J. 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 that may be made as to those units, or a statement that no assurances are made in that regard; and

K. 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.

#### **47-7D-5. Time shares.**

If the declaration provides that ownership or occupancy of any units is or may be in time shares, the disclosure statement shall disclose, in addition to the information required by Section 55 [ [47-7D-3](#) NMSA 1978] of the Condominium Act:

A. a description of the time share interest that may be created;

B. the number and identity of units in which time shares may be created;

C. the total number of time shares that may be created;

D. the minimum duration of any time shares that may be created; and

E. 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 49 [ [47-7C-16](#) NMSA 1978] of the Condominium Act.

#### **47-7D-6. Condominiums containing conversion buildings.**

A. The disclosure statement of a condominium containing any conversion building shall contain, in addition to the information required by Section 54 [55] [ [47-7D-3](#) NMSA 1978] of the Condominium Act:

(1) a statement by the declarant, based on a report prepared by a licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building; and

(2) a list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.

B. Paragraph (1) of Subsection A of this section applies only to buildings containing more than fifteen units that shall be occupied for residential use.

#### **47-7D-7. Condominium securities.**

If an interest in a condominium is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements relating to the preparation of a disclosure statement of the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] if he delivers to the purchaser a copy of the prospectus approved by the securities and exchange commission.

#### **47-7D-8. Purchaser's right to cancel.**

A. A person required to deliver a disclosure statement pursuant to Subsection C of Section 54 [ [47-7D-2](#) NMSA 1978] of the Condominium Act shall provide a purchaser of a unit with a copy of the disclosure statement and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the disclosure statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the disclosure statement.

B. If a purchaser elects to cancel a contract pursuant to Subsection A of this section, he may do so by hand-delivering notice thereof to the offerer or by mailing notice thereof by prepaid United States mail to the offerer or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

C. If a person required to deliver a disclosure statement pursuant to Subsection C of Section 54 of the Condominium Act fails to provide a purchaser to whom a unit is conveyed with that disclosure statement and all amendments thereto as required by Subsection A of this section, the purchaser is entitled to rescind the purchase within six months from the date of conveyance upon delivery to the seller of a deed subject to no encumbrance attaching to the property suffered or caused by the purchaser.

#### **47-7D-9. Resales of units.**

A. Except in the case of a sale where delivery of a disclosure statement is required, or unless exempt under Subsection B of Section 53 [ [47-7D-1](#) NMSA 1978] of the Condominium Act, a unit owner shall furnish to a purchaser before conveyance a copy of the declaration, other than the plats and plans, the bylaws, the rules or regulations of the association and a resale certificate from the association containing:

- (1) a statement disclosing the existence and terms of any right of first refusal or other restraint on the free alienability of the unit;
- (2) a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;
- (3) a statement of any other fees payable by unit owners;
- (4) a statement of any capital expenditures anticipated by the association for the current and two next succeeding fiscal years;

- (5) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
- (6) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
- (7) the current operating budget of the association;
- (8) a statement of any unsatisfied judgments against the association;
- (9) a statement describing any insurance coverage provided for the benefit of unit owners; and
- (10) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

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

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

#### **47-7D-10. Escrow of deposits.**

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a disclosure statement pursuant to Subsection C of Section 54 [ [47-7D-2](#) NMSA 1978] of the Condominium Act shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose until:

- A. delivered to the declarant at closing;
- B. delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
- C. refunded to the purchaser.

#### **47-7D-11. Release of liens.**

A. In the case of a sale of a unit where delivery of a disclosure statement is required pursuant to Subsection C of Section 54 [ [47-7D-2](#) NMSA 1978] of the Condominium Act, a seller shall, before conveying a unit, record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the

purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

B. Before conveying real estate to the association, the declarant shall have that real estate released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and all other liens on that real estate unless the disclosure statement describes certain real estate which may be conveyed subject to liens in specified amounts.

**47-7D-12. Conversion buildings.**

A. 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 residential subtenants in possession of a portion of a conversion building notice of the conversion and provide those persons with the disclosure statement no later than sixty days before the tenants and subtenants in possession are required to vacate. The notice shall set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. If mailed, the notice will be deemed received on the earlier of actual receipt or thirty days after mailing. No tenant or subtenant shall be required to vacate upon shorter notice than that required by the Uniform Owner-Resident Relations Act, [Section 47-8-1](#) NMSA 1978 et seq. Failure to give notice as required by this section is a defense to an action for possession.

B. For sixty days after receipt of the notice described in Subsection A of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during the sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following sixty days at a price more favorable to the offeree than the price offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

C. If a seller, in violation of Subsection B 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 B of this section to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of Subsection B of this section.

D. From the date on which the tenant or subtenant accepts the offer pursuant to Subsection B of this section, there shall be no increase in the rental rate applicable to the portion of the conversion building of which the tenant or subtenant is in possession. If the tenant fails or refuses to consummate the purchase, the rent may thereafter be increased.

E. Nothing in this section permits termination of a lease by a declarant in violation of its terms. Any provision in a lease which would permit termination or cancellation of the lease by a declarant prior to its stated term solely because the declarant seeks to convert the real estate to a condominium is unenforceable.

**47-7D-13 to 47-7D-16. Reserved.**

**47-7D-17. Effect of violations on rights of action; attorney's fees.**

If a declarant or any other person subject to the Condominium Act [ [47-7A-1](#) to [47-7D-20](#) NMSA 1978] fails to comply with any provision of that act or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees.

**47-7D-18. Labeling of promotional material.**

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

**47-7D-19. Declarant's obligation to complete and restore.**

A. The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to Section 21 [ [47-7B-9](#) NMSA 1978] of the Condominium Act.

B. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by Sections 22, 23, 24, 25, 27 and 28 [ [47-7B-10](#) to [47-7B-13](#), [47-7B-15](#), [47-7B-16](#) NMSA 1978] of the Condominium Act.

**47-7D-20. Substantial completion of units.**

In case of a sale of a unit where delivery of a disclosure statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion pursuant to Section 13 [ [47-7B-1](#) NMSA 1978] of the Condominium Act.