

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2407

By: Vaughn

AS INTRODUCED

An Act relating to property; enacting the Uniform Common Interest Ownership Act; providing for applicability of act; defining terms; limiting waiver or variation of applicability; providing for taxation of property; providing for applicability of certain ordinances and regulations; requiring certain payments if property acquired through eminent domain; providing for applicability of certain laws; prohibiting implicit repeal of act; requiring uniform application of act; providing for severability of act; limiting applicability of contract terms if found unconscionable; requiring good faith effort in performance of obligations of contract; requiring remedies of act be liberally construed; allowing adjustment of certain dollar amounts under act; providing for applicability of act after effective date; providing exception from act for certain cooperatives; providing exception from act for certain communities; providing for applicability of act to certain existing communities; providing exception from act for certain existing cooperatives and planned communities; allowing for amendments to certain bylaws if in conformity to act; providing for applicability of act to certain nonresidential and mixed-use common interest communities; limiting applicability of act to certain out-of-state communities; creating common interest communities; providing for boundaries of units; providing for construction and validity of certain laws; providing for adequate legal description of units; requiring certain provisions be present in a declaration; requiring recording of leases of certain leasehold common interest communities; providing for allocation of certain interests; requiring certain common elements be specified in declaration; requiring certain provisions be a part of plats and plans; allowing exercise of certain development rights; allowing for alteration of units; providing for relocation of unit boundaries by amendment; allowing for subdivision of units in certain circumstances; providing for easements for encroachments by units or common elements; providing for using monuments as boundaries for units; allowing for units to be used as sales or management offices in certain circumstances; providing for easement rights; allowing for amendment of declaration; providing for termination of common interest community; establishing rights of secured lenders; providing for existence of master associations; providing for merger or consolidation of common interest communities; providing for the addition of

unspecified real estate in certain circumstances; providing for existence of master planned community; providing for organization of unit owners association; designating powers of unit owners association; establishing powers of board members and officers of association; providing for transfer of special declarant rights; providing for termination of contracts and leases of declarant; providing for bylaws of associations; requiring upkeep of common interest community; providing for meetings of associations; defining amount needed for quorum in association meeting; providing for voting of unit owners and voting by proxy; establishing tort liability of unit owners and statute of limitations; providing for conveyance or encumbrance of common elements; requiring insurance coverage be maintained by association; directing use of surplus funds of association; providing for assessments for common expenses; allowing for lien for assessments; providing for other liens; requiring maintenance of association records; allowing association to act as trustee; providing for applicability and waiver of act; requiring public offering statements for offerings; providing general requirements for public offering statements; requiring certain disclosures in public offering statements; requiring disclosure of time-share provisions in public offering statement; requiring disclosure of conversion buildings in public offering statement; requiring certain sellers to provide certain disclosures; providing securities registration requirements for common interest community; establishing right of purchaser to cancel purchase contract; establishing procedures for resale of units; requiring escrow of certain deposits; providing for release of certain liens; requiring notice to tenants of conversion buildings before required to vacate; establishing express warranties of quality; establishing implied warranties of quality; allowing for exclusion or modification of implied warranties of quality; providing statute of limitations for warranties; creating cause of action for violations of act; requiring labeling of promotional materials; creating obligation of declarant to complete and restore property; requiring substantial completion of units before sale; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.101 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Common Interest Ownership Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.102 of Title 60, unless there is created a duplication in numbering, reads as follows:

Applicability of this act is governed by Sections 16 through 23 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.103 of Title 60, unless there is created a duplication in numbering, reads as follows:

In the declaration and bylaws, Section 52 of this act, unless specifically provided otherwise or the context otherwise requires, and in this act:

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

a. A person "controls" a declarant if the person:

- (1) is a general partner, officer, director, or employer of the declarant,
- (2) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant,
- (3) controls in any manner the election of a majority of the directors of the declarant, or
- (4) has contributed more than twenty percent (20%) of the capital of the declarant.

b. A person "is controlled by" a declarant if the declarant:

- (1) is a general partner, officer, director, or employer of the person,
- (2) directly or indirectly or acting in concert with one or more other persons, or through one or more

subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person,

- (3) controls in any manner the election of a majority of the directors of the person, or
- (4) has contributed more than twenty percent (20%) of the capital of the person.

Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised;

2. "Allocated interests" means the following interests allocated to each unit:

- a. in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association,
- b. in a cooperative, the common expense liability and the ownership interest and votes in the association, and
- c. in a planned community, the common expense liability and votes in the association;

3. "Association" or "unit owners' association" means the unit owners' association organized under Section 47 of this act;

4. "Common elements" means:

- a. in the case of:
  - (1) a condominium or cooperative, all portions of the common interest community other than the units, and
  - (2) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit, and
- b. in all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration;

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

6. "Common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 30 of this act;

7. "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. "Ownership of a unit" does not include holding a leasehold interest of less than twenty (20) years in a unit, including renewal options;

8. "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners;

9. "Conversion building" means a building that at any time before creation of the common interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers;

10. "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit;

11. "Dealer" means a person in the business of selling units for his own account;

12. "Declarant" means any person or group of persons acting in concert who:

- a. as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of, or
- b. reserves or succeeds to any special declarant right;

13. "Declaration" means any instruments, however denominated, that create a common interest community, including any amendments to those instruments;

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

- a. add real estate to a common interest community,
- b. create units, common elements, or limited common elements within a common interest community,
- c. subdivide units or convert units into common elements, or
- d. withdraw real estate from a common interest community;

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

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

17. "Identifying number" means a symbol or address that identifies only one unit in a common interest community;

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

19. "Limited common element" means a portion of the common elements allocated by the declaration or by operation of paragraph 2 or 4 of Section 25 of this act for the exclusive use of one or more but fewer than all of the units;

20. "Master association" means an organization described in Section 43 of this act, whether or not it is also an association described in Section 47 of this act;

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

22. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee;

23. "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community;

24. "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative;

25. "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

- a. a leasehold interest, including renewal options, of less than twenty (20) years, or
- b. as security for an obligation;

26. "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law

pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

27. "Residential purposes" means use for dwelling or recreational purposes, or both;

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

29. "Special declarant rights" means rights reserved for the benefit of a declarant to:

- a. complete improvements indicated on plats and plans filed with the declaration pursuant to Section 32 of this act or, in a cooperative, to complete improvements described in the public offering statement pursuant to paragraph 2 of subsection A of Section 68 of this act,
- b. exercise any development right pursuant to Section 33 of this act,
- c. maintain sales offices, management offices, signs advertising the common interest community, and models pursuant to Section 38 of this act,
- d. use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community pursuant to Section 39 of this act,

- e. make the common interest community subject to a master association pursuant to Section 43 of this act,
- f. merge or consolidate a common interest community with another common interest community of the same form of ownership pursuant to Section 44 of this act, or
- g. appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control pursuant to subsection D of Section 49 of this act;

30. "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 (5) years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof;

31. "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to paragraph 5 of subsection A of Section 28 of this act. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the interest in that unit of the association is not thereby affected; and

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

the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated pursuant to Section 30 of this act until that unit has been conveyed to another person.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.104 of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as expressly provided in this act, its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as provided in Section 22 of this act, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this act or the declaration.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.105 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In a cooperative, unless the declaration provides that an interest of a unit owner in a unit and its allocated interests is real estate for all purposes, that interest is personal property. That interest is subject to the provisions of Title 31 of the Oklahoma Statutes, even if it is personal property.

B. In a condominium or planned community:

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

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

C. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and

assessed against the declarant, and the declarant alone is liable for payment of those taxes.

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.106 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

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

C. Except as provided in subsections A and B of this section, the provisions of this act do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.107 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the

decree otherwise provides, the allocated interests of that unit are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

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

1. The allocated interests of that unit are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

2. The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be 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 must be recorded in every county in which any portion of the common interest community is located.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.108 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.109 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.110 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.111 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.112 of Title 60, unless there is created a duplication in numbering, reads as follows:

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, must be afforded a reasonable opportunity to present evidence as to:

1. The commercial setting of the negotiations;
2. Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;
3. The effect and purpose of the contract or clause; and
4. If a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.113 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.114 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The remedies provided by this act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this act or by other rule of law.

B. Any right or obligation declared by this act is enforceable by judicial proceeding.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.115 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. From time to time the dollar amount specified in Section 18 of this act must change, as provided in subsections B and C of this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index"). The Index for December 1979, which was 230, is the Reference Base Index.

B. The dollar amount specified in Section 18 of this act and any amount stated in the declaration pursuant to Section 18 of this act, must change on the first of July of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent (10%) or more, but:

1. The portion of the percentage change in the Index in excess of a multiple of ten percent (10%) must be disregarded and the dollar amount shall change only in multiples of ten percent (10%) of the amount appearing in this act on the date of enactment;

2. The dollar amount must not change if the amount required by this section is the amount currently in effect pursuant to this act as a result of earlier application of this section; and

3. In no event may the dollar amount be reduced below the amount appearing in this act on the date of enactment.

C. If the Index is revised after December 1979, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.201 of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as provided in Sections 17 and 18 of this act, this act applies to all common interest communities created within this state after the effective date of this act. Amendments to this act apply to all common interest communities created after the effective date of this act or subjected to this act, regardless of when the amendment is adopted in this state.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.202 of Title 60, unless there is created a duplication in numbering, reads as follows:

If a cooperative contains no more than twelve units and is not subject to any development rights, it is subject only to Sections 6 and 7 of this act unless the declaration provides that the entire act is applicable.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.203 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If a planned community that is not subject to any development right:

1. Contains no more than twelve units; or

2. Provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed Three Hundred Dollars (\$300.00) as adjusted pursuant to Section 15 of this act, it is subject only to Sections 5, 6 and 7 of this act unless the declaration provides that this entire act is applicable.

B. The exemption provided in paragraph 2 of subsection A of this section applies only if:

1. The declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community; and

2. The declaration provides that the assessment may not be increased during the period of declarant control without the consent of all unit owners.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.204 of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as provided in Section 20 of this act, Sections 5, 6 and 7, Sections 26 and 27, Section 44, paragraphs 1 through 6 and paragraphs 11 through 16 of subsection A of Section 48, Section 57, Section 62, Section 64, Section 75, Section 83, and Section 3 of this act to the extent necessary in construing any of those sections, apply to all common interest communities created in this state before the effective date of this act; but those sections apply only with respect to events and circumstances occurring after

the effective date of this act and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.205 of Title 60, unless there is created a duplication in numbering, reads as follows:

If a cooperative or planned community created within this state before the effective date of this act contains no more than twelve (12) units and is not subject to any development rights, it is subject only to Sections 5, 6 and 7 of this act unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of Section 21 of this act, in which case all the sections enumerated in Section 19 of this act apply to that cooperative or planned community.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.206 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The declaration, bylaws, or plats and plans of any common interest community created before the effective date of this act may be amended to achieve any result permitted by this act, regardless of what applicable law provided before this act was adopted.

B. An amendment to the declaration, bylaws, or plats and plans authorized by this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this act. If an amendment grants to any person any rights, powers, or privileges permitted by this act, all correlative obligations, liabilities, and restrictions in this act also apply to that person.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.207 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. "Nonresidential common interest community" means a common interest community in which all units are restricted exclusively to nonresidential purposes. Except as provided in subsection E of this section, this section applies only to nonresidential common interest communities.

B. A nonresidential common interest community is not subject to this act unless the declaration otherwise provides.

C. The declaration of a nonresidential common interest community may provide that the entire act applies to the community or that only Sections 5, 6 and 7 of this act apply.

D. If the entire act applies to a nonresidential common interest community, the declaration may also require, subject to Section 12 of this act, that:

1. Notwithstanding Section 51 of this act, any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

2. Notwithstanding Section 4 of this act, purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

E. A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this act unless the units that may be used for residential purposes would comprise a common interest community in the absence of the nonresidential units

or the declaration provides that this act applies as provided in subsection C or D of this section.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901.208 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act does not apply to common interest communities or units located outside this state, but the public offering statement provisions pursuant to Sections 67 through 74 of this act apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection B of Section 66 of this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.101 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. In a condominium, a declaration, or an amendment to a declaration, adding units may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by a registered engineer, surveyor, or architect.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.102 of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as provided by the declaration:

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

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

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

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

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.103 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to paragraph 1 of subsection A of Section 48 of this 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 this act.

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

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.104 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.105 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The declaration must contain:

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

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

3. A legally sufficient description of the real estate included in the common interest community;

4. A statement of the maximum number of units that the declarant reserves the right to create;

5. In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the

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

6. A description of any limited common elements, other than those specified in paragraph 2 or 4 of Section 25 of this act, as provided in paragraph 10 of subsection B of Section 32 of this act and, in a planned community, any real estate that is or must become common elements;

7. A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in paragraphs 2 and 4 of Section 25 of this act, 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:

- a. either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and
- b. a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be

exercised in all or in any other portion of the remainder of that real estate;

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

11. An allocation to each unit of the allocated interests in the manner described in Section 30 of this act;

12. Any restrictions on:

- a. alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to paragraph 2 of subsection C of Section 48 of this act, and
- b. the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

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

14. All matters required by Sections 29, 30, 31, 32, 38, 39, and subsection D of Section 49 of this act.

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

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.106 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

1. The recording data for the lease or a statement of where the complete lease may be inspected;

2. The date on which the lease is scheduled to expire;

3. A legally sufficient description of the real estate subject to the lease;

4. Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

5. Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

6. Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

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

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

D. If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with subsection A of Section 7 of this act as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.107 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The declaration must allocate to each unit:

1. In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association pursuant to subsection A of Section 61 of this act, and a portion of the votes in the association;

2. In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association pursuant to subsection A of Section 61 of this act, and a portion of the votes in the association; and

3. In a planned community, a fraction or percentage of the common expenses of the association pursuant to subsection A of Section 61 of this act, and a portion of the votes in the association.

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

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

D. The declaration may provide:

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 this act nor may units constitute a class because they are owned by a declarant.

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

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

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

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.108 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except for the limited common elements described in paragraphs 2 and 4 of Section 25 of this act, the declaration must specify to which unit or units each limited common element is

allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

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

C. A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with paragraph 7 of subsection A of Section 28 of this act. The allocations must be made by amendments to the declaration.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.109 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. Each plat must show or project:

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

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

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

4. The extent of any encroachments by or upon any portion of the common interest community;

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

6. Except as provided in subsection H of this section, the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection D of this section and the identifying number of that unit;

7. Except as provided in subsection H of this section, the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection D of this section and the identifying number of that unit;

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 common interest community;

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

11. 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 common interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".

D. Except as provided in subsection H of this section, to the extent not shown or projected on the plats, plans of the units must show or project:

1. The approximate location and dimensions of the vertical boundaries of each unit, and the identifying number of that unit;

2. The approximate location of any horizontal unit boundaries, with reference to an established datum, and the identifying number of that unit; and

3. The approximate location of any units in which the declarant has reserved the right to create additional units or common elements pursuant to subsection C of Section 33 of this act, identified appropriately.

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

F. Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections A, B and D 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 plat or plan required by this section or subsection B of Section 24 of this act must be made by a registered surveyor, architect, or engineer.

H. Plats and plans need not show the location and dimensions of the boundaries of the unit or their limited common elements if:

1. The plat shows the location and dimensions of all buildings containing or comprising the units; and

2. The declaration includes other information that shows or contains a narrative description of the general layout of the units

in those buildings and the limited common elements allocated to those units.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.110 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. To exercise any development right reserved under paragraph 8 of subsection A of Section 28 of this act, the declarant shall prepare, execute, and record an amendment to the declaration pursuant to Section 40 of this act and in a condominium or planned community comply with Section 32 of this act. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection B 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 31 of this act.

B. Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by Section 28 or 29 of this act, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by Section 32 of this 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 28 of this 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 must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain pursuant to Section 7 of this act; and

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

D. If the declaration provides, pursuant to paragraph 8 of subsection A of Section 28 of this act, that all or a portion of the real estate is subject to a right of withdrawal:

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

2. If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.111 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.112 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least sixty-seven percent (67%) of the votes in the association, including sixty-seven percent (67%)

of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.

C. The association:

1. In a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers; and

2. In a cooperative shall prepare and record amendments to the declaration, including any plans, necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.113 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 in a condominium or planned community the plats and plans, subdividing that unit.

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

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.114 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 any plats and plans or, in a cooperative, to any representation in the public offering statement.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.115 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.116 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. 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 the obligations of the declarant or exercising special declarant rights, whether arising under this act or reserved in the declaration.

B. In a planned community, subject to the provisions of paragraph 6 of subsection A of Section 48 and of Section 58 of this act, the unit owners have an easement:

1. In the common elements for purposes of access to their units; and

2. To use the common elements and all real estate that must become common elements pursuant to paragraph 6 of subsection A of Section 28 of this act for all other purposes.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.117 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except in cases of amendments that may be executed by a declarant under subsection F of Section 32 or 33 of this act, or by the association under subsection D of Section 7 of this act, Section 29 of this act, subsection C of Section 31 of this act, subsection A of Section 35 of this act, or Section 36 of this act, or by certain unit owners under subsection B of Section 31 of this act, subsection A of Section 35 of this act, subsection B of Section 36 of this act, or subsection B of Section 41 of this act, and except as limited by subsection D of this section, the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all 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 (1) year after the amendment is recorded.

C. Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to subsection A of Section 35 of this act, must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

D. Except to the extent expressly permitted or required by other provisions of this act, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit or the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

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

F. By vote or agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage specified in the declaration, an amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units. The amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

G. The time limits specified in the declaration pursuant to paragraph 8 of subsection A of Section 28 of this act within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by the declarant, agree to that action. The agreement is

effective thirty (30) days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the thirty-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.118 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except in the case of a taking of all the units by eminent domain pursuant to Section 7 of this act, or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

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

C. In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real

estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

D. In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or 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 a common interest community, 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 is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections H, I and J 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 the successors in interest of the unit owner have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the successors in interest of the unit owner remain liable for all assessments and other obligations imposed on unit owners by this act or the declaration.

F. In a condominium or planned community, if the real estate constituting the common interest community is not to be sold

following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection J of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the successors in interest of the unit owner have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

G. Following termination of the common interest community, 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.

H. Following termination of a condominium or planned community, 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. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

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

1. The lien of each creditor of the association which was perfected against the association before termination becomes, upon

termination, a lien against each interest of the unit owner in the unit as of the date the lien was perfected;

2. Any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each interest of the unit owner immediately before termination;

3. The amount of the lien of a creditor of an association described in paragraphs 1 and 2 of this subsection against each of the interests of the unit owners must be proportionate to the ratio the common expense liability of the unit bears to the common expense liability of all of the units;

4. The lien of each creditor of each unit owner which was perfected before termination continues as a lien against the unit of that unit owner as of the date the lien was perfected; and

5. The assets of the association must be distributed to all unit owners and all lienholders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the lien of the creditor against the interest of that unit owner.

J. The respective interests of unit owners referred to in subsections E, F, G, H and I 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, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of any interest of a unit owner to that of all unit owners is determined by dividing the fair market value of the unit of the unit

owner and its allocated interests by the total fair market values of all the units and their allocated interests; 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:

- a. in a condominium, their respective common element interests immediately before the termination,
- b. in a cooperative, their respective ownership interests immediately before the termination, and
- c. in a planned community, their respective common expense liabilities immediately before the termination.

K. In a condominium or planned community, except as provided in subsection L of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community.

Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under Section 58 of this act, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

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

instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.119 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

1. Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board;

2. Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding; or

3. Prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to Section 59 of this act.

B. A lender who has extended credit to an association secured by an assignment of income, pursuant to paragraph 14 of subsection A of Section 48 of this act or an encumbrance on the common elements pursuant to Section 58 of this act, may enforce its security agreement in accordance with its terms, subject to the requirements of this act and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the income of the association has been assigned, or increase its common charges at the direction of the lender by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection A of this section.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.120 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If the declaration provides that any of the powers described in Section 48 of this act are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities, all provisions of this act applicable to the associations of the unit owners apply to any such corporation or unincorporated association, except as modified by this section.

B. Unless it is acting in the capacity of an association described in Section 47 of this act, a master association may exercise the powers set forth in paragraph 2 of subsection A of Section 48 of this act only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

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

D. The rights and responsibilities of unit owners with respect to the association of the unit owners set forth in Sections 49, 54, 55, 56 and 58 of this act apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this act.

E. Even if a master association is also an association described in Section 47 of this act, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

1. All unit owners of all common interest communities subject to the master association may elect all members of the executive board of the master association;

2. All members of the executive boards of all common interest communities subject to the master association may elect all members of the executive board of the master association;

3. All unit owners of each common interest community subject to the master association may elect specified members of the executive board of the master association; or

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

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.121 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection B of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or consolidated into

a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

B. An agreement of two or more common interest communities to merge or consolidate pursuant to subsection A of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

C. Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either:

1. By stating the reallocations or the formulas upon which they are based; or

2. By stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the preexisting common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting common interest community.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.122 of Title 60, unless there is created a duplication in numbering, reads as follows:

In a planned community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate

to the planned community without describing the location of that real estate in the original declaration; but the amount of real estate added to the planned community pursuant to this section may not exceed ten percent (10%) of the real estate described in paragraph 3 of subsection A of Section 28 of this act and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to paragraph 5 of subsection A of Section 28 of this act.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902.123 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least five hundred (500) units that may be used for residential purposes, and at the time of the reservation, that declarant owns or controls more than five hundred (500) acres on which the units may be built.

B. If the requirements of subsection A of this section are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by paragraphs 3 through 14 of subsection A of Section 28 of this act until the declaration is amended under subsection C of this section.

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

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

2. All the information required by paragraphs 3 through 14 of subsection A of Section 28 of this act with respect to that real estate.

D. The only real estate in a master planned community which is subject to this act is units that have been declared or which are being offered for sale and any other real estate described pursuant to subsection C of this section. Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

E. If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in Sections 66 through 86 of this act apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection C of this section.

F. Limitations in this act on the addition of unspecified real estate set out in Section 45 of this act do not apply to a master planned community.

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

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.101 of Title 60, unless there is created a duplication in numbering, reads as follows:

An association of unit owners must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under Section 41 of this act or their

heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, partnership, or as an unincorporated association.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.102 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

1. Adopt and amend bylaws and rules and regulations;
2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
3. Hire and discharge managing agents and other employees, agents, and independent contractors;
4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;
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 estate or personal property, but:
  - a. common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to Section 58 of this act, and
  - b. part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to Section 58 of this 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 paragraphs 2 and 4 of Section 25 of this act, and for services provided to unit owners;

11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, 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 75 of this act, or statements of unpaid assessments;

13. Provide for the indemnification of its officers and executive board and maintain liability insurance for the directors and officers;

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;

17. Exercise any other powers necessary and proper for the governance and operation of the association; and

18. By regulation, require that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

B. The declaration may 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.

C. Unless otherwise permitted by the declaration or this act, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

1. Prevent any use of a unit which violates the declaration;
2. Regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or
3. Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units.

D. If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

1. Exercise directly against the tenant the powers described in paragraph 11 of subsection A of this section;
2. After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and
3. Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

E. The rights granted under paragraph 3 of subsection D of this section may only be exercised if the tenant or unit owner fails to cure the violation within ten (10) days after the association notifies the tenant and unit owner of that violation.

F. Unless a lease otherwise provides, this section does not:

1. Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

2. Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.103 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in the declaration, the bylaws, subsection B of this section, or other provisions of this act, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a corporation.

B. The executive board may not act on behalf of the association to amend the declaration as set out in Section 40 of this act, to terminate the common interest community as set out in Section 41 of this act, or to elect members of the executive board or determine the qualifications, powers and duties of executive board members pursuant to subsection F of this section, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

C. Within thirty (30) days after adoption of any proposed budget for the common interest community, the executive board shall

provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all 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 must 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 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, and except as provided in subsection G of Section 46 of this act, a period of declarant control terminates no later than the earlier of:

1. Sixty (60) days after conveyance of seventy-five percent (75%) of the units that may be created to unit owners other than a declarant;

2. Two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business;

3. Two (2) years after any right to add new units was last exercised; or

4. The day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. 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, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by

the declarant, be approved by the declarant before they become effective.

E. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the executive board must be elected by unit owners other than the declarant.

F. Except as otherwise provided in subsection E of Section 43 of this act, not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

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

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.104 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A special declarant right created or reserved under this act may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest

community is located. The instrument is not effective unless executed by the transferee.

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

1. A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this act. 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 common interest community;

3. If a transferor retains any special declarant rights, 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 this 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, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under the applicable bankruptcy laws or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon his request, succeeds to all special declarant rights

related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to Section 38 of this act and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

D. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under the applicable bankruptcy laws or receivership proceedings, of all interests in a common interest community owned by a declarant:

1. The declarant ceases to have any special declarant rights; and

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

E. The liabilities and obligations 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 this 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 or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this act or the declaration:

a. on a declarant which relate to the exercise or nonexercise of the successor 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 common interest community 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 acts or omissions of the transferor after the transfer;

3. A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof; or

4. A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection C of this section, may declare in a recorded instrument the intention 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 or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with subsection D of Section 49 of this 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, the successor declarant is not subject to any

liability or obligation as a declarant other than liability for his acts and omissions under subsection D of Section 49 of this 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 this act or the declaration.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.105 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in Section 22 of this act, if entered into before the executive board elected by the unit owners pursuant to subsection F of Section 49 of this act takes office:

1. Any management contract, employment contract, or lease of recreational or parking areas or facilities;

2. Any other contract or lease between the association and a declarant or an affiliate of a declarant; or

3. Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to subsection F of Section 49 of this act takes office upon not less than ninety (90) days' notice to the other party.

B. This section does not apply to:

1. Any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or

2. A proprietary lease.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.106 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The bylaws of the association must provide:

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. A method for 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.

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.107 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except to the extent provided by the declaration, subsection B of this section or subsection H of Section 59 of this 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 this act, 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 common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

C. In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.108 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the executive board.

SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.109 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.110 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the 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 owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the 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 revoke a proxy given pursuant to

this section only 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 (1) year after its date, unless it specifies a shorter term.

C. If the declaration requires that votes on specified matters affecting the common interest community 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 must also be given notice, in the manner provided in Section 54 of this act, of all meetings at which lessees are entitled to vote.

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

SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.111 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for the torts of that declarant in connection with any part of the common interest community which that declarant has the responsibility to maintain.

B. An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period

of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for:

1. All tort losses not covered by insurance suffered by the association or that unit owner; and

2. All costs that the association would not have incurred but for a breach of contract or other wrongful act or omission.

Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the association.

C. Except as provided in subsection D of Section 82 of this act with respect to warranty claims, any statute of limitation affecting the right of action of the association against a declarant under this act is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining 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 63 of this act.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.112 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In a condominium or planned community, 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 (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. 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, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

B. Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them 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. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to Section 41 of this act, is void.

C. An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a

portion of the common interest community is situated, and is effective only upon recordation.

D. The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection A of this section, but the contract is not enforceable against the association until approved pursuant to subsections A, B, and C 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.

E. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

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

G. Unless the declaration otherwise provides, if the holders of first security interests on eighty percent (80%) of the units that are subject to security interests on the day the agreement of the unit owners under subsection C of this section is recorded consent in writing:

1. A conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and

2. An encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

H. The consents by holders of first security interests on units described in subsection G of this section, or a certificate of the secretary affirming that those consents have been received by the

association, may be recorded at any time before the date on which the agreement under subsection C of this section becomes void. Consents or certificates so recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting first security interest holders, regardless of later sales or encumbrances on those units. Even if the required percentage of first security interest holders so consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration, or created by the association after the declaration was recorded.

I. In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.113 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 and, in a planned community, also on property that must become 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 must be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

2. Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences

commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

B. In the case of a building that is part of a cooperative or that contains 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, must 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 considers appropriate to protect the association or the unit owners.

D. Insurance policies carried pursuant to subsections A and B of this section must provide that:

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

2. The insurer waives its right to subrogation under the policy against any unit owner or member of the household of the unit owner;

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

4. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the policy of the association 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 holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lienholders as their interests may appear. Subject to the provisions of subsection H of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, 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 common interest community is terminated.

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

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 or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

H. Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

1. The common interest community is terminated, in which case Section 41 of this act applies;

2. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

3. Eighty percent (80%) of the unit owners, including every owner of a unit or assigned limited common element that 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 common interest community is not repaired or replaced:

a. the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and

b. except to the extent that other persons will be distributees:

(1) the insurance proceeds attributable to units and limited common elements that 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

(2) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, as follows:

(a) in a condominium, in proportion to the common element interests of all the units, and

(b) in a cooperative or planned community, in proportion to the common expense liabilities of all the units.

If the unit owners vote not to rebuild any unit, the allocated interests of that unit are

automatically reallocated upon the vote as if the unit had been condemned under subsection A of Section 7 of this act, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

I. The provisions of this section may be varied or waived in the case of a common interest community all of whose units are restricted to nonresidential use.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.114 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.115 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. Except for assessments under subsections C, D and E of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections A and B of Section 30 of this act. Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) 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 must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

2. Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

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

D. Assessments to pay a judgment against the association may be made only against the units in the common interest community 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 that unit owner.

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

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.116 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to paragraphs 10, 11 and 12 of subsection A of Section 48 of this act are enforceable as assessments under this section. If an assessment

is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

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

1. Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

2. A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the interest of the unit owner and perfected before the date on which the assessment sought to be enforced became delinquent; and

3. Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in paragraph 2 of this subsection to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection A of Section 61 which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien. This paragraph does not affect the priority of mechanics' or materialmen liens, or the priority of liens for other assessments made by the association.

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

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

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

F. 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.

G. A judgment or decree in any action brought under this section must include costs and reasonable attorney fees for the prevailing party.

H. The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit owner is real estate, the statement must be in recordable form. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

I. In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

J. The lien of the association may be foreclosed as provided in this subsection:

1. In a condominium or planned community, the lien of the association must be foreclosed in like manner as a mortgage on real estate;

2. In a cooperative whose interests of the unit owner in the units are real estate, the lien of the association must be foreclosed in like manner as a mortgage on real estate;

3. In a cooperative whose interests of the unit owners in the units are personal property, the lien of the association must be foreclosed in like manner as a security interest; and

4. In the case of foreclosure, the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected.

K. In a cooperative, if the interest of the unit owner in a unit is real estate:

1. The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, at any time and place. Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record seven (7) weeks before the date specified in the notice as the date of any public sale or seven (7) weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five (5) weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale;

2. Unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure sale;

3. The proceeds of a foreclosure sale must be applied in the following order:

- a. the reasonable expenses of sale,
- b. the reasonable expenses of securing possession before sale, and holding, maintaining, and preparing the unit

for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney fees and other legal expenses incurred by the association,

- c. satisfaction of the lien of the association,
- d. satisfaction in the order of priority of any subordinate claim of record, and
- e. remittance of any excess to the unit owner;

4. A good faith purchaser for value acquires the unit free of the debt of the association that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by him after a foreclosure of the lien of the association by power of sale and that he was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance; and

5. At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the default of the unit owner and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to

foreclosure incurred to the time of tender, including reasonable attorney fees of the creditor.

L. In an action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the common expense assessments of the association based on a periodic budget adopted by the association pursuant to Section 61 of this act.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.117 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In a condominium or planned community:

1. Except as provided in paragraph 2 of this subsection, a judgment for money against the association, if recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association;

2. If the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 58 of this act, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced;

3. Whether perfected before or after the creation of the common interest community, 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 common interest community, 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, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which the common expense liability of that unit owner bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against the unit of that unit owner for any portion of the common expenses incurred in connection with that lien; and

4. A judgment against the association must be indexed in the name of the common interest community and the association and, when so indexed, is notice of the lien against the units.

B. In a cooperative:

1. If the association receives notice of an impending foreclosure on all or any portion of the real estate of the association, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure; and

2. Whether or not the unit of a unit owner is subject to the claims of the creditors of the association, no other property of a unit owner is subject to those claims.

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.118 of Title 60, unless there is created a duplication in numbering, reads as follows:

The association shall keep financial records sufficiently detailed to enable the association to comply with Section 75 of this act. All financial and other records must be made reasonably available for examination by any unit owner and his authorized agents.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903.119 of Title 60, unless there is created a duplication in numbering, reads as follows:

With respect to a third person dealing with the association in the capacity of the association 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.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.101 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Sections 66 through 86 of this act apply to all units subject to this act, except as provided in subsection B of this section or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

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

1. A gratuitous disposition of a unit;
2. A disposition pursuant to court order;
3. A disposition by a government or governmental agency;
4. A disposition by foreclosure or deed in lieu of foreclosure;
5. A disposition to a dealer;
6. A disposition that may be canceled at any time and for any reason by the purchaser without penalty; or

7. A disposition of a unit restricted to nonresidential purposes.

SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.102 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of Sections 68, 69, 70 and 71 of this act.

B. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to Section 50 of this act or to a dealer who intends to offer units in the common interest community. 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.

C. Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection A of Section 74 of this act. The person who prepared all or a part of the public offering statement is liable under Sections 74 and 83 of this act for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which the person prepared. If a declarant did not prepare any part of a public offering statement that the declarant delivers, the declarant is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

D. If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which

the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of Sections 68, 69, 70 and 71 of this act as those requirements relate to each regime 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 public offering statements.

SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.103 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

1. The name and principal address of the declarant and of the common interest community, and a statement that the common interest community is either a condominium, cooperative, or planned community;

2. A general description of the common interest community, including, to the extent possible, the types, number, and the schedule of the declarant of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common interest community;

3. The number of units in the common interest community;

4. Copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; 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 pursuant to Section 51 of this act;

5. Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one (1) 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 assumptions of the budget concerning occupancy and inflation factors. The budget must 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 the declarant pays and which the declarant 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 common interest community;

9. A description of any financing offered or arranged by the declarant;

10. The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

11. A statement that:

- a. within fifteen (15) days after receipt of a public offering 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 public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent (10%) of the sales price of the unit plus ten percent (10%) of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community, and
- c. if a purchaser receives the public offering statement more than fifteen (15) days before signing a contract, the purchaser 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 common interest community of which a declarant has actual knowledge;

13. A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to Section 74 of this act, together with the name and address of the escrow agent;

14. Any restraints on alienation of any portion of the common interest community and any restrictions:

- a. on use, occupancy, and alienation of the units, and
- b. on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

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 common interest community;

17. The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to Section 85 of this act;

18. A brief narrative description of any zoning and other land use requirements affecting the common interest community;

19. All unusual and material circumstances, features, and characteristics of the common interest community and the units; and

20. In a cooperative,

- a. whether the unit owners will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative, and
- b. a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

B. If a common interest community composed of not more than twelve units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs 9, 10, 15, 16, 17, 18 and 19 of subsection A of this section and the narrative descriptions of documents required by paragraph 4 of subsection A of this section.

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

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.104 of Title 60, unless there is created a duplication in numbering, reads as follows:

If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by Section 68 of this act:

1. The maximum number of units, and the maximum number of units per acre, that may be created;

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

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

4. A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

5. A statement of the maximum extent to which allocated interests of each unit may be changed by the exercise of any development right described in paragraph 3 of this section;

6. A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the common interest community will be compatible with

existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

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

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

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

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

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

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

SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.105 of Title 60, unless there is created a duplication in numbering, reads as follows:

If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by Section 68 of this act:

1. The number and identity of units in which time shares may be created;

2. The total number of time shares that may be created;

3. The minimum duration of any time shares that may be created;  
and

4. The extent to which the creation of time shares will or may affect the enforceability of the lien of the association for assessments provided in Section 62 of this act.

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.106 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by Section 68 of this act:

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

2. A statement by the declarant of the expected useful life of each item reported on in paragraph 1 of this subsection or a statement that no representations are made in that regard; and

3. A list of any outstanding notices of uncured violations of building code or other municipal rules, together with the estimated cost of curing those violations.

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

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.107 of Title 60, unless there is created a duplication in numbering, reads as follows:

Any unit owner that offers disposition of his or her unit through a real estate sales contract and is not subject to the preparation of a public offering statement conforming to the requirements of Sections 68, 69, 70, and 71 of this act shall provide to a purchaser copies of any recorded covenants, conditions, restrictions, and reservations that affect the common interest community, along with bylaws and any rules and regulations.

Any and all copies shall be provided at the same time the property disclaimer form is presented pursuant to the Residential Property Condition Disclosure Act.

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.108 of Title 60, unless there is created a duplication in numbering, reads as follows:

If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this act if the declarant delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a common interest community is not a security under the provisions of Title 71 of the Oklahoma Statutes.

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.109 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A person required to deliver a public offering statement pursuant to subsection C of Section 67 of this act shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than fifteen (15) days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen (15) days after first receiving the public offering 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 offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

C. If a person required to deliver a public offering statement pursuant to subsection C of Section 67 of this act fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection A of this section, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent (10%) of the sale price of the unit, plus ten percent (10%) of the share, proportionate to the common expense liability of the purchaser, of any indebtedness of the association secured by security interests encumbering the common interest community.

SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.110 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection B of Section 66 of this act, a unit owner shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association, and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association;

2. A statement setting forth the amount of the periodic 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 the owner of the unit being sold;

4. A statement of any capital expenditures approved by the association for the current and succeeding fiscal years;

5. A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

7. The current operating budget of the association;

8. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

9. A statement describing any insurance coverage provided for the benefit of unit owners;

10. A statement as to whether the executive board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited

common elements assigned thereto violate any provision of the declaration;

11. A statement as to whether the executive board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community which has not been cured;

12. A statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;

13. A statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or termination of the common interest community;

14. In a cooperative, the statement of an accountant, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association;

15. A statement describing any pending sale or encumbrance of common elements; and

16. A statement disclosing the effect on the unit to be conveyed of any restrictions on the right of the owner to use or occupy the unit or to lease the unit to another person.

B. The association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection A 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 five (5) days thereafter or until conveyance, whichever first occurs.

SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.111 of Title 60, unless there is created a duplication in numbering, reads as follows:

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection C of Section 67 of this act must be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company or an institution whose accounts are insured by a governmental agency or instrumentality until:

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

SECTION 77. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.112 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In the case of a sale of a unit where delivery of a public offering statement is required pursuant to subsection C of Section 67 of this act, a seller:

1. Before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

- a. in a condominium, that unit and its common element interest, and

b. in a cooperative or planned community, that unit and any limited common elements assigned thereto, or

2. Shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate.

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

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

2. All other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

SECTION 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.113 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. For sixty (60) days after delivery or mailing of the notice described in subsection A 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 that sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty (180) days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit 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, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection B of this section to purchase that unit if the deed states that the seller has complied with subsection B of this section, but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection B of this section.

D. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with applicable state law, the notice also constitutes a notice to vacate specified by that statute.

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

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.114 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

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

2. Any model or description of the physical characteristics of the common interest community, including plans and specifications of or for improvements, creates an express warranty that the common interest community will conform to the model or description;

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

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

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

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

SECTION 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.115 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

B. A declarant and any dealer warrants that a unit and the common elements in the common interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the common interest community, will be:

1. Free from defective materials; and

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

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

D. Warranties imposed by this section may be excluded or modified as specified in Section 82 of this act.

E. For purposes of this section, improvements made or contracted for by an affiliate of a declarant pursuant to paragraph 1 of Section 3 of this act are made or contracted for by the declarant.

F. Any conveyance of a unit transfers to the purchaser all of the implied warranties of quality of the declarant.

SECTION 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.116 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as limited by subsection B of this section with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

1. May be excluded or modified by agreement of the parties; and
2. Are excluded by expression of disclaimer, such as "as is", "with all faults", or other language that in common understanding calls the attention of the purchaser to the exclusion of warranties.

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

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.117 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Unless a period of limitation is tolled under Section 57 of this act or affected by subsection D of this section, a judicial proceeding for breach of any obligation arising under Section 79 or 80 of this act must be commenced within six (6) years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two (2) years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

B. Subject to subsection C of this section, a cause of action for breach of warranty of quality, regardless of the lack of knowledge of the purchaser of the breach, accrues:

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

2. As to each common element, at the time the common element is completed or, if later, as to:

- a. a common element that is added to the common interest community by exercise of development rights, at the time the first unit which was added to the condominium by the same exercise of development rights is conveyed to a bona fide purchaser, or
- b. a common element within any other portion of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

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

D. During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the decision of the committee must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney fees, are common expenses, and must be added to the budget annually adopted by the association under Section 61 of this act. If the committee is so created, the period of limitation for claims for these warranties begins to run from the date of the first meeting of the committee, regardless of when the period of declarant control terminates.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.118 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. Parties to a dispute arising under this act, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

1. A declarant may agree with the association to do so only after the period of declarant control passes unless the agreement is made with an independent committee of the executive board elected pursuant to subsection D of Section 82 of this act; and

2. An agreement to submit to any form of binding alternative dispute resolution must be in a writing signed by the parties.

SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.119 of Title 60, unless there is created a duplication in numbering, reads as follows:

No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT".

SECTION 85. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.120 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except for improvements labeled "NEED NOT BE BUILT", the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to Section 32 of this act, whether or not that site plan or other graphic representation is contained in the public

offering statement or in any promotional material distributed by or for the declarant.

B. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by Section 33, 34, 35, 36, 38 or 39 of this act.

SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904.121 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 87. This act shall become effective November 1, 2002.

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