

To: New Jersey Law Revision Commission
From: John Cannel
Re: Common Interest Ownership
Date: July 6, 2015

M E M O R A N D U M

A. The Draft So Far

The Commission has tentatively established these provisions as a basis for discussion:

SECTION 1-103. DEFINITIONS

* * *

(9) Common interest community means a condominium, cooperative or planned unit development or any other real estate development composed of individually owned property units and common property jointly owned and managed by the unit owners.

COMMENT

This definition was proposed only as a rough approximation.

SECTION 1-201. APPLICABILITY TO COMMON INTEREST COMMUNITIES.

- a. Except as otherwise provided in this section, this act applies to all common interest communities within this state.
- b. This act shall not make any action taken before its effective date invalid or illegal.
- c. This act shall not alter the rights and responsibilities of declarants of common interest communities established before the effective date of this act.
- d. [reserved for exception for small or limited communities]

COMMENT

This section applies the act to all common interest communities with the exceptions expressed. It differs from UCIOA which would generally apply only to communities established after the effective date of the act.

Since the Applicability provision uses the term, “common interest community,” and its definition is critical to the meaning of the provision, the Commission may want to consider that definition. The UCIOA definition is:

(9) “Common interest community” means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. The term does not include an arrangement described in Section 1-209 or 1-210. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest of less than [20] years in a unit, including renewal options.

This definition probably distinguishes common interest communities from other property arrangements, but because it is not based on the essence of what these communities are, it is confusing. It is like the definition criticized by Aristotle, defining man as a featherless biped. It might work but it misses the essence. As a rough first attempt at a substitute, I suggest:

Common interest community means a condominium, cooperative or planned unit development or any other organization composed of individually owned property units and jointly owned common property.

SECTION 1-104. NO VARIATION BY AGREEMENT.

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

COMMENT

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

SECTION 1-105. SEPARATE TITLES AND TAXATION.

a. In a condominium or planned community:

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

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

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

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

COMMENT

Subsection (a) of UCIOA has been deleted. It states that unit ownership in a cooperative is personality. That is an over simplification in New Jersey law. The rest of the section is identical to UCIOA and seems to be consonant with New Jersey law.

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

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

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

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

COMMENT

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

SECTION 1-107. EMINENT DOMAIN.

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

b. Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially-acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

d. The court condemnation judgment must be recorded in every county in which any portion of the common interest community is located.

COMMENT

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

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

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

COMMENT

This section is identical to UCIOA 1-108.

SECTION 1-109. CONSTRUCTION AGAINST IMPLICIT REPEAL

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

COMMENT

This section is identical to UCIOA 1-109.

SECTION 1-111. SEVERABILITY.

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

COMMENT

This section is identical to UCIOA 1-111.

SECTION 1-113. OBLIGATION OF GOOD FAITH.

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

COMMENT

This section is identical to UCIOA 1-113.

SECTION 1-114. REMEDIES TO BE LIBERALLY ADMINISTERED.

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

COMMENT

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

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

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

COMMENT

This section is identical to UCIOA 1-116.

B. The first part of Article Two

The following statutory sections are from UCIOA. After some sections is a commentary in italics indicating issues I have identified for consideration by the Commission.

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

COMMUNITIES

SECTION 2-101. CREATION OF COMMON INTEREST COMMUNITIES.

(a) A common interest community may be created pursuant to this [act] only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every [county] in which any portion of the common interest community is located and must be indexed [in the grantee's index] in the name of 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 (i) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent [registered] engineer, surveyor, or architect [, or (ii) unless the agency has approved the declaration or amendment in the manner prescribed in Section 5-103(b)].

COMMENT

Subsection (a) includes requirements for indexing that differ from those in the New Jersey title recording law. The subsection requires that units be built before the declaration is filed. That requirement is different from New Jersey practice and was deleted in the 2005 bill drafted in consultation between OLS and CAI (hereafter, 2005 bill).

SECTION 2-102. UNIT BOUNDARIES.

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), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

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

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

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

(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws or rules.

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

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

COMMENT

In subsection (b), the 2005 bill adds the phrase "or restraints on alienation". In subsection (d), the 2005 bill deletes the second sentence.

SECTION 2-104. DESCRIPTION OF UNITS.

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

COMMENT

The section might be simplified: A description of a unit which sets forth the name of the common interest community, the recording data for the declaration, and the identifying number of the unit, is a legally sufficient description of that unit.

SECTION 2-105. CONTENTS OF DECLARATION.

(a) The declaration must contain:

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

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

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

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

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

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

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

(8) a description of any development right and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(A) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and

(B) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;

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

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

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

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

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

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

COMMENT

The section might be simplified; some of its requirements may be unnecessary and some requirements may need to be added. More consultation is needed before a new draft of this section can be produced. The 2005 bills keeps all of this detail and adds provisions on requirements for repair reserves, display of flag, limitations on the permitted use of units and restrictions on design.

SECTION 2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.

(a) Any lease the expiration or termination of which may terminate the common interest community or reduce its size [, or a memorandum thereof,] 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 lessor's successor in interest may terminate the leasehold

interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

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

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with Section 1-107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

COMMENT

The 2005 bill provision is substantively identical to this provision

SECTION 2-107. ALLOCATION OF ALLOCATED INTERESTS.

(a) The declaration must allocate to each unit:

(i) in a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association;

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

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

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

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

(d) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this [act] nor may units constitute a class because they are owned by a declarant.

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

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

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

COMMENT

It is not clear why there is a separate provision for planned communities. In current practice, these communities usually have common property. Other simplifications of the section might be possible, but are not important. The 2005 bill adds a subsection establishing the right of unit owners to use common elements.

SECTION 2-108. LIMITED COMMON ELEMENTS.

(a) Except for the limited common elements described in Section 2-102(2) and (4), the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

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

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

COMMENT

There is good reason for this provision; a unit owner should have a written record to the property that is his. However, this issue is more complicated than the section discloses. A limited common element means "means a portion of the common elements allocated by the declaration or by operation of Section 2-102(2) and (4), for the exclusive use of one or more, but fewer than all, of the units." Thus the term includes a wide range of property: the roof of the unit, its front walk, a dedicated parking space (or the right to park in a particular lot) and access to a recreational facility that is not open to the whole community. The 2005 bill accepts this section, so it may not be considered problematic. Perhaps the solution is to adjust the definition of "limited common element" or Section 2-102 to so as to include parts of the common elements that are necessary to occupancy of the unit.

SECTION 2-109. PLATS AND PLANS.

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

(b) Each plat must show or project:

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

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

(3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel, but plats and plans need not designate or label which development rights are applicable to each parcel if that information is clearly delineated in the declaration;

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

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

(6) except as otherwise provided in subsection (h), the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(7) except as otherwise provided in subsection (h), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

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

(9) the distance between non-contiguous parcels of real estate comprising the common interest community;

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

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

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community. Any contemplated improvement shown must be labeled either MUST BE BUILT or NEED NOT BE BUILT.

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

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

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

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

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

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) A certification of a plat or plan required by this section or Section 2-101(b) must be made by an independent [registered] surveyor, architect, or engineer.

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

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

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

COMMENT

Again, this section was accepted by the 2005 bill without substantive change. However, its requirements may be inappropriate for some condominiums. If the condominium is a conversion of an apartment house, it may not be useful, or even possible, to comply with the detail of this section. Some limitation may need to be built into the provision. More consultation, with persons who form condominiums and with the Department of Community Affairs, will be necessary to evaluate this provision.

SECTION 2-110. EXERCISE OF DEVELOPMENT RIGHTS

(a) To exercise any development right reserved under Section 2-105(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration (Section 2-117) and in a condominium or planned community comply with Section 2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 2-108 (Limited Common Elements).

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by Section 2-105 or 2-106, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by Section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Section 2-105(a)(8).

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

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (Section 1-107); and

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

(d) If the declaration provides, pursuant to Section 2-105(a)(8), that all or a portion of the real estate is subject to a right of withdrawal:

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

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

COMMENT

This section was accepted by the 2005 bill without substantive change.

SECTION 2-111. ALTERATIONS OF UNITS.

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;

(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.

COMMENT

The 2005 bill provision is substantively identical to this provision. The phrase, "the exterior appearance of a unit" may be too broad. If the unit is a row house or apartment, the phrase works well. However if the unit is a house and some ground, some leeway may need to be built in.

SECTION 2-112. RELOCATION OF UNIT BOUNDARIES.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the

reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and [in the 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 [67] percent of the votes in the association, including [67] percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.

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

COMMENT

The 2005 bill provision is substantively identical to this provision.

SECTION 2-113. SUBDIVISION OF UNITS.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the declaration and law other than this [act], upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration including, in a condominium or planned community, the plats and plans subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

COMMENT

The 2005 bill provision is substantively identical to this provision.