

REPORT OF THE D.C. BAR-DIVISION 15
CONDOMINIUM COMMITTEE ON PROPOSED AMENDMENTS
TO THE D.C. CONDOMINIUM ACT

July 19, 1983

NOTE: THE VIEWS EXPRESSED HEREIN REPRESENT ONLY THOSE
OF DIVISION 15 (REAL ESTATE, HOUSING AND LAND USE) OF
THE DISTRICT OF COLUMBIA BAR AND NOT THOSE OF THE D.C.
BAR OR OF ITS BOARD OF GOVERNORS.

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During the summer of 1982, in response to comments and concerns expressed by many members of the D.C. Bar, the Steering Committee of Division 15 established a special committee to consider needed amendments to the D.C. Condominium Act. This action reflected the feelings of various members of the Bar that, although the Act in its present form has generally worked quite well, a number of legislative amendments were needed to "fine tune" the present Act, to resolve several technical problems encountered by practitioners using the Act, and to address certain issues (e.g., the rights and liabilities of successor declarants) which are not covered by the present Act.

The Committee -- on which all members of Division 15 were invited to participate -- included the following persons:

James W. Jones, Esquire - Chairman
Arnold & Porter

Mitchell Baer, Esquire
Miller Loewinger & Associates

Edward Berkowitz, Esquire
Lane & Edson, P.C.

David M. Bond, Esquire
Wilkes, Artis, Hedrick & Lane

Robert P. Bunn, Esquire
Finley, Kumble, Wagner et al.

Robert Diamond, Esquire
Thomas & Fiske, P.C.

Devin Doolan, Esquire
Furey, Doolan, Abell

Robert Fall, Esquire
Kass & Skalet

Ronald S. Gart, Esquire
Colton & Boykin

Benny L. Kass, Esquire
Kass & Skalet

Adelaide M. Miller, Esquire

Marianne K. Renjilian, Esquire
Furey, Doolan & Abell

Earl Segal, Esquire
Linowes & Blocher

Jeffrey Wolpe, Esquire
Sachs, Greenebaum & Tayler

It solicited the views of a large number of members of the Bar and other persons concerned with condominium development in the District of Columbia. On April 7, 1983, following widespread notice to persons having a potential interest in the project, the Committee held a public meeting at the D.C. Bar offices to discuss the Draft Report. The Report of the Committee incorporates many of the suggestions made at that meeting, as well as other comments received from non-Committee members on other occasions.

This Report is divided into two principal sections. The first (beginning at p. 3) presents the exact legislative amendments proposed by the Committee (with language to be deleted indicated by brackets and language to be added indicated by underlining). The second section (beginning at p. 79) sets out the comments of the Committee relating to its legislative proposals on a section-by-section basis.

It should be noted that, in considering its legislative proposals, the Committee has relied heavily on the language (including recent amendments) of the Virginia Condominium Act (the "Virginia Act") -- the statute on which the D.C. Act was initially modeled -- and the Uniform Condominium Act (the "Uniform Act") promulgated by the National Conference of Commissioners on Uniform State Laws. The Committee believes that both of these statutes provide useful models for dealing with many of the legislative problems considered by the Committee.

PROPOSED LEGISLATIVE AMENDMENTS

SUBCHAPTER I. GENERAL PROVISIONS.

§ 45-1801. Applicability of chapter; corresponding terms; supersedure of prior law.

(a) This chapter shall apply to all condominiums [and to all horizontal property regimes or condominium projects.] created within the District of Columbia after the effective date of this Act. Sections 45-1804, 45-1805, 45-1806, 45-1813, 45-1816, 45-1817, 45-1818, 45-1819, 45-1840, 45-1848(a)(1) through (6) and (11) through (16), 45-1849, 45-1853, 45-1854, 45-1860A, 45-1871, 45-1872, 45-1873, 45-1874, 45-1875, 45-1876, 45-1877, and 45-1802 to the extent necessary in construing any of those sections, shall apply to all condominiums and to all horizontal property regimes or condominium projects created in the District of Columbia before the effective date of this Act; but those sections shall apply only with respect to events and circumstances occurring after the effective date of this Act and shall not invalidate existing provisions of the condominium instruments of those condominiums, horizontal property regimes, or condominium projects.

(b) For the purposes of this chapter:

(1) The terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium";

(2) The term "co-owner" shall be deemed to correspond to the term "unit owners' association";

(3) The term "council of co-owners" shall be deemed to correspond to the term "unit owners' association";

(4) The term "developer" shall be deemed to correspond to the term "declarant"; and

(5) The term "general common elements" shall be deemed to correspond to the term "common elements."

[(c) This chapter shall be deemed to supersede Chapter 17 of Title 45[] and Regulation 74-26 of the District of Columbia City Council, and no condominium

shall be established except pursuant to this chapter on or after March 29, 1977. But this chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded, or of any horizontal property regime complying with the requirements of Chapter 17 of Title 45 and registered prior to March 29, 1977. Nor shall subchapter IV of this chapter be deemed applicable to any condominiums established prior to March 29, 1977, except as provided in § 45-1871.]

(c) The provisions of Chapter 17 of Title 45, of Regulation 74-26 of the District of Columbia City Council, and of Chapter 18 of Title 45 enacted prior to the effective date of this Act shall not apply to condominiums created after the effective date of this Act and shall not invalidate any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before the effective date of this Act if the amendment would be permitted by this Act. Any such amendment must be adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect just prior to the effective date of this Act. If any such 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.

(d) This chapter shall not apply to condominiums located outside the District of Columbia, but Sections 45-1862 through 45-1868 and Sections 45-1872 through 45-1877 shall apply to all contracts for the disposition of condominium units signed in the District of Columbia by any person, unless exempt under Section 45-1861.

§ 45-1802. Definitions.

For the purposes of this chapter:

(1) "Affiliate of a declarant" shall mean any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or

(iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) [(1)] "Common elements" shall mean all portions of the condominium other than the units.

(3) [(2)] "Common expenses" shall mean all lawful expenditures made or incurred by or on behalf of the unit owners' association, together with all lawful assessments for the creation and maintenance of reserves pursuant to the provisions of the condominium instruments. "Future common expenses" shall mean common expenses for which assessments are not yet due and payable.

[(3)] "Common profits" shall mean all income collected or accrued by or on behalf of the unit owners' association, other than income derived by assessment pursuant to § 45-1852.]

(4) "Condominium" shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. [property and any incident thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter.] No real estate [project] shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

(5) "Condominium instruments" shall mean the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of

such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

(6) "Condominium unit" shall mean a unit together with the undivided interest in the common elements appertaining to that unit.

(7) "Contractable condominium" shall mean a condominium from which 1 or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of 1 or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

(8) "Conversion condominium" shall mean a condominium containing structures which before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

(9) "Convertible land" shall mean a building site; that is to say, a portion of the common elements, within which additional units or limited common elements, or both, may be created in accordance with the provisions of this chapter.

(10) "Convertible space" shall mean a portion of a structure within the condominium, which portion may be converted into 1 or more units or common elements, or both, in accordance with the provisions of this chapter.

(11) "Declarant" shall mean any person, or group of persons acting in concert, who (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium. [all persons who execute or propose to execute the declaration, or on whose behalf the declaration is executed or proposed to be executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute the amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred

to in this subsection who come to stand in the same relation to the condominium as their predecessors did shall also come within this definition.]

(12) "Dispose" or "disposition" shall mean any voluntary transfer to a purchaser of a legal or equitable interest in a condominium unit, other than as security for a debt or pursuant to a deed in lieu of foreclosure.

(13) "Executive board" [organ] shall mean an executive and administrative entity, by whatever name denominated and designated in the condominium instruments to act for the unit owners' association in governing the condominium.

(14) "Expandable condominium" shall mean a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

(15) "Identifying number" shall mean 1 or more letters or numbers, or both, that identify only 1 unit in the condominium.

(16) "Institutional lender" shall mean 1 or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including but not limited to, real estate investment trusts, any other entity regularly engaged directly or indirectly in financing the purchase, construction, or improvement of real estate, or any combination of any of the foregoing entities.

[(17) "Land is a 3 dimensional concept and includes all parcels with upper or lower boundaries, or both, parcels extending ab solo usque ad coleum, and any improvements thereto. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.]

(17) [(18)] "Leasehold condominium" means a condominium all or any portion of which is subject to a lease, the expiration or termination of which will terminate the condominium or exclude a portion therefrom.

(18) [(19)] "Limited common element" shall mean a portion of the common elements reserved for the exclusive use of those entitled to the use of 1 or more, but less than all, of the units.

(19) "Master association" shall mean an organization described in Section 45-1858, whether or not it is also an association described in Section 45-1841.

(20) "Mayor" shall mean the Mayor of the District of Columbia.

(21) "Nonbinding reservation agreement" shall mean an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be cancelled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested to the declarant at any time prior to the execution of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

(22) "Offer" shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, other than as security for a debt: Provided, however, that "offer" shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any other public broadcast medium. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Mayor and that no unit in the condominium can or will be offered for sale until such time as such unit has been so registered.

(23) "Officer" shall mean any member of the executive board [organ] or official of the unit owners' association.

(24) "Par value" shall mean a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the

same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

(25) "Person" shall mean a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination of any of the foregoing.

(26) "Purchaser" shall mean any person, other than a declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a condominium unit other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation. [any person or persons who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than as security for a debt.]

(27) "Real estate" or "land" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" or "land" shall be deemed to include parcels with or without upper or lower boundaries, and spaces that may be filled with air or water. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

(28) [(27)] "Registered land surveyor" shall mean any person or firm permitted to prepare and certify surveys and subdivision plats in the District of Columbia, including but not limited to, registered civil engineers.

(29) [(28)] "Size" shall mean the number of cubic feet or the number of square feet of ground or floor space, or both, within each unit as computed by reference to the plats and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, or garage space, may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

(30) "Special declarant rights" shall mean any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) complete improvements indicated on plats and plans filed with the declaration pursuant to Section 45-1824; (ii) expand an expandable condominium pursuant to Section 45-1829; (iii) contract a contractable condominium pursuant to Section 45-1830; (iv) convert convertible land or convertible space or both pursuant to Sections 45-1827 or 45-1828; (v) elect, appoint or remove any officer of the unit owners' association or any master association or any executive board member pursuant to Section 45-1842 during any period of declarant control; (vi) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer thereof or the executive board; (vii) use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium pursuant to Section 45-1831; (viii) make the condominium subject to a master association pursuant to Section 45-1858; (ix) make the condominium part of a larger condominium pursuant to Section 45-1859; or (x) maintain sales offices, management offices or model units pursuant to Section 45-1832.

(31) [(29)] "Surveyor" shall mean the Office of the Surveyor of the District of Columbia.

(32) "Time share" shall mean a right to occupy a condominium unit or any of several condominium units during 5 or more separated time periods over a period of at least 5 years including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

(33) [(30)] "Unit" shall mean a portion of the condominium designed and intended for individual ownership. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with § 45-1828 (d).

(34) [(31)] "Unit owner" shall mean a declarant or [1 or more] any person [persons] who owns a condominium unit[,] or, in the case of a leasehold condominium, whose leasehold interest [or interests] in the condominium extends for the entire balance of the unexpired term [or terms], but does not include a person having an interest in a condominium unit solely as security for a debt.

§ 45-1803. Ownership of individual units.

Each condominium unit shall constitute for all purposes a separate parcel of real estate [property], distinct from all other condominium units. Any condominium unit may be owned by more than 1 person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real estate [property] tenancy relationship recognized under the laws of the District of Columbia.

§ 45-1804. Separate taxation of units.

If there is any unit owner other than the declarant, then no tax or assessment shall be levied on the condominium as a whole or against any common elements, but only on the individual condominium units. Each condominium unit shall be carried on the records of the District of Columbia and assessed as a separate and distinct taxable entity.

§ 45-1805. Ordinances and regulations.

[No change proposed.]

§ 45-1806. Eminent domain; allocation of award; proportionate shares of common areas and redetermination thereof where units or parts of units taken; reallocation of voting rights, surplus funds [profits], and future liabilities; recordation of decree.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common elements, except that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than 1 unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned.

(b) If 1 or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other

units in the condominium in proportion to their respective undivided interests in the common elements with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree, reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the 1st sentence of this subsection and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for the unit owner's entire undivided interest in the common elements and for the unit owner's entire unit.

(e) Votes in the unit owners' association, rights to future surplus funds [common profits], and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, rights to future surplus funds [common profits], and liabilities for future common expenses not specially assessed, respectively, with any units partially taken participating in such reallocation as though the voting strength in the unit owners' association, right to future surplus funds [common profits], and liabilities for future common expenses not specially assessed, respectively, had been reduced in proportion to the reduction in their undivided interests in the common elements. But in any case where votes in the unit owners' association were

originally assigned on the basis of equality (subject to the exception for convertible spaces) votes in the unit owners' association shall not be reallocated. The decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the District of Columbia.

§ 45-1807. Variation by agreement.

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

§ 45-1808. Interpretation of chapter.

In applying and construing the provisions of this chapter, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in States which have enacted the Uniform Condominium Act or other condominium statutes containing provisions similar to those of this chapter.

SUBCHAPTER II. ESTABLISHMENT OF CONDOMINIUMS.

§ 45-1811. Creation of condominiums; recordation of instruments; plats; contiguity of units.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections (a) and (b) of § 45-1824. The foreclosure of any mortgage, deed of trust or other lien shall not be deemed, *ex proprio vigore*, to terminate the condominium. [All units shall be contiguous, or on the same square, or on contiguous squares, except that common elements need not be on contiguous squares.]

§ 45-1812. Release of liens prior to conveyance of 1st unit; exemption; liens for labor or material applied to individual units or common areas; partial release.

(a) At the time of the conveyance to the 1st purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § 45-1842 (a) has expired, and so long as the bylaws authorize the same.

(b) No labor performed or materials furnished with the consent of or at the request of a unit owner or such unit owner's agent or contractor or subcontractor shall be the basis for the filing of a lien pursuant to the provisions of § 38-101 against the property of any unit owner not expressly consenting to the same, except that such consent shall be deemed to be given

by any unit owner in the case of emergency repairs to his unit. Labor performed or materials furnished for the common elements, if duly authorized by the unit owners' association or its executive board [organ] subsequent to any period of developer control pursuant to § 45-1842 (a), shall be deemed to be performed or furnished with the express consent of every unit owner and shall be the basis for the filing of a lien pursuant to the provisions of § 38-101 against all of the condominium units. Notice of such lien shall be served on the principal officer of the unit owners' association or any member of the executive board [organ].

(c) In the event that any lien, other than a deed of trust or mortgage, becomes effective against 2 or more condominium units subsequent to the creation of the condominium, any unit owner may remove such unit owner's condominium unit from that lien by payment of the amount attributable to that condominium unit, or, in the case of any mechanic's or materialman's lien, by filing a written undertaking for such amount with surety approved by the court as provided in § 38-118. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to § 45-1852 (c). Subsequent to such payment, discharge or other satisfaction, or filing of bond, the unit owner of that condominium unit shall be entitled to have that lien released as to such unit owner's condominium unit, and the unit owners' association shall not assess, or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 45-1852 and 45-1853.

§ 45-1813. Description of condominium units; undivided interest in common elements automatically included.

[No change proposed.]

§ 45-1814. Declaration, bylaws and certain amendments of each to be executed by owners and lessees.

The declaration and bylaws, and any amendments of either made pursuant to § 45-1829 [45-1838], shall be executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § 45-1829 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or curtesy interest, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common elements.

§ 45-1815. Recordation of condominium instruments; amendment and certification thereof.

All amendments and certifications of the condominium instruments shall set forth the instrument number and date of recordation of the declaration and, when necessary, shall set forth the condominium book and page number where the plats and plans are recorded. All condominium instruments and all amendments and certifications thereof shall set forth the name and address of the condominium and shall be so recorded. The Recorder of Deeds shall accept for recordation all executed and acknowledged condominium instruments and all executed and acknowledged amendments and certifications thereof without further review and without the imposition of any additional requirements.

§ 45-1816. Construction of terms in instruments; designation of unit boundaries; division of property within and without unit boundary; common element serving single unit.

[No change proposed.]

§ 45-1817. Instruments construed together and incorporate one another; when conflict arises.

[No change proposed.]

§ 45-1818. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint[.]; insubstantial failure to comply with chapter.

(a) All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

(b) No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

(c) No restraint on alienation shall discriminate or be used to discriminate on the basis of religious conviction, race, color, sex, or national origin. The condominium instruments may provide, however, for restraints on use of some or all of the units restricting the use of such units to persons meeting requirements based upon age, sex, marital status, physical disability or, in connection with programs of the federal or District of Columbia government, income levels.

(d) Subject to the provisions of subsection (c) of this section, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units not restricted exclusively to residential use.

(e) Title to a condominium unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the condominium instruments to comply with this chapter. Whether or not a substantial failure impairs marketability is not affected by this chapter.

§ 45-1819. Suit for noncompliance with this chapter or condominium instruments.

Any lack of compliance with this chapter or with any lawful provision of the condominium instruments shall be grounds for an action or suit to recover sums due for damages or injunctive relief, or for any other available remedy, maintainable by the unit owners' association, or by its executive board [organ] or any managing agent on behalf of such association, or[, in any proper case,] by 1 or more aggrieved persons on their own behalf or, in an otherwise proper case, as a class action.

§ 45-1820. Contents of declaration; where condominium contains convertible land; expandable, contractable and leasehold condominiums; easements; additionally required descriptions.

[No change proposed.]

§ 45-1821. Allocation of interests in common elements; proportionate or equal shares; statement in declaration; no alteration nor disposition without unit; no partition.

[No change proposed.]

§ 45-1822. Allocation where condominium expandable or contains convertible land; reallocation following addition of land; where all convertible space converted to common elements; effect of reduction in number of units.

[No change proposed.]

§ 45-1823. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.

(a) All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the

extent that the condominium instrument expressly provided otherwise prior to the 1st assignment of that limited common element.

(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers to whom such application is duly made shall forthwith prepare and execute an amendment to the condominium instruments reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by the unit owners of the units concerned and, upon payment by such unit owners of all reasonable costs for the preparation and acknowledgement thereof, shall be recorded by the unit owners' association. [delivered forthwith to the unit owners of the units concerned upon payment by them of all reasonable costs for the preparation and acknowledgement thereof. Such amendment shall become effective when the unit owners of the units concerned have executed and recorded it.]

(c) A common element not previously assigned as a limited common element shall be so assigned only pursuant to § 45-1820 (a)(5) [in pursuance to § 45-1820(a)(6)]. The amendment to the declaration making such an assignment shall be prepared and executed by the principal officer of the unit owners' association, or by such other officer or officers as the condominium instruments may specify. Such amendment shall also be executed by the unit owner of the unit concerned and, upon payment by such unit owner of all reasonable costs for the preparation and acknowledgement thereof, shall be recorded by the unit owners' association. The recordation of such an amendment [be delivered to the unit owner or owners of the unit or units concerned upon payment by them of all reasonable cost for the preparation and acknowledgement thereof. Such amendment shall become effective when the aforesaid unit owner or owners have executed and recorded it, and the recordation thereof] shall be conclusive evidence that the method prescribed pursuant to § 45-1829(a)(6) was adhered to.

§ 45-1824. Recordation of plat and plans; contents; certification; when new plat, survey, and recordation necessary; provisions applicable to limited common elements; filing with Office of Surveyor.

[No change proposed.]

§ 45-1825. Preliminary recordation of plans.

[No change proposed.]

§ 45-1826. Easement for encroachments and support; where liability not relieved.

[No change proposed.]

§ 45-1827. Conversion of convertible lands; recordation of appropriate instruments; character of convertible land; tax liability; time limitation on conversion.

[No change proposed.]

§ 45-1828. Conversion of convertible spaces; amendment of declaration and bylaws; recordation; status of convertible space not converted.

[No change proposed.]

§ 45-1829. Expansion of condominiums; amendment of declaration; recordation; reallocation of interests in common elements.

[No change proposed.]

§ 45-1830. Contraction of condominiums; amendment of declaration; recordation; withdrawal of land after conveyance of unit.

[No change proposed.]

§ 45-1831. Declarant's easement over common elements for purposes of improvements, etc.

[No change proposed.]

§ 45-1832. Sales offices, model units, etc.; authorization; when become common elements.

[No change proposed.]

§ 45-1833. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improvements designated for such; liability for damages arising out of use of certain easements.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done or [on] with regard to the condominium or any portion thereof, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

(b) The declarant shall complete all improvements labeled "not yet completed" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "not yet begun" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(c) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by §§ 45-1831 and 45-1832, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

§ 45-1834. Improvements or alterations within unit; exterior appearance not to be changed; merger of adjoining units.

[No change proposed.]

§ 45-1835. Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a)(1) If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with:

(A) The provisions of this section; and

(B) Any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

(2) The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

(b) If the unit owners of adjoining units whose mutual boundaries may be relocated, desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute the appropriate instruments pursuant to subsections (c), (d) and (e) of this section.

(c) An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain words of conveyance between those unit owners. If the unit owners of the units involved have specified in their written application, a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that allocation.

(d) If the unit owners of the units involved have specified in their written application reasonable allocations as between the units involved of the aggregate number of votes in the unit owners' association, rights to future surplus funds [common profits], or liabilities for future common expenses not specially assessed, then an amendment to the bylaws shall reflect any such reallocations.

(e) Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

- (1) By a registered land surveyor in the case of any plat; and
- (2) By a registered architect or registered engineer in the case of any plan.

(f) When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, or acknowledged, they shall be executed by the unit owners of the units concerned and, upon payment by such unit owners of all reasonable costs for the preparation and acknowledgement thereof, shall be recorded by the unit owners' association [delivered forthwith to the unit owners of the units involved upon payment by them of all reasonable costs for the preparation and acknowledgement thereof.] Said instruments shall become effective when so recorded [the unit owners of the units involved have executed and recorded them], and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocation made pursuant to subsections (c) and (d) of this section were reasonable.

(g) Any relocation of boundaries between adjoining units shall be governed by this section and not by § 45-1836. Section 45-1936 shall apply only to such

subdivisions of units as are intended to result in the creation of 2 or more units in place of the subdivided unit.

§ 45-1836. Subdivision of units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a)(1) If the condominium instruments expressly permit the subdivision of any units; then such units may be subdivided in accordance with:

(A) The provisions of this section; and

(B) Any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

(2) No unit shall be subdivided unless the condominium instruments expressly permit it.

(b) If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d) and (e) of this section.

(c) An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common elements assigned to the subdivided unit exclusively should be assigned to 1 or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

(d) An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common profits formerly appertaining to the subdivided unit.

(e) Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

(1) By a registered land surveyor in the case of any plat; and

(2) By a registered architect or registered engineer in the case of any plan.

(f) When appropriate instruments in accordance with the preceding subsections of this section have been prepared, executed, and acknowledged, they shall be executed by the subdivider and, upon payment by the subdivider of all reasonable costs for the preparation and acknowledgement thereof, shall be recorded by the unit owners' association. [delivered forthwith to the subdivider upon payment by the subdivider of all reasonable costs for the preparation and acknowledgement thereof.] Such instruments shall become effective when so recorded, [the subdivider has executed and recorded them] and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections (c) and (d) of this section were reasonable.

(g) Notwithstanding the provisions of §§ 45-1803 and 45-1828(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such

unit shall be deemed a unit for the purposes of this section.

§ 45-1837. [~~Termination or amendment~~] Amendment of instruments -- [Before] before conveyance of 1st unit[.]; same -- after conveyance of 1st unit; validity of amendment; recordation and certification of amendment; limitation on scope of amendment.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally [~~terminate the condominium or~~] amend the condominium instruments, and any such [~~termination or~~] amendment shall become effective upon the recordation thereof if the same has been executed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

(b) If any of the units in the condominium are restricted exclusively to residential use and if there is any unit owner other than the declarant, then the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendments. If none of the units in the condominium are restricted exclusively to residential use, then the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) No action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may be brought more than 1 year after the amendment is recorded.

(d) Amendments to the condominium instruments required by this chapter to be recorded by the unit owners' association shall be prepared, executed, recorded, and certified on behalf of the unit owners' association by any officer thereof designated for that purpose or, in the absence of designation, by the presiding officer of the executive board.

(e) Except to the extent expressly permitted or required by other provisions of this chapter, no

amendment to the condominium instruments may create or increase special declarant rights; increase the number of units; change the boundaries of any unit; change the undivided interest in the common elements, the liability for common expenses, the rights to surplus fund, or the number of votes in the unit owners' association appertaining to any unit; or change the uses to which any unit is restricted, in the absence of unanimous consent to the unit owners.

[§ 45-1838. Same -- After conveyance of 1st unit; evidence of agreement; recordation; limitation on scope of amendments; ownership of condominium upon termination; division of net assets.

(a) If there is any unit owner other than the declarant, then the condominium shall be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify.

(b) If there is any unit owner other than the declarant, then the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendments.

(c) If none of the units in the condominium are restricted exclusively to residential use, then the condominium instruments may specify majorities smaller than the minimums specified by subsections (a) and (b) of this section.

(d) Agreement of the required majority of unit owners to termination of the condominium or to any amendment of the condominium instruments shall be evidenced by execution of the termination agreement or amendment, or of ratifications thereof by such unit owners or their attorneys-in-fact, and the same shall become effective only when such agreement is so evidenced of record. For the purposes of this section and § 45-1837, an instrument terminating a condominium shall be deemed a condominium instrument subject to the provisions of § 45-1815, and for the purposes of this section, any ratification of such an amendment shall also be deemed such an instrument. Such recorded

instrument shall also be recorded in the Office of the Surveyor.

(e) Except to the extent expressly permitted or expressly required by other provisions of this chapter, no amendment to the condominium instruments shall change the boundaries of any unit, the undivided interest in the common elements appertaining thereto, the liability for common expenses or rights to common profits appertaining thereto, or the number of votes in the unit owners' association appertaining thereto.

(f) Upon recordation of an instrument terminating a condominium, all of the property constituting the same shall be owned by the unit owners as tenants in common in proportion to their respective undivided interests in the common elements immediately prior to such recordation. But as long as such tenancy in common lasts, each unit owner or the heirs, successors, or assigns thereof shall have an exclusive right of occupancy of that portion of such property which formerly constituted such unit owner's unit.

(g) Upon recordation of an instrument terminating a condominium, the rights of the unit owners to the net assets of the unit owners' association shall be in proportion to their respective liabilities for common expenses as set forth in the bylaws pursuant to § 45-1852(c) prior to such recordation.

(h) No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.]

§ 45-1838. Termination of condominium - before conveyance of 1st unit; same -- after conveyance of 1st unit; termination agreements; sale of property following termination; rights of unit owners following termination; powers of unit owners' association following termination; foreclosure or enforcement of liens or encumbrances.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium, and any such termination shall become effective upon the recordation thereof if the same has

been executed by the declarant and if it is also recorded in the Office of the Surveyor. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce in whole or in part, the right hereby conferred.

(b) If any of the units in the condominium are restricted exclusively to residential use and if there is any unit owner other than the declarant, then the condominium may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium are restricted exclusively to residential use, then the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An agreement to terminate a condominium 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. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association appertain. 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 is effective only upon recordation and must also be recorded in the Office of the Surveyor.

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

(e) In the case of a condominium containing any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination,

unless the condominium instruments as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(f) The unit owners' association, on behalf of the unit owners, may contract for the sale or other disposition of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (b) and (c). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the unit owners' association as trustee for the holders of all interests in the units. Thereafter, the unit owners' association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the unit owners' association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (i). Unless otherwise specified in the termination agreement, as long as the unit owners' association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the condominium instruments.

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

(h) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the unit owners' association, are held by the unit owners' association as trustee for unit

owners and holders of liens on the units as their interests may appear. Following termination, creditors of the unit owners' association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the unit owners' association are to be treated as if they had perfected liens on the units immediately before termination.

(i) The respective interests of unit owners referred to in subsections (f), (g) and (h) are as follows:

(1) Except as provided in paragraph (2), the respective interest of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which one-fourth of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

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

(j) Except as provided in subsection (k), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land does not of itself withdraw that real estate from the condominium, but the person taking title

thereto has the right to require from the unit owners' association, upon request, an amendment excluding the real estate from the condominium.

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

§ 45-1839. Condominium lease; recordation; terms; leasehold payments; increases; sale or assignation; offer to unit owners' association; renewal.

[No change proposed.]

§ 45-1840. Transfer of special declarant rights.

(a) No special declarant right created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in the same manner as the condominium instruments. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

(1) A transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by this chapter. Lack of privity shall 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 shall be jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall

be liable for any obligations or liabilities imposed on a declarant by this chapter or by the condominium instruments relating to the retained special declarant rights and arising after the transfer.

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

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, shall succeed to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the condominium instruments pursuant to § 45-1832 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. For purposes of this subsection, "development rights" shall mean any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.

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

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

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

(e) The liabilities and obligations of a person who succeeds to special declarant rights shall be as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant shall be subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4), who is not an affiliate of a declarant, shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments:

(i) on a declarant which relate to his exercise or non-exercise of special declarant rights; or

(ii) on his transferor, other than:

(A) misrepresentations by any previous declarant;

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

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

(D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the condominium instruments to maintain models, sales offices, and signs, if he is not an affiliate of a declarant, may not exercise any other special declarant right, and shall not be subject to any liability or obligation as a declarant, except the liabilities and obligations arising under

subchapter IV of this chapter as to disposition by that successor.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of § 45-1842 for the duration of any period of declarant control, and any attempted exercise of those rights shall be void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions under § 45-1842.

(f) Nothing in this section shall subject 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 chapter or the condominium instruments.

SUBCHAPTER III. CONTROL AND GOVERNANCE OF CONDOMINIUMS.

§ 45-1841. Bylaws; recordations, unit owners' association and executive board [organ] thereof; powers and duties; officers; and amendment and contents thereof [responsibility for insurance on common elements].

(a) There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

(b) The bylaws shall provide whether or not the unit owners' association shall have an executive board [organ]. The executive board [organ], if any, shall, subsequent to the expiration of the period of declarant control specified pursuant to § 45-1842(a), be elected by the unit owners unless the unit owners vote to amend the bylaws to provide otherwise. If there is to be such a board [an organ], the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board [organ], inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board [organ] may delegate to a managing agent.

(c) The bylaws shall provide whether or not there shall be officers in addition to the members of the executive board [organ]. If there are to be such additional officers, the bylaws shall specify the powers and responsibilities of the same, the manner of their selection and removal, their number and their terms. The bylaws may delegate to such additional officers, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association.

(d) In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of § 45-1822, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate to the new units votes in the unit owners' association, rights to future surplus funds [common profits], and

liabilities for future common expenses not specially assessed, on the same bases as were used for such allocations to the units depicted on plats and plans recorded pursuant to subsections (a) and (b) of § 45-1824; or shall abolish the votes appertaining to former units and reallocate their rights to future surplus funds [common profits], and their liabilities for future common expenses not specially assessed, to the remaining units in proportion to the relative rights and liabilities of the remaining units immediately prior to the amendment.

[(c) The bylaws shall be so worded as to indicate by whom the deductible, if any, or any policy insurance on the common elements will be paid.]

§ 45-1842. Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board [organ]; strict construction.

(a) The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or members of its executive board [organ], or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to unit owners' association, the officers, or the executive board [organ]. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant and no such authorization shall be valid after the time set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Mayor according to § 45-1866. The time limit initially set by the condominium instruments shall not exceed 3 years in the case of an expandable condominium or a condominium containing convertible land, or 2 years in the case of any other condominium containing any convertible land, or 2 years in the case of any other condominium. Such period shall commence upon settlement of the 1st unit to be sold in any portion of the condominium.

(b)(1) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, no contract or lease entered into with the declarant (other than leases subject to § 45-1820 (e)) or an affiliate of [any entity affiliated with] the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, or the unit owners as a group, shall be entered into for a period in excess of 2 years. Any such contract or agreement entered into on or after the effective date of this provision may be terminated without penalty by the unit owners' association or its executive board upon not less than 90 days' written notice to the other party. [Any such contract or agreement may be renewed for periods not in excess of 2 years; however, at the end of any 2-year period the unit owners' association or its executive organ may terminate any further renewals or extensions thereof.]

(2) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, any contract, lease or agreement, other than those subject to the provisions of paragraph (1) of subsection (b) of this section, may be entered into by or on behalf of the unit owners' association, its executive board [organ], or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

(c) If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this subchapter or the condominium instruments require or permit action by the unit owners' association, its executive board [organ], or any officer or officers.

(d) Notwithstanding subsection (a) of this section, the bylaws shall provide that:

(1) Not later than the time that units to which 25 percent of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held

at which not less than 25 percent of the members of the executive board [organ] shall be selected by unit owners other than declarant; and

(2) Not later than the time units to which 50 percent of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than thirty-three and one-third percent of the members of the executive board [organ] shall be selected by unit owners other than declarant.

[(a) A person or entity is "affiliated with" the declarant for the purposes of this section if:

(1) Such person controls or has a substantial financial interest in the declarant; or

(2) The declarant controls or has a substantial financial interest in such person or entity.]

(e) [-f-] This section shall be strictly construed to protect the rights of the unit owners.

§ 45-1843. Annual meetings of unit owners' association --
Notice.

Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of such association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place, and purpose or purposes of such meeting. Such notice shall be sent by the United States mail, to all unit owners of record at the address of their respective units and to such other addresses as any of them may have designated to such officer; or such notice may be hand-delivered by the said officer, provided that such officer certified in writing that such notice was delivered to the unit owner [he obtains a receipt of acceptance of such notice from the unit owner].

§ 45-1844. Same -- Executive board [organ]; quorums.

(a) Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than the thirty-three and one-third percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 25 percent.

(b) Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board [organ] if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

§ 45-1845. Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.

(a) The bylaws may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 45-1824 a number of votes in the unit owners' association proportionate to the liability for common expenses as established pursuant to § 45-1852(c).

(b) Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

(c) Since a unit owner may be more than 1 person, if only 1 of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than 1 of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any 1 of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person

need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

(d) The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than 1 person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons; that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as foresaid, or if the signatures of any of those executing the same has not been witnessed by a person who shall sign his full name and address. [duly acknowledged. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof to execute deeds on behalf of that person.] Any proxy shall terminate automatically upon the final adjournment of the 1st meeting held on or after the date of that proxy but shall remain in effect during any recess or temporary adjournment of such meeting.

(e) If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

(f) Anything in this section to the contrary notwithstanding during any time when the unit owners' association is the unit owner of any condominium unit, the votes in the unit owners' association appertaining to such condominium unit shall be included in any calculation to determine the existence of a quorum at any meeting of the unit owners' association pursuant to §45-1844 but shall otherwise be deemed to be cast in proportion to the affirmative and negative votes cast by all unit owners other than the unit owners' association at any such meeting. [no votes in the unit owners' association shall be deemed to appertain to any condominium unit during such time as the unit owner thereof is the unit owners' association.]

§ 45-1846. Officers; disqualification.

[No change proposed.]

§ 45-1847. Maintenance, repair, etc., of condominiums; right of access for repair, liability for damages arising from exercise thereof. [warranty against structural defects; limitations upon actions; bond or other security.]

[(a)] Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong: (1) To the unit owners' association in the case of the common elements; and (2) to the individual unit owner in the case of any unit or any part thereof. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through such unit [owners'] owner's unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

[(b)] Notwithstanding anything in this section to the contrary the declarant shall warrant against structural defects, each of the units for 1 year from the date each is conveyed and all of the common elements for 2 years. The 2 years referred to in the preceding sentence shall begin as to each of the common elements, whenever the same has been completed, or if later: (1) As to any common element within any additional land or portion thereof at the time the 1st unit therein is conveyed; (2) as to any common element within any convertible land or portion thereof at the time the 1st unit therein is conveyed; and (3) as to any common element within any other portion of the condominium at the time the 1st unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability or

safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in the subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements. No action to enforce the warranty created by this subsection may be brought after 1 year from the date such warranty period has expired, except for structural defects which occurred within the warranty period but which are latent and undetected in fact; in the case of such latent defects, no action shall be brought after 6 months from the date such defect is detected.

[(c) The declarant shall post a bond with the Mayor in the sum of 10 percent of the estimated construction or conversion costs, or shall provide such other security as the Mayor shall prescribe. Such bond or other security shall be available to meet the costs arising from the declarant's failure to meet the requirements of this section. Such land or other security shall be posted or given prior to conveyance of the 1st unit and shall be continued until the end of the warranty period on each unit and on the common elements.]

§ 45-1848. Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements; limitations on powers; standard of care of executive board members and officers.

(a) Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the unit owners' association shall have the:

[(1) Power to govern all matters relating to the condominium;

(2) Power to sue on behalf of all unit owners;

(3) Power to employ, dismiss, and replace agents and employees who exercise and discharge the powers and responsibilities of such association arising under § 45-1847;

(4) Power to make or cause to be made additional improvements on and as a part of the common elements;

(5) Power to manage the common elements and to provide for the use, rental or operation of common elements or limited common elements;

(6) Right to any income derived from payments, fees or charges for the use, rental or operation of the common elements of the condominium;

(7) Right to grant or withhold approval of any action by 1 or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect to provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval;

(8) Right to acquire, hold, convey and encumber title to real property, including but not limited to condominium units; and

(9) Right to make contracts and incur liabilities.]

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

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

(3) Power to hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the condominium;

(5) Power to make contracts and incur liabilities;

(6) Power to regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Power to cause additional improvements to be made as a part of the common elements;

(8) Power to acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(9) Power to grant easements, leases, licenses, and concessions through or over the common elements;

(10) Power to impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;

(11) Power to impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the condominium instruments and rules and regulations of the unit owners' association;

(12) Power to impose reasonable charges for the preparation and recordation of amendments to the condominium instruments, statements concerning resales of units required by § 45-1871, or statements of unpaid assessments;

(13) Power to provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) Power to assign its right to further income, including the right to future income, including the right to receive common expense assessments, but only to the extent the condominium instruments expressly so provide;

(15) Power to exercise any other powers conferred by the condominium instruments;

(16) Power to exercise all other powers that may be exercised in the District of Columbia by legal entities of the same type as the unit owners' association; and

(17) Power to exercise any other powers necessary and proper for the governance and operation of the unit owners' association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive board

[organ] of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any part thereof.

(c) The condominium instruments may not impose limitations on the power of the unit owners' association to deal with the declarant which are more restrictive than the limitations imposed on the power of the unit owners' association to deal with other persons.

(d) In the performance of their duties, the officers and members of the executive board shall exercise the care required of fiduciaries of the unit owners.

§ 45-1849. Tort and contract liability of association and declarant; judgment liens against common property and individual units.

(a) An action for tort alleging a wrong done: (1) by any agent or employee of the declarant or of the unit owners' association; or (2) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of ownership of an undivided interest in the common elements or by reason of membership in the association or status as an officer.

(b) Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 45-1831 and 45-1832.

(c) An action arising from a contract made by or on behalf of the unit owners' association, its executive board [organ] or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to § 45-1842(a). No unit owner shall be precluded from bringing such an action by reason of membership in the association or status as an officer.

(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to § 45-1852(c), but no unit owner shall be otherwise liable on account of such judgment, and, after payment by the unit owner of such proportionate share, the association shall not assess or have a lien against that unit owner's condominium unit for any portion of the common expenses incurred in connection with that lien. Any such judgment shall be satisfied first out of the property of the association. Such judgment shall be otherwise subject to the provisions of Title 15 of the District of Columbia Code.

§ 45-1850. Insurance obtained by association; [notice to unit owners] provisions of insurance policies; adjustments of losses; additional insurance of unit owners' certificates of insurance; repair and replacement of damaged property.

(a) Commencing not later than the time of the first conveyance of a condominium unit to a person other than a declarant, the unit owners' association shall maintain, to the extent reasonably available:

(1) property insurance on the common elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than 90 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, 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 condominium instruments covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the condominium instruments, the insurance maintained under subsection (a) (1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the unit owners' association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The condominium instruments may require the unit owners' association to carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a) must provide that:

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

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

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

(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 unit owners' association's policy provides primary insurance; and

(5) if the unit owners' association brings suit against a unit owner, or vice versa, with respect to any loss, the insurer will provide for the defense of the defendant.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the unit owners' association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the unit owners' association shall hold any insurance proceeds in trust for unit owners and lien holders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged property,

and unit owners and lien holders shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the unit owners' association shall not prevent a unit owner from obtaining insurance for his own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the unit owners' association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the unit owners' association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the unit owners' association unless (i) the condominium is terminated, (ii) repair or replacement would be illegal under any health or safety statute or ordinance or (iii) 80 percent of the unit owners including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense. If the entire condominium is not repaired, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements appertained, or to lien holders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lien holders, as their interests may appear, in proportion to the interests in the common elements appertaining to all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests shall be automatically reallocated upon the vote as if the unit had been condemned under § 45-1806,

and the unit owners' association promptly shall prepare, execute, and record an amendment to the condominium instruments reflecting the reallocations. Notwithstanding the provisions of this subsection, § 45-1838 governs the distribution of insurance proceeds if the condominium is terminated.

(i) The bylaws shall specify insurance coverages and limits with respect to any insurance policies which may be required on the common elements and shall indicate who is responsible for paying any deductible amount in connection with such policies.

(j) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to non-residential use.

§ 45-1851. Rights to [common profits.] surplus funds.

[The common profits shall be applied to the payment of common expenses or to the creation and maintenance of reserves, or shall be distributed to the unit owners in proportion to the liability for common expenses as established pursuant to § 45-1852(c), as the bylaws shall provide.] Unless otherwise provided in the condominium instruments, any surplus funds of the unit owners' 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 liabilities for common expenses or credited to them to reduce their future common expense assessments.

§ 45-1852. Liability for common expenses; special assessments; proportionate liability fixed in bylaws; installment payment of assessments; when assessment past due; interest thereon.

(a) Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than 1 condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

(b) To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases.

(c) The amount of all common expenses not specially assessed pursuant to subsection (a) or (b) of this section shall, subject to the provisions of subsection (f) of this section be assessed against the condominium units, including those units owned by the declarant, in accordance with the provisions of the condominium instruments. The bylaws may establish the fraction or percentage of liability for such expenses appertaining to each condominium unit proportionate to either the size or par value of such condominium unit. Otherwise, the bylaws shall allocate to each such condominium unit an equal liability for such expenses, subject to the following exception: Each convertible space shall be allocated a liability for common expenses proportionate to the size of each such space, vis-a-vis the aggregate size of all units, while the remaining liability for common expenses shall be allocated equally to the other units. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

(d) If the condominium instruments provide for any common expense assessments to be paid in installments, such instruments may further provide that upon default in the payment of any 1 or more of such installments, the balance thereof shall be accelerated, or that the said balance may be accelerated at the option of the unit owners' association, its executive board [organ], or the managing agent.

(e) Unless the condominium instruments provide otherwise, unpaid assessments for common expense and unpaid installments of such assessments shall become past due on the 15th day from the day such assessment or installment thereof first became due and payable, and any past due assessment or installment thereof shall

bear interest at the lesser of 10 percent per annum or the maximum rate permitted to be charged in the District of Columbia to natural persons on 1st mortgage loans at the time such assessment or installment became past due.

(f) Unless the condominium instruments provide otherwise, the declarant may elect to pay all common expenses for a period of not to exceed 1 year from the conveyance of the 1st condominium unit to a purchaser. If the declarant so elects, no common expenses shall be assessed against any unit or imposed upon or collected from any unit owner, and the declarant shall pay all such costs including the costs of any contributions to reserve accounts as set forth in the budget of the condominium described in § 45-1864.

§ 45-1853. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board [organ] to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

(a) All assessments levied against a condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments shall, from the time such assessments became due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which such assessments pertain. If an assessment is payable in installments, the full amount of such assessment shall be a lien from the time the 1st installment thereof becomes due and payable. Such lien shall be prior to all other liens and encumbrances except: (1) Liens and encumbrances recorded prior to the recordation of the declaration; (2) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; [liens of any first priority mortgage or deed of trust on such unit recorded prior to the due date of such assessment or the due date of the 1st installment payable on such assessment;] and (3) liens for real estate taxes and municipal assessments or charges against the unit. Except for mortgages and deeds of trust recorded prior to the effective date of this Act, the lien shall also be prior to the mortgages and deeds of trust described in clause (2) above to the extent of the common expense

assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's liens.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim for assessment shall be required.

(c) [A lien for assessments against a condominium unit may be enforced against such condominium unit by a power of sale in favor of the unit owners' association] The unit owners' association has the power of sale to enforce a lien for assessments against a condominium unit if assessments are past due, unless the condominium instruments provide otherwise. A unit owner shall have the right to cure any default in payment of assessments at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charges and interest due thereon and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for such assessments. Such power of sale may be exercised by the executive board [organ] on behalf of the unit owners' association, and the executive board [organ] shall have the authority to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at such sale. The recitals in such deed shall be prima facie evidence of the truth of the statement made therein and conclusive evidence in favor of bona fide purchasers for value. No foreclosure sale shall be held until 30 days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by a unit owner to the executive board [organ] for purposes of such a notice. A copy of the notice shall also be sent to the Mayor or his designated agent at least 30 days in advance of such sale. The notice shall specify the amount of the assessments past due, together with any accrued interest thereon and late charges, if any, as of the date of the notice and shall further notify the unit owner that if such past due assessments and accrued interest and any late charges are not paid within 30 days after the date such notice is mailed, the executive board [organ] shall sell the unit at a public sale at the time and place and on a date stated in the notice. Such date of sale shall not be sooner than

31 days from the date such notice is mailed. The executive board [organ] shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by such other means it deems necessary and appropriate to give notice of sale, if any. Such newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale. The proceeds of sale shall be applied:

(1) To unpaid assessments with interest thereon and late charges, if any;

(2) To the cost of foreclosure including but not limited to, reasonable attorney's fees; and

(3) The balance to the person or persons legally entitled thereto.

(d) Unless the condominium instruments provide otherwise, the executive board [organ] shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive board [organ] may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to § 45-1819.

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall

be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 [5 business] days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board [organ] and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to § 45-1852.

(j) In addition to the other rights and powers conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of common expense assessments by more than 30 days, and such suspension may remain in effect until such assessments have been paid in full.

§ 45-1854. Financial records of association; availability for examination; annual audit.

The unit owners' association shall cause to be kept books with detailed accounts in chronological order of the associations' income and expenditures. Said books and the vouchers accrediting the entries therein shall be made available for examination by the unit owners and their attorneys, accountants, and authorized agents during reasonable hours on business days. Such books shall be kept in [accordance with generally accepted

accounting principles and shall be subjected to an independent audit at least once each year.] such a manner as to be verifiable upon an audit and shall be subject to an independent financial review at least once each year. Such books shall be subject to an independent audit upon the request of unit owners of units to which at least thirty-three and one-third percent of the votes in the unit owners' association appertain or such lower percentage as may be specified in the condominium instruments.

§ 45-1855. Limitation on right of 1st refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.

If the condominium instruments create any rights of 1st refusal or other restraints on free alienability of any of the condominium units, such rights and restraints shall be void unless the condominium instruments make provisions for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, its executive board [organ], and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

§ 45-1856. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

(a) As used in this section, "structural defects" means those defects in components constituting any unit or portion of the common elements which reduce the stability or safety of the structure below standards commonly accepted in the real estate market or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) A declarant shall warrant against structural defects in each of the units for 2 years from the date each is first conveyed to a bona fide purchaser, and all of the common elements for 2 years. The 2 years shall begin as to each portion of the common elements whenever the portion has been completed or, if later:

(1) As to any portion of the common elements within any additional land or portion thereof which may be added to an expandable condominium, at the time the first unit therein is first conveyed to a bona fide purchaser;

(2) As to any portion of the common elements within any convertible land or convertible space or portion thereof, at the time the first unit therein is first conveyed to a bona fide purchaser; and

(3) As to any portion of the common elements within any other portion of the condominium, at the time the first unit therein is first conveyed to a bona fide purchaser.

(c) A declarant of a conversion condominium may offer the units, common elements, or both in "as is" condition, in which event the declarant's warranty against structural defects shall apply only to defects in components installed by the declarant or work done by the declarant except to the extent that the declarant gives a more extensive warranty in writing.

(d) Except with respect to a purchaser of a unit which may be used for residential purposes, the warranty against structural defects:

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

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

(e) The declarant shall post a bond with the Mayor in the sum of 10 percent of the estimated construction or conversion costs, or shall provide such other security as the Mayor shall prescribe, to satisfy any costs arising from the declarant's failure to satisfy the requirements of this section. Such bond or other

security shall be posted or given prior to the first conveyance of the first unit to a purchaser and shall be continued until the end of the warranty period on each unit and on the common elements.

§ 45-1857. Statute of limitations for warranties.

(a) A judicial proceeding for breach of any obligation arising under § 45-1856 must be commenced within 6 years after the cause of action accrues.

(b) Subject to subsection (c), a cause of action for breach of any express or statutory warranty, regardless of the purchaser's lack of knowledge of the breach, accrues:

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

(2) As to each portion of the common elements, at the time the portion is completed or, if later, (i) as to a portion of any additional land which may be added to an expandable condominium or within any convertible land or convertible space, or any portion thereof, at the time the first unit therein is first conveyed to a bona fide purchaser; or (ii) as to a portion within any other portion of the condominium, at the time the first unit in the condominium is first conveyed to a bona fide purchaser.

(c) If any express or statutory warranty explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

§ 45-1858. Master associations -- authorization; powers; rights and responsibilities of unit owners; election of executive board.

(a) If the condominium instruments for a condominium provide that any of the powers described in § 45-1848 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated association) which exercises those or other powers on behalf of one or more condominiums or for the benefit

of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations shall apply to any such corporation (or unincorporated association), except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in § 45-1844, it may exercise the powers set forth in § 45-1848(a)(2) only to the extent expressly permitted in the condominium instruments of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the condominium instruments of any condominium provide that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in §§ 45-1842, 45-1843, 45-1844, 45-1845, and 45-1860 shall apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(e) Notwithstanding the provisions of § 45-1842(a) with respect to the election of the executive board of a unit owners' association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in § 45-1841, the certificate of incorporation or other instrument creating the master association and the condominium instruments of each condominium the powers of which are assigned by the condominium instruments 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 condominiums subject to the master association may elect all members of that executive board;

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

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

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

§ 45-1859. Merger or consolidation of condominiums -- authorization; agreement to merge or consolidate; reallocations of interests.

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

(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the unit owners' association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium.

(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 condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new condominiums which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated

to that unit by the condominium instruments of the preexisting condominium.

(d) For purposes of subsection (c), the term "allocated interests" shall mean the individual interest in the common elements, the liability for common expenses, and the votes in the unit owners' association appertaining to each unit.

§ 45-1860. Conveyance or encumbrance of common elements; agreements to convey; powers and limitations respecting conveyance or encumbrance.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the unit owners' association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the condominium instruments specify, agree to that action: but all the 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 condominium instruments may specify a smaller percentage only if all of the units are restricted exclusively to non-residential uses. Proceeds of the sale are an asset of the unit owners' association.

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution and recordation 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.

(c) The unit owners' association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the unit owners' association until approved pursuant to subsections (a) and (b). Thereafter, the unit owners' association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the condominium instruments otherwise provide, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

§ 45-1860A. Unit owners' association as trustee.

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

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice to ensure transparency and accountability.

2. The second part outlines the procedures for handling discrepancies between the recorded amounts and the actual cash flow. It suggests a systematic approach to identify the source of the error and correct it promptly to avoid any financial misstatements.

3. The third part provides a detailed breakdown of the monthly budgeting process. It includes a table showing the allocation of funds across various departments and projects, along with a comparison of actual spending against the budgeted amounts.

Department	Budgeted Amount	Actual Amount
Marketing	\$120,000	\$115,000
Operations	\$250,000	\$255,000
Development	\$180,000	\$178,000
Support	\$90,000	\$92,000

4. The final part of the document concludes with a summary of the key findings and recommendations. It stresses the need for continuous monitoring and reporting to ensure that the organization remains on track with its financial goals and maintains a healthy cash flow.

SUBCHAPTER IV. REGISTRATION AND OFFERING OF CONDOMINIUMS.

§ 45-1861. Exemptions.

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 45-1862, 45-1863, 45-1864, 45-1865, 45-1866, 45-1867, 45-1868, 45-1869, and 45-1872 do not apply to:

- (1) Dispositions in a condominium in which all units are restricted to commercial, industrial, or other nonresidential use;
- (2) Dispositions pursuant to court order;
- (3) Dispositions by any government agency; [or]
- (4) Solicitation and acquisition by the declarant of nonbinding reservation agreements;
- (5) Gratuitous dispositions; or
- (6) Dispositions by foreclosure or deed in lieu of foreclosure.

§ 45-1862. No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.

(a) Neither declarant nor any person on behalf of declarant may offer or dispose of any interest in a condominium unit located in the District of Columbia, nor dispose in the District of Columbia of any interest in a condominium unit located without the District of Columbia prior to the time the condominium including such unit is registered in accordance with this chapter.

(b) [During any period when registration of a condominium is required by this chapter or until such time as all units in the condominium have been initially disposed of to the bona fide purchasers, no] No declarant may dispose of any interest in a condominium unit not previously disposed of unless there is delivered to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser, before conveyance of the unit, within 15 days after the [contract] date

of execution of the contract for such disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. [Unless otherwise stated herein, the foreclosure of lien provisions should be in accord with § 45-715(b).] If the purchaser elects to cancel, he may do so by notice thereof hand-delivered or sent by United States mail, return receipt requested, to the seller [declarant]. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

(c) The public offering statement and sales contract shall contain a clause and its Spanish equivalent in a form prescribed by the Mayor, which shall clearly state the purchaser's right to cancel.

(d) Any declarant is liable under this chapter for any false or misleading statement set forth in a public offering statement or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared or caused to be prepared. If a declarant did not prepare or cause to be prepared any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

§ 45-1863. Application for registration; contents; later registration of additional units; availability for public inspection; fee to be determined by Mayor.

[No change proposed.]

§ 45-1864. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the

condominium. The proposed public offering statement submitted to the Mayor shall be in a form prescribed by his rules and shall include:

- (1) The name and principal address of the declarant and the condominium;
- (2) The applicant's name, address, and the form, date, and jurisdiction of organization, the address of each of its offices in the District of Columbia, the names and addresses of all general partners if applicant is a partnership, and all directors and owners of 10 percent or more of the beneficial interest in the stock of applicant if applicant is a corporation;
- (3) To the extent that such information is reasonably available to applicant, the names and addresses of the attorney primarily responsible for the preparation of the condominium documents, the general contractor, if any, all contractors who are primarily responsible for the construction, reconstruction or renovation of the electrical, plumbing or mechanical systems or the roof of the condominium, and the architect and engineer primarily responsible for the design, construction or renovation of the condominium;
- (4) A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and the number of units to be rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by declarant;
- (5) A copy of the condominium instruments [declaration and bylaws], with a brief narrative statement describing each and including:
 - (A) Information on declarant control;
 - (B) A projected budget for at least the 1st year of the condominium's operation (including projected common expense assessments for each unit);

- (C) Provisions for enforcement of liens for assessments;
 - [(D) Provisions for reserves for capital expenditures;]
 - (D) A statement of the amount, or a statement that there is no amount, included in the projected budget as a reserve for repairs and replacement;
 - (E) The estimated amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fees; [and]
 - (F) A description of any restraints on alienation; and
 - (G) A description of any services not reflected in the proposed budget that the declarant will provide or expenses that he will pay, and that he expects may become at any subsequent time a common expense of the unit owners' association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
- (6) Copies of the deed [instruments] which will be delivered to a purchaser to evidence his interest in the unit and of the contract[s and other agreements] of sale which a purchaser will be required to [agree to or] sign;
- (7) A copy of any management contract, lease of recreational areas, and any other contract or agreement substantially affecting the use or maintenance of, or access to all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, the condominium unit owners and the condominium, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

- (8) A general statement of:
- (A) The status of construction;
 - (B) The project's compliance with zoning, site plan and building permit regulations;
 - (C) Source of financing available and the estimated amount necessary to complete all improvements shown on the plans and plans as "not yet completed" or "not yet begun" which declarant is obligated to complete; and
 - (D) The projected date of completion of construction or renovation of the major amenities of the condominium;
- (9) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;
- (10) The significant terms of any financing offered by or through the declarant to purchasers of units in the condominium;
- (11) The provisions and any significant limitations of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by § 45-1847(B);
- (12) A statement that the contract purchaser of a condominium unit [from the declarant] may, prior to conveyance, cancel the purchase transaction within 15 days following the date of execution of the contract by the purchaser or the receipt of a current public offering statement, whichever is later;
- (13) A statement as to whether or not the condominium satisfies, or is expected to satisfy, the special requirements pertaining to condominiums established by federal, federally chartered or District of Columbia institutions which insure, guarantee or maintain a secondary market for condominium unit mortgages; and

(14) Additional information required by the Mayor to assure full and fair disclosure to prospective purchasers[; and].

[(15) Plans of the condominium which clearly locate all units and buildings and all common elements.]

(b) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by subsection (a):

- (1) The total number of unit in which time-share estates may be created;
- (2) The total number of time-share estates that may be created in the condominium;
- (3) The projected common expense assessment for each time-share estate and whether those assessments may vary seasonally;
- (4) A statement of any services not reflected in the budget which declarant provides, or expenses which he pays, and which he expects may become at any subsequent time a common expense of the unit owner's association, and the projected common expense assessment attributable to each of those services or expenses for each time-share estate;
- (5) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit;
- (6) The extent to which a suit for partition may be maintained against a unit owned in time-share estates; and
- (7) The extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

(c) [(b)] The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the Mayor approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement if such emphasis is intended to mislead the prospective purchaser or to otherwise conceal material facts, except that there may be a cover sheet for such public offering statement using such design, pictures and words as the Mayor may deem reasonable. The form, content, and layout of the public offering statement shall be subject to approval by the Mayor.

(d) [(c)] The declarant shall file with the Mayor a statement of any material change in the information contained in the public offering statement. Such statement shall be filed within 15 days after the date on which the declarant knows or should have known about the change. The Mayor may require the declarant to amend the public offering statement if necessary to assure full and fair disclosure to prospective purchasers. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. Such amendments must be mailed by United States registered mail, return receipt requested. Such receipt shall be kept on file for review.

(e) [(d)] The provisions of this section shall be deemed to be complied with if the public offering statement filed pursuant to the provisions of [paragraph (9) of] subsection (a) of this section is for offers of units currently registered as securities with the Securities and Exchange Commission.

(f) In the case of a condominium situated wholly outside the District of Columbia, no application for registration or proposed public offering statement filed with the Mayor which has been approved by an agency in the State where the condominium is located and substantially complies with the requirements of this chapter may be rejected by the Mayor on the grounds of non-compliance with any different or additional requirements imposed by this chapter or by rules and regulations promulgated by the Mayor pursuant to this chapter. However, the Mayor may require additional documents or information in particular cases to assure

adequate and accurate disclosure to prospective purchasers.

§ 45-1865. Application for registration -- Investigation by Mayor upon receipt.

[No change proposed.]

§ 45-1866. Same -- Notice of filing; registration or rejection; notice of need for rejection; hearing.

[No change proposed.]

§ 45-1867. Registration; annual updating report by declarant; termination.

[No change proposed.]

§ 45-1868. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate[.]; establishment of reasonable reserves.

(a) Any declarant of a conversion condominium shall include in his public offering statement, in addition to the requirements of § 45-1864:

[(1) A description of any provisions made in the budget for reserves for capital expenditures, contingencies and improvements and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect; and

(2)(A) A] (1) A statement by the declarant based upon a report of a qualified architect or engineer as to the present condition of all structural components and major utility installations in the condominium. The statement shall include:

[(i)] (A) The approximate dates of construction, installation, and major repairs of structural components and major utility installations and a general description of each installed system as particularly suitable or unsuitable for use in a conversion condominium;

[(ii)] (B) An evaluation of the adequacy of each system to perform its intended function both before and after completion of the condominium conversion; and

[(iii)] (C) The estimated life of the system components, and the estimated cost (in current dollars) of replacing each component that has a rated life that is evaluated to be less than the rated life of the entire structure.

(2) [(B)] The architect's or engineer's report upon which the statement required by this subsection is based shall be filed with the Mayor as a part of the application for registration.

(b) In the case of a conversion condominium:

(1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this chapter at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved. The notice shall be in such form as the Mayor may require and shall set forth generally the rights of tenants and subtenants pursuant to this section. Such notice shall be hand-delivered or sent by United States mail, return receipt requested. Such notice shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease;

(2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with the declarant or the declarant's predecessor in interest to lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit during the second 60 days of such 120-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the purchase of such apartment units shall be on terms and conditions at least as favorable to the tenants or subtenants as those being offered by declarant to

the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apartment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than 1 tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than 1 subtenant occupying the apartment unit, then each subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed;

(3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

(c) Each declarant of a conversion condominium shall assure that the budget established for the unit owners' association and upon which common expense assessments are made shall include an adequate provision for reasonable reserves to cover future maintenance, repair, and replacement costs associated with the common elements.

§ 45-1869. Escrow of deposits; to bear interest; not subject to attachment.

[No change proposed.]

§ 45-1870. Copies of declaration and bylaws to be furnished to purchaser by declarant.

[No change proposed.]

§ 45-1871. Resale by unit owner; seller to obtain appropriate [statements] certificate from association and furnish to purchaser; scope of provisions.

(a) In the event of any resale of a condominium unit by a unit owner other than the declarant, such owner shall obtain from the unit owners' association and furnish to the purchaser, prior to the [contract] date of execution of the contract of sale by the purchaser [disposition] copies of the condominium instruments and a certificate setting forth the following, or else the contract shall be enforceable only at the option of the purchaser:

(1) Appropriate statements pursuant to § 45-1853(h) and, if applicable, § 45-1855;

(2) A statement of any capital expenditures anticipated by the unit owners' association within the current or succeeding 2 fiscal years;

(3) A statement of the status and amount of any reserves for capital expenditures, contingencies, and improvements, and any portion of such reserves earmarked for any specified project by the executive board [organ];

(4) A copy of the statement of financial condition for the unit owners' association for the then most recent fiscal year for which such statement is available and the current operating budget, if any;

(5) A statement of the status of any pending suits or judgments to which the unit owners' association is a party;

(6) A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and a statement whether such coverage includes public liability, loss or damage, or fire and extended coverage insurance with respect to the unit and its contents;

(7) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments; [and]

(8) A statement of the remaining term of any leasehold estate affecting the condominium or the condominium unit and the provisions governing any extension or renewal thereof; and

(9) The date of issuance of the certificate.

(b) The principal officer of the unit owners' association or such other officer or officers as the condominium instruments may specify, shall furnish the certificate [statements] prescribed the subsection (a) of this section upon the written request of any unit owner or purchaser within 10 days of the receipt of such request.

(c) Subject to the provisions of § 45-1861, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of Chapter 17 of Title 45.

§ 45-1872. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.

(a) This chapter shall be administered by the Mayor or his designee. The Mayor shall prescribe reasonable rules which shall be adopted, amended or repealed in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.). The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and such other rules as are necessary and proper to accomplish the purposes of this chapter. The initial such regulations shall be promulgated by the Mayor within 120 days after March 29, 1977.

(b) The Mayor by regulation, rule or order, after reasonable notice and hearing may require the filing of advertising material relating to condominiums prior to the distribution of such material.

(c) The Mayor may by regulation, rule or order approve the filing and use of an abbreviated public offering statement if the agency determines that the public interest and the interests of purchasers would best be served thereby. The Mayor shall determine whether or not such abbreviated disclosure will be permitted based upon consideration of the following factors among others:

(1) The total number of units being offered is small, which shall mean generally less than 10;

(2) Adequate disclosure of relevant information will otherwise be readily available to prospective purchasers;

(3) The class of purchasers will be comprised substantially of persons having the ability to protect their own interests (such as the present tenants); and

(4) In the case of a conversion condominium, no substantial renovation or remodeling of the units will be done.

(d) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation or order hereunder, the Mayor, with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(e) The Mayor may intervene in any suit involving the rights and liabilities of declarant with respect to the condominium being registered and any transactions related thereto. The Mayor may require the declarant to notify the Mayor of any suit by or against the declarant involving a condominium established or sold by the declarant.

(f) The Mayor may:

(1) Accept registrations filed in other jurisdictions or with the federal government;

(2) Contract with similar agencies in this or other jurisdictions to perform investigative functions; and

(3) Accept grants-in-aid from any governmental source.

(g) The Mayor shall notify the Rental Accommodations Commission whenever an application is made to register a conversion condominium and at such time as any application to register a conversion condominium is approved.

(h) With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with § 45-1863, the agency shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or any annual report.

§ 45-1873. Investigations and proceedings; powers of Mayor; enforcement through courts.

[No change proposed.]

§ 45-1874. Cease and desist and affirmative action orders; temporary cease and desist orders; prior notice thereof.

[No change proposed.]

§ 45-1875. Revocation of registration; notice; hearing; written finding of fact; cease and desist order as alternative.

[No change proposed.]

§ 45-1876. Judicial review of mayoral actions.

[No change proposed.]

§ 45-1877. Penalties; prosecution by Corporation Counsel.

[No change proposed.]

§ 45-1878. Severability.

[No change proposed.]

COMMENTS ON PROPOSED AMENDMENTS

Subchapter I. General Provisions

§ 45-1801. Applicability of chapter; corresponding terms; supersedure of prior law.

1. The Committee is concerned that the benefits of the proposed amendments should, to the maximum extent possible, apply to all condominiums in the District of Columbia -- both those created before as well as those created after the enactment of the amendments. To accomplish this result -- which the Committee views as particularly important with respect to the successor declarant provisions of the amendments -- the Committee proposes that the entire statute be reenacted as a new act and that § 45-1801 dealing with applicability of the statute be revised to conform to the format used in § 1-102 of the Uniform Act. In the Committee's view, this is the best approach for assuring maximum applicability of the new statute consistent with relevant constitutional principles.

2. The approach used in the Uniform Act and proposed by the Committee in subsections (a) and (c) of this section adopts a novel three-step procedure for dealing with condominiums created before the effective date of the amendments. First, certain provisions of the revised act automatically apply to "old" condominiums, but only prospectively and only in a manner which does not invalidate provisions of condominium instructions valid under "old" law. Second, "old" law remains applicable to previously created condominiums where not automatically displaced by the amended act. Third, owners of "old" condominiums may amend any provision of their condominium instruments, even if the amendment would not be permitted by "old" law, so long as (i) the amendment is adopted in accordance with the procedure required by "old" law and the existing condominium instruments and (ii) the substance of the amendment does not violate the amended statute.

3. The present D.C. Act is silent as to the general applicability of its provisions to condominiums located outside the District of Columbia but offered or sold in the District. Since many such condominium projects -- particularly resort projects and projects

in neighboring Maryland and Virginia -- are offered and sold here, the omission of such a provision from the D.C. Act creates an ambiguity as to the breadth of the statute's applicability to non-D.C. condominiums. (This problem is potentially exacerbated by the very broad definition of "offer" contained in the Act.)

Both the Uniform Act and the Virginia Act address this point expressly by including provisions which clarify that those statutes do not apply generally outside the enacting jurisdiction, although certain portions of the public offering statement requirements do apply to foreign condominiums. The Committee has adopted the Virginia statutory language in the proposed law subsection (d).

It should be noted that, under the Committee's proposal, the partial execution of a contract for the disposition of a condominium unit would trigger the public offering statement provisions of the statute even though the condominium was not physically located in the District of Columbia. While this result might appear harsh, the Committee believes the rule is necessary to preserve the intensity of the Act's consumer protection features.

§ 45-1802. Definitions.

1. The D.C. Act, at § 45-1842(e), presently defines the term "affiliated with" a declarant, but only for the narrow purpose of permitting the invalidation of certain contracts entered into by the declarant on behalf of the unit owners' association. Moreover, the definition given in § 45-1842(e) is somewhat ambiguous, particularly its reference to "substantial financial interest."

The Committee believes that a more explicit definition of "affiliate of a declarant" should be included in the definitional section of the D.C. Act. As will be seen from certain of the Committee's other proposals, this term covers an important concept that is useful for broader disclosure purposes and is needed for an adequate treatment of successor declarant issues. The definition proposed here is taken from § 1-103(1) of the Uniform Act and is similar to the definitions set forth in 12 U.S.C. § 1730(a) (which prescribes the authority of the Federal Savings and Loan Insurance Corporation to regulate the activities of savings and loan holding companies) and in 15 U.S.C. § 78(c)(18)

(which defines persons deemed to be associated with a broker or dealer for purposes of the federal securities laws). Unlike the present definition in the D.C. Act, the objective standards of the proposed definition permit a ready determination of the existence of affiliate status to be made.

The Committee is aware that increasing numbers of condominium projects are being financed through limited partnership syndications and, of course, does not wish to propose any legislative change which would unreasonably inhibit use of this device for raising equity capital. Plainly, such an inhibition could result if any limited partner of a declarant were automatically deemed to be an "affiliate" for purposes of the D.C. Act. Whatever the likelihood of such a holding under present law, the definition proposed by the Committee would make it clear that such a result would not obtain unless the limited partner contributed more than 20 percent of the declarant's equity capital.

2. Although often used in connection with condominium projects, the term "common profits" is somewhat misleading. Generally, a unit owners' association does not operate with a view toward generating "profits" for its members and, indeed, if proper budgeting is undertaken, the association should normally function on a "breakeven" basis (except for the maintenance of reserves). Recognizing these facts, the Uniform Act does not use the term "common profits" but refers to funds of the association available for distribution to the unit owners as "surplus funds," a term which is clearly preferable. (See, e.g., § 3-114 of the Uniform Act.) The Committee endorses the approach taken in the Uniform Act and, accordingly, recommends the deletion of the term "common profits" from the D.C. Act.

3. The definition of "condominium" used in the D.C. Act (§ 45-1802(4)) is circular. It includes real property "lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter." However, since § 45-1801 of the D.C. Act provides that the statute is applicable only to "condominiums," it would be theoretically possible for a person to create a condominium in the District and avoid the provisions of the statute by the simple device of not filing the condominium instruments and thus never submitting the project "to this chapter."

The solution to this obviously undesirable result is to amend the definition of "condominium" to set out a substantive definition of the term -- i.e., to describe precisely the concept of a condominium. The revised definition which the Committee proposes is taken from § 1-103(7) of the Uniform Act.

4. The present definition of "declarant" in the D.C. Act is deficient in at least two respects, both related to the provision's use of the execution of the declaration as the "litmus test" of whether a person should be regarded as a declarant. In one respect the definition -- which makes "all persons who execute or propose to execute the declaration" declarants -- is too broad since § 45-1814 of the D.C. Act requires that the declaration be executed by "all of the owners and lessees of the submitted land." The result is that all ground lessors of leasehold condominiums are rendered declarants for purposes of the liabilities imposed under the statute even though some such lessors do not exercise any rights as developers and have no interest in the projects beyond the collection of ground rents.

In another respect the present definition is too narrow since it fails to deal effectively with the issue of successor declarants -- e.g., foreclosing mortgagees who may never "execute or . . . propose to execute" a declaration. To be sure, the present definition does refer to "[a]ny successors . . . who come to stand in the same relation to the condominium as their predecessors did" However, this ambiguous reference creates numerous difficulties in sorting out the rights, obligations, and liabilities of potential successor declarants. Considering the substantial liabilities imposed upon a declarant under the D.C. Act, these are obviously matters that must be defined with more precision.

As in the case of the definition of "condominium," the Committee proposes to correct both these defects in the present definition by substituting a new definition of "declarant" that describes those persons who are declarants in substantive and operational terms. The proposed definition -- which forms an integral part of the Committee's overall approach for dealing with successor declarant issues -- is taken from § 1-103(9) of the Uniform Act. (The Committee notes that, in 1982, the Virginia Act was amended to incorporate the same language.)

5. The definition of "dispose" or "disposition" presently covers any voluntary transfer of an interest in a condominium unit, even a transfer by a declarant to a successor declarant or to a real estate broker for resale. In the Committee's view, neither of the latter two transfers should trigger the public disclosure provisions of the statute. Accordingly, the Committee proposes to modify this definition to make clear that only transfers "to a purchaser" are covered and to amend the definition of "purchaser" to exclude "a declarant or a person in the business of selling real estate for his own account." Also, the Committee proposes to clarify that a transfer of a condominium unit pursuant to a deed in lieu of foreclosure will not be considered a disposition triggering the consumer protection provisions of the Act.

6. The Committee proposes that, throughout the statute, the term "executive organ" be changed to "executive board." Such a change will bring the D.C. Act into conformity with general usage in the condominium field and will more accurately describe the organizational format used in most condominium regimes.

7. The Committee believes that it would be useful to include a definition of "real estate" in the D.C. statute, in part because the term carries a somewhat broader connotation in common usage than the word "land." At the same time, the Committee does not wish to cause confusion by suggesting a deletion of the word "land" from the Act, since for present purposes the terms "real estate" and "land" should be viewed as interchangeable. Consequently, the Committee proposes a single definition for "real estate" or "land."

The Committee also believes that the definition of "real estate" contained in the Uniform Act (§ 1-103(21)) is a more comprehensive and helpful definition than the definition of "land" contained in the present D.C. statute. Accordingly, the Committee proposes that the Uniform Act's definition be included in the D.C. Act as a new definition of "real estate" or "land."

8. One of the additions which the Committee proposes for the D.C. Act is the inclusion of a provision permitting the delegation of certain powers of the unit owners' association to a master association which may exercise similar powers with respect to several

condominiums. This provision, set forth as a proposed new § 45-1858, requires the addition of a definition for the term "master association."

9. The present definition of "offer" in the D.C. Act is so broad as to cover any advertisements or communications of any sort with respect to projects located in the District. As a consequence, developers of potential condominium projects can find themselves in difficult predicaments. To cite but one example -- if the developer of a conversion condominium would like to give current residents advance notice of the opportunity which they will be afforded under § 45-1868 of the Act to purchase their units and he provides such information prior to the approval of his application for registration, the developer would be in technical violation of § 45-1862 of the Act since he would have made an "offer" to dispose of a condominium unit in advance of registration.

The Committee believes that this problem could be resolved by adding to the D.C. Act a "red herring" provision of the type proposed here. The language suggested is taken from a 1981 amendment to § 55-79.41 of the Virginia Act.

10. For an explanation of the changes proposed in the definition of "purchaser," see item 5, above.

11. For an explanation of the addition of a definition for "real estate," see item 7, above.

12. One of the principal issues addressed by the Committee in its proposed amendments is the problem of successor declarants -- i.e., what rights they may exercise and what obligations and liabilities they assume to unit owners and the unit owners' association. This issue is dealt with in detail in the proposed new § 45-1840 and the comments thereto. Key to the proposed approach, however, is the concept of "special declarant rights," a term which is defined in this section.

The term "special declarant rights" seeks to isolate those rights reserved for the benefit of a declarant which are unique to the declarant and not shared in common with other unit owners. The list, while short, encompasses virtually every significant right which a declarant might seek in the course of creating or expanding a condominium.

Under the proposed definition of "declarant" (see item 4, above), any person who reserves a special declarant right is a declarant, as is any person who succeeds to such a right under § 45-1840. Thus, the concept of special declarant rights triggers the imposition of obligations on those who possess or exercise the rights. Under § 45-1840, those obligations vary significantly depending upon the particular special declarant rights possessed or exercised by a particular declarant.

The proposed definition of special declarant rights is adapted from § 1-103(23) of the Uniform Act.

13. The Committee proposes to add new disclosure requirements to the public offering statement provisions of the D.C. Act to deal with time share condominiums. (See the comments to § 45-1864 below.) Those additions require a definition of "time share," the proposed one being taken from § 1-103(24).

14. The Committee suggests two changes to the present definition of "unit owner." First, we propose that a reference to declarants be included in the definition to resolve any ambiguity which may exist that declarants are subject to all of the obligations of other unit owners, including the obligation to pay common expense assessments against their units. Although the Committee believes that § 45-1852(c) already sets forth clearly the obligation of declarants to pay common expense assessments with respect to units which they own, there can be no harm in underscoring that obligation and in making it clear that declarants are liable for other obligations and responsibilities of unit owners as well.

Second, consistent with the definition of "unit owner" set out in § 1-103(26) of the Uniform Act, the Committee proposes to add language to the present definition in the D.C. Act to exclude expressly any person who holds an interest in a unit solely as security for a debt. It should be noted that, following a foreclosure or the receipt of a deed in lieu of foreclosure, a lender would be a unit owner within the proposed definition since his interest in the unit would no longer be "solely as security for a debt."

§ 45-1803. Ownership of individual units.

Since the Committee proposes making "real estate" a defined term in the D.C. Act, we suggest that the term "real property" as used in this section be changed to "real estate."

§ 45-1804. Separate taxation of units.

The Committee proposes that this section be modified to make it clear that no tax or assessment may be levied against the condominium as a whole or against any portion of the common elements, but only against the units. The present D.C. Act does not address explicitly the possibility of a tax or assessment against the common elements.

§ 45-1806. Eminent domain; allocation of award; proportionate shares of common areas and redetermination thereof where units or parts of units taken; reallocation of voting rights, surplus funds, and future liabilities; recordation of decree.

The Committee proposes changing the term "common profits" as used in this section to "surplus funds," consistent with the comments set forth in item 2 of § 45-1802, above.

§ 45-1807. Variation by agreement.

1. Consistent with the approach taken in both the Uniform Act and the Virginia Act, the Committee proposes that a new section be added prohibiting the variation by agreement of any requirement of the D.C. Act, except where such variation is expressly permitted in the statute. In the Committee's view, the D.C. Act represents a carefully balanced approach to the development and regulation of condominiums, an approach that takes into account the often competing interests of developers, purchasers, lenders, and others. To permit random variation of the statute's provisions is, in the Committee's judgment, inconsistent with the overall statutory scheme.

2. One of the consumer protections included in the D.C. Act is the requirement for consent by specified percentages of unit owners to particular actions or changes in the condominium instruments. In order to prevent declarants from evading these requirements

by obtaining powers of attorney from all unit owners (a practice common in some jurisdictions), the proposed section forbids the use by a declarant of any device to evade the limitations or prohibitions of the statute or of the condominium instruments.

§ 45-1808. Interpretation of chapter.

Since the revised act will, in many important respects, track the language of the Uniform Act and of the Virginia Act, the Committee believes that it is important that the courts of the District of Columbia be empowered to consider the decisions of courts in various states which may have enacted the Uniform Act or other condominium statutes similar to that proposed for the District. To accomplish this result, a new § 45-1808 is proposed.

Subchapter II. Establishment of Condominiums

§ 45-1811. Creation of condominiums; recordation of instruments; plats.

The Committee perceives no reason why all units within a condominium should be contiguous or on the same square or contiguous squares. Accordingly, in keeping with the flexibility generally conferred by the statute the Committee proposes that the last sentence of the present section be deleted.

§ 45-1812. Release of liens prior to conveyance of 1st unit; exemption; liens for labor or material applied to individual units or common areas; partial release.

The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above.

§ 45-1814. Declaration, bylaws and certain amendments of each to be executed by owners and lessees.

The reference in this section to § 45-1838 appears to be erroneous. The Committee believes that the proper reference is § 45-1829.

§ 45-1815. Recordation of condominium instruments; amendment and certification thereof.

The Committee is advised that, from time to time, the Office of the Recorder of Deeds has required changes to be made in condominium instruments that were not necessary to comply with the provisions of the D.C. Act. The purpose of the proposed addition to this section is to clarify that the Recorder of Deeds lacks any authority to impose such additional requirements.

§ 45-1818. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint; insubstantial failure to comply with chapter.

1. The D.C. Act sets forth numerous requirements with respect to the condominium instruments, many of which might arguably affect the quality of the title conveyed to a unit owner. The purpose of the proposed section is to clarify that insubstantial failures to comply with statutory requirements will not tender such title unmarketable or otherwise affect it. For example, the failure of the condominium instruments to include the word "condominium" in the name of a project as required in § 45-1820(a)(1) might constitute an insubstantial failure to comply with the statute. Likewise, the failure of the undivided interests expressed in a declaration to add up to 1 if stated as fractions or 100 percent if stated as percentages, as required in § 45-1821(c), might constitute an insubstantial failure in some cases.

2. Whether a substantial failure of the condominium instruments to comply with the provisions of the statute does or does not affect marketability of title should be determined by reference to the law of the District of Columbia dealing with the marketability of titles to real estate generally and not by reference to this Act. That sentiment is expressed in the second sentence of the proposed section.

§ 45-1819. Suit for noncompliance with this chapter or condominium instruments.

The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above. The remaining change proposed in this section is for purposes of clarification only since the Committee believes it reflects what is already the correct interpretation of the present statute.

§ 45-1823. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.

1. The Committee proposes two changes to this section. First, the present procedures set forth in subsections (b) and (c) for the recordation of amendments to the condominium instruments have proved awkward in practice since the unit owners' association can never be certain that amendments have been filed. This, in turn, creates uncertainty that the records of the association are correct with respect to the assignment of limited common elements and, thus, potential confusion with respect to the levying of assessments therefor. To correct this problem, the Committee proposes that the procedures be modified to require recordation of the amendments by the unit owners' association.

2. Second, the reference to § 45-1820(a)(6) in subsection (c) appears to be erroneous. The Committee believes that the correct reference is to § 45-1820(a)(5).

§ 45-1833. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improvements designated for such; liability for damages arising out of use of certain easements.

The change proposed in this section is solely to correct a typographical error.

§ 45-1835. Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

1. The Committee proposes changing the term "common profits" as used in this section to "surplus funds," consistent with the comments set forth in item 2 of § 45-1802, above.

2. For the same basic reasons as expressed in the comments set forth in item 1 of § 45-1823, above, the Committee proposes modifying subsection (f) to require recordation of the necessary instruments by the unit owners' association.

§ 45-1836. Subdivision of units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

For the same basic reasons as expressed in the comments set forth in item 1 of § 45-1823, above, the Committee proposes modifying subsection (f) to require recordation of the necessary instruments by the unit owners' association.

§ 45-1837. Amendment of instruments -- before conveyance of 1st unit; same -- after conveyance of 1st unit; validity of amendment; recordation and certification of amendment; limitation on scope of amendment.

1. To make the somewhat complicated provisions set forth in §§ 45-1837 and 45-1838 more easily understandable, the Committee proposes that the two sections of the present Act be restructured such that § 45-1837 deals only with amendments to the condominium instruments, whether before or after the conveyance of the first unit in the project, and § 45-1838 deals only with termination of the condominium.

2. In the proposed new § 45-1837, the Committee suggests a number of additions -- taken principally from § 2-117 of the Uniform Act -- to fill in several "gaps" not addressed in the present D.C. Act. Subsection (a) of the proposed new section is taken from the present § 45-1837. Subsection (b) is taken from the present § 45-1838(b), as modified by language from § 2-117(a) of the Uniform Act respecting non-residential units. Subsection (c) is taken from § 2-117(b) of the Uniform Act. Subsection (d) is adapted from § 2-117(e) of the Uniform Act. Subsection (e) represents a combination of the present § 45-1838(e) and § 2-117(d) of the Uniform Act.

§ 45-1838. Termination of condominium -- before conveyance of 1st unit; same -- after conveyance of 1st unit; termination agreements; sale of property following termination; rights of unit owners following termination; powers of unit owners' association following termination; foreclosure or enforcement of liens or encumbrances.

1. One of the least considered problems of condominium ownership is the issue of how a condominium might be terminated in a way that protects the legitimate interests of unit owners, lenders, and other creditors. The question might arise as a result of the destruction of the condominium property or as a result of a voluntary decision by unit owners to terminate the regime -- typically in order to sell the project to a third party. In either case, the issues raised are complex and require careful consideration. The Committee believes that the termination provisions set forth in § 2-118 of the Uniform Act are far superior to those contained in the present D.C. Act, particularly because of the detail with which the Uniform Act provisions address various circumstances which could arise upon termination. Accordingly, the Committee proposes the adoption of a new § 45-1838 which uses the Uniform Act's approach, as modified by the requirements presently set forth in § 45-1838 and by several alterations made by the Committee.

2. Subsections (a) and (b) of the proposed new section are taken from existing provisions of §§ 45-1837 and 45-1838.

3. Subsection (c) of the proposed new section describes the procedure for execution of the termination agreement. It recognizes that not all unit owners will be able to execute the same instrument, and permits execution or ratification of the master termination agreement. Since the transfer of an interest in real estate is being accomplished by the agreements, each of the ratifications must be executed in the same manner as a deed. Importantly, the agreement must specify the time within which it will be effective; otherwise, the project might be indefinitely in "limbo" if ratifications had been signed by some, but not all, required unit owners, and the signing unit owners fail to revoke their agreements. Importantly, the agreement becomes effective only when it is recorded.

4. Subsections (d) and (e) of the proposed new section deal with the question of when all the real estate in the condominium, or the common elements, may be sold without unanimous consent of the unit owners. The section reaches a different result based on the physical configuration of the project.

Subsection (d) states that if a condominium contains only units having horizontal boundaries -- a typical high rise building -- the unit owners may be required to sell their units upon termination despite objection. Under subsection (e), however, if the project contains any units which do not have horizontal boundaries -- for example, a single family home project where some of the units include title to land and could theoretically continue apart from a condominium as a title matter -- then the termination agreement may not force dissenting unit owners to sell their units unless the condominium instruments as originally recorded provided otherwise. Obviously, of course, if all the unit owners consent to the sale of the units, sale of the entire development would be possible.

5. Subsection (f) of the proposed new section describes the powers of the unit owners' association during the pendency of the termination proceedings. It empowers the association to negotiate for the sale but makes the validity of any contract dependent on unit owner approval. This subsection also makes clear that, upon termination, title to the real estate shall be held by the unit owners' association, so that the association may convey title without the necessity of each unit owner signing the deed. Finally, this subsection makes clear that, until the association delivers title to the condominium property, the project will continue to operate as it had prior to the termination, thus insuring that the practical necessities of operation of the real estate will not be impaired.

6. Subsection (g) of the proposed new section contemplates the possibility that a condominium might be terminated but the real estate not sold. While this is not likely to be the usual case, it is important to provide for the possibility.

7. A complex series of creditors' rights questions may arise upon termination. Those questions involve competing claims of first mortgage holders on individual units, other secured and unsecured creditors of individual

unit owners, judgment creditors of the unit owners' association, creditors of the association to whom a security interest in the common elements has been granted, and unsecured creditors of the association. Subsection (h) of the proposed new section attempts to establish general rules with respect to these competing claims, but leaves to the general law the resolution of the priorities of those competing claims.

8. Subsection (i) of the proposed new section departs significantly from the usual result under most condominium acts (other than the Uniform Act). Under those acts the proceeds of the sale of the entire project are distributed upon termination to each unit owner in accordance with the common element interest which was allocated at the outset of the project. Of course, in an older development, those original allocations will bear little resemblance to the actual value of the units. For that reason, this subsection adopts an appraisal procedure for distribution of the sales proceeds, and this appraisal may dramatically affect the amount of dollars actually received by unit owners. Accordingly, it is likely the appraisal will be required to be distributed prior to the time the termination agreement is approved, so that unit owners may understand the likely financial consequences of the termination.

9. Subsection (i)(2) is an exception to the "fair market value" rule. It provides that, if appraisal of any unit cannot be made, either through pictures or comparison with other units, so that any unit's appropriate share in the overall proceeds cannot be calculated, then the distribution will fall back on the only objective, albeit artificial, standard available, which is the common element interest allocated to each unit.

10. As provided in the proposed subsection (k), foreclosure of a mortgage or other lien or encumbrance does not automatically terminate the condominium, but, if a mortgagee or other lienholder (or any other party) acquires units with a sufficient number of votes, that party can cause the condominium to be terminated pursuant to subsection (b) of the proposed new section.

11. A mortgage or deed of trust on a condominium unit may provide for the lien to shift, upon termination, to become a lien on what will then be the borrower's undivided interest in the whole property. However, such a shift would be deemed to occur even in the absence

of express language, pursuant to the first sentence of subsection (h).

12. Any termination agreement used pursuant to the proposed new section should adopt or contain any restrictions, covenants and other provisions for the governance and operation of the property formerly constituting the condominium which the owners deem appropriate. These might closely parallel the provisions of the condominium instruments. This is particularly important in the case of a condominium which is not to be sold pursuant to the terms of the termination agreement. In the absence of such provisions, the general law governing tenancies in common would apply.

13. Subsection (k) recognizes the possibility that a pre-existing lien might not have been released prior to the time the condominium instruments were recorded. In the absence of a provision such as subsection (k), recordation of the condominium instruments would constitute a changing of the priority of those liens; and it is contrary to all expectations that a prior lienholder may be involuntarily subjected to the condominium instruments. For that reason, this subsection permits the non-consenting prior lienholder upon foreclosure to exclude the real estate subject to his lien from the condominium.

§ 45-1840. Transfer of special declarant rights.

1. One of the key issues which the Committee set out to address was the extent to which obligations and liabilities imposed upon a declarant by the D.C. Act should be transferred to a third party by a transfer of the declarant's interest in a condominium. There are two parts to the problem -- (i) what obligations and liabilities to unit owners (both existing unit owners and persons who become unit owners in the future) should a declarant retain, notwithstanding his transfer of interests; and (ii) what obligations and liabilities may fairly be imposed upon the declarant's successor in interest. Obviously, there are particularly important questions to lenders who foreclose on troubled projects or accept deeds in lieu of foreclosure.

The new section which the Committee proposes for dealing with these complex issues is based on § 3-104 of the Uniform Act. This section strikes a balance between the obvious need to protect the interests of unit owners and the equally important need to protect

innocent successors to a declarant's rights, especially persons such as mortgagees whose only interest in the condominium project is to protect their debt security. The general scheme of the section is to impose upon a declarant continuing obligations and liabilities for promises, acts, or omissions undertaken during the period that he was in control of the condominium, while relieving a declarant who transfers all or part of his special declarant rights in a project of such responsibilities with respect to the promises, acts, or omissions of a successor over whom he has no control. Similarly, the section imposes obligations and liabilities arising after the transfer upon a non-affiliated successor to a declarant's interests, but absolves such a transferee of responsibility for the promises, acts, or omissions of a transferor declarant over which he had no control. Finally, the section makes special provision for the interests of certain successor declarants (e.g., a mortgagee who succeeds to the rights of the declarant pursuant to a "deed in lieu of foreclosure" and who holds the project solely for transfer to another person) by relieving such persons of virtually all of the obligations and liabilities imposed upon declarants by this Act.

2. Subsection (a) of the proposed new section provides that a successor in interest to a declarant may acquire the special rights of the declarant only by recording an instrument which reflects a transfer of those rights. This recordation requirement is important to determine the duration of the period of declarant control pursuant to § 45-1842, as well as to place unit owners on notice of all persons entitled to exercise the special rights of a declarant under the statute. The transfer by a declarant of all of his interest in a condominium project to a successor, without a concomitant transfer of the special rights of a declarant pursuant to this subsection, results in the automatic termination of such special declarant rights and of any period of declarant control.

3. Under subsection (b) of the proposed new section, a transferor declarant remains liable to unit owners (both existing unit owners and persons who subsequently become unit owners) for all obligations and liabilities, including warranty obligations on all improvements made by him, arising prior to the transfer. If a declarant transfers any special declarant right to an affiliate, the transferor remains subject to all liabilities specified in paragraph (1) of subsection (b)

and, in addition, is jointly and severally liable with his successor in interest for all obligations and liabilities of the successor.

4. The obligations and liabilities imposed upon transferee declarants under the statute are set forth in subsection (e). In general, a transferee declarant (other than an affiliate of the original declarant and other than a successor whose interest in the project is solely for the protection of debt security) becomes subject to all obligations and liabilities imposed upon a declarant by the statute or by the condominium instruments with respect to any promises, acts, or omissions undertaken subsequent to the transfer which relate to the rights he holds. Such a transferee is liable for the promises, acts, or omissions of the original declarant undertaken prior to the transfer, except as set forth in paragraph (e)(2)(ii). For example, a successor declarant would not be liable for the warranty obligations of the original declarant with respect to improvements to the project made by the original declarant. Similarly, a successor would not be liable, under normal circumstances, for any misrepresentation or breach of fiduciary duty by the original declarant prior to the transfer.

5. To preclude declarants from evading their obligations and liabilities under the statute by transferring their interests to affiliated companies, paragraph (1) of subsection (e) makes clear that any successor declarant who is an affiliate of the original declarant is subject to all obligations and liabilities imposed upon the original declarant by the statute or by the condominium instruments. Similarly, as previously noted, paragraph (2) of subsection (b) provides that an original declarant who transfers his rights to an affiliate remains jointly and severally liable with his successor for all obligations and liabilities imposed upon declarants by the statute or by the condominium instruments.

6. The section handles the problem of certain successor declarants (i.e., persons whose sole interest in the condominium project is the protection of debt security) in three ways. First, subsection (c) provides that, in the case of a foreclosure of a mortgage, a sale by a trustee under a deed of trust, or a sale by a trustee in bankruptcy of any units owned by a declarant, any person acquiring title to all of the units being foreclosed or sold may request the transfer of special

declarant rights. In that event, and only upon such request, such rights will be transferred in the instrument conveying title to the units and such transferee will thereafter become a successor declarant subject to the other provisions of this section. In the event of a foreclosure, sale by a trustee under a deed of trust, or sale by a trustee in bankruptcy of all units owned by a declarant, if the transferee of such unit does not request the transfer of special declarant rights, then, under subsection (d), such special declarant rights cease to exist and any period of declarant control terminates.

Second, any person who succeeds to special declarant rights as a result of the transfers just described or by deed in lieu of foreclosure, may, pursuant to paragraph (4) of subsection (e), declare his intention (in a recorded instrument) to hold those rights solely for transfer to another person. Thereafter, such a successor may transfer all special declarant rights to a third party acquiring title to any units owned by the successor but may not, prior to such transfer, exercise any special declarant rights other than the right to control the executive board of the unit owners' association in accordance with the provisions of § 45-1842. A successor declarant who exercises such a right is relieved of any liability under the statute except liability for any acts or omissions related to his control of the executive board of the association. This provision is designed to deal with the typical problem of a foreclosing mortgage lender who opts to bid in and obtain the project at the foreclosure sale solely for the purpose of subsequent resale. It permits such a foreclosing lender to undertake such a transaction without incurring the full burden of declarant obligations and liabilities. At the same time, the provision recognizes the need for continuing operation of the unit owners' association and, to that end, permits a foreclosing lender to assume control of the association for the purpose of ensuring a smooth transition.

Third, paragraph (3) of subsection (e) provides that a successor who has only the right to maintain model units, sales offices, and sign does not thereby become subject to any obligations or liabilities as a declarant, except for the obligation to provide a public offering statement and any liability resulting therefrom. This provision also is designed to protect mortgage lenders and contemplates the situation where a lender takes over a condominium project and desires

to sell out existing units without making any additional improvements to the project. This provision facilitates such a transaction by relieving the mortgage lender, in that instance, from the full burden of obligations and liabilities ordinarily imposed upon a declarant under the statute.

Under other provisions of the statute, a declarant may reserve the right to create additional units in portions of the condominium which were originally designated as common elements. The declarant becomes the owner of any units created but, prior to creation of units, the title to those portions of the condominium is in the unit owners. The right to create the units is an interest in land in which a security interest might be granted. If the mortgagee of that interest forecloses, the purchaser at the foreclosure sale has the choices concerning development rights and resulting liability which are described in the preceding paragraph. That is, under subsections (c) and (d), the purchaser may limit his liability by agreeing to hold the rights only for the purpose of transfer as provided by paragraph (e)(4) or may buy the rights under paragraph (c).

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It then goes on to describe the various methods used to collect and analyze data, including surveys, interviews, and focus groups.

3. The next section details the results of the data collection process, highlighting key findings and trends.

4. This is followed by a discussion of the implications of these findings for policy and practice.

5. Finally, the document concludes with a summary of the overall findings and a list of recommendations for future research.

6. The document is organized into several sections, each covering a different aspect of the research process.

7. The first section provides an overview of the research objectives and the scope of the study.

8. The second section describes the research design and the methods used to collect and analyze data.

9. The third section presents the results of the data collection process, including a detailed description of the data and the findings.

10. The fourth section discusses the implications of these findings for policy and practice, and provides a list of recommendations for future research.

11. The fifth section provides a summary of the overall findings and a list of recommendations for future research.

12. The document is organized into several sections, each covering a different aspect of the research process.

13. The first section provides an overview of the research objectives and the scope of the study.

14. The second section describes the research design and the methods used to collect and analyze data.

Subchapter III. Control and Governance of Condominiums.

§ 45-1841. Bylaws; recordation; unit owners' association and executive board thereof; powers and duties; officers; and amendment and contents thereof.

1. The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above.

2. The Committee proposes changing the term "common profits" in this section to "surplus funds," consistent with the comments set forth in item 2 of § 45-1802, above.

3. Since the Committee proposes the addition of a new comprehensive section on insurance (see comments on § 45-1850, below), we suggest the deletion of the present subsection (e) in this section and its incorporation as part of the new section.

§ 45-1842. Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board; strict construction.

1. The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above.

2. Since the term "affiliate of a declarant" is proposed as a defined term in the statute (see comments set forth in item 1 of § 45-1802, above), the Committee suggests that that term be used in subsection (b)(1) of this section and that the definitional provision set out in subsection (e) be deleted.

3. The Committee is concerned that the last sentence of subsection (b)(1) as it presently appears unfairly imposes upon a unit owners' association the obligation to continue a management contract or other agreement with a declarant or an affiliate of a declarant for up to two years following the termination of the period of declarant control, regardless of the terms

of such contract or agreement. Given the inherent opportunity for abuse present in such a provision (and considering the abuses which have, in fact, been experienced in other jurisdictions), the Committee believes that the unit owners' association should be able to terminate such contracts relatively promptly following the expiration of the period of declarant control. The language which we propose in this regard is taken from § 55-79.74 of the Virginia Act.

§ 45-1843. Annual meetings of unit owners' association --
Notice.

The present requirement that an officer who hand-delivers a notice of meetings of the unit owners' association must obtain receipts of the acceptance of such notice from the unit owners is impractical. Not only are such receipts often hard to obtain because the unit owner (as opposed to a spouse or child) is not home when the notice arrives, but uncooperative unit owners can effectively block meetings by refusing to execute receipts for the notices they receive. Accordingly, the Committee proposes that this provision be modified to require a certification of delivery by the officer concerned.

§ 45-1844. Same -- Executive board; quorums.

The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above.

§ 45-1845. Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.

1. The Committee proposes three changes in the present subsection (d). First, we suggest that the somewhat ambiguous reference to proxy signatures being "duly acknowledged" be modified to require that such signatures be "witnessed by a person who shall sign his full name and address." Second, the Committee believes that the present requirement that proxies be signed by persons "having authority . . . to execute deeds on behalf of that person" is unduly restrictive and could exclude agents or attorneys specifically empowered to execute proxies. Accordingly, we recommend that the requirement be deleted. And third, the Committee

proposes additional language in the last sentence of the subsection to make it clear that a valid proxy is not terminated by a recess or temporary adjournment of a meeting (e.g., for the purpose of obtaining a quorum).

2. The Committee does not believe that the present language in subsection (f) accomplishes its intended purpose since, depending upon the number of units owned by the unit owners' association, it could effectively prevent the association from having a quorum at a meeting or ever achieving the necessary majorities to take specific actions. Consequently, the Committee suggests modifying the language to provide that any votes held by the unit owners' association may be counted as present for purposes of determining a quorum at any meeting of the association and that the votes of the association will be deemed cast in the same proportion at any such meeting as the non-association votes present.

§ 45-1847. Maintenance, repair, etc., of condominiums; right of access for repair; liability for damages arising from exercise thereof.

1. The change proposed in the present subsection (a) is solely for the purpose of correcting a typographical error.

2. Since the Committee proposes the addition of two new sections dealing with warranty obligations (see the comments on §§ 45-1856 and 45-1857, below), the present subsections (b) and (c) of this section should be deleted.

§ 45-1848. Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements; limitations on powers; standard of care of executive board members and officers.

1. After reviewing the present provisions of the D.C. Act respecting the powers of the unit owners' association and comparing them with § 3-102 of the Uniform Act, the Committee is persuaded that the Uniform Act provisions are more comprehensive and more carefully drawn. To cite but one example, the present § 45-1848(a)(2) empowers the association "to sue on behalf of all unit owners," a provision that leaves ambiguous whether the association may be sued (and, if so, on what types of causes of action), whether the

association may sue on behalf of less than all of the unit owners, and whether the association may participate in administrative proceedings (as opposed to litigation). All of these issues are addressed with precision in § 3-102(a)(4) of the Uniform Act. Consequently, the Committee proposes that -- with certain minor modifications -- the provisions of the Uniform Act dealing with the powers of the association (i.e., § 3-102(a)) be substituted for the present subsection (a) in the D.C. Act. However, it should be noted that, in recommending that the powers of unit owners' associations as enumerated in the statute should be expanded, the Committee does not mean to suggest that these additional powers if presently being exercised by unit owners' associations under current law are in any way invalid.

2. In the present subsection (b), the Committee proposes changing the term "executive organ" to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above.

3. The Committee proposes adding a new subsection (c), taken from § 3-102(b) of the Uniform Act, making it clear that a declarant may not avoid the implications of the termination of the period of declarant control by specifying in the condominium instruments special (and more favorable) provisions for the association's dealings with the declarant than with other persons.

4. As an additional consumer protection provision, the Committee proposes the addition of a new subsection (d) imposing upon all persons who serve as executive board members and officers of the unit owners' association the obligation to act as fiduciaries on behalf of the unit owners.

§ 45-1849. Tort and contract liability of association and declarant; judgment liens against common property and individual units.

1. The Committee proposes changing the term "executive organ" in subsection (c) to "executive board," consistent with the comments set forth in item 6 of § 45-1802, above.

2. With respect to subsection (d), the Committee believes that additional language is required to assure that a unit owner who pays his pro rata share of a judgment entered against the condominium is not assessed

to make up the deficiency for unit owners who refuse to pay their shares through the device of a special assessment levied by the unit owners' association. The Committee thinks that such an addition is fully consistent with the thrust of the present subsection. The language proposed is taken from § 3-117(c) of the Uniform Act.

§ 45-1850. Insurance obtained by association; provisions of insurance policies; adjustment of losses; additional insurance of unit owners; certificates of insurance; repair and replacement of damaged property.

1. In the Committee's view, the present provisions of this section do not deal adequately with the complex issues involved in the insuring of condominium projects. Consequently, the Committee proposes that the present section be deleted and that, in lieu thereof, an adaptation of § 3-113 of the Uniform Act be used.

2. Subsections (a) and (b) of the proposed new section provide that the required insurance must be maintained only to the extent reasonably available. This permits the unit owners' association to comply with the insurance requirements even if certain coverages are unavailable or unreasonably expensive.

3. Subsection (b) represents a significant departure from the present law in virtually all states (other than those using the Uniform Act) by requiring that the unit owners' association obtain and maintain property insurance on both the common elements and the units within buildings with "stacked" units. While it has been common practice in many parts of the country (either by custom or as mandated by statute) for associations to maintain property insurance on the common elements, it has generally not been the practice for the property insurance policy to cover individual units as well. However, given the great interdependence of the unit owners in the stacked unit condominium situation, mandating property insurance for the entire building is the preferable approach. Moreover, such an approach will greatly simplify claims procedures, particularly where both common elements and portions of a unit have been destroyed. If common elements and units are insured separately, the insurers could be involved in disputes as to the coverage provided by each policy.

The section does not mandate association insurance on units in town house or other arrangements in which there are no stacked units. However, if the developer wishes, the condominium instruments may require association insurance as to units having shared walls or as to all units in the development. Many developments will have some units with horizontal boundaries and other units with no horizontal boundaries. In that case, association insurance as to the units having horizontal boundaries is required, but it is not necessary as to other units.

4. The distinction between what is a common element and what is a unit with respect to the insurance coverage required by this section is complex. The definitions of common elements and a unit in § 45-1802(2) and (34) are not sufficient for this purpose. To determine the distinction between the common elements and units, one must refer first to the condominium instruments' provisions on unit boundaries. Those provisions will define the unit boundaries. If the condominium instruments fail to do so, the provisions of § 45-1816 apply.

In summary, § 45-1816 provides that, if the condominium instruments are silent, all non-loadbearing and non-structural portions of the walls, floors, and ceilings are part of the unit, while all loadbearing and structural portions of the walls, floors, and ceilings are common elements. Further, with respect to any structure partially within and partially outside of the boundaries of a unit, any portion thereof serving only that unit is a limited common element (see definition in § 45-1802(19)), and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. This treats and defines ownership of all portions of the electrical, plumbing, and mechanical systems serving the building not entirely within the boundaries of a unit.

All spaces, interior partitions, electrical, plumbing, and mechanical systems, and all other items within the boundaries of the unit which are attached to the unit boundaries, whether or not deemed fixtures under general law, are part of the unit.

Put simply, if any item is installed, constructed, repaired, or replaced by the declarant or his successor in connection with the original sale of a stacked unit, the item is insured by the unit owners' association.

Clearly, this does not include items of personal property easily movable within the unit or easily removable from the unit (whether or not deemed a fixture under general law), such as a vase, table, or other furnishings. If installed by the unit owner, the item should be insured by the unit owner. Those items, installed by the unit owner and not covered by the association policy, are called "improvements and betterments."

5. Although "all risk" coverage is not required as to conversion buildings, but merely fire and extended coverage, this is not intended to imply that such coverage is unnecessary. "All risk" coverage is not required because it may not be appropriate in the case of an unrenovated conversion where cost is a critical factor.

6. The minimum requirement as to the amount of insurance, which is 90% of replacement cost, should not be viewed as a recommendation; rather, the 90% is a floor. Typically, many condominium documents require insurance in an amount equal to 100% of the replacement cost of the insured property. This section permits greater flexibility, however, inasmuch as different types of construction and varieties of projects may not require such total coverage with its attendant higher premium cost.

7. Subsection (a)(2) covers only the liability of the unit owners' association, and unit owners as members, but does not cover the unit owner's individual liability for his acts or omissions or liability for occurrences within his unit.

8. Clause (i) of the third sentence of subsection (h) would operate as follows: (1) if the condominium consists of campsites, restoration after fire damage might consist of merely resodding the area damaged; (2) if the condominium consists of separate garden-type buildings, restoration after fire damage might consist of demolishing the remaining structure and paving or landscaping the area; and (3) if the condominium consists of a single high-rise building, restoration may not be required (if the building is substantially destroyed) inasmuch as "a condition compatible with the remainder of the condominium" would be damaged and unrestored.

9. The scheme of this section, as set forth in subsection (h), is that any damage or destruction to any portion of the condominium must be repaired (if repairs can be made consistent with applicable safety

and health laws) absent a decision to terminate the condominium or a decision by 80% of the unit owners (including the owners of any damaged units) not to rebuild. Unless a decision is made not to rebuild, any available insurance proceeds must be used to effectuate such repairs. For this reason, subsection (e) provides that any loss covered by the unit owners' association's property insurance policy shall be adjusted with the association and that the proceeds for any loss shall be payable to the association or to any insurance trustee that may be designated for such purpose. Significantly, such insurance proceeds may not be paid to any mortgagee or other outside party. This provision is necessary to insure that insurance proceeds are available to effectuate any repairs or restoration to the condominium that may be required.

10. In the case of commercial or industrial condominiums, unit owners may prefer to act as self-insurers or make other arrangements with respect to property insurance. Accordingly, subsection (j) provides that the insurance requirements of this section may be varied or waived in the case of a condominium all of the units of which are reserved exclusively for non-residential use. Such waiver or modification is not possible in the case of a mixed-use condominium, some of the units of which may be used for residential purposes.

11. Subsection (i) is taken from the present § 45-1841(e).

§ 45-1851. Rights to surplus funds.

The Committee believes that § 3-114 of the Uniform Act more clearly expresses the concept relating to surplus funds than does the present § 45-1851 of the D.C. Act. Accordingly, the Committee proposes that the Uniform Act provision be substituted for the present section. See also the comments set forth in item 2 of § 45-1802, above.

§ 45-1852. Liability for common expenses; special assessments; proportionate liability fixed in bylaws; installment payment of assessments; when assessment past due; interest thereon.

1. The Committee proposes changing the term "executive organ" in subsection (d) to "executive board," consistent with the comments set forth in item 2 of § 45-1802, above.

2. The Committee believes that a new subsection (f) should be added to this section which clarifies that a declarant may elect to pay all common expenses for some initial period of time and, when doing so, may not assess such expenses against any unit. At the same time, the Committee thinks it important that the statutory language prevent a declarant who exercises such an election from imposing such charges under some other name on selected unit owners (e.g., all unit owners other than the declarant). This change requires a corresponding change in subsection (c).

§ 45-1853. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

1. The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 2 of § 45-1802, above.

2. The Committee believes that the language of clause (2) in subsection (a) achieves an unintended result with respect to the priority afforded the lien of the unit owners' association for unpaid assessments. As written, the association's lien could take priority over a first mortgage lien for several months in the following circumstances: where an association has assessments due and payable in quarterly installments and, just after the due date of the first installment, a unit is sold and thereupon subjected to a new first mortgage lien, the association's lien would prime the first mortgage for the balance of the year -- i.e., with respect to the next three installment payments. It seems doubtful that such a result was intended.

Accordingly, the Committee proposes substituting for the present clause (2), language taken from § 3-116(b) of the Uniform Act, together with a new sentence after the sentence containing clause (2). These modifications would make clear that the association's lien "primes" a first mortgage lien only with respect to the balance of such assessments due for a period of six months.

3. In subsection (h), the Committee proposes to change the reference from "5 business days" to "10 days," to conform to the requirements elsewhere in the statute respecting resale certifications.

4. The Committee also recommends the addition of a new subsection (j) specifically granting the unit owners' association the power to suspend the voting rights in the association of any unit owner more than 30 days in arrears in the payment of his common expense assessments. We hope that the grant of this additional authority will provide the association with extra leverage which may be used against recalcitrant unit owners.

5. The Committee has been advised that some title insurance companies in the District of Columbia have expressed concern that the power of sale provisions set forth in subsection (c) may be subject to constitutional challenge since they contemplate possible sale of a unit by a unit owners' association without benefit of either (i) a court order (following notice to the unit owner concerned with attendant rights to defend) or (ii) an explicit grant of power of sale in an instrument executed by the unit owner waiving his right to a judicial hearing. Although there appears no case law (at least in the District of Columbia) directly addressing this issue, the Committee acknowledges the possibility of such challenges. The clarifying changes proposed by the Committee to this subsection are designed to address these concerns, at least in part.

§ 45-1854. Financial records of association; availability for examination; annual audit.

1. The Committee proposes two changes in the present section. First, we suggest deletion of the requirement that the unit owners' association's books be kept "in accordance with generally accepted accounting principles." This requirement imposes an often unnecessary burden on small associations and does not

appear to be necessary to insure sound financial management. Instead, the Committee proposes that associations be required to keep their books "in such a manner as to be verifiable upon an audit."

2. Second, the Committee proposes that the present requirement for an annual independent audit be deleted, again because of the unnecessary burden which the provision imposes on small unit owners' associations. Instead, the Committee proposes language which would require that an association's books "be subject to an independent review at least once each year" and also subject to an independent audit if requested by a stated percentage of the unit owners.

§ 45-1855. Limitation on right of 1st refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.

The Committee proposes changing the term "executive organ" in this section to "executive board," consistent with the comments set forth in item 2 of § 45-1802, above.

§ 45-1856. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

1. The Committee believes that a more flexible warranty provision than the one presently included in § 45-1847(b) is desirable. While the Committee recognizes that warranty issues always involve "trade-offs" between the interests of declarants and those of unit purchasers, we would prefer to strike the balance somewhat differently than presently set forth in the D.C. Act. Specifically, the Committee thinks that the concept of latent structural defects -- obligations with respect to which could run for many years -- should be eliminated in favor of a longer warranty period on units and a longer statute of limitations period. (The statute of limitations issue is addressed in a proposed new § 45-1857.) The proposed new § 45-1856 which the Committee suggests is adapted from warranty provisions recently enacted by the West Virginia Legislature.

2. Under subsections (a) and (b) of the proposed new section, a declarant would warrant against structural defects in units for a period of 2 years following initial conveyance and in common elements for a period of 2 years

from the date of completion or conveyance of the first unit related thereto.

3. Under subsection (c), a declarant would be empowered to sell conversion condominiums in "as is" condition, a flexibility not permitted under the D.C. Act at present. In such case, unless he undertook greater obligations, the declarant would be liable only for structural defects with respect to improvements which he made to the condominium.

4. Under subsection (d), a declarant is given the power to waive or exclude structural warranties with respect to units which may not be used for residential purposes. This provision is based on the assumption that bargaining power between a declarant and a unit owner is likely to be more evenly matched with respect to commercial units than in the case of units reserved for residential purposes.

5. Subsection (e) is taken from the existing language of § 45-1847(c). While the Committee has not proposed any legislated changes to subsection (e), it did receive numerous comments from members of the Bar and others that there is a pressing need for the issuance of new regulations by the D.C. Condominium Office setting forth standardized and comprehensive procedures governing warranty bonds. The Committee agrees with this view and strongly urges that the D.C. Condominium Office undertake such a project.

§ 45-1857. Statute of limitations for warranties.

1. This proposed new section is part of the balancing of interests on warranty matters described in the comments on § 45-1856, above. Under subsection (a), the statute of limitations for warranty obligations is extended from the present one year after expiration of the warranty period (as set out in § 45-1847(b) of the D.C. Act) to six years following accrual of the cause of action.

2. Subsections (b) and (c) describe when a cause of action for breach of warranty obligation "accrues" for purposes of the section.

§ 45-1858. Master association -- authorization; powers; rights and responsibilities of unit owners; election of executive board.

1. The Committee proposes the addition of a new section dealing with master associations -- a concept which the Committee believes is very useful. It is very common in large or multiphased condominiums for the declarant to create a master or umbrella association which provides management services or decision-making functions for a series of smaller condominiums. While the Committee expresses no view as to a declarant's ability to achieve such results under the present D.C. Act, we believe that express statutory provision for such an approach is useful. The section proposed here is adapted from § 2-120 of the Uniform Act.

2. Subsection (a) states the general rule that the powers of a unit owners' association may only be exercised by, or delegated to, a master association if the condominium instruments for the condominium permit that result. The condominium instruments may have originally provided for a master association; alternatively, the unit owners of several condominiums may amend their condominium instruments in similar fashion to provide for this power. Subsection (a) makes it clear that, if any of the powers of the unit owners' association may be exercised by, or delegated to, a master association, all other provisions of the statute which apply to a unit owners' association apply to that master association except as modified by this section. Accordingly, such provisions on notice, voting, quorums, records, meetings, and other matters which apply to the unit owners' association would apply with equal validity to such a master association.

3. Subsection (b) changes the usual presumption with respect to the powers of the unit owners' association, except in those cases where the master association is actually acting as the only association for one or more condominiums. In those cases where it is not so acting, however, the only powers of the unit owners' association which the master association may exercise are the ones expressly permitted in the condominium instruments or in the delegation of power. This is in significant contrast with the rule of § 45-1848 that all of the powers described in that section may be exercised unless limited by the declaration.

4. Subsection (c) clarifies the liability of the members of the executive board of a unit owners' association when the condominium for which the unit owners' association acts has delegated some of its powers to a master association. In that instance, subsection (c) makes it clear that the members of the executive board of the unit owners' association have no liability for acts and omissions of the master association board; under subsection (a), that liability lies with the members of the master association.

5. Subsection (d) addresses the question of the rights and responsibilities of the unit owners in their dealings with the master board. A variety of sections enumerated in subsection (d) provide certain rights and powers to unit owners in their dealings with their association. In the affairs of the master association, however, it would be incongruous for the unit owners to maintain those same rights if those unit owners were not in fact electing the master board. Thus, for example, the question of election of directors, meetings, notice of meetings, quorums, and other matters enumerated in those sections would have little meaning if those sections were read literally when applied to a master board which was not elected by all members of the condominiums subject to the master board. For that reason, the rights of notice, voting, and other rights enumerated in the statute are available only to the persons who actually elect the board.

6. Subsection (e) recognizes that there may be reasons for a representative form of election of directors of the master association. Alternatively, there may be cases where at-large election is reasonable. For that reason, subsection (e) provides that after the period of declarant control has terminated, there may be four ways of electing the master association board. Those four ways are: (1) at-large election of the master board among all the condominiums subject to the master association; (2) at-large election of the master board only among the members of the executive boards of all condominiums subject to the master association; (3) each condominium might have designated positions on the master board, and those spaces could be filled by an at-large election among all the members of each condominium; or (4) the designated positions could be filled by an election only among the members of the executive board of the unit owners' association for each condominium. It would only be in the case of an at-large election of the master board among all condominiums that subsection (d) would have no relevance.

§ 45-1859. Merger or consolidation of condominiums
-- authorization; agreement to merge or
consolidate; reallocations of interests.

1. There may be circumstances where condominiums may wish to merge or consolidate their activities by the creation of a single condominium. This concept is not presently addressed in the D.C. Act, although the Committee believes it to be a useful addition. Accordingly, the Committee proposes the insertion of a new § 45-1859 dealing with this issue. The language of the proposed new section is adapted from § 2-121 of the Uniform Act.

2. Subsection (a) of the proposed new section makes it clear that a merger or consolidation may occur by the same vote of the unit owners necessary to terminate the condominium. If two or more condominiums are merged or consolidated, the resulting condominium is for all purposes the legal successor of the pre-existing condominiums, with a single association for all purposes. In the event condominiums did not wish to completely merge or consolidate their affairs, it would also be possible for them to create a master association pursuant to § 45-1858.

3. Under subsection (b) of the proposed new section, the merger or consolidation agreement is treated for recording purposes as an amendment to the condominium instruments, and the same requirements for approval are mandated as for termination.

4. Subsection (c) does not state a minimum requirement for the contents of a merger or consolidation agreement, and any additional clauses not inconsistent with subsection (c) may be included. The important point that subsection (c) makes is that the reallocation of the common element interests, common expense liabilities, and votes in the new association must be carefully stated.

Subsection (c) states two alternative rules in this respect. First, the reallocation may be accomplished by stating specifically the allocation of common element interests, common expense liability, and votes in the association to each unit, or by stating the formulas by which those interests may be allocated to each unit in all of the pre-existing condominiums.

Alternatively, the merger or consolidation agreement may state the percentage of overall common element interests, common expense liabilities, and votes in the association allocated to "all of the units comprising each of the pre-existing condominiums." The agreement might then also provide that the portion of the percentage allocated to each unit from among the shares allocated to each condominium will be equal to the percentage of common expense liability and votes in the association allocated to that unit by the condominium instruments of the pre-existing condominium.

§ 45-1860. Conveyance or encumbrance of common elements; agreements to convey; powers and limitations respecting conveyance or encumbrance.

1. Another concept embodied in the Uniform Act (at § 3-112) but not expressly addressed in the present D.C. Act is the power of the unit owners' association -- under certain specified circumstances -- to convey or encumber portions of the common elements. The Committee is aware of prior attempts by condominiums under present D.C. law to accomplish this same result either through specific provision in the condominium instruments or through the granting of powers of attorney by all unit owners to a declarant or an association, and the Committee expresses no view as to the validity of such efforts under the present statute. We do believe, however, that it would be helpful to include a specific provision in the D.C. Act relating to this issue and, accordingly, propose the addition of a new section adapted from the Uniform Act provision.

2. Subsection (a) of the proposed new section provides that, on agreement of unit owners holding 80% of the votes in the unit owners' association, parts of the common elements may be sold or encumbered. (The 80% provision corresponds to the percentage required for termination of the condominium under § 45-1838.) This power may be exercised during the period of declarant control, but, in order to be effective, 80% of non-declarant unit owners must approve the action.

The ability to sell a portion of the common elements without termination of the condominium gives the condominium regime desirable flexibility. For example, the unit owners, some years after the initial creation of the condominium, may decide to convey away a portion of the open space which has been reserved

as a part of the common elements because they no longer find the area useful or because they wish to use sale proceeds to make other improvements. Similarly, the ability to encumber common elements gives the unit owners' association power to raise money for improvements through the device of mortgaging the improvements themselves. Of course, recreational improvements will frequently not be sufficient security for a loan for their construction. Nevertheless, the ability to take a security interest in such improvements may lead lenders to be more favorably disposed toward making a loan in larger amounts and at lower interest rates.

3. Subsection (b) requires that the agreement for sale or encumbrance be evidenced by the execution of an agreement in the same manner as a deed by the requisite majority of the unit owners. The agreement then must be recorded in the land records. The recorded agreement signed by the unit owners is not the conveyance itself, but is rather a supporting document which shows that the unit owners' association has full power to execute a deed or mortgage. Under subsection (c), it is contemplated that the association will execute the actual instrument of conveyance. Under subsection (e), a conveyance or encumbrance of common elements may not deprive a unit owner of rights of access and support.

4. Under the condominium form of ownership, each unit owner owns a share of the common elements as an appurtenant interest to his unit and, when the unit owner mortgages his unit, he also mortgages his appurtenant interest. The unit owner himself cannot convey his unit separately from its interest in the common elements nor can he convey his common element interest separately from the unit. Therefore, if there is a mortgage or other lien against any unit, the problem arises as to whether the unit owners' association under this section can convey a part of the common elements free from the mortgage interest of the unit mortgage. Subsection (f) answers that question no. Therefore, a sale or encumbrance of common elements under this section would be subject to the superior priority of any prior mortgagee on the unit unless the mortgagee releases his interest therein.

The introductory language to subsection (f) permits a declarant to vary the rule enunciated in the subsection by specifying in the condominium instruments that any subsequent conveyance or encumbrance of specified portions of the common elements would be free of prior security

interests. In such event, the security interests in the common elements held by unit mortgagees could be cut off. Since the loss of the security interests in the common elements could significantly affect mortgagees, this is obviously a provision of the condominium instruments which a declarant should review with his potential lenders with great care. If limited to particular common element real estate such as portions of recreational area land, and if protections are provided for lender interests, the ability to convey free of prior security interests could contribute significantly to the continued economic viability of a project. Therefore, lenders may be favorable to inclusion of some version of such a provision.

The condominium instruments could protect lender interests in connection with a conveyance free of the security interests in a number of ways. For example, the condominium instruments might provide for payment of a specified percentage of the sales price to unit mortgagees, or it might provide that a specified percentage of the mortgage debt be paid to them. Also, the condominium instruments might provide that no sale or encumbrance of common elements would be effective without the approval of a specified percentage of lenders. There are, no doubt, other devices which could afford substantial protection to lenders as well.

§ 45-1860A. Unit owners' association as trustee.

Since the Committee is proposing changes to § 45-1850 which would make the unit owners' association an insurance trustee for the unit owners and to § 45-1838 which would make the association a trustee for the unit owners following termination of the condominium, we believe that it is necessary to add a new section to protect innocent third parties in their dealings with the unit owners' association when the association is acting in one of these trust capacities. The suggested section is taken from § 3-119 of the Uniform Act, which is based in turn on § 7 of the Uniform Trustees' Power Act.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

RECEIVED
MAY 15 1964

TO: DR. J. H. GOLDSTEIN
FROM: DR. R. M. WAYMIRE
SUBJECT: [Illegible]

[Illegible text block]

[Illegible text block]

Subchapter IV. Registration and Offering of Condominiums

§ 45-1861. Exemptions.

1. In the list of sections to which the exemption provision applies, the Committee believes that a reference to § 45-1862 has been inadvertently omitted. Accordingly, we recommend that such reference be inserted.

2. The Committee also believes that two exemptions set forth in the corresponding section of the Uniform Act (§ 4-101(b)) but not included in the present D.C. Act should be added. They are exemptions for (i) gratuitous dispositions and (ii) dispositions resulting from foreclosures or the receipt of deeds in lieu of foreclosure.

§ 45-1862. No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.

1. In subsection (b), the Committee proposes a change in the introductory language to clarify precisely when a declarant is obligated to deliver a public offering statement. The Committee also believes that -- consistent with the provisions of the corresponding section of the Uniform Act (§ 4-108) -- the right of cancellation vested in a purchaser should terminate upon actual conveyance of the unit concerned. We note that, in the vast majority of cases, this would still permit adequate time for the purchaser to consider his investment and to exercise his cancellation option without running unnecessary risks that title to the unit might be clouded by the existence of a statutory requirement which survived the closing.

2. The Committee also proposes the addition of a new subsection (e) to clarify the liabilities of declarants who deliver public offering statements pursuant to the requirements of the statute but who did not prepare the public offering statements delivered.

3. Also relating to subsection (b), the Committee proposes -- for purposes of clarity -- that the reference to "the contract date of . . . disposition" be changed to read "the date of execution of the contract for . . . disposition."

4. Finally, the Committee proposes the deletion of a somewhat puzzling sentence in subsection (b) dealing with foreclosure of lien provisions. The Committee assumes that this sentence was erroneously placed in this section in the current statute.

§ 45-1864. Public offering statement; form prescribed by Major; contents; use in promotions; material change in information and amendment of statement.

1. In paragraph (a)(5), the Committee proposes several changes. First, we recommend that the reference to "declaration and bylaws" in the introductory phrase be changed to the somewhat broader term "condominium instruments" to insure that each potential purchaser receives all of the documentation necessary to make an informed purchase decision. Second, we propose that subparagraph (D) be modified to make clear that, if no reserves are to be established, a statement to that effect must be included. And third, we suggest that a new subparagraph (G) be added to cover a description of any services which the declarant intends to provide initially or expenses which the declarant intends to cover which may ultimately become added expenses or burdens of the unit owners' association. The proposed new subparagraph (G) is taken from § 4-103(a)(6) of the Uniform Act.

2. The Committee believes that the present requirements of paragraph (a)(6) impose a difficult burden on declarants since there are often documents which the purchaser is required to sign at closing which were not foreseeable at the time the public offering statement is given. It appears to the Committee that the potential purchaser would be adequately protected if this paragraph were limited to require delivery only of the form of deed which a purchaser would receive and the form of sales contract which the purchaser would be expected to sign, and we so recommend.

3. The change proposed in paragraph (a)(12) is required to conform to the recommendations of the Committee made with respect to § 45-1862. (See the comments set forth in item 4 of § 45-1862, above.)

4. If, as recommended by the Committee, paragraph (a)(5) is amended to include a reference to "condominium instruments," then paragraph (a)(15) may be deleted as redundant.

5. The Committee proposes the addition of a new subsection (b) imposing special disclosure requirements for condominiums involving units which may be owned in time-shares. Although the District of Columbia has few if any such condominiums within its borders (and is unlikely to have many more in the future), the Committee believes this provision is important to cover condominium projects in other jurisdictions (particularly resort projects) which may be actively marketed and sold in the District. The proposed subsection was taken from § 4-103 of the Uniform Act.

6. In subsection (e), the Committee believes that the reference to "paragraph (9) of" subsection (a) is erroneous and should be deleted.

7. Since the public offering statement provisions of the act are applicable to condominiums located outside the District of Columbia if interests in such condominiums are disposed of in the District, the Committee believes that it is important that -- to the extent possible and consistent with the basic thrust of the District's statute -- declarants of non-District projects should be provided with some type of "streamlined" registration in the District. To accomplish this, the Committee proposes the addition of a new subsection (f) which would permit the use of public offering statements prepared for other jurisdictions if such statements were approved by agencies in such other jurisdictions and conformed substantially to the requirements of the District's statute.

§ 45-1868. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate.

1. If, as recommended by the Committee, § 45-1864(a)(5)(D) is amended to require a statement that there are no reserves, if that be the case, then paragraph (a)(1) of this section may be deleted as redundant.

2. In the case of conversion condominiums, the Committee believes that the establishment of reserves should, in fact, be required. This is in recognition of the fact that such structures are often old and in need of substantial repair at the time of conversion.

The proposed requirement is also particularly important if it is remembered that the amended statute would permit the conveyance of conversion condominium units in "as is" condition. (See comments on § 45-1856.) This provision would be embodied in a new subsection (c).

§ 45-1871. Resale by unit owner; seller to obtain appropriate certificate from association and furnish to purchaser; scope of provisions.

1. In keeping with the general usage in the condominium industry and for ease of reference, the Committee recommends that the term "certificate" be used with reference to the document which the unit owners' association is required to provide to a unit owner upon resale of his unit and which he, in turn, is required to provide to his potential purchaser.

2. In subsection (a), the Committee proposes -- for purposes of clarity -- that the reference to "the contract date of . . . disposition" be changed to read "the date of execution of the contract of sale by the purchaser." The Committee also believes that purchasers of resale units should be entitled to receive copies of the condominium instruments and proposes that this requirement be added to subsection (a).

3. The Committee proposes changing the term "executive organ" in paragraph (a)(3) to "executive board," consistent with the comments set forth in item 2 of § 45-1802, above.

4. In subsection (a), the Committee proposes adding a new paragraph (9) to require that each resale certificate bear a date of issuance. This is obviously important to advise the potential purchaser of the currency of the information which he is receiving.

§ 45-1872. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.

The Committee proposes the addition of a new subsection (h) requiring the agency promptly to forward to the declarant any process served upon the agency pursuant to the appointment made in accordance with § 45-1863. The language proposed is based on a recent amendment to § 55-79.98 of the Virginia Act.

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The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is essential for the proper management of the organization's finances and for ensuring compliance with applicable laws and regulations.

The second part of the document outlines the specific procedures that should be followed when recording transactions. This includes details on how to handle receipts, invoices, and other financial documents, as well as the frequency and timing of record-keeping activities.

The third part of the document addresses the role of the accounting department in the overall financial management process. It highlights the department's responsibility for providing accurate and timely financial information to management and other stakeholders, as well as for identifying areas where cost savings can be realized.

The fourth part of the document discusses the importance of internal controls in the financial management process. It explains how these controls help to prevent errors and fraud, and how they can be used to monitor and improve the organization's financial performance over time.

The fifth part of the document provides a summary of the key points discussed in the previous sections. It reiterates the importance of accurate record-keeping, the role of the accounting department, and the significance of internal controls in the financial management process.

The sixth part of the document contains a list of references and resources that are relevant to the topics discussed in the document. These include books, articles, and other materials that provide further information on financial management and accounting practices.

The seventh part of the document contains a list of appendices that provide additional information and data related to the financial management process. These appendices are intended to support the main text of the document and provide a more detailed look at specific aspects of the financial management process.

The eighth part of the document contains a list of footnotes that provide further information and clarification on specific points discussed in the document. These footnotes are intended to provide a more complete understanding of the financial management process and the role of the accounting department.

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