

ENROLLMENT(S)



COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 8-233

"Condominium Act of 1976 Reform Amendment
Act of 1990".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 8-65 on first and second readings, December 4, 1990, and December 18, 1990, respectively. Following the signature of the Mayor on December 27, 1990, this legislation was assigned Act No. 8-316, published in the January 11, 1991, edition of the D.C. Register, (Vol. 38 page 261) and transmitted to Congress on January 15, 1991 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 8-233, effective March 8, 1991.


JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January 15,16,17,18,22,23,24,25,28,29,30,31
February 1,4,5,6,7,19,20,21,22,25,26,27,28
March 1,4,5,6,7

Codification
District of Columbia Code
(1991 Supplement)

AN ACT

D.C. ACT 8-316

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DEC. 27, 1990

To amend the District of Columbia Condominium Act of 1976.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "Condominium Act of 1976
Reform Amendment Act of 1990".

Sec. 2. The Condominium Act of 1976, approved March
29, 1977 (D.C. Law 1-89; D.C. Code, sec. 45-1801 et seq.),
is amended as follows:

(a) Section 101 (D.C. Code, sec. 45-1801(a)) is
amended as follows:

Section
45-1801

(1) Subsection (a) is amended to read as follows:

"(a) The Condominium Act of 1976 Reform Amendment Act
of 1990 ("Condominium Amendment Act") shall apply to any
condominium created in the District of Columbia after the
effective date of the Condominium Amendment Act. Sections
104, 105, 106, 203, 206, 207, 208, 209, 240, 308(a)(1)
through (6) and 308(a)(11) through (16), 309, 313, 314, 320,
411, 412, 413, 414, 415, 416, 417, and 102 to the extent
necessary in construing any of those sections, shall apply
to any condominium or to any horizontal property regime or
condominium project created in the District of Columbia
before the effective date of the Condominium Amendment Act
except that these sections shall apply only with respect to
an event or circumstance that occurs after the effective
date of the Condominium Amendment Act and shall not
invalidate any existing provision of the condominium
instruments of those condominiums, horizontal property
regime, or condominium project."

(2) Subsection (c) is amended to read as follows:

"(c) The provisions of the Horizontal Property Act of
the District of Columbia, approved December 21, 1963 (77
Stat. 449; D.C. Code, sec. 45-1701 et seq.), Regulation
74-26 of the District of Columbia City Council, and this act
enacted prior to the effective date of the Condominium
Amendment Act shall not apply to any condominium created

after the effective date of the Condominium Amendment 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 the Condominium Amendment Act if the amendment would be permitted by the Condominium Amendment Act. Any amendment to the condominium instruments shall be adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect immediately prior to the effective date of the Condominium Amendment Act. If an amendment grants a person any right, power, or privilege permitted by the Condominium Amendment Act, any correlative obligation, liability, or restriction in the Condominium Amendment Act shall apply to the person."

(3) A new subsection (d) is added to read as follows:

"(d) The Condominium Amendment Act shall not apply to any condominium located outside the District of Columbia. Sections 402 through 408 and sections 412 through 417 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless exempt under section 401."

(b) Section 102 (D.C. Code, sec. 45-1802) is amended as follows:

Section
45-1802

(1) A new paragraph (12A) is added to read as follows:

"(12A)(A) "Affiliate of a declarant" shall mean any person who controls, is controlled by, or shares common control with a declarant.

"(B) 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 at least 1 other person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies that represent more than 20% 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% of the capital of the declarant.

"(C) 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 another person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies

representing more than 20% of the voting interest in the person; or

"(iii) Controls in any manner the election of a majority of the directors if the powers described in this paragraph are held solely as security for an obligation and are not exercised."

(2) Paragraph (c) is repealed.

(3) Paragraph (d) is amended to read as follows:

"(d) "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 the portions designated for separate ownership. Real estate shall not be deemed a condominium within the meaning of the Condominium Amendment Act unless the undivided interests in the common elements are vested in the unit owners."

(4) Paragraph (k) is amended to read as follows:

"(k) "Declarant" shall mean any person or group of persons acting in concert who:

"(1) Offers to dispose of the person's or group's interest in a Condominium unit not previously disposed of;

"(2) Reserves or succeeds to any special declarant right; or

"(3) Applies for registration of the condominium."

(5) Paragraph (l) is amended to read as follows:

"(l) "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."

(6) Paragraph (m) is amended by striking the phrase "Executive Organ" and inserting the phrase "Executive Board" in its place.

(7) Paragraph (q) is repealed.

(8) A new paragraph (sA) is added to read as follows:

"(sA) "Master association" shall mean an organization described in section 318, whether or not the organization is an association described in section 301."

(9) Paragraph (v) is amended by adding a sentence at the end to read as follows:

"Nothing shall be considered an offer that 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 the time the unit has been so registered."

(10) Paragraph (w) is amended by striking the word "organ" and inserting the word "board" in its place.

(11) Paragraph (z) is amended to read as follows:

"(z) "Purchaser" shall mean any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer, acquires a legal or equitable interest in a condominium unit other than a leasehold interest, including a renewal option, of less than 20 years, or as security for an obligation."

(12) A new paragraph (zA) is added to read as follows:

"(zA) "Real estate" or "land" shall mean any leasehold or other estate or interest in, over, or under land, including but not limited to, any structure, fixture, or any other improvement or interest which by custom, usage, or law passes with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term "real estate" or "land" shall be deemed to include a parcel with or without an upper or lower boundary, and space that may be filled with air or water. Any requirement in the Condominium Amendment Act of a legally sufficient description shall be deemed to include a requirement that any upper or lower boundary of a parcel be identified with reference to established data."

(13) A new paragraph bbA is added to read as follows:

"(bbA) "Special declarant right" shall mean any right reserved for the benefit of a declarant or any person that becomes a declarant to:

"(i) Complete improvements indicated on plats and plans filed with the declaration pursuant to section 214;

"(ii) Expand an expandable condominium pursuant to section 219;

"(iii) Contract a contractable condominium pursuant to section 220;

"(iv) Convert convertible land, convertible space, or both pursuant to section 217 or 218;

"(v) Elect, appoint, or remove any officer of the unit owners' association or master association or any executive board member pursuant to section 302 during any period of declarant control;

"(vi) Exercise any power or responsibility otherwise assigned by any condominium instrument or by the Condominium Amendment Act to the unit owners' association, any officer of the unit owners' association, or the executive board;

"(vii) Use easements through the common elements to make improvements within the condominium or real estate that may be added to the condominium pursuant to section 221;

"(viii) Make the condominium subject to a master association pursuant to section 318;

"(ix) Make the condominium part of a larger condominium pursuant to section 319; or

"(x) Maintain a sales office, management office, or model unit pursuant to section 222."

(14) A new paragraph (ccA) is added to read as follows:

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

(15) Paragraph (eeA) is amended to read as follows:

"(eeA) "Unit owner" shall mean a declarant or any person who owns a condominium unit. In the case of a leasehold condominium, "unit owner" shall mean a declarant or person whose leasehold interest in the condominium extends for the entire balance of the unexpired term. The term "unit owner" shall not include a person who has an interest in a condominium unit solely as a security for a debt."

(c) Section 103 (D.C. Code, sec. 45-1803) is amended by striking the word "property" whenever it appears and inserting the word "estate" in its place.

Section
45-1803

(d) Section 104 (D.C. Code, sec. 45-1804) is amended to read as follows:

Section
45-1804

"Sec. 104. Separate taxation.

"If there is any unit owner other than the declarant, a tax or assessment shall not be levied on the condominium as a whole or against any common elements, but only on the individual condominium units. A condominium unit shall be carried on the records of the District of Columbia and assessed as a separate and distinct taxable entity."

(e) Section 106(e) (D.C. Code, sec. 45-1806(e)) is amended by striking the phrase "common profits" wherever it appears and inserting the phrase "surplus funds" in its place.

Section
45-1806

(f) A new section 107 is added to read as follows:

Section
45-1807

"Sec. 107. Variation by agreement.

"Except as expressly provided by the Condominium Amendment Act, a provision of the Condominium Amendment Act may not be varied by agreement and any right conferred by the Condominium Amendment Act may not be waived. A declarant may not act under a power of attorney or use any other device to evade a limitation or prohibition of the Condominium Amendment Act or the condominium instruments."

Enrolled Original

- (g) A new section 108 is added to read as follows: Section
"Sec. 108. Interpretation of act. 45-1808
"In the application or construction of the provisions of the Condominium Amendment Act, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in states that have enacted the Uniform Condominium Act or any other condominium statute that contains provisions similar to the provisions of the Condominium Amendment Act."
- (h) Section 201 (D.C. Code, sec. 45-1811) is amended Section
by striking the last sentence. 45-1811
- (i) Section 202(b) (D.C. Code, sec. 45-1812(b)) is Section
amended by striking the word "organ" wherever it appears and 45-1812
inserting the word "board" in its place.
- (j) Section 204 (D.C. Code, sec. 45-1814) is amended Section
by striking the phrase "section 228" and inserting the 45-1814
phrase "section 219" in its place.
- (k) Section 205 (D.C. Code, sec. 45-1815) is amended Section
by adding a sentence at the end to read as follows: 45-1815
"The Recorder of Deeds shall accept for recordation any executed and acknowledged condominium instrument or any executed and acknowledged amendment and certification without further review of a condominium instrument or the imposition of any additional requirement."
- (l) Section 208 (D.C. Code, sec. 45-1818) is amended Section
by adding a new subsection (e) to read as follows: 45-1818
"(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 act. Whether or not a substantial failure impairs marketability is not affected by this act."
- (m) Section 209 (D.C. Code, sec. 45-1819) is amended Section
to read as follows: 45-1819
"Sec. 209. Compliance with Condominium act and instrument.
Any lack of compliance with this act or with any lawful provision of the condominium {instrument} instruments shall be grounds for an action or suit to recover damages or injunctive relief, or for any other available remedy maintainable by the unit owners' association, the unit owners' association's executive board, any managing agent on behalf of the unit owner's association, an aggrieved person on his or her own behalf, or, in an otherwise proper case, as a class action."
- (n) Section 210(a)(5) (D.C. Code, sec. 45-1820(a)(5)) Section
is amended by adding the following language at the end to 45-1820
read as follows:
"The description of the method whereby an assignment shall be made shall include the following information:

Enrolled Original

"(i) The name of any person who may assign the limited common elements;

"(ii) The name of any person who must execute the assignment;

"(iii) Whether or not the deed to a condominium unit will reflect the assignment, if previously made; and

"(iv) If there is any limited common expense payable by the unit owners of a condominium unit to which the limited common elements pertain.

(o) Section 213 (D.C. Code, sec. 45-1823) is amended as follows:

Section
45-1823

(1) Subsection (b) is amended to read as follows:

"(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application of the condominium unit owners concerned to the principal officer of the unit owners' association or to any officer the condominium instruments may specify. The officer to whom the application is made shall prepare and execute an amendment to the condominium instruments that reassigns any right or obligation with respect to the limited common element involved. The amendment shall be executed by the unit owners of the condominium units concerned and shall be recorded by the unit owners' association upon payment by the unit owners of reasonable costs for preparation and acknowledgement of the amendment."

(2) Subsection (c) is amended to read as follows:

"(c) A common element not previously assigned as a limited common element shall be assigned only pursuant to section 210(a)(5). The assignment shall be made as follows:

"(1) If the assignment is made by the declarant, the amendment to the declaration that makes an assignment shall be prepared, executed, and recorded by the declarant and a copy sent to the unit owners' association. Unless the declaration provides otherwise, the amendment shall be executed by the condominium unit owner of the unit concerned. The recordation of an amendment shall be conclusive evidence of compliance with method prescribed section 210(a)(5).

"(2) If the assignment is made by the unit owners' association, the amendment to the declaration that makes an assignment shall be prepared and executed by the principal officer of the unit owners' association or any other officer the condominium instruments may specify. An amendment shall be executed by the condominium unit owner of the unit concerned, and upon payment by the unit owner for the reasonable costs for the preparation and acknowledgement of the amendment, the amendment shall be recorded by the unit owners' association. The recordation of an amendment

shall be conclusive evidence of compliance with the method prescribed by section 210(a)(5).

"(3) Any assignment made prior to the effective date of the Condominium Amendment Act shall be considered valid if the assignment would be permitted pursuant to this section.

(p) Section 223(a) (D.C. Code, sec. 45-1833(a)) is amended by amending the 2nd sentence to read as follows:

Section
45-1833

"In the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement that requires the declarant to add 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 with regard to the condominium or any portion of the condominium, this subsection shall not be construed to nullify, limit, or otherwise affect any obligation."

(q) Section 225 (D.C. Code, sec. 45-1835) is amended as follows:

Section
45-1835

(1) Subsection (d) is amended by striking the phrase "common profits" and inserting the phrase "surplus funds" in its place.

(2) Subsection (f) is amended to read as follows:

"(f) If appropriate instruments in accordance with the preceding subsections have been prepared, executed, and acknowledged, the instruments shall be executed and acknowledged by the unit owners of the units concerned and, upon payment by the unit owners of reasonable costs for the preparation and acknowledgement of the instruments, the instruments shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the relocation of boundaries effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocation made pursuant to subsections (c) and (d) of this section are reasonable."

(r) Section 226(f) (D.C. Code, 45-1836(f)) is amended to read as follows:

Section
45-1836

"(f) If appropriate instruments in accordance with the preceding subsections of this section have been prepared, executed, and acknowledged, the instruments shall be executed by the subdivider and, upon payment by the subdivider of reasonable costs for the preparation and acknowledgement of the instrument, shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the subdivision effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocations made

pursuant to subsections (c) and (d) of this section are reasonable."

(s) Section 227 (D.C. Code, sec. 45-1837) is amended to read as follows:

Section
45-1837

"Sec. 227. Amendment of instruments.

"(a) If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon recordation if the amendment has been executed by the declarant. 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 conferred.

"(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which 2/3 of the votes in the unit owners' association pertain, or any larger majority that the condominium instruments may specify, except in cases for which this act provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

"(c) An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than 1 year after the amendment is recorded.

"(d) Any amendment to the condominium instruments required by this act 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 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 act, an amendment to the condominium instruments may not create or

"(1) Increase special declarant rights;

"(2) Increase the number of units;

"(3) Change the boundaries of any unit;

"(4) Change the undivided interest in the common elements, the liability for common expenses, the right to surplus funds, or the number of votes in the unit owners' association that pertains to any unit; or

"(5) Change the uses to which any unit is restricted, in the absence of the unanimous consent to the unit owners."

"(f)(1) Notwithstanding any other provision of this section, within 5 years after the recordation of a condominium instrument that contains or creates a mistake, inconsistency, error, or ambiguity, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to:

"(A) Correct a mathematical mistake, an inconsistency, or a scrivener's error; or

"(B) Clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including without limitation recalculating the undivided interest in the common elements, the liability for common expenses or right to surplus funds, or the number of votes in the unit owners' association that pertain to a unit.

"(2) An amendment or supplement may not materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. The principal officer of the unit owners' association may unilaterally execute and record a corrective amendment or supplement upon a vote of {two-thirds} 2/3rds of the members of the executive board. Any corrective amendment or supplement shall be validated to the extent that the corrective amendment or supplement would have been permitted by this subsection."

(t) Section 228 (D.C. Code, sec. 45-1838) is amended to read as follows:

Section
45-1838

"Sec. 228. Termination of condominium.

"(a) If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. A termination shall become effective upon recordation if the termination has been executed by the declarant and recorded in the Office of the Surveyor. 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 conferred.

"(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated by the agreement of unit owners of units to which 4/5 of the votes in the unit owners' association pertain, or any larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

"(c) An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement or ratification 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 pertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. A termination agreement and any ratification of the termination agreement shall be effective only upon recordation any in the Office of the Surveyor.

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

"(e) In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale.

"(f) On behalf of the unit owners, the unit owners' association may contract for the disposition of real estate in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections (b) and (c) of this section. If any real estate in the condominium shall be sold following termination, title to the real estate, upon termination, shall vest in the unit owners' association as trustee for the holders of all interests in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to a unit owner or lien holder as his or her interest may appear, in proportion to the respective interests of unit owners as provided in subsection (i) of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the real estate, each unit owner or his or her successor in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of occupancy by the unit owner or his or her

successor in interest, each unit owner or his successor in interest shall remain liable for an assessment or other obligation imposed on the unit owner by this act or the condominium instruments.

"(g) If the real estate that constitutes the condominium shall not to be sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the real estate in the condominium shall vest in the unit owners upon termination as tenants in common in proportion to the unit owners respective interests as provided in subsection (i) of this section. Any lien on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his or her successor in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

"(h) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the unit owners' association, shall be held by the unit owner's association as trustee for unit owners or lien/holders on the units as the unit owner's or lien/holders' interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he or she had perfected a lien on the units immediately before termination.

"(i) The respective interests of unit owners referred to in subsections (f), (g), and (h) of this section shall be as follows:

"(1) Except as provided in paragraph (2) of this subsection, the respective interests of a unit owners shall be the fair market values of the unit owner's, limited common elements, and common element interests immediately before the termination, as determined by an independent appraiser selected by the unit owners' association. The decision of the independent appraiser shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which 1/4 of the votes in the unit owners' association. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of the 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 limited common element is destroyed to the extent that an appraisal of the fair market

value before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

"(j) Except as provided in subsection (k) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw the portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

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

(u) A new section 230 is added to read as follows:

"Sec. 230. Transfer of special declarant rights.

"(a) A special declarant right created or reserved under this act may not be transferred except by an instrument that evidences the transfer recorded in the same manner as the condominium instruments. The instrument shall not be 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 that arises before the transfer and shall remain liable for any warranty obligation imposed upon him or her by this act. 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 a special declarant right is an affiliate of a declarant, the transferor shall be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

"(3) If a transferor retains a special declarant right, and transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall be liable for any obligation or liability imposed on a declarant by this act or by the condominium instruments that relates to the retained special declarant rights and that arises after the transfer.

Section
45-1839.1

"(4) A transferor shall have no liability for any act or omission or any breach of a contractual or warranty obligation that arises 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, mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of any unit owned by a declarant or real estate in a condominium subject to development rights, a person who acquires title to all the real estate being foreclosed or sold, upon his or her request, shall succeed to all special declarant rights related to the real estate held by the declarant, or to any rights reserved in the condominium instruments pursuant to section 222 and held by the declarant to maintain models, sales offices, and signs. The judgment or instrument that conveys title shall provide for transfer of only the special declarant rights requested. For purposes of this subsection, the term "development rights" means 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 or receivership proceedings of all units and other real estate in a condominium owned by a declarant:

"(1) The declarant shall cease to have any special declarant rights; and

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

"(e) The liability or obligation 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 any obligation or liability imposed on the transferor by (this act) or the condominium instruments.

"(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) of this subsection, who is not an affiliate of a declarant, shall be subject to any obligation or liability imposed by (this act) or the condominium instruments:

"(A) On a declarant that relates to his or her exercise or nonexercise of special declarant rights; or

"(B) On his or her transferor, other than:

"(i) A misrepresentation by a previous declarant;

"(ii) A warranty obligation on improvements made by a previous declarant or made before the condominium was created;

"(iii) A breach of {any} a fiduciary obligation by a previous declarant or his or her appointee to the executive board; or

"(iv) Any liability or obligation imposed on the transferor's acts or omissions after the transfer.

"(3) A successor who is not an affiliate of a declarant and whose sole right is a reservation in the condominium instruments to maintain models, sales offices, and signs may not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except a liability or obligation that arises under title IV of (this act) that relates to disposition by the successor.

"(4) If the transferor is not an affiliate of the successor to special declarant rights and the successor succeeded to all the special declarant rights pursuant to a deed in lieu of foreclosure or a judgment or instrument that conveys title to units under subsection (c) of this section, the successor may declare his or her intention in a recorded instrument to hold the rights solely for transfer to another person. Until the successor transfers all special declarant rights to any person who acquires title to any unit owned by the successor, or until the successor records an instrument that permits exercise of all special declarant rights, the successor may not exercise the special declarant rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of section 302 for the duration of any period of declarant control. Any attempted exercise of special declarant rights other than a right held by the successor's transferor to control the executive board shall be void. For the period that a successor declarant may not exercise special declarant rights under this subsection, he or she shall not be subject to any liability or obligation as a declarant other than liability or obligation as a declarant for his or her acts or omissions under section 302.

"(f) Nothing in this section shall subject any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than a claim or obligation that arises under this act or the condominium instruments."

(v) Section 301 (D.C. Code, sec. 45-1841) is amended as follows:

Section
45-1841

(1) Subsection (b) is amended by striking the word "organ" wherever it appears and inserting the word "board" in its place.

(2) Subsection (c) is amended by striking the word "organ" and inserting the word "board" in its place.

(3) Subsection (d) is amended by striking the phrase "common profits" wherever it appears and inserting the phrase "surplus funds" in its place.

(4) Subsection (e) is repealed.

(w) Section 302 (D.C. Code, sec. 45-1842) is amended as follows:

(1) Paragraphs (1) through (17) of subsection (a) are amended to read by striking the word "organ" and inserting the word "board" in its place.

(2) Subsection (b)(1) is amended to read as follows:

"(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 or an affiliate of a declarant, other than a lease subject to section 210(e), management contract, employment contract, or lease of a recreational or parking area or facility, 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 contract or agreement entered into after the effective date of the Condominium Amendment Act may be terminated without penalty by the unit owners' association or the executive board of the unit owners' association upon not less than 90 days written notice to the other party."

(3) Subsection (b)(2) is amended by striking the word "organ" and inserting the word "board" in its place.

(4) Subsection (c) is amended by striking the word "organ" and inserting the word "board" in its place.

(5) Subsection (d) is amended by striking the word "organ" and inserting the word "board" in its place.

(6) Subsection (e) is repealed.

(x) Section 303 (D.C. Code, sec. 45-1843) is amended to read as follows:

"Sec. 303. Meetings.

"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 the unit owners' 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 of the meeting. The notice shall be sent by the United States mail to all unit owners of record at the address of their respective units and to any other address that the unit owners have designated to the officer. In the alternative, notice may be

Section
45-1843

hand-delivered by the officer, if the officer certifies in writing that the notice was delivered to the unit owner."

(y) Section 304(b) (D.C. Code, sec. 45-1844(b)) is amended by striking the word "organ" and inserting the word "board" in its place.

Section
45-1844

(z) Section 305 (D.C. Code, sec. 45-1845) is amended as follows:

Section
45-1845

(1) Subsection (d) is amended to read as follows:

"(d) The votes that pertain to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in a case where the unit owner is more than 1 person, by or on behalf of all those persons. A proxy may be revoked if a unit owner or 1 of the unit owners, in the case of a unit owned by more than 1 person, gives actual notice of revocation to the person who presides over the meeting. A proxy shall be void if the proxy is not dated, if the proxy purports to be revocable without notice, or if the signatures of any person executing the proxy has not been witnessed by a person who shall sign his or her full name and address. A proxy shall terminate automatically upon the final adjournment of the 1st meeting held on or after the date of the proxy, but shall remain in effect during any recess or temporary adjournment of the meeting."

(2) Subsection (f) is amended to read as follows:

"(f) Notwithstanding anything in this section to the contrary, during any time that the unit owners' association is the owner of any condominium unit, the votes in the unit owners' association that pertain to the 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 section 304, but otherwise shall 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 meeting."

(aa) Section 307 (D.C. Code, sec. 45-1847) is amended as follows:

Section
45-1847

(1) Subsection (a) is amended as follows:

(A) The 2nd sentence of subsection (a) is amended by striking the 2nd occurrence of the word "owners'" and inserting the word "owner's" in its place.

(B) The following language at the end to read as follows:

"Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may repair or replace specified unit components using common expense funds, if failure to make the repair or replacement would have a material adverse effect upon the health, safety, or welfare of the unit owners, the common elements, or the income and common expenses of the unit owners' association. The repair or replacement may be at

the expense of the unit owners' association or, if a limited number of units are affected, at the expense of the unit owners affected."

(2) Subsections (b) and (c) are repealed.

(bb) Section 308 (D.C. Code, sec. 45-1848) is amended as follows:

Section
45-1848

(1) Subsection (a) is amended to read as follows:

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

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

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

"(3) Power to hire or discharge a managing agent or other employees, agents, or independent contractors;

"(4) Power to institute, defend, or intervene in litigation or an administrative proceedings in the name of unit owners' association on behalf of the unit owners' association or 2 or more unit owners on any matter that affects the condominium;

"(5) Power to make a contract or incur liability;

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

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

"(8) Power to acquire, hold, encumber, or convey in the name of the unit owners' association any right, title, or interest to real or personal property;

"(9) Power to grant an easement, lease, license, or concession through or over the common elements;

"(10) Power to impose on and receive from individual unit owners any payment, fee, or charge for the use, rental, or operation of the common elements or for any service provided to unit owners;

"(11) Power to impose a charge for late payment of an assessment and, after notice and an opportunity to be heard, levy a reasonable fine for violation of the condominium instruments or rules and regulations of the unit owners' association;

"(12) Power to impose a reasonable charge for the preparation and recordation of an amendment to the condominium instruments, a statement concerning the resale of units required by section 411, or a statement of an unpaid assessment;

"(13) Power to provide for the indemnification of officers or the executive board of the unit owners'

association and maintain liability insurance for directors or officers;

"(14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments, but only to the extent the condominium instruments expressly so provide;

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

"(16) Power to exercise any other power that may be exercised in the District of Columbia by a legal entity of the same type as the unit owners' association; and

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

(2) The 1st sentence of subsection (b) is amended by striking the word "organ" and inserting the word "board" in its place.

(3) The following new subsections are added to read as follows:

"(c) The condominium instruments may not impose any limitation on the power of the unit owners' association to deal with the declarant that is more restrictive than the limitation imposed on the power of the unit owners' association to deal with any other person.

"(d) In the performance of duties, an officer or member of the executive board shall exercise the care required of a fiduciary of the unit owners."

(cc) Section 309 (D.C. Code, sec. 45-1849) is amended as follows:

Section
45-1849

(1) The 1st sentence of subsection (c) is amended by striking the word "organ" and inserting the word "board" in its place.

(2) Subsection (d) is amended to read as follows:

"(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the unit owners' association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to section 312(c), but no unit owner shall be otherwise liable on account of a judgment and, after payment by the unit owner of his or her proportionate share, the association shall not assess or have a lien against the unit owner's condominium unit for any portion of the common expenses incurred in connection with the lien. If after payment by a unit owner of a proportionate share, the unit owners' association elects to pay the balance of the judgment from common funds, the unit owners' association shall reimburse the unit owner for the amount the unit owner paid separately. Any judgment shall be satisfied 1st out of the

property of the unit owners' association. The judgment shall be otherwise subject to the provisions of Title 15 of the District of Columbia Code."

(dd) Section 310 (D.C. Code, sec. 45-1850) is amended as follows:

Section
45-1850

(1) The existing text is designated as subsection (a) and the following new subsections are added to read as follows:

"(b) Commencing not later than the time of the 1st 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 not be less than 90% 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 that covers all occurrences commonly insured against for death, bodily injury, or property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

"(c) If a building contains units that have horizontal boundaries described in the condominium instruments, the insurance maintained under subsection (b)(1) of this section, to the extent reasonably available, shall include the units, but need not include an improvement or betterment installed by unit owners.

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

"(e) An Insurance policy carried pursuant to subsection (b) of this section shall provide that:

"(1) A unit owner is an insured person under the policy with respect to liability that arises out of the unit owner's interest in the common elements or membership in the unit owners' association;

"(2) The insurer waives the insurer's right to subrogation under the policy against any unit owner or member of the unit owners' household;

"(3) An act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the unit owners' association, shall not void the policy or be a condition to recovery under the policy;

"(4) If at the time of loss under the policy, there is other insurance in the name of a unit owner that covers the same risk covered by the policy, the unit owners' association's policy shall provide 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 shall provide for the defense of the defendant.

"(f) Any loss covered by the property policy under subsections (b)(1) and (c) of this section shall be adjusted with the unit owners' association, but the insurance proceeds for the loss shall be payable to any insurance trustee designated to receive payments or otherwise to the unit owners' 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 or lien holders as the unit owners' or lien holders' interests may appear. Subject to the provisions of subsection (i) of this section, the proceeds shall be disbursed 1st for the repair or restoration of the damaged property. A unit owner or lien holder 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.

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

"(h) 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 that issues the policy may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the unit owner's association, any unit owner, and any mortgagee or beneficiary under the deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

"(i) Any portion of the condominium for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the unit owners' association unless the condominium is terminated, repair or replacement would be illegal under any health or safety statute, rule, or regulation, or 80% 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, 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. The insurance proceeds attributable to the units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements appertain, or to lien holders, as their interests may appear. 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 section 106, 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, section 228 governs the distribution of insurance proceeds if the condominium is terminated.

"(j) The bylaws shall specify insurance coverage and limits with respect to any insurance policy that may be required on the common elements and shall indicate who shall be responsible for payment of any deductible amount in connection with the insurance policy.

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

(ee) Section 311 (D.C. Code, sec. 45-1851) is amended to read as follows:

Section
45-1851

"Sec. 311. Rights to surplus funds.

"Unless otherwise provided in the condominium instruments, any surplus funds of the unit owners' association that remain after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to the unit owners' liabilities for common expenses or credited to the unit owners to reduce the unit owners' future common expense assessments."

(ff) Section 312 (D.C. Code, sec. 45-1852) is amended as follows:

Section
45-1852

(1) The 1st sentence of subsection (c) is amended to read as follows:

"The amount of any common expense 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 the condominium units owned by the declarant, in accordance with the provisions of the condominium instruments."

(2) Subsection (d) is amended by striking the word "organ" and inserting the word "board" in its place.

(3) A new subsection (f) is added to read as follows:

"(f) Unless the condominium instruments provide otherwise, the declarant may elect to pay all common expenses for a period not to exceed 1 year from the conveyance of the 1st condominium unit to a purchaser. If the declarant elects, common expenses shall not be assessed against any condominium unit or imposed upon or collected from any unit owner, and the declarant shall pay all the costs including the costs of any contributions to reserve accounts as set forth in the budget of the condominium described in section 404."

(gg) Section 313 (D.C. Code, sec. 45-1853) is amended as follows:

Section
45-1853

(1) Subsection (a) is amended to read as follows:

"(a)(1) Any assessment levied against a condominium unit in accordance with the provisions of this act and any lawful provision of the condominium instruments shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the 1st installment becomes due and payable. The lien shall be prior to any other lien or encumbrance except:

"(A) A lien or encumbrance recorded prior to the recordation of the declaration;

"(B) A 1st mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

"(C) A lien for real estate taxes or municipal assessments or charges against the unit.

"(2) Except for a mortgage or deed of trust recorded prior to the effective date of the Condominium Amendment Act, the lien shall be prior to a mortgage or deed of trust described in subsection (a)(2) of this subsection to the extent of the common expense assessments based on the periodic budget adopted by the unit owner's 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 lien."

(2) Subsection (c) is amended to read as follows:

"(c)(1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due, unless the condominium instruments provide otherwise. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

"(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charge or interest due and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for the assessment.

"(3) The power of sale may be exercised by the executive board on behalf of the unit owners' association, and the executive board shall have the authority to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.

"(4) A foreclosure sale shall not 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 the unit owner to the executive board for purpose of notice. A copy of the notice shall be sent to the Mayor or the Mayor's designated agent at least 30 days in advance of the sale. The notice shall specify the amount of any assessment past due and any accrued interest or late charge, as of the date of the notice. The notice shall notify the unit owner that if the past due assessment and accrued interest or late charge are not paid within 30 days after the date the notice is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the notice.

"(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board 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 any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on

at least 3 separate days during the 15-day period prior to the date of the sale.

"(6) The proceeds of a sale shall be applied:

"(A) To any unpaid assessment with interest or late charges;

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

"(C) The balance to any person legally entitled to the proceeds."

(3) Subsection (d) is amended by striking the word "organ" wherever it appears and inserting the word "board" in its place.

(4) The 3rd sentence of subsection (h) is amended as follows:

"(A) By striking the phrase "five business" and inserting the number "10" in its place; and

"(B) By striking the word "organ" and inserting the word "board" in its place.

(5) A new subsection (j) is added to read as follows:

"(j) In addition to any other right or power 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 a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full."

(hh) Section 314 (D.C. Code, sec. 45-1854) is amended to read as follows:

"Sec. 314. Financial records.

"The unit owners' association shall keep books with detailed accounts in chronological order of the unit owners' associations' income and expenditures. The books and the vouchers accrediting the entries shall be made available for examination by a unit owner or the unit owner's attorney, accountant, or authorized agent during reasonable hours on business days. The books shall be kept in a manner verifiable upon an audit and shall be subjected to an independent financial review at least once annually. The books shall be subject to an independent audit upon the request of unit owners of units to which at least 33 1/3% of the votes in the unit owners' association appertain or a lower percentage as may be specified in the condominium instruments."

(ii) Section 315 (D.C. Code, sec. 45-1855) is amended by striking the word "organ" and inserting the word "board" in its place.

(jj) A new section 316 (D.C. Code, sec. 45-1856) is added to read as follows:

Section
45-1854

Section
45-1855

Section
45-1856

"Sec. 316. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

"(a) As used in this section, the term "structural defect" means a defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally 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 unit is 1st conveyed to a bona fide purchaser, and all of the common elements for 2 years. The 2 years shall begin as to any 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 of any additional land that may be added to an expandable condominium, at the time the 1st unit is 1st conveyed to a bona fide purchaser;

"(2) As to any portion of the common elements within any convertible land or convertible space or portion of a convertible land or convertible space, at the time the 1st unit is 1st conveyed to a bona fide purchaser; {and} or

"(3) As to any portion of the common elements within any other portion of the condominium, at the time the 1st unit is 1st 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. If the conversion condominium is offered in "as is" condition, the declarant's warranty against structural defects shall apply only to a defect in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

"(d) Except with respect to a purchaser of a unit that 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 that 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% of the estimated construction or conversion costs, or shall provide any other security the Mayor shall prescribe, to satisfy any costs that arise {arising} from

the declarant's failure to satisfy the requirements of this section. The bond or other security shall be posted or given prior to the 1st conveyance of the 1st unit to a purchaser and shall be continued until the end of the warranty period on each unit and on the common elements."

(kk) A new section 317 is added to read as follows:

Section
1856.1

"Sec. 317. Statute of limitations for warranties.

"(a) A judicial proceeding for breach of any obligation that arises under section 316 shall be commenced within 6 years after the cause of action accrues.

"(b) Subject to subsection (c) of this section, 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 1st 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, 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 is first conveyed to a bona fide purchaser; or 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 shall accrue at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier."

(ll) A new section 318 is added to read as follows:

Section
45-1856.2

"Sec. 318. 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 section 308 are to be exercised by or may be delegated to a for profit or nonprofit corporation or incorporated association that exercises the powers described in section 308 or other powers on behalf of 1 or more condominiums or for the benefit of the unit owners of 1 or more condominiums, all provisions of this act applicable to unit owners' associations shall apply to the for profit or nonprofit corporation or unincorporated association, except as modified by this section.

"(b) Unless a master association is acting in the capacity of an association described in section 304, it may exercise the powers set forth in section 308(a)(2) only to the extent expressly permitted in the condominium instruments of condominiums that 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 the powers following delegation.

"(d) The rights or responsibilities of a unit owner with respect to the unit owners' association set forth in sections 302, 303, 304, 305, and 320 shall apply in the conduct of the affairs of a master association only to any person who elects the board of a master association, whether or not the person is otherwise a unit owner within the meaning of this act.

"(e) Notwithstanding the provisions of section 302(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 regardless of whether a master association is an association described in section 301, the certificate of incorporation or other instrument that creates 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 shall be elected after the period of declarant control in any of the following ways:

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

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

(mm) A new section 319 is added to read as follows:

"Sec. 319. Merger or consolidation of condominiums.

"(a) Any 2 or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, if 2 or more condominiums merge or consolidate the resultant condominium

Section
45-1856.3

shall be, for all purposes, the legal successor of all of the preexisting condominiums, and the operations or activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association. The single unit owners' association shall hold any power, right, obligation, asset, or liability of all preexisting unit owners' associations.

"(b) An agreement of 2 or more condominiums to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate the condominium.

"(c)(1) A merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which the reallocations are based, or 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.

"(2) For purposes of this section, 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 that pertain to each unit."

(nn) A new section 320 is added to read as follows:

"Sec. 320. Conveyance or encumbrance of common elements.

Section
45-1856.4

"(a) A portion of the common elements may be conveyed or subjected to a security interest by the unit owners' association if persons entitled to cast at least 80% of the votes in the unit owners' association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the condominium instruments specify, agree to convey or subject to a security interest. To convey or subject a limited common element to a security interest, all the owners of units to which any limited common element is allocated shall agree. The condominium instruments may specify a smaller percentage if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale shall be an asset of the unit owners' association.

"(b) An agreement to convey or subject common elements to a security interest shall be evidenced by the execution and recordation of the agreement, or ratification of the agreement, in the same manner as a deed, and by the requisite number of unit owners. The agreement shall specify a date after which the agreement shall be void unless recorded before that date.

"(c) The unit owners' association, on behalf of the unit owners, may contract to convey or subject common elements to a security interest. The contract shall not be enforceable against the unit owners' association until approved pursuant to subsections (a) and (b) of this section. Upon approval, the unit owners' association shall have any power necessary and appropriate to effect the conveyance or encumbrance of the common elements, including the power to execute a deed or other instrument.

"(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements pursuant to this section shall not deprive any unit of the unit's right of access or support.

"(f) Unless the condominium instruments otherwise provide, a conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of a preexisting encumbrance."

(oo) A new section 321 is added to read as follows:

"Sec. 321. Unit owners' association as trustee.

"With respect to a 3rd person that deals with the unit owners' association in the unit owners' association's capacity as a trustee, the existence and proper exercise of trust powers by the unit owners' association, may be assumed without inquiry. A 3rd person shall not be bound to inquire whether the unit owners' association has the power to act as trustee or is properly exercising trust powers. A 3rd person without actual knowledge that the unit owners' association is exceeding or improperly exercising its powers is fully protected in dealing with the unit owners' association as if the unit owners' association possessed and properly executed the powers the unit owners' association purports to exercise. A 3rd person shall not be bound to assure the proper application of trust assets paid or delivered to the unit owners' association in its capacity as trustee."

(pp) Section 401 (D.C. Code, sec. 45-1861) is amended as follows:

(1) By striking the phrase "sections 403" and inserting the phrase "sections 402, 403" in its place.

(2) By amending paragraph (c) by striking the word "or".

(3) By adding the following new paragraphs to read as follows:

Section
45-1856.5

Section
45-1861

"(e) Gratuitous dispositions; or
"(f) Dispositions by foreclosure or deed in lieu of foreclosure."

(qq) Section 402 (D.C. Code, sec. 45-1862) is amended as follows:

Section
45-1862

(1) Subsection (b) is amended to read as follows:

"(b) During any period when registration of a condominium is required by this act or until the time that all units in the condominium have been initially disposed of to the bona fide purchasers, a declarant may not 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 the disposition. The disposition shall be expressly and without qualification or condition subject to cancellation by the purchaser before conveyance of the unit, within 15 days after the date of execution of the contract for the disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement shall not be current unless any necessary amendment is incorporated or attached. If the purchaser elects to cancel, he or she may cancel by notice hand-delivered or sent by United States mail, return receipt requested, to the seller. The cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety."

(2) A new subsection (d) is added to read as follows:

"(d) A declarant shall be liable under this act for any false or misleading statement in a public offering statement or for any omission of a material fact with respect to the portion of the public offering statement that he or she 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 or she delivers, the declarant shall not be liable for any false or misleading statement or any omission of a material fact unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission."

(rr) Section 404 (D.C. Code, sec. 45-1864) is amended as follows:

Section
45-1864

(1) Subsection (a) is amended as follows:

(A) Paragraph (5) is amended as follows:

(i) By striking the phrase "declaration and bylaws" and inserting the phrase "condominium instruments" in its place; and

(ii) By amending subparagraph (D) to read as follows:

"(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,".

(iii) Subparagraph (E) by striking the last occurrence of the word "and".

(iv) Subparagraph (F) by inserting the word "and" after the semicolon.

(v) By adding a new subparagraph (G) to read as follows:

"(G) A description of any service not reflected in the proposed budget that the declarant shall provide or expenses that he or she shall pay, and that he or she 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;".

(vi) By amending paragraph (6) to read as follows:

"(6) Copies of the deed that shall be delivered to a purchaser to evidence his or her interest in the unit and of the contract of sale that a purchaser shall be required to sign;".

(vii) By amending paragraph (12) to read as follows:

"(12) A statement that the contract purchaser of a condominium unit 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;".

(viii) By amending paragraph (13) by adding the word "and" after the semicolon.

(ix) By amending paragraph (14) by striking the phrase "; and" and inserting a period in its place.

(x) By repealing paragraph (15).

(2) A new subsection (a-1) is added to read as follows:

"(a-1) 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) of this section:

"(1) The total number of units 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 the assessment may vary seasonally;

"(4) A statement that shall include:

"(A) Any service that the declarant shall provide or any expense that the declarant shall pay, if the service or expense is not reflected in the budget and the declarant expects that the expense or service may later become a common expense of the unit owners' association; and

"(B) The projected common expense assessment attributable to any expense or service listed pursuant to subparagraph (A) of this paragraph for each time-share estate;

"(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 owners' 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 the 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 that arises out of claims against other time-share owners of the same unit."

(3) A new subsection (e) is added to read as follows:

"(e) In the case of a condominium situated wholly outside the District of Columbia, an application for registration or a 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 act, may not be rejected by the Mayor on the grounds of noncompliance with any different or additional requirements imposed by this act or by rules and regulations issued by the Mayor pursuant to this act. The Mayor may require additional documents or information in a particular case to assure adequate and accurate disclosure to prospective purchasers."

(tt) Section 408 (D.C. Code, sec. 45-1868) is amended as follows:

Section
45-1868

(1) Subsection (a) is amended as follows:

(A) By adding a comma after the 1st occurrence of the word "statement".

(B) By repealing paragraph (1).

(2) By adding a new subsection (c) to read as follows:

"(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, or replacement costs associated with the common elements."

(uu) Section 411 (D.C. Code, sec. 45-1871) is amended as follows:

Section
45-1871

(1) Subsection (a) is amended as follows:

(A) The 1st phrase of subsection (a) is amended to read as follows:

"(a) In the event of a resale of a condominium unit by a unit owner other than the declarant, the unit owner shall obtain from the unit owners' association and furnish to the purchaser, prior to the date of execution of the contract of sale by the purchaser, a copy of the condominium instruments and a certificate setting forth the following:

(B) Paragraph (3) is amended by striking the word "organ" and inserting the word "board" in its place.

(C) Paragraph (8) is amended by striking the period and inserting the phrase "; and" in its place.

(D) A new paragraph (9) is added to read as follows:

"(9) The date of issuance of the certificate."

(2) A new subsection (a-1) is added to read as follows:

"(a-1) If the requirements of subsection (a) of this section are not met, the contract shall be enforceable only at the option of the purchaser.

(3) Subsection (b) is amended by striking the word "statements" and inserting the word "certificate" in its place.

(vv) Section 412 (D.C. Code, sec. 45-1872) is amended by adding a new subsection (h) to read as follows:

Section
45-1872

"(h) With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with section 403, the agency shall send the lawful process 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 the application or any annual report."

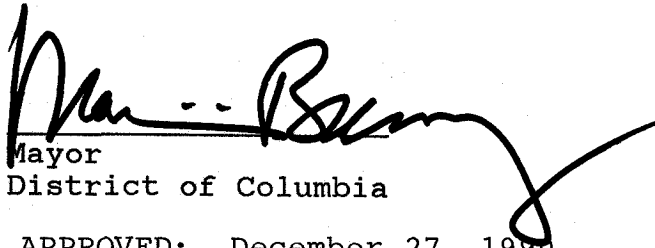
Sec. 3. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia

Enrolled Original

Statutes-at-Large, or the District of Columbia Municipal
Regulations.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: December 27, 1990



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Eight

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B8-65

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 12-04-90

VOICE VOTE: Approved

Recorded vote on request

Absent: all present

ROLL CALL VOTE: — RESULT _____ (_ / _ / _)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Russell A. Smith

Secretary to the Council

21 December 1990

Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 12-18-90

VOICE VOTE: Approved

Recorded vote on request

Absent: Wilson

ROLL CALL VOTE: — RESULT _____ (_ / _ / _)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Russell A. Smith

Secretary to the Council

21 December 1990

Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT _____ (_ / _ / _)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date