

Sec. 2. Notwithstanding the provisions of Minnesota Statutes, Section 340.14, Subdivision 5, or any other law to the contrary, any Sunday on-sale intoxicating liquor license issued to a licensed premises in unorganized territory of Lake County without an election on the question is hereby legalized and validated.

Sec. 3. AITKIN COUNTY; COMBINATION LICENSES. Subject to section 340.11, subdivision 10, and other applicable laws, the county board of Aitkin County may issue combination licenses for the on-sale and off-sale of intoxicating liquor in unorganized or unincorporated areas. The fee for such licenses shall be comparable with fees for combination licenses in comparable areas. No licensee shall continue operation of the off-sale portion of his business after discontinuance of the on-sale portion.

Sec. 4. Section 3 is effective upon approval by the governing body of the county of Aitkin and compliance with Minnesota Statutes, Section 645.021.

Sec. 5. Section 1 is effective the day following final enactment. Section 2 is effective upon compliance with Minnesota Statutes, Section 645.021, Subdivision 3.

Approved April 16, 1980

CHAPTER 582—S.F.No. 133

An act regulating certain joint economic activities; enacting the uniform condominium act and the 1976 uniform limited partnership act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

UNIFORM CONDOMINIUM ACT

ARTICLE I

GENERAL PROVISIONS

Section 515.1-101. **[515A.1-101] SHORT TITLE.** Sections 515.1-101 to 515.4-117 shall be known and may be cited as the uniform condominium act.

Sec. 515.1-102. **[515A.1-102] APPLICABILITY.** (a) Sections 515.1-105 (Separate Titles and Taxation; Homestead), 515.1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 515.1-107 (Eminent Domain), 515.2-103 (Construction and Validity of Declaration and Bylaws), 515.2-104 (Description of Units), 515.3-102 (1) to (5) and (9) to (12) (Powers of Unit Owners Association), 515.3-111 (Tort and Contract Liability), 515.3-112 (Insurance), 515.3-115 (Lien for Assessments), 515.3-116 (Association Records), 515.4-107 (Resales of Units), and 515.1-103 (Definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state prior to the effective date of sections 515.1-101 to 515.4-117; provided, however, that these sections apply only with respect to events and circumstances occurring

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after the effective date of sections 515.1-101 to 515.4-117, and do not invalidate existing provisions of the declaration, bylaws, or floor plans of those condominiums.

(b) Sections 515.1-101 to 515.4-117 apply to all condominiums created within this state after August 1, 1980. The provisions of Minnesota Statutes, Sections 515.01 to 515.29 do not apply to condominiums created after August 1, 1980 and do not invalidate any amendment to the declaration, bylaws, or floor plans of any condominium created before August 1, 1980 if the amendment would be permitted by sections 515.1-101 to 515.4-117. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Minnesota Statutes, Sections 515.01 to 515.29. If the amendment grants to any person any rights, powers or privileges permitted by sections 515.1-101 to 515.4-117, all correlative obligations, liabilities, and restrictions in sections 515.1-101 to 515.4-117 also apply to that person.

Sec. 515.1-103. **[515A.1-103] DEFINITIONS.** In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in sections 515.1-101 to 515.4-117:

(1) "Additional real estate" means real estate that may be added to a flexible condominium.

(2) "Affiliate of a declarant" means 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 or (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, or (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 or (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, or (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(3) "Association" or "unit owners association" means the unit owners association organized under section 515.3-101.

(4) "Common elements" means all portions of a condominium other than the units.

(5) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

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(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 515.2-108.

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(8) "Conversion condominium" means a condominium in which a building was at any time before the recording of the declaration wholly or partially occupied by persons other than purchasers and persons who occupied with the consent of the purchasers.

(9) "Declarant" means:

(a) if the condominium has been created, (1) any person who has executed a declaration or an amendment to a declaration to add additional real estate, other than persons holding interests in the real estate solely as security for an obligation, persons whose interests in the real estate will not be conveyed to unit owners, or, in the case of a leasehold condominium, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights, or (2) any person who succeeds under section 515.3-104 to any special declarant rights; or

(b) any person who has offered prior to creation of a condominium to dispose of his interest in a unit to be created and not previously disposed of.

(10) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, other than as security for an obligation.

(11) "Flexible condominium" means a condominium to which additional real estate may be added.

(12) "Leasehold condominium" means a condominium in which all of the real estate is subject to a lease, the expiration or termination of which will terminate the condominium.

(13) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 515.2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(14) "Person" means a natural person, corporation, partnership, trust, or other entity, or any combination thereof.

(15) "Purchaser" means any person, other than a declarant, who prior to creation of the condominium enters into a purchase agreement with a declarant or who by means of a voluntary transfer after creation of the condominium holds a legal or equitable interest in a unit, other than (i) a leasehold interest (including renewal options) of less than three years, or (ii) as security for an obligation.

(16) "Real estate" means any leasehold for three years or more 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" includes parcels with or without upper or lower boundaries.

(17) "Security for an obligation" means the vendor's interest in a contract for deed, mortgagee's interest in a mortgage, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

(18) "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on floor plans (section 515.2-110); to add additional real estate to a flexible condominium (section 515.2-111); to subdivide or convert a unit (section 515.2-115); to maintain sales offices, management offices, signs advertising the condominium, and models (section 515.2-117); to use easements through the common elements for the purpose of making improvements within the condominium or any additional real estate (section 515.2-118); or to appoint or remove any board member during any period of declarant control (section 515.3-103(a)).

(19) "Unit" means a portion of the condominium, whether or not contained solely or partially within a building, designated for separate ownership, the boundaries of which are described pursuant to section 515.2-110.

(20) "Unit owner" means a declarant who owns a unit, a person to whom ownership of a unit has been conveyed or transferred, or in a leasehold condominium a lessee of a unit whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a holder of an interest as security for an obligation.

Sec. 515.1-104. **[515A.1-104] VARIATION BY AGREEMENT.** Except as expressly otherwise provided in sections 515.1-101 to 515.4-117, provisions of sections 515.1-101 to 515.4-117 may not be varied by agreement, and rights conferred by sections 515.1-101 to 515.4-117 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 sections 515.1-101 to 515.4-117 or the declaration.

Sec. 515.1-105. **[515A.1-105] SEPARATE TITLES AND TAXATION; HOMESTEAD.** (a) Each unit together with its common element interest constitutes for all purposes a separate parcel of real estate.

(b) If a declaration is recorded prior to ten days before any installment of real estate taxes becomes payable, the local taxing authority shall split the taxes so payable on the condominium among the units. Interest and penalties which would otherwise accrue shall not begin to accrue until at least 30 days after the split is accomplished.

(c) A unit used for residential purposes together with not more than two units used for vehicular parking and their common element interests shall be treated the same as any other real estate in determining whether homestead exemptions or classifications shall apply.

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Sec. 515.1-106 [515A.1-106] APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. (a) Except as provided in subsections (b) and (c), a zoning, subdivision, building code, or other real estate use law, ordinance, charter provision, or regulation may not directly or indirectly prohibit the condominium form of ownership or impose any requirement upon a condominium, upon the creation or disposition of a condominium or upon any part of the condominium conversion process which it would not impose upon a physically similar development under a different form of ownership. Otherwise, no provision of sections 515.1-101 to 515.4-117 invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, charter provision, or regulation.

(b) Subsection (a) shall not apply to any ordinance, rule, regulation, charter provision or contract provision relating to the financing of housing construction, rehabilitation, or purchases provided by or through a housing finance program established and operated pursuant to state or federal law by a state or local agency or local unit of government.

(c) A statutory or home rule charter city, pursuant to an ordinance or charter provision establishing standards to be applied uniformly within its jurisdiction, may prohibit or impose reasonable conditions upon the conversion of buildings to the condominium form of ownership only if there exists within the city a significant shortage of suitable rental dwellings available to low and moderate income individuals or families or to establish or maintain the city's eligibility for any federal or state program providing direct or indirect financial assistance for housing to the city. Prior to the adoption of an ordinance pursuant to the authority granted in this subsection, the city shall conduct a public hearing.

Any ordinance or charter provision adopted pursuant to this subsection shall not apply to any conversion condominium or proposed conversion condominium for which a bona fide loan commitment for a consideration has been issued by a lender and is in effect on the date of adoption of the ordinance or charter provision, or for which a notice of condominium conversion or intent to convert prescribed by section 515.4-110(a), containing a termination of tenancy, has been given to at least 75 percent of the tenants and subtenants in possession prior to the date of adoption of the ordinance or charter provision.

(d) For purposes of providing marketable title, a statement in the declaration showing that the condominium is not subject to an ordinance or showing that any conditions required under an ordinance have been complied with shall be prima facie evidence that the condominium was not created in violation thereof.

(e) A violation of an ordinance or charter provision adopted pursuant to the provisions of subsections (b) or (c) shall not affect the validity of a condominium. This subsection shall not be construed to in any way limit the power of a city to enforce the provisions of an ordinance or charter provision adopted pursuant to subsections (b) or (c).

Any ordinance or charter provision enacted hereunder shall not be effective for a period exceeding 18 months.

Sec. 515.1-107. **[515A.1-107] EMINENT DOMAIN.** (a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner and holders of an interest as security for an obligation in the unit and its common element interest as their interests may appear, whether or not any common element interest is acquired. Upon acquisition, unless the decree otherwise provides, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated to the remaining units in proportion to the respective interests, votes, and liabilities of those units prior to the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award shall compensate the unit owner and the holders of an interest as security for an obligation as their interests may appear for the reduction in value of the unit and its common element interest. Upon acquisition, unless the apportionment thereof pursuant to the declaration is based upon equality, (1) that unit's common element interest, votes in the association, and common expense liability are reduced in proportion to the reduction in the size of the unit, and (2) the portion of common element interest, votes, and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective interests, votes, and liabilities of those units prior to the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced interests, votes, and liabilities.

(c) If part of the common elements is acquired by eminent domain, the award shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners and holders of an interest as security for an obligation as their interests may appear in proportion to their respective interests in the common elements before the taking, but the portion of the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition and the respective holders of an interest as security for an obligation of the units as their interests may appear of the units to which that limited common element was allocated at the time of acquisition, or in such other manner as the declaration may provide.

(d) The court decree shall be recorded in every county in which any portion of the condominium is located.

Sec. 515.1-108. **[515A.1-108] SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.** The principles of law and equity, including the law of corporations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress,

coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of sections 515.1-101 to 515.4-117, except to the extent inconsistent with sections 515.1-101 to 515.4-117. Documents required by sections 515.1-101 to 515.4-117 to be recorded shall in the case of registered land be filed.

Sec. 515.1-109. **[515A.1-109] CONSTRUCTION AGAINST IMPLICIT REPEAL.** Sections 515.1-101 to 515.4-117 being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Sec. 515.1-110. **[515A.1-110] UNIFORMITY OF APPLICATION AND CONSTRUCTION.** Sections 515.1-101 to 515.4-117 shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of sections 515.1-101 to 515.4-117 among states enacting it.

Sec. 515.1-111. **[515A.1-111] SEVERABILITY.** If any provision of sections 515.1-101 to 515.4-117 or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of sections 515.1-101 to 515.4-117 which can be given effect without the invalid provisions or application, and to this end the provisions of sections 515.1-101 to 515.4-117 are severable.

Sec. 515.1-112. **[515A.1-112] UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.** (a) The court, upon finding as a matter of law that a contract or contract clause to which the declarant or the affiliate of a declarant is a party was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court that such a contract or contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(3) the effect and purpose of the contract or clause; and

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not; of itself, render the contract unconscionable.

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Sec. 515.1-113. [515A.1-113] **OBLIGATION OF GOOD FAITH.** Every contract or duty governed by sections 515.1-101 to 515.4-117 imposes an obligation of good faith in its performance or enforcement.

Sec. 515.1-114. [515A.1-114] **REMEDIES TO BE LIBERALLY ADMINISTERED.** (a) The remedies provided by sections 515.1-101 to 515.4-117 shall be liberally administered to the end that the aggrieved party is put in as good a position as though the other party had fully performed, provided that rights of bona fide purchasers shall be protected. However, consequential, special, or punitive damages may not be awarded except as specifically provided in sections 515.1-101 to 515.4-117 or by other rule of law.

(b) Any right or obligation declared by sections 515.1-101 to 515.4-117 is enforceable by judicial proceeding unless the provision declaring it provides otherwise.

Sec. 515.1-115. [515A.1-115] **NOTICE.** Except as otherwise stated in sections 515.1-101 to 515.4-117 all notices required by sections 515.1-101 to 515.4-117 shall be in writing and shall be effective upon hand delivery or upon mailing if properly addressed with postage prepaid and deposited in the United States mail.

Sec. 515.1-116. [515A.1-116] **EFFECTIVE DATE.** Section 515.1-106 is effective the day following final enactment.

ARTICLE II

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 515.2-101. [515A.2-101] **CREATION OF CONDOMINIUM.** (a) A condominium may be created pursuant to sections 515.1-101 to 515.4-117 only by recording a declaration executed, in the same manner as a deed, by all persons whose interests in the real estate will be conveyed to unit owners, except vendors under contracts for deed, and by every lessor of a lease the expiration or termination of which will terminate the condominium. The condominium shall not include real estate covered by a lease affecting less than all of the condominiums and the expiration or termination of which will reduce the size of the condominium. The declaration and bylaws shall be recorded in every county in which any portion of the condominium is located. *Failure of any party to join in a declaration shall have no effect on the validity of a condominium provided that after the recording of the declaration the party acknowledges the condominium in a recorded instrument or the interest of the party is extinguished.*

(b) A declaration, or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems serving more than one unit of all buildings containing or comprising any units thereby created are substantially completed consistent with the floor plans, as evidenced by a certificate executed by a registered professional engineer or architect and recorded or attached to the floor plans.

(c) *No possessory interest in a unit may be conveyed until the unit is substantially completed as evidenced by a recorded certificate of completion*

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executed by a registered professional engineer or architect. For the purpose of this section "substantially completed" means entirely completed consistent with the floor plans. This subsection does not prevent the conveyance prior to substantial completion of all units owned by the declarant to a person who is a transferee of special declarant rights.

(d) The declaration, any amendment or amendments thereof, and every instrument affecting a condominium or any unit shall be entitled to be recorded.

(e) In addition to the records and indexes required to be maintained by the recording officer, the recording officer shall maintain an index or indexes whereby the record of each declaration contains a reference to the record of each conveyance of a unit affected by the declaration.

(f) The recording officer shall upon request assign a number to a condominium to be formed.

(g) The recording officer shall separate the floor plans from the declaration and the floor plans shall be kept by the recording officer in a separate file for each condominium indexed in the same manner as a conveyance entitled to record indicating the number of the condominium.

Sec. 515.2-102. **[515A.2-102] UNIT BOUNDARIES.** Except as otherwise provided by the declaration:

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

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

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

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

Sec. 515.2-103. **[515A.2-103] CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.** (a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration or sections 515.1-101 to 515.4-117, or any instrument executed pursuant to the declaration or sections 515.1-101 to 515.4-117.

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent that the declaration is inconsistent with sections 515.1-101 to 515.4-117.

Sec. 515.2-104. **[515A.2-104] DESCRIPTION OF UNITS.** After the declaration is recorded, a description of a unit which sets forth the number of the condominium, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and its common element interest whether or not the common element interest is described or referred to therein.

Sec. 515.2-105. **[515A.2-105] CONTENTS OF DECLARATION; ALL CONDOMINIUMS.** The declaration for a condominium shall contain:

(1) the name and number of the condominium, which shall include the word "condominium" or be followed by the words "a condominium";

(2) the name of every county in which any part of the condominium is situated;

(3) a legally sufficient description of the real estate included in the condominium;

(4) a description or delineation of the boundaries of a unit;

(5) the floor plans as required by section 515.2-110;

(6) an allocation to each unit of an undivided interest in the common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association (section 515.2-108);

(7) a statement of the maximum number of any units which may be created by the subdivision or conversion of units owned by the declarant pursuant to section 515.2-115(c);

(8) an allocation of any limited common elements, as provided in section 515.2-109;

(9) any restrictions on use, occupancy, and alienation of the units;

(10) a statement showing that the condominium is not subject to an ordinance provided for in section 515.1-106 or showing that any conditions required under an ordinance have been complied with;

(11) any other matters the declarant deems appropriate.

Sec. 515.2-106. **[515A.2-106] CONTENTS OF DECLARATION; FLEXIBLE CONDOMINIUMS.** The declaration for a flexible condominium shall include, in addition to the matters specified in section 515.2-105:

- (1) an explicit reservation of any options to add additional real estate;
- (2) a statement of any time limit, not exceeding seven years after the recording of the declaration, upon which any option reserved under paragraph (1) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. If no time limit is set forth in the declaration, the time limit shall be seven years after the recording of the declaration;
- (3) a statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed pursuant to law;
- (4) legally sufficient descriptions of each portion of additional real estate;
- (5) if portions of any additional real estate may be added at different times, a statement to that effect together with a statement fixing the boundaries of those portions and regulating the order in which they may be added or a statement that no assurances are made in those regards;
- (6) a statement of (i) the maximum number of units that may be created within any additional real estate and within any portion, the boundaries of which are fixed pursuant to paragraph (5), and (ii) how many of those units will be restricted exclusively to residential use;
- (7) a statement that any buildings and units that may be erected upon the additional real estate or a portion thereof will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size, or a statement of any differences with respect to the buildings or units, or a statement that no assurances are made respecting those matters;
- (8) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to units created in the additional real estate, or a statement of any differentiations that may be made as to those units;
- (9) general descriptions of all other improvements and common elements that may be made or created upon or within the additional real estate or each portion thereof;
- (10) a statement of the extent to which any assurances made in the declaration regarding additional real estate pursuant to paragraphs (5) to (9) apply in the event any additional real estate is not added to the condominium, or a statement that those assurances do not apply if the real estate is not added to the condominium.

Sec. 515.2-107. **[515A.2-107] LEASEHOLD CONDOMINIUMS.** (a) Any lease the expiration or termination of which may terminate the condominium shall be recorded and the declaration shall include, in addition to the matters specified in section 515.2-105:

- (1) the county of recording and recorder's document number for the lease;

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(2) the date on which the lease is scheduled to expire;

(3) *any right of the unit owners to purchase the lessor's interest in the real estate and the manner whereby those rights may be exercised, or a statement that they do not have those rights;*

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

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

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent which shall be the same portion thereof as that of his common area expense and who otherwise complies so far as practicable with his share of all other covenants which, if violated, would entitle the lessor to terminate the lease. No unit owner's leasehold interest is affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the lessor does not merge the leasehold and fee simple interests and the lessor shall hold the title to the unit subject to the declaration unless the leasehold interests of all unit owners subject to the lease are so acquired.

Sec. 515.2-108. **[515A.2-108] ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES.** (a) The declaration shall allocate a fraction or percentage of the undivided interests in the common elements, common expenses and votes in the association to each unit in such manner that each of the items is equally allocated or is allocated according to the proportion of the area or volume of each unit to the area or volume of all units, and the items need not be allocated the same for all purposes. The declaration may provide that a portion of each common expense assessment may be allocated on the basis of equality and the remainder on the basis of area or volume of each unit. The sum of the percentages or fractions shall equal 100 percent or one.

(b) Except in the case of eminent domain (section 515.1-107), expansion of a flexible condominium (section 515.2-111), relocation of boundaries between adjoining units (section 515.2-114), or subdivision of units (section 515.2-115), the *common element interest, votes and common expense liability allocated to any unit* may not be altered, except as an amendment to the declaration which is signed by all unit owners and first mortgagees, and which complies with section 515.2-119. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest or involuntary transfer of an undivided interest in the common elements without the unit to which the interest is allocated is void.

(c) The association may assess certain common expenses against fewer than all units pursuant to section 515.3-114.

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Sec. 515.2-109. **[515A.2-109] COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.** Common elements other than limited common elements may be used in common with all unit owners. Except for the limited common elements described in section 515.2-102(2) and (4), the declaration shall specify to which unit each limited common element is allocated.

Sec. 515.2-110. **[515A.2-110] FLOOR PLANS.** (a) Floor plans are a part of the declaration. The floor plans shall contain a certification by a registered professional engineer, surveyor or architect that the floor plans accurately depict all information required by this section.

(b) Each floor plan shall show:

(1) the number of the condominium, and the boundaries and dimensions of the land included in the condominium;

(2) the dimensions and location of all existing structural improvements and roadways;

(3) the intended location and dimensions of any contemplated common element improvements to be constructed within the condominium labeled either "MUST BE BUILT" or "NEED NOT BE BUILT";

(4) the location and dimensions of any additional real estate, labeled as such;

(5) the extent of any encroachments by or upon any portion of the condominium;

(6) the location and dimensions of all recorded easements within the condominium serving or burdening any portion of the condominium;

(7) the distance between noncontiguous parcels of real estate;

(8) the location and dimensions of limited common elements, including porches, balconies and patios, other than limited common elements described in section 515.2-102(2) and (4);

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

(10) the location and dimensions of the horizontal unit boundaries with reference to established or assumed datum, and that unit's identifying number;

(11) any units which may be converted by the declarant to create additional units or common elements (section 515.2-115) identified separately.

(c) When adding additional real estate (section 515.2-111), the declarant shall record supplemental floor plans for that real estate conforming to the requirements of subsection (b). If less than all additional real estate is being added, the supplemental floor plans shall also show the location and dimensions of the remaining portion.

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(d) If a declarant subdivides or converts any unit into two or more units, common elements or limited common elements (section 515.2-115), he shall record an amendment to the floor plans showing the location and dimensions of any new units, common elements and limited common elements thus created.

Sec. 515.2-111. **[515A.2-111] EXPANSION OF FLEXIBLE CONDOMINIUMS.** (a) To add additional real estate pursuant to an option reserved under section 515.2-106(1), all persons having an interest in the additional real estate, excepting any holder of an easement or any holder of an interest to secure an obligation which interest was recorded or created subsequent to the recording of the declaration, shall prepare and execute and, after notice as provided in subsection (b), record an amendment to the declaration. The amendment to the declaration shall assign an identifying number to each unit formed in the additional real estate, and reallocate common element interests, votes in the association, and common expense liabilities according to section 515.2-108. The amendment shall describe or delineate any limited common elements formed out of the additional real estate, showing or designating the unit to which each is allocated to the extent required by section 515.2-109 (Limited Common Elements).

(b) The declarant shall serve notice of his intention to add additional real estate as follows:

(1) To the association in the same manner as service of summons in a civil action in district court at least 30 days prior to recording the amendment. The amendment shall be attached to the notice and shall not thereafter be changed so as to materially affect the rights of unit owners.

(2) To the occupants of each unit by notice given in the manner provided in section 515.1-115 not less than 20 days prior to recording the amendment addressed to "Occupant Entitled to Legal Notice" at each unit. Attached to the notice shall be a statement that the amendment has been served on the association.

(3) Proof of service upon the association and the occupants shall be attached to the recorded amendment.

Sec. 515.2-112. **RESERVED.**

Sec. 515.2-113. **[515A.2-113] ALTERATIONS OF UNITS.** Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may with consent of the association and first mortgagees of the affected units, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. The adjoining unit owners shall have the exclusive

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license to use the space occupied by the common elements, but the use shall not create an easement or vested right. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries. The association may reasonably require that the owner or owners of units affected replace or restore any such partition.

Sec. 515.2-114. [515A.2-114] RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. (a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. The owners of the adjoining units shall specify the proposed reallocation between their units of their common element interests, votes in the association, and common expense liabilities in the application and in accord with section 515.2-108. Unless the board of directors determines within 60 days after receipt of the application by the association that the proposed amendment is not in the best interests of the condominium, the unit owners shall prepare an amendment which shall identify the units involved, state the reallocation, be executed by those unit owners and by any holder of an interest as security for an obligation, contain words of conveyance between them, contain written consent of the association, and upon recordation be indexed in the name of the grantor and the grantee. The amendment shall include an amended floor plan to show the altered boundaries between the adjoining units and their dimensions and identifying numbers. If a holder of an interest as security for an obligation joins in the amendment pursuant to this section, the extent of the interest and the remedies shall be deemed to be modified as provided in the amendment. The association shall incur no liability to any party by reason of performing those acts enumerated in this section.

(b) The association may require the owners of the affected units to build a boundary wall and other common elements between the units.

(c) The applicant shall deliver a certified copy of the amendment to the association.

Sec. 515.2-115. [515A.2-115] SUBDIVISION OR CONVERSION OF UNITS. (a) If the declaration expressly so permits, (i) a unit may be subdivided into two or more units, or, (ii) if owned by a declarant, a unit may be subdivided or converted into two or more units, limited common elements, common elements, or a combination of units, limited common elements and common elements. Subject to the provisions of the declaration and other provisions of law, the unit owner shall prepare and execute an amendment to the declaration, including the floor plans, subdividing or converting that unit. The amendment to the declaration shall be executed by the unit owner and any holder of an interest as security for an obligation of the unit to be subdivided or converted, assign an identifying number to each unit created, and reallocate the common element interest, votes in the association, and common expense liability formerly allocated to the subdivided unit to the units in accord with section 515.2-108.

(b) The unit owner shall deliver a certified copy of the recorded amendment to the association.

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(c) In the case of a unit owned by a declarant, if a declarant converts part or all of a unit to common elements, the amendment to the declaration shall reallocate among the other units the common element interest, votes in the association, and common-expense liability formerly allocated to the converted unit or portion thereof on the same basis used for the initial allocation thereof.

(d) If a holder of an interest as security for an obligation joins in the amendment pursuant to this section, the interest and remedies shall be deemed to apply to the units and the common element interests that result from the subdivision or conversion under this section. In the event of enforcement of any remedy, including foreclosure by advertisement, all instruments and notices shall describe the subject property in terms of the amended description.

Sec. 515.2-116. **[515A.2-116] MINOR VARIATION IN BOUNDARIES.** The existing physical boundaries of a unit or of a unit reconstructed in substantial accordance with the floor plans are conclusively presumed to be its boundaries regardless of settling or lateral movement of the building.

Sec. 515.2-117. **[515A.2-117] USE FOR SALES PURPOSES.** If the declaration so provides and specifies the rights of a declarant with regard to their number, size, location and relocation, a declarant may maintain sales offices, management offices, and models in the condominium. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium.

Sec. 515.2-118. **[515A.2-118] EASEMENT TO FACILITATE COMPLETION, CONVERSION, AND EXPANSION.** Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under sections 515.1-101 to 515.4-117 or reserved in the declaration.

Sec. 515.2-119. **[515A.2-119] AMENDMENT OF DECLARATION.** (a) Except in cases of amendments which may be executed by a declarant under sections 515.2-110(c) and (d), 515.2-111(a); the association under section 515.1-107(a); or certain unit owners under sections 515.2-114, 515.2-115, or 515.2-120(b), and except as limited by subsection (d), the declaration may be amended by the association only by a vote or written agreement of unit owners to which at least 67 percent of the votes in the association are allocated, and 67 percent of the first mortgagees of the units (each mortgagee having one vote per unit financed) or any larger or smaller majority the declaration specifies. The declaration may specify any percentage if all of the units are restricted exclusively to nonresidential use.

(b) Every amendment to the declaration shall be recorded in every county in which any portion of the condominium is located, and is effective only when recorded.

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(c) Except to the extent expressly permitted or required by other provisions of sections 515.1-101 to 515.4-117, no amendment may create or increase special declarant rights, increase the number of units, convert common elements to limited common elements, or change the boundaries of any unit, the common element interest, common expense liability, or voting strength in the association allocated to a unit, or the uses to which any unit is restricted, in the absence of unanimous written agreement of the unit owners and holders of an interest as security for an obligation.

(d) Limited common elements shall not be altered without the written agreement of the unit owners and holders of an interest to secure an obligation of the units to which the limited common elements are allocated.

(e) An affidavit of the secretary of the association stating that the votes or agreements required by this section have occurred, shall be attached to the amendment and shall constitute prima facie evidence of the representations contained therein.

Sec. 515.2-120. **[515A.2-120] TERMINATION OF CONDOMINIUM.** (a) Except in the case of a taking of all the units by eminent domain (section 515.1-107), a condominium may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, and 80 percent of the first mortgagees of the units (each mortgagee having one vote per unit financed), or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) An agreement of unit owners and mortgagees to terminate a condominium must be evidenced by their execution of a termination agreement or ratification thereof. If, pursuant to a termination agreement, the real estate constituting the condominium is to be sold following termination, the termination agreement shall set forth the terms of the sale. A termination agreement and all ratifications thereof shall be effective upon recording in every county in which a portion of the condominium is situated.

(c) If the termination agreement provides that the real estate constituting the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. The association as trustee thereafter has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers and responsibilities it had before termination whether under the declaration or otherwise. Unless the termination agreement otherwise provides, proceeds of the sale shall be paid to the association as trustee and shall be distributed to the unit owners and holders of an interest as security for an obligation as their interests may appear and according to the priority enjoyed prior to termination in proportion to the respective interests of unit owners as provided in subsection (f). Any interest as security for an obligation formerly affecting a unit shall constitute a claim against the proceeds in the amount existing at the time of termination plus interest and other amounts accrued until distribution. Except as otherwise speci-

fied in the termination agreement, as long as the association as trustee holds title to the real estate, each unit owner and his successors in interest have the right to use the real estate that formerly constituted the common elements and have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit and limited common elements. During the period of such occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by sections 515.1-101 to 515.4-117, the declaration, or the termination agreement.

(d) If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f). Any interests held as security for an obligation and the respective instruments formerly affecting a unit shall be deemed to be an interest affecting the resulting undivided interest in the same manner as they formerly affected the unit. As long as 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 and limited common elements. Unless the termination agreement otherwise provides during the period of tenancy in common, the cotenants and the association shall have the rights and obligations under sections 515.1-101 to 515.4-117, the declaration and bylaws and the termination agreement.

(e) Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners and holders of an interest as security for an obligation in proportion to their respective interests as provided in subsection (f). The proceeds of sale described in subsection (c) and held by the association as trustee are not assets of the association.

(f) The respective interests of unit owners referred to in subsections (c), (d), and (e) are as follows:

(1) except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be delivered in the manner provided in section 515.1-115 addressed to the "Occupant Entitled to Legal Notice" at each unit and the first mortgagee of each unit at its last known address and becomes final unless disapproved within 30 days after delivery by unit owners of units to which 25 percent of the votes in the association are allocated or by 25 percent of the first mortgagees, each mortgagee having one vote per unit financed. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of his interest by the total fair market values of the interests of all unit owners.

(2) if any unit is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made and there is not satisfactory evidence to afford such an appraisal, the interests of all unit owners are their respective common element interests immediately before the termination.

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Sec. 515.2-121. [515A.2-121] **RIGHTS OF HOLDERS OF AN INTEREST AS SECURITY FOR AN OBLIGATION.** (a) Nothing in sections 515.1-101 to 515.4-117 unless expressly stated diminishes the rights of holders of an interest as security for an obligation or prevents the declaration from requiring that all or a specified number or percentage of holders of an interest as security for an obligation affecting the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners, or (2) prevent the association from commencing, intervening in or settling any litigation, or proceeding, or receiving and distributing any insurance proceeds pursuant to section 515.3-112.

(b) Foreclosure or enforcement of an interest as security for an obligation against the entire condominium does not of itself terminate the condominium. Foreclosure or enforcement of an interest as security for an obligation against a portion of the condominium without redemption withdraws that portion from the condominium unless (i) the interest is recorded subsequent to the recording of the declaration or is otherwise subordinate to the declaration, or (ii) the holder or his predecessor has issued a release or deed for a unit.

ARTICLE III MANAGEMENT OF THE CONDOMINIUM

Section 515.3-101. [515A.3-101] **ORGANIZATION OF UNIT OWNERS ASSOCIATION.** A unit owners association shall be organized no later than the date the condominium is created. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 515.2-120, or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation.

Sec. 515.3-102. [515A.3-102] **POWERS OF UNIT OWNERS ASSOCIATION.** (a) Unless limited by the provisions of the declaration, the association may:

- (1) adopt and amend rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (5) regulate the use, maintenance, repair, replacement and modification of common elements;
- (6) cause improvements to be made as a part of the common elements;

(7) grant leases, licenses, and concessions not to exceed one year and utility easements through or over the common elements; provided, however, that after conveyance to owners other than the declarant or affiliate of a declarant of units to which more than 50 percent of the voting power is allocated, the association may by resolution of a meeting of the members duly called grant leases, licenses, and concessions in excess of one year and easements through or over the common elements;

(8) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in section 515.2-102(2) and (4);

(9) impose reasonable charges including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the declaration, resale certificates required by section 515.4-107, or statements of unpaid assessments;

(10) provide for the indemnification of its officers and board and maintain directors' and officers' liability insurance;

(11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

(12) exercise any other powers conferred by state law, the declaration, or bylaws.

(b) Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 515.3-103. [515A.3-103] BOARD OF DIRECTORS, MEMBERS AND OFFICERS. (a) The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may elect the members of the board of directors. Any period of declarant control extends from the date of the first conveyance of a unit to a unit owner other than a declarant for a period not exceeding five years in the case of a flexible condominium or three years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates upon surrender of control by the declarant or no later than 60 days after conveyance of 75 percent of the units to unit owners other than a declarant.

(b) Not later than 60 days after conveyance of 50 percent of the units to unit owners other than a declarant not less than 33-1/3 percent of all of the members of the board of directors shall be elected by unit owners other than the declarant.

(c) Not later than the termination of the period of declarant control and thereafter the unit owners shall elect a board of directors of at least three members, at least a majority of whom shall be unit owners or the individual

nominees of unit owners other than individuals. The board of directors shall elect the officers. The persons elected shall take office upon election.

(d) In determining whether the period of declarant control has terminated under subsection (a), or whether unit owners other than a declarant are entitled to elect members of the board of directors under subsection (b), the percentage of the units which has been conveyed is presumed to be that percentage which would have been conveyed if all the units which the declarant has built or reserved the right to build in the declaration were included in the condominium.

Sec. 515.3-104. **[515A.3-104] TRANSFER OF SPECIAL DECLARANT RIGHTS.** (a) No special declarant rights (section 515.1-103 (18)) created or reserved under sections 515.1-101 to 515.4-117 may be transferred except by an instrument evidencing the transfer recorded in every county where any portion of the condominium is located. The instrument shall be recordable and is not effective unless executed by the transferor and transferee. If additional real estate is transferred by the declarant, the transferee shall be deemed to receive all special declarant rights with respect thereto and shall be subject to any obligations imposed by the declaration respecting the additional real estate so transferred.

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

(1) a transferor is not relieved of any obligation or liability which arose before the transfer, and remains liable for warranty obligations imposed on him by sections 515.1-101 to 515.4-117. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor;

(2) if a transferor retains any special declarant right, or if a successor to any special declarant right is an affiliate of a declarant (section 515.1-103(2)), the transferor is subject to liability for all obligations and liabilities imposed on a declarant by sections 515.1-101 to 515.4-117 or by the declaration arising after the transfer and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the condominium; and

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

(c) In case of foreclosure of a mortgage or cancellation of a contract for deed or sale under the bankruptcy act or receivership proceeding or the foreclosure of any other lien against any unit owned by a declarant in the condominium, a person first acquiring title to all the units being cancelled, foreclosed or sold, succeeds to all then existing special declarant rights except the special declarant rights with respect to additional real estate, unless the mortgage or other instrument or proceeding also covers additional real estate.

(d) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

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(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all the obligations and liabilities imposed on any declarant by sections 515.1-101 to 515.4-117 or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed on a declarant by sections 515.1-101 to 515.4-117 or the declaration, except that he is not subject to liability for misrepresentations or warranty obligations on improvements made by *any previous declarant, or made before the condominium was created, or for a breach of fiduciary obligation by any previous declarant.*

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (section 515.2-117), if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a disclosure statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights, who is not an affiliate of a declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or by reason of 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 the right to control the board of directors in accordance with the provisions of section 515.3-103 for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as any successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 515.3-103.

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under sections 515.1-101 to 515.4-117 or the declaration.

Sec. 515.3-105. **[515A.3-105] TERMINATION OF CONTRACTS AND LEASES OF DECLARANT.** If entered into prior to expiration of the period of declarant control pursuant to section 515.3-103, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease binding the association or any unit owner other than the declarant or an affiliate of the declarant to which a declarant or an affiliate of a declarant is a party, or (3) any contract or lease binding the association or any unit owner other than the declarant or an affiliate of the declarant which is not bona fide or which was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the expiration of declarant control upon not less than 90 days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium.

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Sec. 515.3-106. **[515A.3-106] BYLAWS.** The bylaws and any amendments thereto must be recorded to be effective and shall provide:

(a) The meeting of the members shall be held at least once each year and shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place and complete agenda of the meeting. The notice shall be hand delivered or sent by United States mail to all unit owners of record at the address of the respective units and to other addresses as any of them may have designated to the officer.

(b) No vote in the association of unit owners shall be deemed to inure to any unit during the time when the unit owner is the association.

(c) For a mechanism to resolve disputes regarding voting among more than one unit owner of a unit in such a way that the vote allocated to the unit is not split or otherwise cast separately by the several unit owners.

(d) An annual report be prepared by the association and a copy of the report be provided to each unit owner and the report contain a minimum of the following:

(1) A statement of any capital expenditures in excess of two percent of the current budget or \$5,000 whichever is the greater anticipated by the association during the current year or succeeding two fiscal years.

(2) A statement of the status and amount of any reserve or replacement fund and portion of the fund designated for any specified project by the board of directors.

(3) A copy of the statement of financial condition for the association for the last fiscal year.

(4) A statement of the status of any pending suits or judgments to which the association is a party.

(5) A statement of the insurance coverage provided by the association.

(6) A statement of any unpaid assessments by the association on individual units identifying the unit number and the amount of the unpaid assessment.

Sec. 515.3-107. **[515A.3-107] UPKEEP OF THE CONDOMINIUM.** Except to the extent otherwise provided by the declaration or section 515.3-112(d), the association is responsible for maintenance, repair, and replacement of the common elements and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes.

If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

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Sec. 515.3-108. **RESERVED.**

Sec. 515.3-109. **RESERVED.**

Sec. 515.3-110. **RESERVED.**

Sec. 515.3-111. **[515A.3-111] TORT AND CONTRACT LIABILITY.** (a) If a tort or breach of contract occurred during any period of declarant control (section 515.3-103), the declarant shall indemnify the association for all liability incurred by the association as a result of that tort or breach of contract, including legal fees. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(b) No unit owner shall have tort liability arising out of his ownership of the common elements provided that the association has liability insurance coverage on the occurrence in an amount not less than \$1,000,000.

Sec. 515.3-112. **[515A.3-112] INSURANCE.** (a) Commencing not later than the time of the first conveyance of a unit to a unit owner other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units, exclusive of land, excavations, foundations, and other items normally excluded from property policies, insuring against all risks of direct physical loss. The total amount of insurance after application of any deductibles shall be not less than 80 percent of the full insurable replacement cost of the insured property. The association or its authorized agent may enter a unit at reasonable times upon reasonable notice for the purpose of making appraisals for insurance purposes.

(2) Comprehensive general liability insurance, in an amount determined by the board of directors but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If the insurance described in subsection (a) is not maintained, the association shall immediately cause notice of that fact to be sent postage prepaid by United States mail to all unit owners at their respective units and other addresses provided to the association. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(c) Insurance policies carried pursuant to subsection (a) shall provide that:

(1) Each unit owner and holder of a vendor's interest in a contract for deed is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements;

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household and against the association and members of the board of directors;

(3) No act or omission by any unit owner or holder of an interest as security for an obligation, unless acting within the scope of his authority on behalf of the association, shall void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

(d) Any loss covered by the property policy under subsection (a)(1) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and holders of an interest as security for an obligation as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and holders of an interest as security for an obligation are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored, or the condominium is terminated.

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

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance, upon request, to any unit owner, or holder of an interest as security for an obligation. The insurance may not be cancelled until 30 days after notice of the proposed cancellation has been mailed to the association and to each unit owner and holder of an interest as security for an obligation to whom certificates of insurance have been issued.

(g) Any portion of the condominium damaged or destroyed shall be promptly repaired or replaced by the association unless (1) the condominium is terminated and the association votes not to repair or replace all or part thereof, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) 80 percent of the unit owners, including every owner and first mortgagee of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of a unit or the common area in excess of insurance proceeds and reserves shall be a common expense. If less than the entire condominium is repaired or replaced, (1) 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, (2) 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 holders of an interest as security for an obligation of those units and the owners and holders of an interest as security for an obligation of the units to which those limited common elements were assigned, as their interests may appear, and (3) the remainder of the proceeds shall be distributed to all the unit owners and holders of an interest as security for an obligation as their interests may appear in proportion to their common element interest. In the event the unit

owners vote not to rebuild a unit, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 515.1-107(a), and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, if the condominium is terminated, insurance proceeds not used for repair or replacement shall be distributed in the same manner as sales proceeds pursuant to section 515.2-120.

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

Sec. 515.3-113. **[515A.3-113] SURPLUS FUNDS.** Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be credited to the unit owners to reduce their future common expense assessments.

Sec. 515.3-114. **[515A.3-114] ASSESSMENTS FOR COMMON EXPENSES.**

(a) Until the association levies a common expense assessment, the declarant shall pay all accrued expenses of the condominium. After any assessment has been levied by the association, assessments shall be levied at least annually and shall be based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c) and (d), common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit (section 515.2-108). Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding the rate of interest provided in section 549.09.

(c) Except as provided by the declaration any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the unit or in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

(d) If the declaration so provides, the association may assess any common expense benefiting less than all of the units against the units benefited. In that case the common expense shall be allocated among units benefited in proportion to their common expense liability.

Sec. 515.3-115. **[515A.3-115] LIEN FOR ASSESSMENTS.** (a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes payable. The association's lien may be foreclosed as provided by the laws of this state as if it were a lien under a mortgage containing a power of sale. The rights of the parties shall be the same as those provided by law except that the period of redemption for unit owners shall be six months from the date of sale. Unless the declaration otherwise provides, fees, charges, late charges, and interest charges pursuant to section 515.3-102(8), (9) and (12) are enforceable as assessments under this section.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the

declaration, (2) any recorded mortgage on the unit securing a first mortgage holder, and (3) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) Recording of the declaration constitutes record notice and perfection of the lien, and no further recordation of any claim of lien for assessment under this section is required.

(d) Proceedings to enforce an assessment must be instituted within three years after the last installment of the assessment becomes payable.

(e) Unit owners at the time an assessment is payable are personally liable to the association for payment of the assessments.

(f) A foreclosure sale, judgment or decree in any action, proceeding or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) The association shall furnish to a unit owner or his authorized agent upon written request of the unit owner or his authorized agent a recordable statement setting forth the amount of unpaid assessments currently levied against his unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and every unit owner.

Sec. 515.3-116. **[515A.3-116] ASSOCIATION RECORDS.** The association shall keep financial records sufficiently detailed to enable the association to comply with section 515.4-107. All financial records shall be made reasonably available for examination by any unit owner and his authorized agents.

Sec. 515.3-117. **[515A.3-117] ASSOCIATION AS TRUSTEE.** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding its powers or improperly exercising them, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

ARTICLE IV PROTECTION OF PURCHASERS

Section 515.4-101. **[515A.4-101] APPLICABILITY; WAIVER.** (a) This article applies to all units subject to sections 515.1-101 to 515.4-117 except as provided in subsection (b) and section 515.4-113 or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) A disclosure statement need not be prepared in case of:

(1) a gratuitous transfer of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure and subsequent disposition by the purchaser at mortgage foreclosure sale, or grantee in the deed in lieu of foreclosure;

(5) a transfer to which section 515.4-107 (*Resales of Units*) applies.

Sec. 515.4-102. [515A.4-102] **DISCLOSURE STATEMENT; GENERAL PROVISIONS.** A disclosure statement shall fully disclose:

(a) The name and principal address of the declarant and the address and the name, if any, and number, if available, of the condominium;

(b) A general description of the condominium; including without limitation the types and number of all buildings, units and amenities, and declarant's schedule of commencement and completion of construction thereof;

(c) The total number of additional units that may be included in the condominium and whether the declarant intends to rent or market blocks of units to investors;

(d) A copy of the declaration other than the floor plans, floor plans for the particular unit, bylaws, articles of incorporation, rules and regulations, and any contracts and leases to which the unit owners or association will be subject and which may not be cancelled upon 30 days notice by the association;

(e) Any current balance sheet and a projected budget for the association for the first full or partial year during which a unit is conveyed to a unit owner other than a declarant and any projected budget for future years which the association has adopted, and a statement of who prepared the balance sheet, projected budget or budget. The budget or projected budget shall include, without limitation:

(1) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(2) a statement of any other reserves;

(3) the projected common expense assessment by category of expenditures for the association;

(4) the projected monthly common expense assessment for each type of unit;

(f) Any supplies and services not reflected in the budget or projected budget which the declarant provides, or expenses which he pays, and which he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

Changes or additions indicated by underline deletions by ~~strikeout~~

(g) Any initial or special fee due from the purchaser to the declarant or the association at closing, together with a description of the purpose and method of calculating the fee;

(h) A description of any liens, defects, or encumbrances on or affecting the title to the condominium after the contemplated conveyance;

(i) A description of any financing offered by the declarant;

(j) The terms of any warranties provided by the declarant, including the warranties set forth in sections 515.4-111 and 515.4-112, and limitations imposed by the declarant on the enforcement thereof;

(k) A statement that:

(1) within 15 days after receipt of a disclosure statement, a purchaser may, prior to conveyance, cancel any purchase agreement of a unit from a declarant;

(2) if a declarant fails to provide a disclosure statement to a purchaser before conveying a unit, that purchaser may recover from the declarant an amount not to exceed five percent of the sales price of the unit, and

(3) if a purchaser received the disclosure statement more than 15 days before he signs a purchase agreement, he cannot cancel the agreement;

(l) A statement disclosing, to the extent of the actual knowledge of the declarant or an affiliate of the declarant after reasonable inquiry, any judgments against the association, the status of any pending suits to which the association is a party, and the status of any pending suits material to the condominium;

(m) A statement that any earnest money paid in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the purchase agreement pursuant to section 515.4-106;

(n) A description of the insurance coverage to be provided for the benefit of unit owners;

(o) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and

(p) Whether financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to section 515.4-117 (Declarant's Obligation to Complete and Restore).

Sec. 515.4-103. **RESERVED.**

Sec. 515.4-104. **[515A.4-104] SAME; CONVERSION CONDOMINIUMS.** The disclosure statement of a conversion condominium the units of which may be used for residential purposes shall contain, in addition to the information required by section 515.4-102:

(a) A professional opinion prepared by an architect licensed in this state or a registered professional engineer licensed in this state, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium to the extent reasonably ascertainable without disturbing the improvements or dismantling the equipment;

(b) A statement by the declarant of the expected useful life of each item reported on in subsection (a) or a statement that no representations are made in this regard;

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, which will be outstanding at the time of the first conveyance of a unit, together with the estimated cost of curing those violations.

Sec. 515.4-105. RESERVED.

Sec. 515.4-106. [515A.4-106] PURCHASER'S RIGHT TO CANCEL. (a) *Unless delivery of a disclosure statement is not required under section 515.4-101(b)*, a declarant shall provide at least one of the purchasers of a unit with a copy of a disclosure statement not later than the date of any purchase agreement. Unless a purchaser is given the disclosure statement more than 15 days prior to execution of a purchase agreement for the unit, the purchaser may, prior to the conveyance, cancel the agreement within 15 days after receiving the disclosure statement.

If the conveyance occurs within 15 days after the date of the execution of the purchase agreement by the purchaser, any purchaser may waive in writing all rights to receive a disclosure statement under this section.

(b) If a purchaser elects to cancel a purchase agreement pursuant to subsection (a), *he may do so by hand delivering notice thereof to the declarant or by mailing notice thereof by postage prepaid United States mail to the declarant or to his agent for service of process.* Cancellation is without penalty, and all payments made by the purchaser pursuant to the purchase agreement shall be refunded promptly.

(c) If a declarant fails to provide a purchaser to whom a unit is conveyed with a disclosure statement and all amendments thereto as required by subsections (a) and (d), that purchaser, in addition to any rights to damages or other relief, is entitled to receive from the declarant an amount not to exceed five percent of the sales price of the unit.

(d) The disclosure statement and any information furnished in connection therewith may be amended prior to conveyance if the amendment is delivered to the purchaser to whom the disclosure statement was delivered. If the amendment materially adversely affects a purchaser, then the purchaser shall have 15 days after delivery of the amendment to cancel the purchase agreement in accordance with this section.

Sec. 515.4-107. [515A.4-107] REALES OF UNITS. (a) In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall

furnish to a purchaser before execution of any purchase agreement for a unit, or otherwise before conveyance, a copy of the declaration, other than the floor plans, the bylaws, the rules and regulations of the association, and any amendments thereto, and a certificate dated not more than 90 days prior to the date of the purchase agreement or otherwise before conveyance, containing:

(1) a statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration, bylaws, rules and regulations, or any amendment thereof;

(2) a statement setting forth the amount of periodic installments of common expense assessments and special assessments and any unpaid common expense or special assessment currently payable;

(3) a statement of any other fees payable by unit owners;

(4) a statement of any capital expenditures approved by the association for the current and next succeeding two fiscal years;

(5) a statement that a copy of the floor plans and any amendments thereof are available in the office of the association for inspection;

(6) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

(7) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(8) the current budget of the association;

(9) a statement of any judgments against the association and the status of any pending suits to which the association is a party;

(10) a statement describing any insurance coverage provided for the benefit of unit owners.

(b) The association shall, within seven days after a request by a unit owner or his authorized agent, furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner without actual knowledge providing a certificate pursuant to subsection (a) shall have no liability to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee existing as of the date of the certificate greater than the amount set forth in the certificate prepared by the association. A unit owner is not responsible to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

Sec. 515.4-1075. **[515A.4-1075] PURCHASER'S RIGHT TO CANCEL.** (a) The information required to be delivered by section 515.4-107 shall be delivered to a purchaser not later than the date of any purchase agreement. Unless a

purchaser is given the information more than 15 days prior to the execution of the purchase agreement for the unit the purchaser may, prior to the conveyance, cancel the agreement within 15 days after receiving the information.

(b) If a purchaser elects to cancel a purchase agreement pursuant to subsection (a), he may do so by hand delivering notice thereof to the seller or his agent or by mailing notice thereof by postage prepaid United States mail to the seller or his agent. Cancellation is without penalty and all payments made by the purchaser shall be refunded promptly.

Sec. 515.4-108. [515A.4-108] **ESCROW OF DEPOSITS.** Any earnest money paid in connection with the purchase or reservation of a unit from a declarant shall be escrowed and held in this state in an account, savings deposit or certificate of deposit designated solely for that purpose in an institution whose accounts are insured by a governmental agency or instrumentality until (1) delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under the purchase agreement or reservation; or (3) delivered to the purchaser.

Sec. 515.4-109. [515A.4-109] **RELEASE OF INTERESTS AS SECURITY FOR AN OBLIGATION.** (a) Before conveying a unit to a purchaser other than a declarant, the seller shall furnish to the purchaser releases for that unit and its common element interest of all interests as security for an obligation affecting more real estate than that unit and its common element interest, or if the purchaser expressly agrees, a policy of title insurance insuring against loss or damage by reason of such interests. Failure to furnish the releases does not of itself invalidate the lien or the conveyance. This subsection does not apply to conveyance of all of the units in the condominium or to deeds in lieu of foreclosure.

(b) Whether perfected before or after creation of the condominium, if a lien other than a mortgage, including a lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of such a unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit and its common element interest. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(c) Labor performed or materials furnished for the common elements, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the lien law against each of the units and shall be subject to the provisions of subsection (b) of this section.

Sec. 515.4-110. [515A.4-110] **CONVERSION CONDOMINIUMS.** (a) A declarant of a conversion condominium shall give each of the tenants and any subtenant in possession of buildings subject to sections 515.1-101 to 515.4-117 notice of the conversion or the intent to convert no later than 120 days before the declarant will require them to vacate. The notice shall set forth generally the rights conferred by this section and shall have attached thereto a form of purchase agreement setting forth the terms of sale contemplated by subsection (b) and a statement of any significant restrictions on the use and occupancy of the unit to be imposed by the declarant and shall be hand delivered or mailed by postage prepaid United States mail to the tenant and subtenant at the address of the unit. The notice shall further state that the tenants or subtenants in possession of a residential unit may demand to be given 60 additional days before being required to vacate, if any of them, or any person residing with them, is 62 years of age or older, handicapped as defined in Minnesota Statutes 129A.01, or a minor child on the date the notice is given. This demand must be in writing, contain reasonable proof of qualification, and be given to the declarant within 30 days after the notice of condominium conversion is delivered or mailed. The notice shall be contained in an envelope upon which the following words shall be boldly printed: "Notice of Condominium Conversion". No tenant or subtenant may be required by the declarant to vacate upon less than 120 days notice, except by reason of nonpayment of rent, waste, or conduct which disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period, except that a tenant or subtenant in possession of a residential unit may vacate upon 30 days' written notice to the declarant. Nothing in this section prevents the declarant and the tenant or subtenant in possession of the unit from agreeing to an extension of the tenancy on a month to month basis beyond the 120-day notice period. No repair work or remodeling may be commenced or undertaken in the occupied units or common areas of the building during the notice period, unless reasonable precautions are taken to ensure the safety and security of the tenants or subtenants in possession of the premises. Failure of a declarant to give notice as required by this section constitutes a defense to an action for possession.

(b) For 60 days after delivery or mailing of the notice described in subsection (a), the holder of the lessee's interest for each unit on the date the notice is delivered or mailed shall have an option to purchase that unit on the terms set forth in the purchase agreement attached to the notice. The purchase agreement shall contain no terms or conditions preventing the purchase of the unit by the holder because of the age of the holder or of persons residing with the holder. If the holder fails to exercise the option during that 60 day period, the declarant may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the holder. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or if the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, delivery of the deed conveying the unit extinguishes any right which a holder of a lessee's interest not in possession may have under subsection (b) to purchase that unit, but does not affect the right of the holder to recover damages from the declarant for a violation of subsection (b).

(d) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

Sec. 515.4-111. **[515A.4-111] EXPRESS WARRANTIES.** (a) Express warranties made by a declarant or an affiliate of a declarant to a purchaser of a unit if reasonably relied upon by the purchaser, are created as follows:

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

(2) any model or description of the physical characteristics of the condominium, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description. A notice prominently displayed on a model or description shall prevent a purchaser from reasonably relying upon the model or description to the extent of the disclaimer set forth on the notice;

(3) any description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerance; and

(4) a provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

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

(c) Any conveyance of a unit transfers to the purchaser all express warranties made by a declarant or an affiliate of a declarant.

Sec. 515.4-112. **[515A.4-112] IMPLIED WARRANTIES.** (a) A declarant warrants to a purchaser that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant warrants to a purchaser that a unit and the common elements in the condominium are structurally suitable for the ordinary uses of real estate of its type and that any improvements or repairs made or contracted for by him or made by any person in contemplation of the creation of the condominium, will be:

(1) free from defective materials; and

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

(c) A declarant warrants to a purchaser of a unit which may be used for residential use that the residential use does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in section 515.4-113.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant (section 515.1-103(2)) are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all of any declarant's implied warranties.

Sec. 515.4-113. [515A.4-113] EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES. (a) Except as limited by subsection (b) implied warranties:

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

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

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

Sec. 515.4-114. [515A.4-114] STATUTE OF LIMITATIONS FOR WARRANTIES. (a) A judicial proceeding for breach of any obligation arising under section 515.4-111 or 515.4-112 must be commenced within six years after the cause of action accrues, but the parties may reduce the period of limitation to not less than two years. With respect to a unit which may be occupied for residential use, an agreement to reduce the period of limitation shall be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action under section 515.4-111 or 515.4-112, regardless of the purchaser's lack of knowledge of the breach, accrues:

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

(2) as to each common element, the later of (i) the time the common element is completed, (ii) the time the first unit in the condominium is conveyed

to a bona fide purchaser, or (iii) as to a common element within any additional real estate or portion thereof the time the first unit therein is conveyed to a bona fide purchaser.

(c) If a warranty under section 515.4-111 or 515.4-112 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.

Sec. 515.4-115. [515A.4-115] **EFFECT OF VIOLATIONS ON RIGHTS OF ACTION; ATTORNEYS' FEES.** *If a declarant or any other person subject to sections 515.1-101 to 515.4-117 violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of sections 515.1-101 to 515.4-117. The court, in an appropriate case, may award reasonable attorneys' fees.*

Sec. 515.4-116. [515A.4-116] **LABELING OF PROMOTIONAL MATERIAL.** *If any improvement contemplated in a condominium is required by section 515.2-110(b)(3) to be labeled "NEED NOT BE BUILT" on the floor plan, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT".*

Sec. 515.4-117. [515A.4-117] **DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.** (a) The declarant shall complete all improvements labeled "MUST BE BUILT" on the floor plans prepared pursuant to section 515.2-110.

(b) The declarant is subject to liability for the prompt repair and restoration to a condition compatible with the remainder of the condominium of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 515.2-111, 515.2-117, and 515.2-118.

Sec. 515.4-118. [515A.4-118] **REFERENCES.** When used in Articles I to IV, the term "this act" and similar terms refer to Articles I to IV.

ARTICLE V

1976 UNIFORM LIMITED PARTNERSHIP ACT

Section 1. [322A.01] **DEFINITIONS.** As used in this act, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section 8, and the certificate as amended.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 23.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means a limited or general partner.

(9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sec. 2. [322A.02] NAME. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain without abbreviation the words "limited partnership";

(2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership;

(4) may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state; and

(5) may not contain the following words: corporation, incorporated.

Sec. 3. **[322A.03] RESERVATION OF NAME.** (a) The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited partnership under this act and to adopt that name;

(2) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) any foreign limited partnership intending to register in this state and adopt that name; and

(4) any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(b) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Sec. 4. **[322A.04] SPECIFIED OFFICE AND AGENT.** Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which shall be kept the records required by section 5 to be maintained; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

Sec. 5. **[322A.05] RECORDS TO BE KEPT.** Each limited partnership shall keep at the office referred to in section 4, clause (1), the following: (1) a current list of the full name and last known business address of each partner set forth in alphabetical order, (2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed, (3) copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years, and (4) copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years. Those records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

Sec. 6. [322A.06] **NATURE OF BUSINESS.** A limited partnership may carry on any business that a partnership without limited partners may carry on.

Sec. 7. [322A.07] **BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP.** Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Sec. 8. [322A.11] **CERTIFICATE OF LIMITED PARTNERSHIP.** (a) In order to form a limited partnership two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the secretary of state and set forth:

- (1) the name of the limited partnership;
- (2) the general character of its business;
- (3) the address of the office and the name and address of the agent for service of process required to be maintained by section 4;
- (4) the name and the business address of each partner (specifying separately the general partners and limited partners);
- (5) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;
- (6) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
- (7) any power of a limited partner to grant the right to become a limited partner to an assignee of any part of his partnership interest, and the terms and conditions of the power;
- (8) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of, or the method of determining, the distribution to which he may be entitled respecting his partnership interest, and the terms and conditions of the termination and distribution;
- (9) any right of a partner to receive distributions of property, including cash from the limited partnership;
- (10) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution;
- (11) any time at which or events upon the happening of which the limited partnership is to be dissolved and its affairs wound up;
- (12) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner; and

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(13) any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

Sec. 9. [322A.12] AMENDMENT TO CERTIFICATE. (a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing the certificate; and
- (3) the amendment to the certificate.

(b) Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (1) a change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution;
- (2) the admission of a new partner;
- (3) the withdrawal of a partner; or
- (4) the continuation of the business under section 44 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the 30-day period specified in subsection (b).

Sec. 10. [322A.13] CANCELLATION OF CERTIFICATE. A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and set forth:

- (1) the name of the limited partnership;

- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) any other information the general partners filing the certificate determine.

Sec. 11. **[322A.14] EXECUTION OF CERTIFICATES.** (a) Each certificate required by sections 8 to 16 to be filed in the office of the secretary of state shall be executed in the following manner:

- (1) an original certificate of limited partnership must be signed by all partners named therein;
- (2) a certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new partner or whose contribution is described as having been increased; and
- (3) a certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Sec. 12. **[322A.15] AMENDMENT OR CANCELLATION BY JUDICIAL ACT.** If a person required by section 11 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

Sec. 13. **[322A.16] FILING IN OFFICE OF SECRETARY OF STATE.** (a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

- (1) endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;
- (2) file one duplicate original in his office; and

(3) return the other duplicate original to the person who filed it or his representative.

(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

Sec. 14. [322A.17] LIABILITY FOR FALSE STATEMENT IN CERTIFICATE. If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section 12.

Sec. 15. [322A.18] NOTICE. The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as limited partners are limited partners, but it is not notice of any other fact.

Sec. 16. [322A.19] DELIVERY OF CERTIFICATES TO LIMITED PARTNERS. Upon the return by the secretary of state pursuant to section 13 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate to each limited partner unless the partnership agreement provides otherwise.

Sec. 17. [322A.24] ADMISSION OF ADDITIONAL LIMITED PARTNERS. (a) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in section 42, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(b) In each case under subsection (a), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

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Sec. 18. [322A.25] **VOTING.** Subject to section 19, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

Sec. 19. [322A.26] **LIABILITY TO THIRD PARTIES.** (a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

(1) being a contractor for or an agent or employee of the limited partnership or of a general partner;

(2) consulting with and advising a general partner with respect to the business of the limited partnership;

(3) acting as surety for the limited partnership;

(4) approving or disapproving an amendment to the partnership agreement;

or

(5) voting on one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the removal of a general partner.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by section 2, clause (2)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Sec. 20. [322A.27] **PERSON ERRONEOUSLY BELIEVING HIMSELF LIMITED PARTNER.** (a) Except as provided in subsection (b), a person who

makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under section 9, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

Sec. 21. [322A.28] **INFORMATION.** Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by section 5; and

(2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

Sec. 22. [322A.31] **ADMISSION OF ADDITIONAL GENERAL PARTNERS.** After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner.

Sec. 23. [322A.32] **EVENTS OF WITHDRAWAL.** Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in section 32;

(2) the general partner ceases to be a member of the limited partnership as provided in section 40;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in the certificate of limited partnership, the general partner:

(i) makes an assignment for the benefit of creditors;

(ii) files a voluntary petition in bankruptcy;

(iii) is adjudicated a bankrupt or insolvent;

(iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation;

(v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

(5) unless otherwise provided in the certificate of limited partnership, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90 days after the expiration of any such stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(i) his death; or

(ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Sec. 24. [322A.33] **GENERAL POWERS AND LIABILITIES.** Except as provided in this act or in the partnership agreement, a general partner of a

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limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

Sec. 25. [322A.34] **CONTRIBUTIONS BY GENERAL PARTNER.** A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

Sec. 26. [322A.35] **VOTING.** The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

Sec. 27. [322A.38] **FORM OF CONTRIBUTION.** The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Sec. 28. [322A.39] **LIABILITY FOR CONTRIBUTION.** (a) Except as provided in the certificate of limited partnership, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the certificate of limited partnership) of the stated contribution that has not been made.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

Sec. 29. [322A.40] **SHARING OF PROFITS AND LOSSES.** The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Sec. 30. [322A.41] **SHARING OF DISTRIBUTIONS.** Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value (as stated in the certificate of limited partnership) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Sec. 31. [322A.45] **INTERIM DISTRIBUTIONS.** Except as provided in sections 31 to 38, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or upon the happening of the events specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution under section 38, subsection (b), to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.

Sec. 32. [322A.46] **WITHDRAWAL OF GENERAL PARTNER.** A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

Sec. 33. [322A.47] **WITHDRAWAL OF LIMITED PARTNER.** A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with the partnership agreement. If the certificate does not specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

Sec. 34. [322A.48] **DISTRIBUTION UPON WITHDRAWAL.** Except as provided in sections 31 to 38, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

Sec. 35. [322A.49] **DISTRIBUTION IN KIND.** Except as provided in the certificate of limited partnership, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind

from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

Sec. 36. [322A.50] **RIGHT TO DISTRIBUTION.** At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

Sec. 37. [322A.51] **LIMITATIONS ON DISTRIBUTION.** A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

Sec. 38. [322A.52] **LIABILITY UPON RETURN OF CONTRIBUTION.** (a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this act, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this act, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the certificate of limited partnership) of his contribution which has not been distributed to him.

Sec. 39. [322A.55] **NATURE OF PARTNERSHIP INTEREST.** A partnership interest is personal property.

Sec. 40. [322A.56] **ASSIGNMENT OF PARTNERSHIP INTEREST.** Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

Sec. 41. [322A.57] **RIGHTS OF CREDITOR.** On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This act does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

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Sec. 42. [322A.58] RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER. (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in sections 31 to 38. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under sections 14 and 28.

Sec. 43. [322A.59] POWER OF ESTATE OF DECEASED OR INCOMPETENT PARTNER. If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Sec. 44. [322A.63] NONJUDICIAL DISSOLUTION. A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) at the time or upon the happening of events specified in the certificate of limited partnership;

(2) written consent of all partners;

(3) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

(4) entry of a decree of judicial dissolution under section 45.

Sec. 45. [322A.64] JUDICIAL DISSOLUTION. On application by or for a partner the district court may decree dissolution of a limited partnership whenever

it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

Sec. 46. [322A.65] WINDING UP. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the district court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

Sec. 47. [322A.66] DISTRIBUTION OF ASSETS. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 31 or 34;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 31 or 34; and

(3) except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

Sec. 48. [322A.69] LAW GOVERNING. Subject to the constitution of this state, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Sec. 49. [322A.70] REGISTRATION. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) the state and date of its formation;

(3) the general character of the business it proposes to transact in this state;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state;

(5) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed

under paragraph (4) or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.

Sec. 50. [322A.71] ISSUANCE OF REGISTRATION. (a) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(1) endorse on the application the word "Filed", and the month, day and year of the filing thereof;

(2) file in his office a duplicate original of the application; and

(3) issue a certificate of registration to transact business in this state.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

Sec. 51. [322A.72] NAME. A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

Sec. 52. [322A.73] CHANGES AND AMENDMENTS. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement.

Sec. 53. [322A.74] CANCELLATION OF REGISTRATION. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this state.

Sec. 54. [322A.75] TRANSACTION OF BUSINESS WITHOUT REGISTRATION. (a) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) A foreign limited partnership, by transacting business in this state *without registration*, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

Sec. 55. [322A.76] **ACTION BY ATTORNEY GENERAL.** The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of sections 48 to 55.

Sec. 56. [322A.79] **RIGHT OF ACTION.** A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

Sec. 57. [322A.80] **PROPER PLAINTIFF.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

Sec. 58. [322A.81] **PLEADING.** In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Sec. 59. [322A.82] **EXPENSES.** If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

Sec. 60. [322A.85] **SHORT TITLE.** This act may be cited as the 1976 Uniform Limited Partnership Act.

Sec. 61. [322A.86] **RELATIONSHIP TO SECTIONS 322.01 to 322.31.** A domestic limited partnership existing on January 1, 1981, shall be governed by sections 322.01 to 322.31 unless (1) the limited partnership elects to come under the provisions of sections 1 to 60, and the certificate of limited partnership is amended to reflect the intention and is filed with the secretary of state; and (2) to so elect is not prohibited by the terms of the certificate of limited partnership in effect prior to January 1, 1981. A domestic limited partnership formed after December 31, 1980 shall be governed by sections 1 to 60.

Sec. 62. [322A.87] **RULES FOR CASES NOT PROVIDED FOR IN THIS ACT.** In any case not provided for in this act the provisions of Minnesota Statutes, Chapter 323, the Uniform Partnership Act govern.

Sec. 63. When used in Article V, the term "this act" and similar terms refer to Article V.

Approved April 16, 1980

CHAPTER 583—S.F.No. 572

An act relating to liquor; regulating registration of brand labels; removing certain limitations on the numbers of on-sale licenses which the city of Bloomington may issue.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [340.621] **INTOXICATING OR NONINTOXICATING LIQUOR; REGISTRATION OF BRAND BY OWNER.** The label of any brand of intoxicating or nonintoxicating malt beverage may be registered only by the brand owner or its authorized agent. No such brand may be imported for sale within the state without the consent of the brand owner or its authorized agent.

Nothing in this subdivision shall be construed to repeal, limit or otherwise affect the provisions of section 340.114.

Sec. 2. Subdivision 1. The area known as the Metropolitan Sports area, comprising 147 acres, and which is generally described as lying east of Cedar Avenue, south of East 79th Street, west of 24th Avenue South and north of Killebrew Drive, shall be exempt from any legal limitations on the number of on-sale liquor licenses. The on-sale liquor licenses may be issued to establishments located in said area by the city and shall not apply to any limitation in Minnesota Statutes, Section 340.11, Subdivision 5a, and Laws 1979, Chapter 305, Section 2.

Subd. 2. This section is effective only upon approval by a majority of the city council in compliance with Minnesota Statutes, Section 645.021.

Approved April 16, 1980

CHAPTER 584—S.F.No. 1875

An act relating to commerce; providing for ownership rights in dies and molds under certain conditions.

Changes or additions indicated by underline deletions by ~~strikeout~~