

**THE MASSACHUSETTS  
CONDOMINIUM ACT**

*Compliments of*

**MARCUS, ERRICO, EMMER & BROOKS, P.C.**

**45 Braintree Hill Office Park, Suite 107**

**Braintree, Massachusetts 02184**

**Tel (781) 843-5000**

**law@meeb.com**

**Fax (781) 843-1529**

**www.meeb.com**

**THE MASSACHUSETTS  
CONDOMINIUM ACT**

**MASSACHUSETTS GENERAL LAWS  
CHAPTER 183A**

**(amended through Chapter 203 of the Acts of 2000)**

# CHAPTER 183A

## CONDOMINIUMS

### Section

1. Definitions.
2. Application of chapter; creation of other interests in realty.
3. Nature of interest; sale or descent.
4. Exclusive ownership and possession; restrictions; notice.
5. Interest in common areas or facilities; percentage; division.
6. Profits and expenses; lien.
7. Contribution toward common expenses; liability; offset, deduction or waiver prohibited.
8. Master Deed; recording; contents.
- 8A. Leasehold condominiums; rights of unit owners.
9. Deeds of units; contents; plans.
10. Corporation, trust or association; interest of unit owner; powers and duties; manager or managing agent; bylaws; effect of recorded certificate.
11. By-laws; mandatory provisions.
12. By-laws; additional provisions.
13. Claims involving common areas and facilities; liability.
14. Taxation and betterment assessments; liens.
15. Subdivision control law.
16. Submission of property to this chapter.
17. Rebuilding following casualty loss; partition upon disapproval; repair or restoration upon approval; purchase from dissenting owner.
18. Improvements; costs.
19. Removal from provisions of this chapter.
20. Municipal participation in condominium organization and ownership.
21. Multiple family condominium units; by-laws; master deed.
22. Foreclosure of condominium development; liability of lender and developer.

## **Section 1. Definitions**

As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:

“Building,” any building containing one or more units comprising a part of the condominium.

“By-laws,” the by-laws of the organization of unit owners.

“Common areas and facilities” shall, except as otherwise provided or stipulated in the master deed, mean and include:

(1) The foundations, columns, girders, beams, supports, party walls, common walls, main walls, roofs, halls, corridors, lobbies, public stairs and stairways, fire escapes and entrances and exits of the building;

(2) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(3) The elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(4) The land on which the building is located, or the lessee's interest in any lease of such land which is submitted to the provisions of this chapter;

(5) The basements, yards, lawns, gardens, recreational facilities, parking areas and storage spaces;

(6) The premises for the lodging of custodian or persons in charge of the condominium;

(7) Such community and commercial facilities as may be provided for in the master deed as being owned in common; and

(8) All other parts of the condominium necessary or convenient to its existence, maintenance and safety, or normally in common use.

“Common expenses,” the expenses of administration, maintenance, repair or replacement of the common areas and facilities, and expenses declared common expenses by this chapter.

“Common funds,” all funds held by the organization of unit owners.

“Common profits,” the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

“Condominium,” the land or the lessee's interest in any lease of such land which is submitted to the provisions of this chapter, the building or buildings, all other improvements and structures thereon, and all easements, right and appurtenances belonging thereto, which have been submitted to the provisions of this chapter.

“Declarant,” the person or any other entity and its successors or assigns who submits land or the lessee's interest in any lease in land to this chapter pursuant to section two hereof.

“Leasehold condominium,” a condominium created by the submission of a lessee's interest in a lease pursuant to this chapter.

"Limited common areas and facilities", a portion of the common areas and facilities either (i) described in the master deed or (ii) granted or assigned in accordance with the provisions of this chapter by the governing body of the organization of unit owners, for the exclusive use of one or more but fewer than all of the units.

“Manager,” the managing agent, the trustees in a self-managed condominium, or any other person or entity who performs or renders management or administrative services to the organization of unit owners, including but not limited to preparation of budgets and other financial documents; the collecting, controlling, disbursing, accounting or custody of common funds; obtaining insurance; conducting meetings of the organization of unit owners; arranging for and coordinating maintenance and repair; or otherwise overseeing the day to day operations of the condominium for the organization of unit owners.

“Master Deed,” the instrument by which the condominium is submitted to the provisions of this chapter, as hereinafter provided, and any amendment to said instrument.

“Organization of unit owners,” the corporation, trust or association owned by the unit owners and used by them to manage and regulate the condominium.

“Replacement reserve fund,” a separate and segregated portion of the common funds of the organization of unit owners which shall be used to replace, restore, or rebuild common areas and facilities.

Any given “percentage of unit owners” means the owners of that percentage in the aggregate in interest of the undivided ownership of the common areas and facilities.

“Unit,” a part of the condominium including one or more rooms, with appurtenant areas such as balconies, terraces and storage lockers if any are stipulated in the master deed as being owned by the unit owner, occupying one or more floors or a part or parts thereof, including the enclosed space therein, intended for any type of use, and with a direct exit to a street or way or to a common area leading to a street or way.

“Unit designation,” the number, letter or combination thereof designating the unit in the master deed.

“Unit owner,” the person or other entity owning a unit, including the declarant.

**Section 2. Application of chapter; creation of other interests in realty**

This chapter shall apply only when the owner of the land or the lessee of the land submits such owner's or lessee's interest in the land hereof by duly executing and recording a master deed with an assent by the lessor in the case of a leasehold condominium, containing a statement to the effect that the owner or lessee proposes to create a condominium to be governed by the provisions of this chapter, provided that, in the case of a leasehold condominium, the term of such lease shall not be less than sixty years, from the date on which the condominium was submitted to the provisions of this chapter. The provisions of this chapter shall not be deemed to preclude or regulate the creation or maintenance of other interests in real property not expressly declared by the owner or lessee to be subject thereto. For purposes of this section, the holder of a license granted by the department of environmental protection under the provisions of chapter ninety-one for development of commonwealth tidelands shall be deemed the owner of the land, and the licensee shall be deemed the holder of a sufficient interest in real estate to be submitted to and governed by the provisions of this chapter. The provisions of this chapter relating to the creation of leasehold condominiums shall apply only to leasehold condominiums created after April sixth, nineteen hundred and ninety-three.

**Section 3. Nature of interest; sale or descent**

Each unit together with its undivided interest in the common areas and facilities, whether or not such unit is built on owned or leased land shall constitute real estate, and may be the subject of demise, devise, gift, mortgage, ownership, possession, sale, trust, the laws of descent and distribution and all other rights incidental to the holding of real estate as if it were sole and entirely independent of the other units in the condominium of which it forms a part.

**Section 4. Exclusive ownership and possession; restrictions; notice**

Each unit owner shall be entitled to the exclusive ownership and possession of his unit, subject to the provisions of this section and of sections seventeen, eighteen and nineteen; provided, however, that:

(1) No unit shall be devoted to a use prohibited in the master deed or any lease which is submitted to the provisions of this chapter.

(2) The organization of unit owners, its agent or agents shall have access to each unit from time to time during reasonable hours for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another unit or units.

(3) Each unit owner shall comply with the by-laws and with any administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the lawful covenants, conditions and restrictions set forth in the master deed or in the deed to his unit and with each lease which is submitted to the provisions of this chapter.

(4) Each unit owner shall provide to the organization of unit owners and to each mortgagee holding a recorded mortgage upon the unit, within sixty days of the effective date of this subsection or at the time of acquisition of title to the unit, whichever comes later, written notice of the unit owner's name and mailing address. Thereafter, the unit owner shall provide written notice to the organization and said mortgagees of any changes in the name or mailing address previously provided by the unit owner. The organization and mortgagees may rely in good faith upon the most recent notice of name and address for the purpose of providing notices to the unit owner under this chapter or under provisions of the loan documents or condominium documents, and such notices sent in writing to the address listed in the most recent notice of name and address, if relied upon in good faith, shall be deemed sufficiently given, provided that the organization or mortgagee, as the case may be, has complied with other requirements, if any, of this chapter and the loan or condominium documents.

(5) The organization of unit owners shall provide to each mortgagee holding a recorded mortgage upon a unit, written notice of the organization's name and mailing address. The organization shall provide written notice to each such mortgagee of any changes in the name or mailing address previously provided by the organization. Each mortgagee holding a recorded mortgage upon a unit shall give written notice of the mortgagee's name and mailing address to the organization of unit owners. Thereafter, each mortgagee shall provide written notice to the organization of any changes in said name and address for the purpose of providing notices to the mortgagee under this chapter or under the provisions of the loan documents or condominium documents. The organization and mortgagees may rely in good faith upon the most recent notice of name and address for the purpose of providing notices to the organization and mortgagees, as the case may be, under this chapter or under the provisions of the loan documents or condominium documents. In addition, any first mortgagee may at any time give notice to both the unit owner and the organization of unit owners of its desire to receive notice regarding the granting of an easement or other interest or the granting or designation of a limited common areas, or the taking of other action by the organization of unit owners all as provided for in paragraph (2) of subsection (b) of section 5. Notice to the governing body of the organization of unit owners shall be deemed notice to the organization of unit owners. Any notices sent in writing to a mortgagee or to the governing body of the organization of unit owners, as listed in the most recent notice of name and address, if relied upon in good faith, shall be deemed sufficiently given, provided that the organization or mortgagee, as the case may be, has given notice as required by this chapter.

(6) Each unit owner shall provide in writing to the organization of unit owners the name or names of any tenants or occupants of the unit, other than visitors for less than thirty days.

#### **Section 5. Interest in common areas or facilities; percentage; division**

(a) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentage set forth in the master deed. Such percentage shall be in the approximate relation that the fair value of the unit on the date of the master deed bears to the then aggregate fair value of all the units and may include determinations of whether and how to weigh a restriction relating to value imposed on 1 or more, but fewer than all, units by covenant, agreement or otherwise.

(b)(1) The percentage of the undivided interest of each unit owner in the common areas and facilities as expressed in the master deed shall not be altered without the consent of all unit owners whose percentage of the undivided interest is materially affected, expressed in an amendment to the master deed duly recorded; provided, however, that the acceptance and recording of the unit deed shall constitute consent by the grantee to the addition of subsequent units or land or both to the condominium and consent to the reduction of the undivided interest of the unit owner if the master deed at the time of the recording of the unit deed provided for the addition of units or land and made possible an accurate determination of the alteration of each unit's undivided interest that would result therefrom; and provided, further, that readjustment of 1 or more unit's percentage interest solely to reflect release or termination of a restriction previously imposed on the unit by covenant, agreement or otherwise that was a factor for reduction of that percentage interest, with proportionate adjustment only to each other unit's percentage interest, if not otherwise provided for in the master deed, may be made by vote of 75 per cent or such other percentage of unit owners as is required to amend the master deed generally, whichever is less, and the consent of 51 per cent of the number of all mortgagees holding first mortgages on units within the condominium who have given notice of their desire to be notified as provided in clause (5) of section 4 is obtained; provided further, that any such readjustment shall be effective on the date the amendment is recorded in the appropriate registry of deeds or land registration office or such later date as may be stated in the amendment; and provided further, that in the case of readjustment following expiration of a terms of years stated in the restriction, that readjustment shall be effective on the date as aforesaid or 1 year after termination of the restriction, whichever is later. The percentage of the undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. The granting of an easement by the organization of unit owners, or the designation or allocation by the organization of unit owners of limited common areas and facilities, or the withdrawal of a portion of the common areas and facilities, all as provided for in this subsection, shall not be deemed to affect or alter the undivided interest of any unit owner.

(2) The organization of unit owners, acting by and through its governing body, shall have the power and authority, as attorney in fact on behalf of all unit owners from time to time owning units in the condominium, except as provided in this subsection, to:

(i) Grant, modify and amend easements through, over and under the common areas and facilities, and to accept easements benefiting the condominium, and portions thereof, and its unit owners, including, without limitation, easements for public or private utility purposes, as the governing body of the organization shall deem appropriate; provided, however, that the consent of at least 51 per cent of the number of all mortgagees holding first mortgages on units within the condominium who have requested to be notified thereof, as provided in subsection (5) of section 4 is first obtained; and provided, further, that at the time of creation of such easement and at the time of modification or amendment of any such easement, such easement and any such modification or amendment shall not be inconsistent with the peaceful and lawful use and enjoyment of the common condominium property by the owners thereof. Such grant, modification, amendment, or acceptance shall be effective on the thirtieth day following the recording, within the chain of title of the master deed, of an instrument duly



executed by the governing body of the organization of unit owners setting forth the grant, modification, amendment or acceptance with specificity, and reciting compliance with the requirements of this subsection.

(ii) Grant to or designate for any unit owner the right to use, whether exclusively or in common with other unit owners, any limited common area and facility, whether or not provided for in the master deed, upon such terms as deemed appropriate by the governing body of the organization of unit owners; provided, however, that consent has been obtained from (a) all owners and first mortgagees of units shown on the recorded condominium plans as immediately adjoining the limited common area or facility so designated and (b) 51 per cent of the number of all mortgagees holding first mortgages on units within the condominium who have given notice of their desire to be notified thereof as provided in subsection (5) of section 4. In such case as the limited common area or facility shall directly and substantially impede access to any unit, the consent of the unit owner of such unit and its first mortgagee, if such mortgagee has requested notice as aforesaid, shall also be required. Such grant or designation, and the acceptance thereof, shall be effective 30 days following the recording, within the chain of title of the master deed or of the declaration of trust or by-laws, of an instrument duly executed by the governing body of the organization of unit owners and the grantee or designee and his mortgagees, which instrument shall accurately designate, depict and describe the area affected and the rights granted and designated, and shall recite compliance with the requirements of this subsection. Such grant or designation shall be considered an appurtenance to the subject unit and shall be deemed to be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(iii) Extend, revive or grant rights to develop the condominium, including the right to add additional units or land to the condominium; provided, however, that the rights to add additional units are set forth in or specifically authorized by the master deed, and, notwithstanding any provision in section 19 to the contrary, withdraw any portion of the common area of the condominium upon which, at the time of said withdrawal, no unit has been added to the condominium in accordance with the master deed; and provided further, that said withdrawal is not specifically prohibited by the master deed. Any action taken pursuant to this subparagraph shall be taken upon such terms and conditions as the organization of unit owners may deem appropriate, including the method or formula by which the percentage interest of each unit is to be set in accordance with subsection (a) of section 5, or in accordance with another method which the organization of unit owners reasonably determines is fair and equitable under the circumstances, following such extension, revival, grant, additional or withdrawal if not specified in the master deed; provided further, that the consent thereto, including the terms and conditions thereof, of not less than 75 per cent of owners of units within the condominium, or such lower percentage, if any, as the master deed may provide, and 51 per cent of the number of all mortgagees holding first mortgages on units within the condominium who have given notice of their desire to be notified thereof as provided in subsection (5) of section 4 is obtained for such extension, revival, grant, addition or withdrawal. Any action taken pursuant to this subparagraph may be taken even if the time period for adding land, units of common facilities, or for withdrawal has expired. The withdrawal of common areas pursuant to this subparagraph shall not be deemed to affect the percentage interest of each unit. Such extension, revival, grant, addition or withdrawal shall be effective 30 days after the recording, within the chain of title of

the master deed or of the declaration of trust or by-laws, of an instrument duly executed by the organization of unit owners setting forth accurately the extension, revival, grant, addition or withdrawal, and reciting compliance with the requirements of this subsection; and

(iv) Sell, convey, lease or mortgage any rights or interest created as a result of exercise of rights established under subparagraph (iii); provided, however, that any proceeds obtained by the organization of unit owners as a result of such sale, conveyance, lease, or mortgage may be paid by the organization of unit owners for common expenses of the condominium, and otherwise shall be distributed in accordance with subparagraph (iii) of subsection (a) of section (6), or in accordance with another method which the organization of unit owners reasonably determines is fair and equitable under the circumstances. The provisions of paragraph (2) shall not affect the rights reserved by the declarant in the master deed except to the extent such rights have expired.

Any consent required by this subsection shall be deemed to be given if, upon written notice by certified and first class mail, provided by the governing body of the organization of unit owners of a proposed action hereunder, to the unit owner or mortgagee whose consent is required, such unit owner or mortgagee fails to object within 60 days of the date of mailing of such notice. The consent of each mortgagee, to the extent required hereunder, shall be counted separately as to each unit upon which such mortgagee holds a mortgage, based upon one vote for each unit. In no event may a consent required of a mortgagee under this subsection be withheld unless the interests of the mortgagee would be materially impaired by the action proposed. In the event of any conflict between the provisions of this subsection and of the master deed, trust or by-laws or other governing documents of the condominium, this subsection shall control. Any third party interested in title to said condominium or condominium unit or units may conclusively rely upon the recitation of compliance contained within any instrument recorded pursuant to this subsection.

(c) The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof, except as provided in sections seventeen, eighteen and nineteen. The use of limited common areas and facilities may be designated by the organization of unit owners in the same manner as set forth herein relative to the granting of easements; provided, however, that such designation shall take the form of an amendment to the master deed, executed by said organization and the unit owner or owners to whom the designation is made, upon the written consent of the owner or owners of the unit or units directly abutting the limited common area and facility or whose unit or units are directly affected thereby and upon the payment by the unit owner to whom the designation is being granted of the reasonable costs of the preparation, execution and the recordation thereof. Said amendment shall be recorded in the appropriate registry of deeds or land registration office in the names of the parties and the condominium. Nothing contained herein shall be construed to require the consent of one hundred per cent of the beneficial interest and the mortgagees to the granting of an easement by the organization of unit owners, or the designation or allocation of limited common areas and facilities. Except as expressly provided herein, the provisions hereof may not be varied by agreement and rights conferred hereby may not be waived. In the event of a conflict between this section and the master deed, or declaration of trust, or bylaws of any

condominium submitted to the provisions of this chapter, the language hereof shall control. Any covenant or provision to the contrary shall be null and void.

(d) Each unit owner may use the common areas and facilities in accordance with their intended purposes without being deemed thereby to be hindering or encroaching upon the lawful rights of the other unit owners.

(e) The necessary work of maintenance, repair and replacement of the common areas and facilities shall be carried out as provided in the by-laws.

(f) Unless the by-laws otherwise provide, whenever the common areas and facilities shall require emergency works of repair, replacement or maintenance, any unit owner may undertake the same at his expense and recover his reasonable costs as a common expense.

(g) No work which would jeopardize the soundness or safety of the building shall be done in a unit or in the common areas and facilities unless in every such case the unanimous consent of all unit owners is first obtained.

#### **Section 6. Profits and expenses; lien**

(a)(i) Except as provided in paragraph (ii), all common expenses shall be assessed against all units either in accordance with their respective percentages of undivided interest in the common areas and facilities or, if stated in the master deed or an amendment thereto duly recorded in the approximate relation that the area of the unit bears to the aggregate area of all the units, which may take into account unit location, amenities in the unit, and limited common areas and facilities benefiting the unit; provided, however, that such an amendment shall require the consent of all unit owners whose common expense assessment is materially affected. The organization of unit owners shall have a lien on a unit for any common expense assessment levied against that unit from the time the assessment becomes due. Common expense assessments must be made at least annually, based on a budget adopted at least annually in accordance with the master deed, trust, or by-laws.

(ii) If any expense is incurred by the organization of unit owners as a result of the unit owner's failure to abide by the requirements of this chapter or the requirements of the master deed, trust, by-laws, restrictions, rules or regulations, or by the misconduct of a unit owner, or his family members, tenants, or invitees, the organization of unit owners may assess that expense exclusively against the unit owner and such assessment shall constitute a lien against that unit from the time the assessment is due, and such assessment shall be enforceable as a common expense assessment under this chapter. Notwithstanding the provisions of clause (i), the organization of unit owners may assess the cost of maintaining, repairing or replacing a limited common area and facility, solely to the owner of the unit to which a limited common area and facility is appurtenant, allocated, or designated, and such assessment shall be enforceable as a common expense assessment under this chapter; in the alternative, the organization of unit owners may require the owner of the unit to which a limited common area and facility is appurtenant, allocated, or designated to maintain, repair, or replace such limited common area and facility without the intervention of the organization of unit owners. Notwithstanding the

provisions of clause (i), the organization of unit owners may assess to each unit owner the direct cost of any energy conservation device installed in a unit, not already separately metered for water and utilities, including but not limited to the installation of separate water meters, low-flow toilets and showerheads, faucet aerators, windows and storm windows; provided, however, that a unit owner required to install such energy conservation device hereunder may appeal to the board of trustees of the organization of unit owners or if there is no board of trustees, the entity performing its duties. Said board or entity of said organization, in its sole and reasonable discretion, may grant to such unit owner a waiver of such required installation upon such terms and conditions as the organization of unit owners shall deem fit. The cost thereof shall be collected in the same manner as common expense assessments under this chapter. The organization of unit owners may assess to each unit owner his proportionate share of the costs for water and other utilities, as measured by the meter attached to the unit; provided however, that the board of trustees of the organization of unit owners receives the approval of the majority of unit owners in attendance at a meeting, for which notice was duly given and which was held for the purposes of issuing such an assessment. A unit owner assessed costs hereunder may appeal the assessment to said board or entity of said organization of unit owners. Such appeal shall be in writing and shall set forth a clear and concise statement of reasons for an exemption from the assessment for the unit owners. Said board or entity of said organization, in its sole and reasonable discretion, may grant to said unit owner a waiver of the assessment provided herein upon such terms and conditions as the organization of unit owners shall deem fit. In the event of a conflict between this subsection and the master deed, trust, or bylaws, and any amendment thereto, of any condominium submitted to the provisions of this chapter, the provisions of this subsection shall control. Notwithstanding the aforesaid, nothing contained herein shall be construed to be in conflict with the provisions of the state sanitary code. The organization of unit owners may also assess any fees, attorneys' fees, charges, late charges, fines, costs of collection and enforcement, court costs, and interest charged pursuant to this chapter against the unit owner and such assessment shall constitute a lien against the unit from the time the assessment is due, and shall be enforceable as common expense assessments under this chapter.

(iii) Common profits shall be distributed among unit owners in the same manner as common expenses are charged to the unit owners.

(b) The unit owner shall be personally liable for all sums assessed for his share of the common expenses including late charges, fines, penalties, and interest assessed by the organization of unit owners and all costs of collection including attorneys' fees, costs, and charges.

(c) When any portion of the unit owner's share of the common expenses has been delinquent for at least sixty days subsequent to April 1, 1993, the organization of unit owners shall send a notice stating the amount of the delinquency to the unit owner by certified and first class mail. The organization of unit owners shall also send a notice stating the amount of the delinquency to the first mortgagee by certified and first class mail, provided, that the first mortgagee has informed the organization of unit owners of its name and mailing address. Furthermore, thirty days prior to the filing of an action by the organization of unit owners to enforce its lien for delinquent common expenses, the organization of unit owners shall send a notice stating its intention to file said action to the first mortgagee by certified and first class

mail, provided that the first mortgagee has informed the organization of unit owners of its name and mailing address. In the event of the appointment of a receiver for the condominium pursuant to the provisions of chapter one hundred and eleven, the lien for charges imposed for the payment of expenses incurred by the receiver shall have priority over all other liens and mortgages, except municipal liens.

A lien under this section shall be enforced in the manner provided in sections five and five A of chapter two hundred and fifty-four. Such lien is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the master deed, (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other municipal assessments or charges against the unit. This lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and to the extent of any costs and reasonable attorneys' fees incurred in the action to enforce the lien, provided however, that the amount of attorneys' fees incurred prior to January 1, 1993 which shall be prior to the mortgage described in clause (ii) above shall be limited to no more than two thousand and five hundred dollars, and provided further, that payment of the assessments with respect to such six month period, and to the extent of any costs or reasonable attorneys' fees incurred in said action, shall serve to discharge such lien to the extent that such lien is prior to such mortgages described in clause (ii) above. The priority amount shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest assessed by the organization of unit owners. The failure of the organization of unit owners to send the first mortgagee either the notice of sixty day delinquency of common expenses, as described above, or the thirty day notice of intent to file an action to enforce the lien for delinquent common expenses, as described above, shall not affect the priority lien of the organization of unit owners for up to six months' common expenses, but the priority amount shall not include any costs or attorneys' fees incurred in the action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens or other assessments made by the organization of unit owners. Recording of the master deed constitutes record notice and perfection of this lien; no further recordation of any claim of lien for assessment under this section is required.

Neither this section nor anything contained in sections five or five A of chapter two hundred and fifty-four shall be deemed to prohibit actions to recover sums for which this subsection creates a lien or to prohibit an organization of unit owners from taking a deed in lieu of enforcement of the lien created by this section.

The organization of unit owners shall take no further action to enforce its priority liens against a particular unit for common expenses if the first mortgagee agrees in writing that a priority lien exists without the requirement of instituting an action, as to such enforcement and pays, within 60 days of said writing, the following prescribed amounts: (1) so much of any delinquent assessments on that unit for regularly recurring budgeted common expenses over a period for six months immediately preceding the notice of delinquency that would constitute a priority amount if an action had been commenced on the date the organization gives its

delinquency notice to the mortgagee; (2) costs and reasonable attorney's fees incurred by the organization at the time of said writing by the first mortgagee to collect outstanding common expenses, including, but not limited to, costs and fees to ascertain the first mortgagee's identity, examine title, and prepare and send to the unit owner and mortgagee the notices referred to in this paragraph; and to pay within 30 days of their due date; (3) all future common expenses, and special assessments other than special assessments for improvements made pursuant to section 18, assessed against that unit from the date of said notice until such time as the mortgagee's mortgage is foreclosed or otherwise no longer encumbers the unit. The amount which the first mortgagee, if it so elects, would be required to pay to cause the organization not to proceed to enforce its priority liens shall not include any amounts attributable to late charges, fines, penalties, and interest assessed by the organization of unit owners and shall only include amounts attributable to special assessments due and payable after the giving of the delinquency notice pursuant to this paragraph, and then only to the extent the special assessment is not made with respect to any improvement authorized under section 18. If the amounts described in clauses (1) and (2) are not received within said 60 day period, or if the amount of any future assessments under clause (3) is not received within 30 days of their due date, the organization may proceed to take further action to enforce its liens without voiding the first mortgagee's obligation to pay as provided in this subsection. The agreement by the first mortgagee to make payments in the amounts and for the duration specified in this paragraph shall be binding upon its successors and assigns and the successful bidder at any foreclosure but no such successor, assign, bidder or purchaser shall have any liability by virtue of the first mortgagee's undertaking pursuant to this paragraph for any amount first arising, assessed or becoming due after the mortgage is foreclosed or otherwise no longer encumbers the unit. The first mortgagee shall not be liable for the amounts described in clauses (1), (2) and (3) which arise after the first mortgagee ceases to have an interest in the unit. Such amounts shall then become the obligation of the successors and assigns of the first mortgagee.

Within ten days after receipt of the written request of the first mortgagee, the organization of unit owners shall provide a written statement in reasonable detail of the actual dollar amounts the first mortgagee would be required to pay, if it so elected, to cause the organization of unit owners not to take further action to enforce its priority liens against the unit as provided in this section. The first mortgagee shall have 14 days following the mailing of said written statement to enter into the written agreement provided for in the previous paragraph. Unless the organization of unit owners has notice of a first mortgagee's foreclosure sale actually scheduled within 30 days, the organization of unit owners shall take no further action to enforce its priority liens against a particular unit for common expenses for a period of 24 days from the receipt of the written request by the first mortgagee or 14 days following mailing of the written statement by the organization of unit owners, whichever is less. The failure of the organization of unit owners to send the written statement to the first mortgagee, as described above, shall not affect the priority lien of the organization of unit owners for up to six months' common expenses, but the priority amount shall not include any costs or attorneys' fees incurred to collect or enforce the liens.

If a unit owner fails to pay his share of the common expenses to the organization of unit owners for at least twenty-five days from the date it was due, the organization of unit owners may, as a separate and additional remedy, subject to the existing rights of a holder of a first mortgage of record, collect from any tenant renting the unit any rent then or thereafter due to the owner of such unit. Such organization shall apply such rent collected against the amount owed to it by the unit owner. Prior to taking any action hereunder, the organization of unit owners shall give to the delinquent unit owner written notice of its intent to collect the rent owed. Such notice shall be sent by any form of mail or other delivery requiring or providing a signed receipt, shall set forth the exact amount the organization of unit owners claims is due and owing by the unit owner and shall indicate the intent of the organization to collect such amount from rent, along with any other amounts which become due within the current fiscal year and which remain unpaid for twenty-five days after they become due. Further, a copy of such notice shall also be provided to any first mortgagee of record on such unit who has previously requested in writing that the organization of unit owners notify it of any delinquency in the payment amounts due to the organization by the owner of such unit.

The unit owner shall have ten days after receipt of such notice to file a written response with the organization of unit owners. Such response shall be signed under the pains and penalties of perjury; shall, in the case of monthly installments of common expenses, include proof, in the form of a canceled check, receipt or other document, that the installment was paid or shall, in the case of any other charge, state in short and plain terms all grounds upon which said unit owner maintains that the amount claimed to be owed to the organization was incorrectly calculated or charged and shall state exactly what amount, if any, the unit owner admits he owes to the organization of unit owners.

If the unit owner fails to timely file a response in compliance with the foregoing requirements or admits in such response that he owes any amount to the organization of unit owners, the organization shall be entitled to immediately notify and direct each tenant renting such unit from such owner to thereafter pay all or a portion of the rent otherwise due by such unit owner to the organization, such rent or portion thereof to be limited to the lesser of: (i) the amount the organization claimed is due on its notice to the unit owner, if the unit owner failed to timely file a response in compliance with the requirements set forth above; or (ii) the amount such unit owner admitted was due in his timely filed response. The organization shall have a continuing right to collect any rent otherwise payable by the tenant to such unit owner, until such amount, plus any charges thereafter becoming due, are satisfied in full; provided, however, that nothing herein shall preclude the unit owner from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed; and provided further, that nothing herein shall prevent the organization of unit owners from bringing an action under section five of chapter two hundred and fifty-four or to otherwise establish the amount owed to it by the unit owner or otherwise to seek and obtain an order requiring the tenant in such unit or tenants in other units owned by the unit owner in the condominium to pay to the organization rent otherwise due to the unit owner. If in any action brought to establish the amount owed by a unit owner to the organization, it is established that such unit owner

knowingly misrepresented any material fact on any response filed pursuant to the provisions of this section, the organization shall be entitled to recover from such unit owner three times the amount determined to be owed by said unit owner at the time of his response. Further, the organization of unit owners shall be entitled to collect any charges thereafter becoming due and all of the organization's costs, including reasonable attorneys' fees, incurred in such action.

In no event shall a unit owner take any retaliatory action against any tenant who pays rent, or any portion thereof, to the organization of unit owners as provided in this section. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any reprisal taken by a unit owner against a tenant who made or expressed an intention to make a payment to the organization pursuant to this section. Any waiver of the provisions of this section in any lease or rental agreement shall be void and unenforceable as against public policy.

Nothing herein shall be construed to prevent an organization of unit owners from adopting or amending its master deed, trust, by-laws or rules and regulations to provide additional protections, remedies, or rights for said organization.

To the extent that any first mortgagee of record is entitled to an assignment of rents and to the extent that it exercises its rights by written notice recorded at the registry of deeds or the registry district of the land court in which the property lies and by written notice sent by certified or registered mail to the presiding officer of the governing board of the condominium, then commencing with the next rental period, but not for any prior period, the first mortgagee may collect such rents. If the first mortgagee commences collection of such rents, it shall be obligated to pay all prospective expenses lawfully assessed by the organization of unit owners, including late fees, interest, late charges, collection costs, reasonable attorneys' fees, assessments and special assessments and shall be subject to all other provisions of this chapter, the master deed, trust, by-laws and rules and regulations. Further, the first mortgagee shall be obligated to pay any such expenses or other charges which were, prior to the commencement of the collection of rents by the first mortgagee, due and payable to the organization, to the extent that the rent collected monthly by the first mortgagee exceeds the installment of principal and interest which was due monthly to the first mortgagee prior to default, the monthly installments of real estate taxes and mortgage insurance, the monthly share of common expenses, and the customary and ordinary unit repair, operation and maintenance costs, until such time as all arrearages due to the organization by the prior unit owner are paid in full. The organization shall have priority to receive funds collected from the tenant of a delinquent unit owner as to any junior lien holder.

Except as provided in section twenty-one, in the event of a conflict between this subsection and the master deed, trust, or by-laws, and any amendment thereto, the provisions of this subsection shall govern, notwithstanding the date on which the condominium was submitted to the provisions of this chapter.



(d) A statement from the organization of unit owners setting forth the amount of unpaid common expenses and any other sums which have been assessed against a unit owner, including a statement of the amount which the organization of unit owners claims is entitled to priority with respect to any mortgage under subsection (c), shall operate to discharge the unit from any lien for other sums then unpaid when recorded in the appropriate registry of deeds; provided, however, that any statement or document issuing from an unincorporated organization of unit owners may be recorded in a registry of deeds and if so recorded shall indicate and specify therein the book and page, or document number if registered land, within such registry of the instrument from which the signatory or signatories of the statement obtained authority to sign on behalf of the unincorporated organization. The statement shall be furnished within ten business days after receipt of a written request, upon payment of a reasonable fee, and shall be binding on the organization of unit owners, the governing body of the organization of unit owners, and every unit owner; provided, however, that no fee shall be required of any mortgagee, in connection with a foreclosure of a mortgage, who has given the organization notice of its intention to foreclose a mortgage upon the unit.

**Section 7. Contribution toward common expenses; liability; offset, deduction, or waiver prohibited**

No unit owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of the unit or otherwise; and no unit owner shall be entitled to an offset, deduction, or waiver of common expenses or other charges levied or lawfully assessed by the organization of unit owners.

**Section 8. Master Deed; Recording; Contents**

The master deed shall be recorded in the registry of deeds or the land registration office where the real estate is located and shall contain the following particulars:

- (a) The statement required by section two.
- (b) A description of the land on which the building or buildings and improvements are located.
- (c) A description of each building stating the number of stories, the number of units if there is more than one and the principal materials of which it is constructed.
- (d) The unit designation of each unit, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.
- (e) A description of the common areas and facilities and the proportionate interest of each unit therein.

(f) A set of the floor plans of the building or buildings, showing the layout, location, unit numbers and dimensions of the units, stating the name of the building or that it has not a name, and bearing the verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans fully and accurately depict the layout, location, unit number and dimensions of the units as built.

(g) A statement of the purposes for which the building and each of the units are intended and the restrictions, if any, as to their use.

(h) The method by which the master deed may be amended.

(i) The name and mailing address of the corporation, trust or association which has been formed and through which the unit owners will manage and regulate the condominium, together with a statement that such corporation, trust or association has enacted by-laws pursuant to this chapter. If a trust or unincorporated association is named, the master deed shall also set forth the names of the trustees or managing board. Changes in the trustees or members of the managing board, as the case may be, or changes in the mailing address of the organization of unit owners subsequent to the recording of the master deed, shall be stated in a certificate signed and acknowledged by at least one trustee or member of the managing board then appearing of record, or by a vote of the unit owners, and signed and acknowledged by one of them, and such certificate or vote shall be recorded in the registry of deeds or land registration office where the real estate is located. Persons may rely in good faith upon the master deed, declaration of trust, or the most recently recorded certificate or vote as to the names of the trustees or members of the managing board and the address of the organization of unit owners. Notices under this chapter sent in writing to the address listed in the master deed, declaration of trust, or the most recently recorded certificate or vote, if relied upon in good faith, shall be deemed sufficiently given; provided, however, that the person or entity sending the notice has complied with other requirements, if any, of this chapter.

(j) The name of the lessor of each lease which is submitted to the provisions of this chapter and the recording data for each such lease or notice thereof.

#### **Section 8A. Leasehold condominiums; rights of unit owners**

(a) The consent of every lessor of each lease which is submitted to the provisions of this chapter shall be recorded and shall provide:

(1) the recording data for the lease or the notice thereof, and in the latter case, a statement of where the complete lease may be inspected;

(2) the date on which the lease is scheduled to expire, including a provision in said lease requiring the lessor to give a twelve month written notice of said date of expiration to each unit owner;

(3) a legally sufficient description of the real estate subject to the lease;

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

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

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

(b) After the consent of a lessor is recorded, neither the lessor nor any successor in interest of the lessor may terminate the leasehold interest of a unit owner, who makes timely payment or tender of said timely payment by certified mail of such unit owner's share of the rent and otherwise complies with all covenants and conditions which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant or condition.

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

(d) If the expiration or termination of a lease reduces the number of units in a condominium, the common element interests, votes in the association, and common expense liabilities shall be reallocated among the remaining unit owners in proportion to their respective percentage interests. Reallocations shall be confirmed by a duly recorded amendment of the master deed.

(e) The rent and all other amounts payable under the lease shall be declared common expenses.

(f) Prior to the expiration of said lease, the lessor may obtain three independent real estate appraisals of said parcel and may offer the right to purchase said parcel for the average of the three appraisals to the organization of unit owners. In the event that the organization of unit owners chooses not to purchase such parcel, said organization may negotiate a renewal of said lease for a term of not less than sixty years.

## **Section 9. Deed of units; contents; plans**

Deeds of units shall include the following particulars:

(a) an indication that the deed relates to a condominium and is subject to the provisions of this chapter. If the condominium relates to a lease which is submitted to the provisions of this chapter, the name of the condominium shall contain the word "Lease" or "Leasehold" and the deed or assignment for each unit shall indicate that the condominium relates to a lease.

(b) A description of the land as provided in section eight, or the post office address of the property, in either case including the book, page and date of recording of the master deed.

(c) The unit designation of the unit in the master deed and any other data necessary for its proper identification.

(d) A statement of the use for which the unit is intended and the restrictions, if any, on its use.

(e) The undivided interest appertaining to the unit in the common areas and facilities.

(f) Any further provisions which the grantor and grantee may deem desirable to set forth, consistent with the master deed and this chapter.

The first deed of each unit shall, in addition, have attached thereto, as part thereof, a copy of the portion or portions of the plans theretofore filed with the master deed to which copy shall be affixed the verified statement of a registered architect, registered professional engineer or registered land surveyor certifying that they show the unit designation of the unit being conveyed and of immediately adjoining units, and that they fully and accurately depict the layout of the unit, its location, dimensions, approximate area, main entrance and immediate common area to which it has access, as built.

#### **Section 10. Corporation, trust or unincorporated association; owner's interest; powers and duties; management**

(a) Each unit owner shall have the same percentage interest in the corporation, trust or unincorporated association provided for in the master deed for the management and regulation of the condominium as his proportionate interest in the common areas and facilities. Such interest shall not be separated from ownership in the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(b) Such corporation, trust or association shall have, among its other powers, the following rights and powers:

(1) To lease, manage, and otherwise deal with such community and commercial facilities as may be provided for in the master deed as being common areas and facilities.

(2) To own, convey, encumber, lease and otherwise deal with units conveyed to it or purchased by it as the result of enforcement of the lien for common expenses, any right of first refusal, or otherwise.

(3) To obtain insurance on the common areas and facilities. Such insurance coverage shall be written in its name, and the provisions thereof shall be without prejudice to the right of each unit owner to insure his own unit for his own benefit.

(4) To conduct litigation and to be subject to suit as to any course of action involving the common areas and facilities or arising out of the enforcement of the by-laws, administrative rules or restrictions in the master deed.

(5) To impose charges or to charge interest for the late payment of common expense assessments or other charges, and to levy reasonable fines for violations of the master deed, trust, by-laws, restrictions, rules or regulations of the organization of unit owners.

(6) To require or cause the installation of energy saving devices in all units, not already separately metered for water and utilities, and common areas in the condominium. Such devices shall include, but not be limited to, separate meters for each unit that will monitor the use of water and other utilities for the unit to which it is attached, low-flow toilets and showerheads, faucet aerators, windows and storm windows; provided, however, that such devices shall not be considered to be an improvement for purposes of section eighteen; and provided further, that the board of trustees of the organization of unit owners or if there is no board of trustees, the entity performing its duties receives the approval of the majority of unit owners in attendance at a meeting, for which notice was duly given and which was held for the purposes of voting on the installation of such energy conservation devices. The cost of installation of such energy conservation devices shall be an expense of the organization of unit owners, which may be assessed to the individual unit owners as a special assessment, the amount of which, in an instance where such energy conservation device has been installed in each individual unit, or in substantially all of the units in the condominium, may be attributable to each unit owner in the amount of the cost of the item installed. The organization of unit owners may assess to each unit owner his proportionate share of the costs for water and other utilities, as measured by the meter attached to the unit. In the event of a conflict between this clause and the master deed, trust, or bylaws, and any amendment thereto, of any condominium submitted to the provisions of this chapter, the provisions of this clause shall control. Notwithstanding the aforesaid, nothing contained herein shall be construed to conflict with the provisions of the state sanitary code.

The expenses incurred in and proceeds accruing from the exercise of the aforesaid rights and powers shall be common expenses and common profits.

(c) The organization of unit owners may appoint a manager or managing agent or be self-managed by their elected trustees or managing board. The organization of unit owners shall keep a complete copy of the following items, except when the organization shall appoint a manager or managing agent who has responsibility for the collection of assessments, payment of common expenses, or the accounting or custody of common funds, in which case the manager or managing agent shall be responsible, without limitation, for keeping the records in item (4) below:

- (1) a true and accurate copy of the master deed as recorded and amended;
- (2) the by-laws, including amendments thereto, as recorded;

(3) the minute book, as maintained by the organization of unit owners, to the extent such minutes are kept; and

(4) financial records, including the following:

(i) records of all receipts and expenditures, invoices and vouchers authorizing payments, receivables, and bank statements relating thereto;

(ii) records regarding the replacement reserve fund or any other funds of the organization of unit owners and bank statements relating thereto;

(iii) audits, reviews, accounting statements, and financial reports relating to the finances of the organization of unit owners;

(iv) contracts for work to be performed for or services to be provided to the organization of unit owners; and

(v) all current insurance policies of the organization of unit owners, or policies which name the organization as insured or obligee.

Such records shall be kept in an up-to-date manner within the commonwealth and shall be available for reasonable inspection by any unit owner or by any mortgagee holding a recorded first mortgage on a unit during regular business hours and at such other times as may be provided in the agreement between the manager or managing agent and the organization of unit owners. Access to said records shall include the right to photocopy said records at the expense of the person or entity making the request.

Such records, and all other records to be maintained by the manager or managing agent in accordance with any agreement between the organization of unit owners and said manager or managing agent, shall be the property of the organization of unit owners. The organization shall be entitled, during regular business hours, to receive and review such records, upon request, at any time during the term of the agreement. The manager or managing agent shall give to the organization of unit owners all books, records, funds, and accounts in the possession of the manager or managing agent upon termination of the agreement. All records shall be retained for a period of at least seven years.

(d) The party responsible for keeping the records in clause (4) of subsection (c) shall be responsible for preparing a financial report to be completed within one hundred and twenty days of the end of the fiscal year, including without limitation a balance sheet, income and expense statement, and a statement of funds available in the various funds of the organization. A copy of such financial report shall be made available to all unit owners within thirty days of its completion, and shall be made available upon request to any mortgagee holding a recorded mortgage on a unit in the condominium.

An independent certified public accountant shall conduct according to the standards of the American Institute of Certified Public Accountants, a review of the financial report for any condominium comprising fifty (50) or more units. Such review shall be conducted annually, or less frequently in accordance with subsection (m), but in no case less frequently than every two years. In any action brought to enforce the provisions of this paragraph, the prevailing party shall be entitled to reasonable attorneys' fees incurred in such action.

In the case of condominiums comprising fewer than fifty units, an independent certified public accountant shall conduct, according to the standards of the American Institute of Certified Public Accountants, a review of the financial report, if so voted by a majority in beneficial interest of the unit owners at a meeting duly convened in accordance with the by-laws of the condominium, and the cost of said review shall be paid as a common expense of the organization.

A unit owner or mortgagee holding a recorded mortgage on a unit in the condominium shall be allowed to have a review or audit prepared at its own expense, such expense to include, but not be limited to, reasonable expenses incurred by the manager directly related to the preparation of the review or audit. The organization of unit owners and the manager or managing agent shall fully cooperate in providing the information needed to perform the review or audit.

A not-for-profit community development corporation, housing partnership, or other not-for-profit entity established for the purpose of creating or establishing affordable housing may request a copy of the financial report described earlier in this subsection by making such request in writing to the owner of a unit with whom said community development corporation, housing partnership, or other entity entered into a legally enforceable, good faith and bona fide offer to purchase said unit, which offer grants said community development corporation, housing partnership, or other entity the right to inspect said documentation as a condition to the purchase of said unit. In such case, said unit owner may obtain said documentation from the organization of unit owners, the manager, or managing agent of the condominium, and may transmit the documents to said community development corporation, housing partnership, or other entity.

(e) In any contract between a manager or managing agent and an organization of unit owners, the organization shall have a right to terminate the contract for cause with ten days' notice, during which time the manager or managing agent shall have an opportunity to cure. The organization shall in no case be required to provide more than ninety days' notice if the contract is terminated without cause.

(f) If the organization of unit owners appoints a manager or managing agent who has responsibility for the collection of assessments, payment of common expenses, or the accounting or custody of common funds, then the manager or managing agent shall be responsible for keeping the records listed in clause (4) of subsection (c), and shall:

(1) render at least monthly, or less frequently in accordance with subsection (m), but in no case less frequently than quarterly, a written report to the trustees of the managing board of the organization of unit owners detailing all receipts and expenditures on behalf of the

organization, including beginning and ending balances and copies of all relevant bank statements and reconciliations for the replacement reserve fund and any other funds of the organization for which the manager or managing agent has responsibility; and

(2) maintain a separate and distinct account or accounts for each of the following: the replacement reserve fund and any other fund of the organization for which the manager or managing agent has responsibility. These funds shall not be commingled with the assets of the manager or managing agent or with the assets of any other person or any other entity. These funds shall not be subject to the claims of any creditor of the manager or managing agent or its successor in interest including a secured creditor or trustee in bankruptcy, and shall not be subject to the claims of any creditor of any other person or any other entity.

(g) Any reserve account of the organization of unit owners shall require all checks to be signed by one member of the governing board or the organization in addition to the managing agent, if one exists, unless there is a written agreement to the contrary between the organization of unit owners and the managing agent. The governing board shall designate a member or members to be the approved signatories on such checks. The requirements of this subsection may be modified pursuant to subsection (m).

(h) The organization of unit owners in condominiums of more than ten units must secure and maintain, at its own cost and expense, blanket fidelity insurance coverage insuring against the dishonest acts of any person, trustee, manager, managing agent or employee, or the organization of unit owners who is responsible for handling organizational funds, in an amount equal to at least one-fourth of the annual assessments, excluding special assessments. Such fidelity insurance policy per its definition of employee must specifically include the manager or managing agent or provide for same by an endorsement to the fidelity policy. Such fidelity insurance must name the organization of unit owners as the insured and include a provision requiring ten days' written notice to the organization or manager, in the event of cancellation or substantial modification.

The manager or managing agent shall be the designated agent on the fidelity insurance policy, and the fidelity insurance policy shall be the property and for the sole benefit of the organization of unit owners.

The manager or managing agent must maintain, at its sole cost and expense, its own fidelity insurance with substantially the same form of coverage.

The requirements of this subsection may be modified pursuant to subsection (m) of this section.

(i) All condominiums shall be required to maintain an adequate replacement reserve fund, collected as part of the common expenses and deposited in an account or accounts separate and segregated from operating funds. The requirements of this subsection may be modified pursuant to subsection (m) of this section.



(j) The declarant shall not use any funds of the organization to fund expenses relating to the initial construction, development, and marketing of the project, to pay the declarant's share of common expenses, or to pay for any costs that are not directly related to the operation of the condominium.

(k) The organization of unit owners shall designate a person or entity who shall oversee the maintenance and repair of the common areas of the condominium. The organization of unit owners shall notify all unit owners in writing of the name and phone number of the person or entity designated to oversee maintenance and repair of the common areas, and shall notify all unit owners whenever there is a change in said person or entity.

In cases where a unit owner rents a unit to a tenant, the owner of said unit shall designate a person or entity who shall oversee the maintenance and repair of said unit. At the commencement of any tenancy, the unit owner shall notify the tenant and the organization of unit owners in writing of the name and phone number of said person or entity, and shall notify the tenant in writing of the name and phone number of the person or entity designated to oversee maintenance and repair of the common areas. The unit owner shall notify the tenant and the organization of unit owners in writing whenever there is a change in the person or entity designated to oversee maintenance and repair of the unit, and shall notify the tenant in writing whenever the unit owner is notified of a change in the person or entity designated to oversee maintenance and repair of the common areas.

(l) The manager or managing agent, the president, the chairperson, or a majority of the governing board of the condominium may, when so empowered, act for the organization of unit owners and references herein to the organization of unit owners shall include such person or persons when so empowered.

(m) After control of the condominium has been transferred from the declarant to the organization of unit owners, the organization may by an annual vote of sixty-seven (67%) percent in beneficial interest or more of the unit owners modify any or all of the following provisions: the requirement regarding the review of financial records for condominiums comprising fifty or more units in the second paragraph of subsection (d), but such review shall be performed not less frequently than every two years as provided in said subsection (d); the frequency with which written reports must be prepared by the manager or management agent pursuant to clause (1) of subsection (f); the signature requirements in subsection (g); the requirement for fidelity insurance coverage in subsection (h); and the reserve fund requirement of subsection (i); provided, however, that any such modification may be rescinded at any time by the vote of a majority in beneficial interest of the unit owners.

(n) If the organization of unit owners is a trust or unincorporated association, an instrument signed by a majority of the trustees or of the managing board named in the master deed and duly attested as the act of such trust or association may be relied on as conclusively establishing that such instrument was the free act of the trust or association, and shall be binding upon such trust or association when recorded. No purchaser, mortgagee, lender, or other person dealing with the trustees or managing board of the association, as they appear of record, shall be bound to ascertain or inquire further as to the persons who are then trustees or members of the

managing board nor be affected by any notice, implied or actual, relative thereto, other than a recorded certificate thereof, and such recorded certificate shall be conclusive evidence of the personnel of said trustees or members of the managing board and of any changes therein.

### **Section 11. By-laws; mandatory provisions**

In addition to other provisions required or permitted by law, the by-laws of the organization of unit owners shall provide at all times for at least the following:

- (a) The method of providing for the necessary work of maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.
- (b) The manner of collecting from the unit owners their share of the common expenses.
- (c) The procedure for hiring all personnel, including whether or not a manager or managing agent may be engaged.
- (d) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.
- (e) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities, not set forth in the master deed, as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners.

### **Section 12. By-laws; additional provisions**

The by-laws may also provide:

- (a) A method for determining the fair market value of the unit and of the condominium in cases arising under sections seventeen and eighteen by submitting the matter to arbitration by a board consisting of one member chosen by the dissenting unit owner, one member chosen by the organization of unit owners, and one member chosen by the two members so selected.
- (b) A procedure for submitting the disputes arising from the administration of the condominium to arbitration.
- (c) A right of first refusal by the organization of unit owners in case of the sale of a unit, such right to be exercised within thirty days after written notice of intent to sell is given to such organization, provided, however, that this right shall not be exercised so as to restrict alienation, conveyance, sale, leasing, purchase, ownership and occupancy of units because of race, creed, color, national origin or sex.

(d) Such other provisions as may be deemed necessary for the management and regulation of the organization of unit owners or the condominium not inconsistent with this chapter and the master deed.

**Section 13. Claims involving common areas and facilities; liability**

All claims involving the common areas and facilities shall be brought against the organization of unit owners, and all attachments and executions related to such claims shall be made only against common funds or property held by the organization of unit owners and not against the common areas and facilities themselves other than the leasehold of any lease included therein. After such common funds and property have been exhausted, individual unit owners shall be liable for the balance due, if any, provided, however, that the amount for which a unit owner is liable shall be limited to a sum equal to the amount of his percentage interest in the common areas and facilities times the balance due.

**Section 14. Taxation and betterment assessments; lien**

Each unit and its interest in the common areas and facilities shall be considered an individual parcel of real estate for the assessment and collection of real estate taxes but the common areas and facilities, the building and the condominium shall not be deemed to be a taxable parcel. Except as provided in section 127B 1/2 of chapter 111, betterment assessments or portions thereof, annual sewer use charges, water rates and charges, and all other assessments or portions thereof, rates and charges of every nature, due to a city, town or district with respect to the condominium or any part thereof, other than real estate taxes, may be charged or assessed to the organization of unit owners; provided, however, that any lien of the city, town or district provided by law therefor shall attach to the units in proportion to the percentages, set forth in the master deed on record, of the undivided interests of the respective units in the common areas and facilities.

**Section 15. Subdivision control law**

The subdivision control law shall not apply to the division of a building into units.

**Section 16. Submission of property to this chapter**

The owners of any land may submit the same to the provisions of this chapter by the recording in the registry of deeds of a master deed, or, if all of the land is registered under the provisions of chapter one hundred and eighty-five, by filing the master deed under the provisions of said chapter. If a portion of the land desired to be submitted to the provisions of this chapter is registered land under said chapter one hundred and eighty-five, such recording of a master deed of the whole shall be a sufficient ground for withdrawal of the registered land from the provisions of said chapter one hundred and eighty-five.

**Section 17. Rebuilding following casualty loss; partition upon disapproval; repair or restoration upon approval; purchase from dissenting owner**

(a) Rebuilding of the common areas and facilities made necessary by fire or other casualty loss shall be carried out in the manner set forth in the by-law provision dealing with the necessary work of maintenance, repair and replacement, using common funds, including the proceeds of any insurance, for that purpose, provided such casualty loss does not exceed ten per cent of the value of the condominium prior to the casualty.

(b) If said casualty loss exceeds ten per cent of the value of the condominium prior to the casualty, and

(1) If seventy-five per cent of the unit owners do not agree within one hundred and twenty days after the date of the casualty to proceed with repair or restoration, the condominium, including all units, shall be subject to partition at the suit of any unit owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with any common funds shall be divided in proportion to the unit owner's respective undivided ownership in the common areas and facilities. Upon such sale, the condominium shall be deemed removed from the provisions of this chapter.

(2) If seventy-five per cent of the unit owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the condominium, in excess of any available common funds, including the proceeds of any insurance, shall be a common expense, provided, however, that if such excess cost exceeds ten per cent of the value of the condominium prior to the casualty, any unit owner who did not so agree may apply to the superior court of the county in which the condominium is located on such notice to the organization of unit owners as the court shall direct, for an order directing the purchase of his unit by the organization of unit owners at the fair market value thereof as approved by the court. The cost of any such purchase shall be a common expense.

**Section 18. Improvements; costs**

(a) If fifty per cent or more but less than seventy-five per cent of the unit owners agree to make an improvement to the common areas and facilities, the cost of such improvement shall be borne solely by the owners so agreeing.

(b) Seventy-five per cent or more of the unit owners may agree to make an improvement to the common areas and facilities and assess the cost thereof to all unit owners as a common expense, but if such improvement shall cost in excess of ten per cent of the then value of the condominium, any unit owner not so agreeing may apply to the superior court of the county in which the property is located, on such notice to the organization of unit owners as the court shall direct, for an order directing the purchase of his unit by the organization of unit owners at fair market value thereof as approved by the court. The cost of any such purchase shall be a common expense.

## **Section 19. Removal from provisions of this chapter**

(a) Seventy-five per cent of the unit owners, or such greater percentage as is stipulated in the by-laws, may remove all of a condominium or portion thereof from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens upon any of the units affected consent thereto by instruments duly recorded. Upon such removal, the condominium, including all the units, or the portion thereof thus removed shall be owned in common by the unit owners and the organization of unit owners shall be dissolved, unless it is otherwise provided in the removal instrument. The undivided interest in the property owned in common held by each unit owner shall be equal to the percentage of the undivided interest of such owner in the common areas and facilities.

(b) Such removal shall not bar the subsequent resubmission of the land and buildings involved to the provisions of this chapter.

## **Section 20. Municipal participation in condominium organization and ownership**

Notwithstanding any other provision of general or special law, a city or town may own a unit of a condominium under this chapter, participate in the organization of unit owners and be liable for its share of the common expenses of the condominium. Said city or town may either purchase a unit of a condominium or, if the city or town intends to become the owner of such a unit and use the same for municipal purposes, it may contract for the creation of a condominium and for the advancement to the city or town of the acquisition costs allocable to all other units therein. It may acquire land therefor or devote thereto land already owned by it, construct, reconstruct or remodel a building thereon subject however to the provisions of chapter one hundred and forty-nine notwithstanding that said building is not intended solely for municipal uses, and execute and record a master deed submitting such land and building to the provisions of this chapter. Upon the completion of the said construction, reconstruction or remodeling it may convey to such other parties to said contract such units as have been paid for in the proportion of the aggregate cost allocable to their stipulated units. The authority contained in this section shall be exercised, in the case of the city of Boston, by its public facilities commission, in the case of a city having a Plan E charter, by the affirmative vote of a majority of its city council, in the case of any other city, by its city council subject to the provisions of its city charter, and in the case of a town, by its town meeting.

## **Section 21. Multiple family condominium units; by-laws; master deed**

If a condominium does not contain any unit which is designed for occupancy by only one family or household, or if the floor area of all those units which are designed for occupancy by only one family or household does not in the aggregate exceed ten per cent of the floor area of all units in the condominium, then the following provisions shall be applicable notwithstanding any other provisions of this chapter, and such condominium shall be considered a commercial condominium:

(a) The by-laws may provide:

(1) That to any extent specified in the by-laws the common profits shall be distributed among, and the common expenses shall be charged to, the unit owners in proportions other than according to their respective percentages of the undivided interest in the common areas and facilities.

(2) That to any extent specified in the by-laws the unit owners shall not be personally liable for sums assessed for their share of common expenses, but such provisions shall not adversely affect any lien for said share.

(3) For limitations upon the first mortgages of record or the types or categories thereof which shall have priority over the liens provided for in clause (c) of section six, which may be dependent on the person or entity to whom such mortgages are given or upon such other criteria as may be specified in the by-laws.

(4) A procedure for submitting the disputes arising from the administration of the condominium to arbitration or other impartial determination.

(5) Provisions giving a particular unit owner or owners voting rights with respect to election of directors, trustees or members of the managing board less than, or in excess of, the voting rights which such owner or owners would otherwise have had, and provisions requiring or permitting approval of any matter, or any specified category or categories of matters, by a proportion greater than a majority, which proportion may be as great as one hundred per cent.

(6) Terms and conditions differing from or exempting the condominium from subsection (c) of section six, subsections (c) to (k), inclusive, and (m) of section ten, and sections seventeen, eighteen, and nineteen, or any of them, regarding limited lien priority for outstanding common expenses, payment of outstanding common expenses by tenants, rebuilding made necessary by fire or other casualty loss, the making of improvements and the allocations of the costs of such rebuilding or improvements, and the removal of the condominium or portion thereof from the provisions of this chapter; and in such case such terms and conditions so provided in the by-laws shall take precedence over such provisions of said subsection (c) of section six, subsections (c) to (k), inclusive, and (m) of section ten, and sections seventeen, eighteen, or nineteen to the extent inconsistent therewith.

(b) The master deed:

(1) Need not contain a statement of the number of rooms in any unit designed for purposes other than dwelling.

(2) May contain a requirement that in order for instruments to be binding on an organization of unit owners which is a trust or unincorporated association, such instruments shall be signed by a greater proportion of the trustees or of the managing board than a majority, which proportion may be as great as one hundred per cent; and in such case the provisions of clause (e) of section ten shall apply only to instruments signed by the proportion of trustees or of the managing board set forth in such requirement in the master deed.

**Section 22. Foreclosure of condominium development; liability of lender and developer**

In the event of a foreclosure upon a condominium development, the lender taking over the project shall succeed to any obligations the developer has with the unit owners and to the tenants, except that the developers shall remain liable for any misrepresentation already made and for warranties on work done prior to the transfer.