

## Georgia Condominium Act

### § 44-3-70. Short title

This article shall be known and may be cited as the "Georgia Condominium Act."

### § 44-3-71. Definitions

As used in this article, the term:

- (1) "Additional property" means any property which may be added to an expandable condominium in accordance with the provisions of the declaration and this article.
- (2) "Association" means a corporation formed for the purpose of exercising the powers of the association of any condominium created pursuant to this article.
- (3) "Board of directors" or "board" means an executive and administrative body, by whatever name denominated, designated in the condominium instruments as the governing body of the association.
- (4) "Common elements" means all portions of the condominium other than the units.
- (5) "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the association together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of the condominium instruments.
- (6) "Common profits" means all income collected or accrued by or on behalf of the association other than income derived from assessments pursuant to Code Section 44-3-80.
- (7) "Condominium" means the property lawfully submitted to this article by the recordation of condominium instruments pursuant to this article. No property shall be deemed to be a condominium within the meaning of this article unless undivided interests in common elements are vested in the unit owners.
- (8) "Condominium instruments" means the declaration and plats and plans recorded pursuant to this article. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument so long as such amendment or certification was made in accordance with this article.
- (9) "Condominium unit" means a unit, as defined in paragraph (28) of this Code section, together with the undivided interest in the common elements appertaining to that unit.
- (10) "Conversion condominium" means a condominium all or part of which may be used for residential purposes, which condominium contains any building or portion thereof that at any time before the recording of the declaration was occupied wholly or partially by persons other than persons who, at the time of the recording, had contractual rights to acquire one or more units within the condominium. This paragraph shall not apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.
- (11) "Convertible space" means a portion of a structure within a condominium, which portion may be converted in accordance with this article into one or more units or common elements, including, but not limited to, limited common elements.
- (12) "Court" means the superior court of the county where the condominium or any part thereof is located.

- (13) "Declarant" means all owners and lessees of the property who execute the declaration or on whose behalf the declaration is executed; provided, however, that the phrase "owner and lessees," as used in this Code section and in Code Sections 44-3-72 and 44-3-89, shall not include in his capacity as such any mortgagee, any lien holder, any person having an equitable interest under any contract for the sale or lease of a unit, or any lessee or tenant of a unit. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within the definition of "declarant." Any successor-in-title of any owner or lessee referred to in this paragraph who comes to stand in the same relation to the condominium as his predecessor did shall also come within such definition.
- (14) "Declaration" means the recordable instrument containing those matters required by Code Section 44-3-77 and any lawful amendments thereto.
- (15) "Expandable condominium" means a condominium to which additional property may be added in accordance with the declaration and this article.
- (16) "Foreclosure" means, without limitation, the judicial foreclosure of a mortgage and the exercise of a power of sale contained in any mortgage.
- (17) "Identifying number" means one or more letters, numbers, symbols, words, or any combination thereof that identifies only one unit in the condominium.
- (18) "Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years or leasehold estate in his unit or in the property on or within which that unit is situated or both. A condominium including an estate for years in property, or an interest therein, on or within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this article.
- (19) "Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.
- (20) "Mortgage" means a mortgage, deed to secure debt, deed of trust, or other instrument conveying a lien upon or security title to property.
- (21) "Mortgagee" means the holder of a mortgage.
- (22) "Officer" means an officer of the association.
- (23) "Permanently assigned limited common element" means a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned.
- (24) "Person" means a natural person, corporation, partnership, association, trust, other entity, or any combination thereof.
- (25) "Property" means any real property and any interest in real property, including, without limitation, parcels of air space.
- (26) "Record" means to file for record in the office of the clerk of the superior court of all counties in which the condominium or any part thereof is located.
- (27) "Submitted property" means the property lawfully submitted to this article by the recordation of condominium instruments pursuant to this article. Additional property shall be deemed to be submitted property upon the expansion of a condominium pursuant to this article.
- (28) "Unit" means a portion of the condominium intended for any type of independent ownership and use. For the purposes of this article, a convertible space shall also be deemed a unit.

(29) "Unit owner" means one or more persons, including the declarant, who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms.

Laws 1975, p. 609, §§ 3, 6; Laws 1980, p. 1406, § 1; Laws 1982, p. 3, § 44; Laws 1983, p. 3, § 33.

#### **§ 44-3-72. Creation of the condominium**

A condominium shall come into existence upon the recordation of the declaration pursuant to this article and of the plats and plans required by Code Section 44-3-83. The declaration shall be duly executed by or on behalf of all of the owners and lessees of the submitted property.

Laws 1975, p. 609, § 9.

#### **§ 44-3-73. Descriptions of condominium units**

After the submission of any property to this article, no description of a condominium unit located thereon shall be deemed vague, uncertain, or otherwise insufficient if it sets forth the identifying number of that unit, the name of the condominium, the name of the county or counties in which the condominium is located, and the deed book and page number where the first page of the declaration is recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not stated or referred to in the description.

Laws 1975, p. 609, § 10.

#### **§ 44-3-74. Recordation of condominium instruments and other instruments; plat book**

(a) The declaration and any amendments thereto shall be entitled to recordation if executed in the manner required for recording deeds to real property. All condominium instruments and any amendments and certifications thereto shall set forth the name of the condominium; the name of the county or counties in which the condominium is located; and, except for the declaration itself, the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration upon its recordation. All condominium instruments and all amendments and certifications thereto shall be recorded in every county where any portion of the condominium is located. The recordation shall not require the approval of any county or municipal authority or official except as to the manner of execution prescribed by this Code section.

(b) In addition to the records and indexes required to be maintained by the clerk of the superior court, such clerk shall maintain one or more separate plat books, entitled "Condominium Plat Book," in which shall be recorded all plats required to be filed pursuant to this article. In addition to such plats, there shall also be entitled to be recorded in such plat books other plats, including site plans and plot plans, prepared by a registered land surveyor and affecting any condominium; but the same shall not constitute the recording of a plat pursuant to Code Section

44-3-83 unless they comply with all requirements thereof. The record of the declaration and of any amendment thereto shall contain a reference to the plat book and page number of the plat or plats recorded in connection therewith.

(c) The plans required to be recorded pursuant to Code Section 44-3-83 shall be kept by the clerk of the superior court in a separate file for each condominium and shall be indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "Condominium Plans," with the name of the condominium, and each containing a reference to the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration upon its recordation. The record of the declaration and of any amendment thereto shall contain a reference to the file number of the plans recorded in connection therewith.

(d) All deeds, mortgages, liens, leases, and encumbrances of any kind affecting any condominium unit or duplicate originals thereof or copies thereof certified by the clerk of the superior court in whose office the same are first recorded shall be recorded in all counties in which any part of the submitted property is located.

#### **§ 44-3-75. Construction, complementarity and validity of condominium instruments**

(a) Except to the extent otherwise provided by the condominium instruments:

(1) The terms defined in Code Section 44-3-71 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires;

(2) To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all doors and windows therein and all lath, wallboard, plasterboard, plaster, paneling, molding, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof shall be deemed a part of such units; but all other portions of such walls, floors, or ceilings shall be deemed a part of the common elements;

(3) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially inside and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit; but any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements;

(4) Subject to paragraph (3) of this subsection, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit;

(5) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit shall be deemed a limited common element appertaining to that unit exclusively; and

(6) The requirement of consent to or joinder in any act or instrument by any unit owner shall not be deemed to require the consent to or joinder in such act or instrument by any mortgagee of or the holder of any lien upon such unit owner's condominium unit except to the extent expressly required by this article.

(b) In the event that any allocation of undivided interest in the common elements, votes in the association, or liability for common expenses stated in any deed or mortgage to or of any condominium unit conflicts with the allocations thereof as set forth in the declaration, the declaration shall control.

(c) In the event of any inconsistency between this article and the provisions of any declaration, this article shall control. Unless otherwise provided in the condominium instruments, in the event of any inconsistency between the declaration and the provisions of any bylaws of the association, the declaration shall control.

(d) The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this article as to the content of one would be satisfied if any other condominium instrument were incorporated therein by reference.

(e) If any provision, sentence, clause, phrase, or word of any condominium instrument or the application thereof in any circumstances is held invalid, the validity of the remainder of the condominium instrument and of the application of any such provision, sentence, clause, phrase, or word in other circumstances shall not be affected thereby.

Laws 1975, p. 609, § 12; Laws 1990, p. 227, § 1.

#### **§ 44-3-76. Compliance with condominium instruments**

Every unit owner and all those entitled to occupy a unit shall comply with all lawful provisions of the condominium instruments. In addition, any unit owner and all those entitled to occupy a unit shall comply with any reasonable rules or regulations adopted by the association pursuant to the condominium instruments which have been provided to the unit owners and with the lawful provisions of bylaws of the association. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or, in any proper case, by one or more aggrieved unit owners, on their own behalf or as a class action. If and to the extent provided in the condominium instruments, the association shall be empowered to impose and assess fines, and suspend temporarily voting rights and the right of use of certain of the common elements in order to enforce such compliance; provided, however, that no such suspension shall deny any unit owner or occupants access to the unit owned or occupied nor cause any hazardous or unsanitary condition to exist. If the voting right of a unit owner has been suspended, then to the extent provided in the condominium instruments, that unit owner's vote shall not count for purposes of establishing a quorum or taking any action which requires a vote of the owners under this article or the condominium instruments. Notwithstanding any other provision of this Code section, to the extent provided in the condominium instruments, water, gas, electricity, heat, and air conditioning services being provided to a unit or unit owner by the association may be terminated for failure to pay assessments and other amounts due pursuant to subsection (a) of Code Section 44-3-109, subject to the suspension standards and notice requirements imposed on the institutional providers providing such services to the condominium development, only after a final judgment or final judgments in excess of a total of \$750.00 are obtained in favor of the

association from a court of competent jurisdiction. The utility services shall not be required to be restored until the judgment or judgments and any reasonable utility provider charges or other reasonable costs incurred in suspending and restoring such services are paid in full. All common expenses for termination and restoration of any services pursuant to this Code section shall be an assessment and a lien against the unit.

Laws 1975, p. 609, § 13; Laws 1982, p. 3, § 44; Laws 1990, p. 227, § 2; Laws 1994, p. 1943, § 2; Laws 2004, Act 535, § 1, eff. July 1, 2004.

#### **§ 44-3-77. Contents of the declaration**

(a) The declaration for every condominium shall contain the following:

- (1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium";
- (2) The name of the county or counties in which the condominium is located;
- (3) A legal description by metes and bounds of the submitted property, including any horizontal, upper and lower, boundaries as well as the vertical, lateral, boundaries;
- (4) A description or delineation of the boundaries of the units, including any horizontal, upper and lower, boundaries as well as the vertical, lateral, boundaries;
- (5) A description or delineation of any limited common elements showing or designating the unit or units to which each is assigned;
- (6) A description or delineation of all common elements which may subsequently be assigned as limited common elements together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with Code Section 44-3-82;
- (7) The allocation to each unit of an undivided interest in the common elements in accordance with Code Section 44-3-78;
- (8) The allocation to each unit of a number of votes in the association in accordance with Code Section 44-3-79;
- (9) The allocation to each unit of a share of the liability for common expenses in accordance with Code Section 44-3-80;
- (10) Any limitations or restrictions on the powers of the association and the board of directors;
- (11) The name and address of the attorney or other person who prepared the declaration;
- (12) A statement of any and all restrictions on the general use of the condominium or a statement that there are no such restrictions; and
- (13) Such other matters not inconsistent with this article as the declarant deems appropriate.

(b) If the condominium is an expandable condominium, the declaration shall also contain the following:

- (1) The explicit reservation of an option or options to expand the condominium;
- (2) A time limit or date not exceeding seven years from the recording of the declaration upon which all options to expand the condominium shall expire together with a statement of any circumstances which will terminate any such option prior to the expiration of the

time limit so specified; provided, however, that, if the condominium instruments so provide, the unit owners of units to which two-thirds of the votes in the association appertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant, may consent to the extension of any such option within one year prior to the date upon which the option would otherwise have expired;

(3) A statement of any other limitations on the option or options or a statement that there are no such limitations;

(4) A legal description by metes and bounds of the additional property, including any horizontal, upper and lower, boundaries as well as the vertical, lateral, boundaries;

(5) A statement as to whether portions of the additional property may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof or regulating the order in which they may be added to the condominium, or a statement that there are no such limitations;

(6) A statement of any limitations as to the location of any improvements that may be made on any portions of the additional property or a statement that there are no such limitations;

(7) A statement of the maximum number of units that may be created on the additional property. If portions of the additional property may be added to the condominium and the boundaries of those portions are fixed in accordance with paragraph (5) of this subsection, the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional property may be added to the condominium and the boundaries of those portions are not fixed in accordance with paragraph (5) of this subsection, then the declaration shall also state the maximum average number of units per acre that may be created on any such portion added to the condominium;

(8) With regard to the additional property, a statement of whether any units may be created therein that may not be restricted exclusively to residential use and, if so, a statement of the maximum extent thereof or a limitation as to the extent of such nonresidential use;

(9) A statement of the extent to which any structures erected on any portion of the additional property added to the condominium will be compatible with structures on the submitted property in terms of quality of construction, the principal materials to be used, and architectural style or a statement that no assurances are made in those regards;

(10) A description of all other improvements that will be made on any portion of the additional property added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard;

(11) A statement that any units created on any portion of the additional property added to the condominium will be substantially identical to the units on the submitted property, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard;

(12) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional property or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the

types, sizes, and maximum number of such limited common elements within each such portion, or a statement that no limitations are placed on that right; and

(13) A statement of a formula, ratio, or other method whereby, upon the expansion of any expandable condominium, there shall be reallocated among the units the undivided interests in the common elements, the votes in the association, and the liability for common expenses.

Plats or plans may be recorded with the declaration of any amendment thereto and identified therein to supplement or provide information required to be furnished pursuant to this subsection; and provided, further, that paragraph (8) of this subsection need not be complied with if none of the units on the submitted property are restricted exclusively to residential use.

(c) If the condominium contains any convertible space, the declaration shall also contain a statement of a formula, ratio, or other method whereby, upon the conversion of all or any portion of a convertible space, there shall be allocated among the units created therefrom such undivided interest in the common elements, such number of votes in the association, and such liability for common expenses as previously pertained to such convertible space.

(d) If the condominium is a leasehold condominium, with respect to any ground lease, other lease, or other instrument creating the estate for years, the expiration or termination of which may terminate or reduce the condominium, the declaration shall set forth the county or counties wherein the same are recorded and the deed book and page number where the first page of each such lease or other instrument is recorded. The declaration shall also contain the following:

- (1) The date upon which such leasehold or estate for years is due to expire;
- (2) A statement of whether any property will be owned by the unit owners in fee simple and, if so, a legal description by metes and bounds of any such property. With respect to any improvements owned by the unit owners in fee simple, the declaration shall contain a statement of any rights the unit owners shall have to remove the improvements after the expiration or termination of the leasehold or estate for years involved or a statement that they shall have no such rights;
- (3) A statement of the name and address of the person or persons to whom payments of rent must be made by the unit owners unless such rent is collected from the unit owners as a part of the common expenses; and
- (4) A statement of the share of liability for payments under any such lease or other instrument which are chargeable against each unit.

(e) Whenever this Code section requires a legal description by metes and bounds of submitted property or additional property, such requirement shall be deemed to include a requirement of a legally sufficient description of any easements that are submitted to this article or that may be added to the condominium, as the case may be. In the case of any such easement, the declaration shall contain the following:

- (1) A description of the permitted use or uses;
- (2) If the benefit of the easement does not inure to all units and their lawful occupants, a statement of the relevant restrictions and limitations on utilization; and
- (3) If any person other than those entitled to occupy any unit may use the easement, a statement of the rights of others to such use.

Notwithstanding any other provision of this subsection, the foregoing requirements may be satisfied by attaching a true copy of any such easement to the declaration.

(f) Whenever this Code section requires a legal description by metes and bounds of submitted property or additional property, such requirement shall be deemed to include a separate legal description by metes and bounds of all property in which the unit owners collectively shall or may be tenants in common or joint tenants with any other persons. No units shall be situated on any such property, however, and the declaration shall describe the nature of the unit owners' estate therein. No such property shall be shown on the same plat or plats showing other portions of the condominium but shall be shown instead on separate plats unless such property is specifically shown and labeled as being owned subject to such a tenancy.

(g) Wherever this article requires a statement of a method for allocation or reallocation of undivided interests in the common elements, votes in the association, and the liability for common expenses, such method shall be so related to the physical characteristics of the units affected or otherwise so stated as to enable any person to determine the interest, vote, or share in such matters pertaining to any particular unit upon such allocation or reallocation. Certain spaces within the units, including, without limitation, attic, basement, and garage space, may but need not be omitted from such calculation or partially discounted by the use of a ratio so long as the same basis of calculation is employed for all units in the condominium. In the event that the declaration allocates or provides for the allocation to any unit of a different share of undivided interests in common elements than is allocated for liability for common expenses, such difference shall be based upon a good faith estimate of the declarant regarding the approximate relative maintenance or other costs occasioning such disparity, and the basis of such determination shall be stated in the declaration; provided, however, that no unit owner or other person may require any reallocation on account of any disparity between actual costs and the determination reflected in the declaration. Subject to the foregoing sentence of this subsection, nothing contained in this article shall be construed to require that the proportions of undivided interest in the common elements, of votes in the association, or of liability for common expenses assigned and allocated to each unit be equal, it being intended that such proportions may be independent.

Laws 1975, p. 609, § 14; Laws 1982, p. 3, § 44.

#### **§ 44-3-78. Allocation of interests in the common elements**

(a) The declaration shall allocate to each unit depicted on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83 an undivided interest in the common elements. Such allocation may be by percentage, fraction, formula, or any other method which indicates the relative undivided interests in the common elements. If an equal undivided interest in the common elements is allocated to each unit, the declaration may merely so state.

(b) All of the undivided interests in the common elements shall be allocated to the units created by the declaration and shall be subject to reallocation as provided in this article.

(c) If the undivided interests allocated are other than equal, the undivided interest allocated to each unit shall be reflected by a table or provision in the declaration or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith identifying the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated, and setting forth the fraction, percentage, or other statement of undivided interest in the common elements allocated thereto.

(d) Except to the extent otherwise expressly provided by this article, the undivided interest in the common elements allocated to any unit shall not be altered; and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it pertains shall be void.

(e) The common elements shall not be subject to any action for partition except as provided in Code Sections 44-3-98 and 44-3-99.

(f) No undivided interest in the common elements shall be allocated to any unit unless such unit is depicted on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83.

Laws 1975, p. 609, § 15.

#### **§ 44-3-79. Allocation of votes in the association**

(a) The declaration shall allocate a number of votes in the association to each unit depicted on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83. The allocation of such votes may be by percentage, fraction, formula, or any other method which indicates the relative voting power allocated to each unit. If an equal vote is allocated to each unit, the declaration may merely so state. All of the votes in the association shall be allocated among the units depicted on such plats or plans and shall be subject to reallocation as provided in this article.

(b) Since a unit owner may be more than one person, if only one of those persons is present at a meeting of the association or is voting by proxy, ballot, or written consent, that person shall be entitled to cast the votes pertaining to that unit. However, if more than one of those persons is present or executes a proxy, ballot, or written consent, the vote pertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise; and such consent shall be conclusively presumed if any one of them purports to cast the votes pertaining to that unit without protest being made immediately by any of the others to the person presiding over the meeting or vote.

(c) The votes pertaining to any unit may, and, in the case of any unit owner not a natural person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner or, in cases where the unit owner is more than one person, by or on behalf of the joint owners of the unit. No such proxy shall be revocable except as provided in Code Section 14-2-722 or 14-3-724 or by written notice delivered to the association by the unit owner or by any joint owners of a unit. Any proxy shall be void if it is not dated or if it purports to be revocable without such notice.

(d) Except in the case of any condominium of which no part is restricted exclusively to residential use, if 50 percent or more of the votes in the association pertain to 25 percent or less of the condominium units, then in any case where a majority vote is required by the condominium instruments or by this article the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the condominium units.

(e) Anything in this Code section to the contrary notwithstanding, no votes in the association shall be deemed to pertain to any condominium unit during such time as the unit owner thereof is the association nor shall any vote be allocated to any condominium unit unless the condominium unit is depicted on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83. Except to the extent otherwise expressly provided or permitted by this article, the votes allocated to any condominium unit shall not be altered.

Laws 1975, p. 609, § 16; Laws 1982, p. 3, § 44; Laws 2004, Act 535, § 2, eff. July 1, 2004.

#### HISTORICAL AND STATUTORY NOTES

The 2004 amendment by Act 535, in subsec. (b), added "or is voting by proxy, ballot, or written consent" in the first sentence, and added "or executes a proxy, ballot, or written consent" and "or vote" in the second sentence; and in subsec. (c), added "as provided in Code Section 14-2-722 or 14-3-724 or" in the second sentence.

#### **§ 44-3-80. Allocation of liabilities for common expenses**

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

(b) To the extent that the condominium instruments expressly so provide:

(1) Any other common expenses benefiting less than all of the units shall be specially assessed equitably among all of the condominium units so benefited;

(2) Any other common expenses occasioned by the conduct of less than all of those entitled to occupy all of the units or by the licensees or invitees of any such unit or units shall be specially assessed against the condominium unit or units, the conduct of any occupant, licensee, or invitee of which occasioned any such common expenses;

(3) Any other common expenses significantly disproportionately benefiting all of the units shall be assessed equitably among all of the condominium units; and

(4) Other than for limited common elements expressly designated as such in the condominium instruments and assigned to fewer than all units, nothing contained in paragraph (1) or (3) of this subsection shall permit an association to specially or

disproportionately allocate common expenses for periodic maintenance, repair, and replacement of any portion of the common elements or the units which the association has the obligation to maintain, repair, or replace.

(c) The amount of all common expenses not specially assessed pursuant to subsection (a) or (b) of this Code section, less the amount of all undistributed and unreserved common profits, shall be assessed against the condominium units in accordance with the allocation of liability for common expenses set forth in the declaration. The allocation may be by percentage, fraction, formula, or any other method which indicates the relative liabilities for common expenses. If an equal liability for common expenses is allocated to each unit, the declaration may merely so state. The entire liability for common expenses shall be allocated among the units depicted on plats or plans that comply with subsections (a) and (b) of Code Section 44-3-83 and shall be subject to reallocation as provided in this article. Except to the extent otherwise expressly provided or permitted by this article, the allocations of the liability shall not be altered; provided, however, that no reallocation shall affect any assessment or installation thereof becoming due and payable prior to reallocation. The assessments shall be made by the association annually or more often if the condominium instruments so provide and shall be payable in the manner determined by the association. Notwithstanding any unequal allocation of liabilities for common expenses pursuant to this subsection, this provision shall not preclude the association from levying charges equally among units for services or items provided to owners upon request, or which provide proportionate or uniform benefit to the units, including, but not limited to, uniform charges for pool keys or other common element entry devices.

(d) No unit owner other than the association shall be exempted from any liability for any assessment under this Code section or under any condominium instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his unit or any part of the common elements.

(e) Unless otherwise provided in the condominium instruments and except as provided in subsection (f) of this Code section, the grantee in a conveyance of a condominium unit shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that, if the grantor or grantee shall request a statement from the association as provided in Code Section 44-3-109, such grantee and his successors, successors-in-title, and assigns shall not be liable for nor shall the condominium unit conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

(f) In the event that the holder of a first priority mortgage or a secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the unit, or any other person acquires title to any condominium unit as a result of foreclosure of any such mortgage, such holder or other person and successors, successors-in-title, and assigns shall not be liable for nor shall the condominium unit be subject to a lien for any assessment under this Code section or under any condominium instrument chargeable to the condominium unit on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be

deemed to be common expenses collectable from all of the unit owners, including such holder or other person and successors, successors-in-title, and assigns.

(g) A condominium instrument recorded on or after July 1, 1990, shall not authorize the board of directors to impose:

(1) Except as provided in subsections (a) and (b) of this Code section and subsections (a) and (b) of Code Section 44-3-109, a special assessment fee per unit in excess of an average of \$ 200.00 per fiscal year without the approval of a majority of the unit owners; or

(2) A monthly maintenance fee increase in excess of the percentage equal to the annual rate of inflation as measured by the Consumer Price Index for All Urban Consumers for the immediately preceding 12 month period may be disapproved by unit owners holding a majority of the association vote.

Laws 1975, p. 609, § 17; Laws 1990, p. 227, § 3; Laws 1994, p. 1943, §§ 3, 4; Laws 2004, Act 535, § 3, eff. July 1, 2004.

#### HISTORICAL AND STATUTORY NOTES

The 2004 amendment by Act 535, in subsec. (c) added the last sentence beginning with "Notwithstanding any unequal allocation".

#### **§ 44-3-82. Assignments and reassignments of limited common elements**

(a) All assignments and reassignments of limited common elements shall be made or provided for in the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with this article. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common element without the consent of all unit owners whose use of the limited common element is or may be directly affected by the assignment or reassignment, as evidenced by their execution of the amendment, except to the extent that the condominium instruments expressly provided otherwise prior to or simultaneously with the first assignment of the limited common element.

(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application to the association by the owners of units to which the limited common element appertains and the owners of units to which the limited common element is being reassigned. The association shall immediately prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be delivered immediately to the owners of the units to which the limited common element appertains and the owners of units to which the limited common element is being reassigned and upon payment by them of all reasonable costs for the preparation, execution, and recordation thereof. The amendment shall become effective when the association and the owners of the units to which the limited common element appertains and the owners of units to which the limited common element is being reassigned have executed and recorded the same. No vote of the unit owners shall be necessary for the

amendment provided in this Code section to be executed by the association.

(c) A common element not previously assigned as a limited common element shall be so assigned only pursuant to the declaration. The amendment to the declaration making such an assignment shall be prepared and executed by the association. The amendment shall be delivered to the unit owner or owners to whose unit the assignment is being made upon payment by them of all reasonable costs for the preparation, execution, and recordation thereof. The amendment shall become effective after execution by the association and such unit owner or owners and recordation, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to the declaration was adhered to. Unless otherwise required by the condominium instruments, no vote of the unit owners shall be necessary for the amendment provided in this Code section to be executed by the association.

Laws 1975, p. 609, § 19; Laws 1990, p. 227, § 4; Laws 1994, p. 1943, § 5.

#### **§ 44-3-83. Contents of plats and plans; recording**

(a) Prior to the first conveyance of a condominium unit, there shall be recorded one or more plats of survey showing the location and dimensions of the submitted property; the location and dimensions of all structural improvements located on any portion of the submitted property; the intended location and dimensions of all contemplated structural improvements committed to be provided by the declaration on any portion of the submitted property; and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted property or otherwise submitted to this article as part of the common elements. With respect to all such structural improvements, the plats shall indicate which, if any, have not been begun by use of the phrase "NOT YET BEGUN." No structural improvement which contains or constitutes all or part of any unit or units and which is located on any portion of the submitted property shall be commenced on any portion of the submitted property after the recording of the plats. The declarant shall complete all structural improvements depicted on the plats, subject only to such limitations, if any, as may be expressly stated in the declaration with respect to those labeled "NOT YET BEGUN" on the plats, provided that, within six months after written notice from the association, the declarant shall be obligated to complete within a reasonable time every structural improvement actually commenced on the submitted property, notwithstanding any provision of the declaration, unless the declarant removes within a reasonable time all portions of any such structural improvement and restores the surface of the land affected thereby to substantially the same condition as that which existed prior to commencement of any such structural improvement; and provided, further, that nothing contained in this sentence shall exempt the declarant from any contractual liability to complete any such structural improvement. If the submitted property consists of noncontiguous parcels, the plats shall indicate the approximate distances between such parcels unless such information is disclosed in the declaration. If, with respect to any portion or portions, but less than all, of the submitted property, the unit owners are to own only a leasehold or estate for years, the plats shall show the location and dimensions of any such portion or portions and shall label each such portion by use of the phrase "LEASED LAND." To the extent feasible, the plats shall show all easements to which the submitted property or any portion thereof is subject. The plats shall also show all encroachments by or on any operation of the submitted property. In the case of any units which

have vertical boundaries lying wholly or partially outside of structures for which plans pursuant to subsection (b) of this Code section are recorded, the plats shall show the location and dimensions of the vertical boundaries to the extent that they are not shown on the plans; and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified as to its accuracy and compliance with this subsection by a registered land surveyor. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or required by law to be shown for land title surveys.

(b) There shall be recorded prior to the first conveyance of a condominium unit:

(1) Plans which have been prepared, signed, and sealed by a registered architect or registered engineer of every structure which contains or constitutes all or part of any unit or units located on or within any portion of the submitted property, which plans shall show:

- (A) The location and dimensions of the exterior walls and roof of such structures;
- (B) The walls, partitions, floors, and ceilings as constitute the horizontal boundaries, if any, and the vertical boundaries of each unit, including convertible space, to the extent that such boundaries lie within or coincide with the boundaries of such structures; and
- (C) The identifying numbers of all units or portions thereof depicted on the plans; and

(2) A certification by such architect or engineer to the effect that he has visited the site and viewed the property and that, to the best of his knowledge, information, and belief:

- (A) The exterior walls and roof of each structure are in place as shown on the plans; and
- (B) Such walls, partitions, floors, and ceilings, to the extent shown on said plans, as constitute the horizontal boundaries, if any, and the vertical boundaries of each unit, including convertible space, have been sufficiently constructed so as to establish clearly the physical boundaries of such unit.

In addition, each convertible space depicted in the plans shall be labeled as such by use of the phrase "CONVERTIBLE SPACE." Unless the condominium instruments expressly provide otherwise, it shall be presumed that, in the case of any unit not wholly contained within or constituting one or more of the structures, the horizontal boundaries extend, in the case of each unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of the structures. This subsection shall apply to any condominium created on or after July 1, 1980, or to the expansion of any such condominium.

(b.1) There shall be recorded prior to the first conveyance of a condominium unit plans of every structure which contains or constitutes all or part of any unit or units located on or within any portion of the submitted property and a certification by a registered architect or registered engineer to the effect that he has visited the site and viewed the property and that, to the best of his knowledge, information, and belief:

- (1) The foundation, structural members, exterior walls, and roof of each such structure are complete and in place as shown on the plans;
- (2) The walls, partitions, floors, and ceilings, to the extent shown on the plans, as constituting or coinciding with the vertical and horizontal boundaries of each unit, including convertible space, within each such structure, are sufficiently complete and in place to establish clearly the physical boundaries of such unit and that such physical boundaries are as shown on the plans; and
- (3) Each such structure, to the extent of its stage of completion at that time, is constructed substantially in accordance with such plans.

The plans shall show the location and dimensions of the horizontal boundaries, if any, and the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units, or portions thereof, thus depicted shall bear their identifying numbers. In addition, each convertible space depicted in the plans shall be labeled as such by use of the phrase "CONVERTIBLE SPACE." Unless the condominium instruments expressly provide otherwise, it shall be presumed that, in the case of any unit not wholly contained within or constituting one or more of the structures, the horizontal boundaries extend, in the case of each unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of the structures. This subsection shall apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

(c) Prior to the first conveyance of a condominium unit located on any portion of any additional property being or having been added to an expandable condominium, there shall be recorded new plats of survey conforming to the requirements of subsection (a) of this Code section and, with regard to any structures on the property being or having been added, plans conforming to the requirements of subsection (b) of this Code section or certifications, conforming to the certification requirements of subsection (b) of this Code section, of plans previously recorded pursuant to Code Section 44-3-84.

(d) When converting all or any portion of any convertible space into one or more units or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the horizontal boundaries, if any, and the vertical boundaries of each unit formed out of such space. The plans shall be certified by a registered architect or registered engineer in accordance with the certification requirements of subsection (b) of this Code section.

(e) When any portion of the submitted property is withdrawn, there shall be recorded a plat or plats showing the portion of the submitted property withdrawn and the remaining submitted property, which plat or plats shall be certified as provided in subsection (a) of this Code section.

Laws 1975, p. 609, § 20; Laws 1980, p. 1406, § 3; Laws 1982, p. 3, § 44; Laws 1983, p. 3, § 33; Laws 1984, p. 22, § 44.

#### **§ 44-3-84. Preliminary recordation of plans**

Plans previously recorded pursuant to subsection (b) of Code Section 44-3-77 may be used in lieu of new plans to satisfy in whole or in part the requirements of Code Section 44-3-89 if certifications thereof are recorded by the declarant in accordance with subsection (c) of Code Section 44-3-83.

Laws 1975, p. 609, § 21.

#### **§ 44-3-85. Easements**

(a) The purpose of this Code section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere to the plats or plans.

(b) To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats or plans in the construction, repair, renovation, restoration, or repair of any improvement or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist.

(c) The declarant and his duly authorized agents, representatives, and employees shall have an easement for the maintenance of sales offices and model units on the submitted property so long as the declarant owns any condominium unit primarily for the purpose of sale.

(d) Subject to any restrictions and limitations which the condominium instruments may specify, the declarant shall have a transferable easement on and over the common elements for the purpose of making improvements contemplated by the condominium instruments on the submitted property and any additional property and for the purpose of doing all things reasonably necessary and proper in connection therewith.

(e) This Code section shall not be construed so as to prohibit the reservation to the declarant of other easements by means of the condominium instruments or otherwise.

(f) To the extent that damage is inflicted on any part of the condominium by the declarant or by any contractor, subcontractor, or materialman utilizing the easements reserved by the condominium instruments to the declarant or created by this Code section, the declarant together with the person or persons causing the damage shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

Laws 1975, p. 609, § 22; Laws 1982, p. 3, § 44.

#### **§44-3-86. Leasehold condominiums**

(a) As used in this Code section, the term "lessor" means any lessor, sublessor, or grantor of an estate for years.

(b) In the case of any leasehold condominium:

(1) After the recording of the declaration, no lessor who executed the declaration and no successor-in-interest to the lessor shall have any right or power to terminate all or any part of the leasehold interest of any unit owner so long as the condominium shall exist;

(2) In the event that any such lessor shall acquire title to or any other interest in any unit by any method whatsoever, the undivided interest thereby acquired by the lessor in the common elements shall not be merged with the lessor's underlying interest in the submitted property; but the two estates shall remain separate and divided so long as the condominium shall exist;

(3) If provided for in the condominium instruments, the obligation of each unit owner to pay rents and any other amounts under any lease from any lessor shall be secured by a lien upon the condominium unit of the unit owner. The lien shall be prior to all other liens and encumbrances on that condominium unit except liens for ad valorem taxes; and any other lien or encumbrance which the condominium instruments provide shall be superior thereto. The lien shall secure all costs incurred, including, without limitation, reasonable attorney's fees, in connection with the foreclosure thereof and may be foreclosed by action, judgment, and foreclosure in the same manner as is provided for any other lien for the improvement of real property;

(4) Unless otherwise provided in the condominium instruments and except as provided in paragraph (5) of this Code section, no unit owner shall be obligated to pay any amount in excess of the rents due and payable under any lease multiplied by the percentage or other proportion of the unit owner's liability for the rents as set forth in the declaration;

(5) Unless otherwise provided in the condominium instruments, no lessor shall be entitled to require performance by any unit owner of any covenant of any such lease in any form other than by the payment of money by the unit owner; provided, however, that, in the event of any default under any lease other than default in the payment of money, the lessor shall be entitled to perform any defaulted covenant and charge all reasonable costs incurred in connection with performance, including, without limitation, reasonable attorney's fees, against the unit owners in proportion to their liability for the rents, which costs shall be considered rent for purposes of the lien provided for in paragraph (3) of this Code section; and

(6) Except as limited in this Code section, in the condominium instruments, or by law, any lessor shall have all rights and powers provided by law or by his lease.

Laws 1975, p. 609, § 23; Laws 1982, p. 3, § 44.

#### **§ 44-3-87. Conversion condominiums**

(a) The declarant of a conversion condominium shall deliver notice of the conversion to each

tenant in possession of a unit which is subject to this article. The notice must be delivered at least 120 days before the declarant will require the tenant to vacate the unit. The notice must set forth generally the rights of tenants under this Code section. The tenant may not be required by the declarant to vacate the unit at any time during the 120 day period 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 said period; provided, however, that any notice which, under the terms of such tenancy, is required to be given to prevent the automatic renewal or extension of the term of such tenancy may be given during said period. Failure of the declarant to give notice as required by this Code section shall constitute a defense to an action by the declarant for possession initiated less than 120 days after proper delivery of such a notice.

(b) Within 60 days after delivery of the notice described in subsection (a) of this Code section, the declarant shall deliver to the tenant an offer to convey the unit to the tenant at a specified price and on specified terms. If the tenant fails to deliver to the declarant acceptance of the offer within 60 days after delivery of the offer to the tenant, the declarant may not offer to convey the unit, during the 120 days following the date on which delivery is made of the offer to convey to the tenant, at a price or on terms more favorable to the offeree than the price or terms offered to the tenant, without first delivering the same offer to the tenant, who shall have at least ten days within which to deliver to the declarant acceptance of such offer.

(c) Notices and offers required or permitted to be delivered to a tenant by subsections (a) and (b) of this Code section may be hand delivered to the tenant, hand delivered to the unit, or posted in the United States mail, postage prepaid, or sent by statutory overnight delivery, addressed to the tenant at the address of the unit. Acceptances permitted to be delivered to a declarant by subsection (b) of this Code section may be hand delivered to the declarant, hand delivered to an authorized representative of the declarant, or posted in the United States mail, postage prepaid, addressed to the declarant at the address specified in the offer made by the declarant. Any notices, offers, or acceptances sent by registered or certified mail or statutory overnight delivery, return receipt requested, shall be presumed conclusively to have been delivered when posted in the United States mail or delivered to the commercial delivery company, postage and fees prepaid, addressed as provided in this subsection, in which event the postmark date or date of receipt by the commercial delivery company of any such registered or certified mail or statutory overnight delivery or any receipt related thereto shall be the date of delivery for purposes of this Code section.

(d) Subsections (a) and (b) of this Code section shall not apply to any unit in a conversion condominium if the boundaries of the unit do not substantially conform to the boundaries of the unit before conversion. Subsections (a) and (b) of this Code section shall apply only to tenants who are not in default under valid and subsisting leases with the declarant or a predecessor in title of the declarant and who are in possession of and are actually occupying for residential purposes units within the conversion condominium both at the time of recording of the declaration and at the time the notice provided for in subsection (a) of this Code section are delivered.

(e) Prior to or simultaneously with delivery of the offer of sale of a unit to a tenant as provided

in subsection (b) of this Code section, the declarant shall deliver to the tenant the items required to be furnished to a prospective purchaser by subsection (b) of Code Section 44-3-111.

(f) If a declarant conveys a unit to a purchaser in violation of subsection (b) of this Code section, recordation of the deed conveying the unit shall extinguish any right a tenant may have under subsection (b) of this Code section to purchase the unit but shall not affect any rights of any person to recover damages from the declarant for a violation of subsection (b) of this Code section.

(g) If the notice of conversion should specify a date by which the unit must be vacated, the notice will also constitute demand for possession pursuant to Code Section 44-7-50.

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

(i) The rights and obligations of the declarant and the tenant during any period of extended occupancy by the tenant pursuant to subsection (a) of this Code section shall be the same as the rights and obligations of said persons prior to any such period of extended occupancy.

(j) This Code section shall not apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

Laws 1980, p. 1406, § 4; Laws 1982, p. 3, § 44; Laws 1983, p. 3, § 33; Laws 2000, p. 1589, § 11.

#### **§ 44-3-88. Conversion of convertible spaces**

(a) With the consent of the mortgagees thereof, the declarant may convert all or any portion of any convertible space into one or more units or common elements, including, without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this Code section and subsection (d) of Code Section 44-3-83.

(b) The declarant and all mortgagees of the convertible space shall execute and the declarant shall record an amendment to the declaration effecting the conversion. The amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate among the unit or units and the remaining convertible space, if any, the undivided interest in the common elements, the number of votes in the association, and the share of the liability for future common expenses pertaining to the convertible space immediately prior to the conversion. All sums assessed against a convertible space prior to its conversion may be reallocated by the amendment to the units and the remaining convertible space, if any. In the event that no reallocation is effected, however, the lien for the assessments shall continue as to all of the space notwithstanding the conversion. The amendment shall describe or delineate the limited common elements, if any, formed out of the convertible space and shall indicate the unit or units to which each is assigned or provide a method for such assignment.

(c) Any convertible space not converted in accordance with this Code section or any portion or portions thereof not so converted shall be treated for all purposes as a single unit unless and until it is so converted; and this article shall be deemed applicable to any space or portion or portions thereof as though the same were a unit.

Laws 1975, p. 609, § 24.

#### **§ 44-3-89. Expansion of the condominium**

No condominium shall be expanded except in accordance with the provisions of the declaration and this article. Any expansion shall be deemed to have occurred at the time of the recordation of plats or plans pursuant to subsection (c) of Code Section 44-3-83 and an amendment to the declaration effecting the expansion duly executed by the declarant, all other owners or lessees of the additional property being added to the condominium, and all mortgages of the additional property being added to the condominium. The amendment shall contain a legal description by metes and bounds of the additional property being added to the condominium and shall reallocate undivided interests in the common elements, votes in the association, and liabilities for future common expenses all in accordance with the provisions of the declaration.

Laws 1975, p. 609, § 25.

#### **§ 44-3-90. Alterations within units**

(a) Except to the extent prohibited by the condominium instruments and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not materially impair the structural integrity of any structure or otherwise materially lessen the support of any portion of the condominium. No unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to any conditions which the condominium instruments may specify.

(b) If a unit owner acquires an adjoining unit, the unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that the partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is materially weakened or removed and no portion of any common elements other than that partition, and other than any chutes, flues, ducts, conduits, wires, or other apparatus contained in the partition which must be relocated by the unit owner if they serve any other part of the condominium, is damaged, destroyed, or endangered. Alterations permitted by this Code section shall not be deemed an alteration of boundaries within the meaning of Code Section 44-3-91.

Laws 1975, p. 609, § 26.

#### **§ 44-3-91. Relocation of boundaries between units**

(a) If the condominium instruments expressly permit the relocation of boundaries between adjoining units, the boundaries between those units may be relocated in accordance with this Code section and any restrictions and limitations which the condominium instruments may specify.

(b) If the unit owners of adjoining units whose respective boundaries may be relocated desire to relocate those boundaries, the association shall, upon written application of the unit owners and the written consent of the mortgagees of the units involved, immediately prepare and execute appropriate instruments pursuant to subsections (c) and (d) of this Code section. No vote of the unit owners shall be necessary for the amendments provided in this Code section to be executed by the association.

(c) An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof. The unit owners of the units involved shall specify in their written application that there shall be no such reallocation or shall specify reallocations between the units involved of the aggregate undivided interest in the common elements, votes in the association, and liabilities for common expenses, or any one or more thereof, pertaining to those units. The amendment to the declaration shall reflect such reallocations or the absence thereof if deemed reasonable by the board of directors. If the reallocations specified by the unit owners of the units involved or the absence thereof is deemed unreasonable by the board of directors, it shall so notify such unit owners and permit them to amend their written application so as to specify reallocations acceptable to the board of directors.

(d) Any plats or plans necessary to show the altered boundaries between the units involved, together with their other boundaries, shall be prepared; and the units depicted thereon shall bear their identifying numbers. The plats or plans shall indicate the new dimensions of the units involved. The plats or plans shall be certified as to their accuracy and compliance with this subsection by a registered land surveyor in the case of any plat and by a registered architect or registered engineer in the case of any plan.

(e) When appropriate instruments have been prepared and executed by the association in accordance with subsections (a) through (d) of this Code section, they shall be delivered immediately to the unit owners of the units involved upon payment by them of all reasonable costs for the preparation, execution, and recordation thereof. The instruments shall become effective when the unit owners of the units involved and the mortgagees of the units have executed them and they have been recorded. The recording of such instruments shall be conclusive evidence that any reallocations made pursuant to subsection (c) of this Code section were reasonable and were approved by the board of directors. Upon recordation, the instruments shall effectuate conveyancing by and between the unit owners of the units involved regardless of whether the instruments contain or provide for the use of conveyancing language.

(f) Any relocation of boundaries between adjoining units shall be governed by this Code section and not by Code Section 44-3-92. Code Section 44-3-92 shall apply only to the subdivision of units which are intended to result in the creation of two or more new units in place of the

subdivided unit.

Laws 1975, p. 609, § 27; Laws 1990, p. 227, § 5; Laws 1991, p. 94, § 44.

**§ 44-3-92. Subdivision of units**

(a) If the condominium instruments expressly permit the subdivision of any units, the units may be subdivided in accordance with this Code section and any restrictions and limitations which the condominium instruments may specify.

(b) If the unit owner of any unit which may be subdivided desires to subdivide the unit, the association, upon written application of the subdivider, as the unit owner shall henceforth be referred to in this Code section, and the written consent of the mortgagees of the unit, shall immediately prepare and execute appropriate instruments pursuant to subsections (c) and (d) of this Code section. No vote of the unit owners shall be necessary for the amendments provided in this Code section to be executed by the association.

(c) An amendment to the declaration shall assign identifying numbers to the units created by the subdivision of a unit and shall allocate among those units on a reasonable basis acceptable to the subdivider and the board of directors all of the undivided interest in the common elements, votes in the association, and liabilities for common expenses pertaining to the subdivided unit immediately prior to the subdivision. With regard to any limited common elements assigned to the subdivided unit, the units created by the subdivision shall jointly share all rights and shall be liable equally for all obligations so that the total of the assessments therefor equals the total of the common expenses attributable to such limited common elements, except to the extent that the subdivider may have specified in his written application that all or any portion or portions of any limited common element assigned to the subdivided unit should be assigned exclusively to one or more, but less than all, of the units created by the subdivision, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in the written application.

(d) Any plats or plans necessary to show the boundaries separating the units created by the subdivision, together with their other boundaries, shall be prepared; and the units created by the subdivision depicted thereon shall bear their identifying numbers. The plats or plans shall indicate the dimensions of the units created by the subdivision. The plats or plans shall be certified as to their accuracy and compliance with this subsection by a registered land surveyor in the case of any plat and by a registered architect or registered engineer in the case of any plan.

(e) When appropriate instruments in accordance with subsections (a) through (d) of this Code section have been prepared and executed by the association, they shall be delivered immediately to the subdivider upon payment by the subdivider of all reasonable costs for the preparation, execution, and recordation thereof. The instruments shall become effective when the subdivider and all mortgagees of the unit have executed them and they have been recorded. The recordation of such instruments shall be conclusive evidence that any reallocations made pursuant to subsection (c) of this Code section were reasonable and were approved by the board of directors.

(f) This Code section shall have no application to convertible spaces which shall be governed by Code Section 44-3-88.

Laws 1975, p. 609, § 28; Laws 1990, p. 227, § 6.

### **§ 44-3-93. Amendment of condominium instruments**

(a)(1) Except to the extent expressly permitted or required by other provisions of this article, the condominium instruments shall be amended only by the agreement of unit owners of units to which two-thirds of the votes in the association pertain or such larger majority as the condominium instruments may specify; provided, however, that, during any such time as there shall exist an unexpired option to add any additional property to the condominium or during any such time as the declarant has the right to control the association pursuant to Code Section 44-3-101, the agreement shall be that of the declarant and the unit owners of units to which two-thirds of the votes in the association pertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant, or a larger majority as the condominium instruments may specify.

(2) Except to the extent expressly permitted or required by other provisions of this article, from and after July 1, 1990, no amendment of a condominium instrument shall require approval of unit owners to which more than 80 percent of the association vote pertains and the mortgagees holding 80 percent of the voting interest of mortgaged units; provided, however, that the provisions of any condominium instruments in effect on July 1, 1990, which provide for a majority in excess of 80 percent shall not be affected or modified by the provisions of this paragraph if by July 1, 1991, the association and those mortgagees permitted to vote on amendments voted by the majority required for an amendment as specified in the condominium instrument to retain the existing requirements for amendments; and provided, further, if no such vote by the required majority occurred, those provisions requiring more than 80 percent shall be deemed to require only 80 percent of the voting interest. The approval of any proposed amendment by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the mortgagee receives notice of the proposed amendment sent by certified or registered mail or statutory overnight delivery, return receipt requested. This paragraph shall not be deemed to eliminate or modify any right of the declarant provided for in the condominium instruments to approve amendments to the condominium instruments so long as the declarant owns any unit primarily for the purpose of sale and, furthermore, this paragraph shall not be construed as modifying or altering the rights of a mortgagee set forth elsewhere in this article.

(b) If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified by subsection (a) of this Code section.

(c) Except to the extent expressly permitted or required by other provisions of this article or agreed upon by all unit owners and the mortgagees of all condominium units, no amendment to

the condominium instruments shall change the boundaries of any unit, the undivided interest in the common elements pertaining thereto, the number of votes in the association pertaining thereto, or the liability for common expenses pertaining thereto.

(d) Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment. In the alternative, provided that the declarant does not then have the right to control the association pursuant to Code Section 44-3-101, the sworn statement of the president, of any vice-president, or of the secretary of the association attached to or incorporated in an amendment executed by the association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully obtained and that any notices required under this article were properly given, shall be sufficient to evidence the required agreement. Any such amendment of the condominium instruments shall become effective only when recorded or at such later date as may be specified in the amendment itself.

(e) In any court suit or action where the validity of the adoption of an amendment to a condominium instrument is in issue, the adoption of the amendment shall be presumed valid if the suit is commenced more than one year after the recording of the amendment on the public record. In such cases, the burden of proof shall be upon the party challenging the validity of the adoption of the amendment.

Laws 1975, p. 609, § 29; Laws 1982, p. 3, § 44; Laws 1990, p. 227, § 7; Laws 1991, p. 94, § 44; Laws 1994, p. 1943, §§ 6, 7; Laws 2000, p. 1589, § 4.

#### **§ 44-3-94. Damage or destruction of units**

Unless otherwise provided in the condominium instruments, in the event of damage to or destruction of any unit by a casualty covered under insurance required to be maintained by the association pursuant to Code Section 44-3-107, the association shall cause the unit to be restored. Unless otherwise provided in the condominium instruments, any funds required for such restoration in excess of the insurance proceeds attributable thereto shall be paid by the unit owner of the unit; provided, however, that, in the event that the unit owner of the unit together with the unit owners of other units to which two-thirds of the votes in the association pertain agree not to restore the unit, the unit shall not be restored and the entire undivided interest in the common elements pertaining to that unit shall then pertain to the remaining units, to be allocated to them in proportion to their undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a part of the common elements. Votes in the association and liability for future common expenses shall thereupon pertain to the remaining units, being allocated to them in proportion to their relative voting strength in the association and liability for common expenses, respectively. To the extent provided for in the condominium instruments, the association may allocate equitably the payment of a reasonable insurance deductible between the association and the unit owners affected by a casualty against which the association is required to insure; provided, however, that the amount of deductible which can be allocated to any one unit owner shall not exceed \$2,500.00 per casualty loss covered under any insurance required to be maintained by the association under this article. The existence of a reasonable deductible in any required insurance policy shall not be deemed a failure to maintain insurance as required by

this Code section.

Laws 1975, p. 609, § 7; Laws 1983, p. 3, § 33; Laws 1990, p. 227, § 8; Laws 2004, Act 535, § 4, eff. July 1, 2004.

#### **§ 44-3-95. Mortgages and liens**

(a) In the event of the foreclosure of any mortgage or lien which is subordinate to the declaration or from which any condominium unit has been released, the foreclosure shall not terminate the condominium; and, upon his purchase, the mortgagee, lienholder, or other purchaser at foreclosure shall become the owner of all condominium units which had not been released from the mortgage or lien prior to the purchase. In the event of the foreclosure of any mortgage or lien which is not subordinate to the declaration and from which no condominium unit has been released, the foreclosure of the mortgage or lien shall terminate the condominium unless the foreclosing mortgagee or lienholder subordinates to the declaration prior to foreclosure or forecloses subject to the declaration. For the purposes of this Code section, a lien for labor or services performed or for materials furnished in the improvement of property, either before or after it becomes submitted property, recorded upon the submitted property as a whole after the recordation of the declaration, shall be subordinate to the declaration.

(b) Any other provision of law to the contrary notwithstanding, liens for labor and services performed and for materials furnished for the improvement of property either before or after it becomes submitted property, which labor, services, and materials were performed or used in the original construction of any portion of a condominium or additional property of an expandable condominium, may be recorded against the submitted property as a whole; provided, however, that any such lien shall constitute a valid lien only against those units which have not been conveyed by the declarant to any person in a bona fide sale and purchase transaction prior to the recording of the lien. For those units which have been so conveyed, the lien shall be inapplicable and unenforceable.

(c) Subsequent to the creation of the condominium and as long as the submitted property remains subject to this article, no lien shall arise or, except as provided in subsections (a) and (b) of this Code section, be effective against the submitted property as a whole. During such period of submission to this article and except as provided in this subsection, liens or encumbrances shall arise or be created or effective only against each condominium unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or be effective against any other separate parcel of real property subject to individual ownership; provided, however, that labor or services performed or materials furnished for improvement of 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, if other applicable provisions of law are complied with and subject to the limitations thereof, create a lien upon all of the condominium units subject to subsection (d) of this Code section.

(d) In the event that any lien for labor or services performed or materials furnished for improvement of the common elements becomes effective subsequent to the creation of the condominium, any unit owner may remove that lien from his condominium unit by the payment

of the amount attributable to his condominium unit. The amount shall be computed by reference to the liability for common expenses pertaining to that condominium unit pursuant to subsection (c) of Code Section 44-3-80. Subsequent to the payment, discharge, or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with applicable provisions of law; and, notwithstanding anything to the contrary in Code Sections 44-3-80 and 44-3-109, the association shall not assess or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien.

Laws 1975, p. 609, § 8.

#### **§ 44-3-96. Separate titles and taxation**

For all purposes, each condominium unit shall constitute a separate parcel of real property which shall be distinct from all other condominium units. If there is any unit owner other than the declarant, no tax or assessment shall be levied on the condominium as a whole but only on the individual condominium units.

Laws 1975, p. 609, § 4; Laws 1982, p. 3, § 44.

#### **§ 44-3-97. Eminent domain**

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common elements unless otherwise provided in the condominium instruments; provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If any limited common element is permanently assigned to more than one unit at the time of the taking, the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the declaration may specify for this purpose.

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

(c) If a portion of any unit is taken by eminent domain, the court shall determine the fair market value of the portion of such unit not taken; and the undivided interest in the common elements pertaining to any such unit shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portion of undivided interest in the common elements thereby divested from the unit owner of any such unit shall be reallocated among that unit and the other units in the condominium in proportion to

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

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

(e) Votes in the association and liability for future common expenses pertaining to any unit or units taken or partially taken by eminent domain shall then pertain to the remaining units, to be allocated to them in proportion to their relative voting strength in the association and liability for common expenses, respectively, with any unit partially taken participating in such reallocation as though its voting strength and its liability for common expenses in the association had been reduced in proportion to the reduction in its undivided interest in the common elements and the decree of the court shall provide accordingly.

(f) Any or all of the matters which, under this Code section, are prescribed for the determination of the court may instead be resolved by amendment to the declaration agreed to by unit owners to which more than 50 percent of the votes in the association pertain, including the unit owner of all units wholly or partially taken, or to which there is appurtenant any permanently assigned limited common element wholly or partially taken, together with the mortgagee of each such unit.

Laws 1975, p. 609, § 6.

#### **§ 44-3-98. Termination of the condominium**

(a) The condominium shall be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the association pertain and all mortgagees of such units or such larger majority as the condominium instruments may specify; provided, however, that during such times, if any, as there shall exist an unexpired option to add any additional property to the condominium or during such time, if any, as the declarant has the right to control the association pursuant to Code Section 44-3-101, the agreement shall be that of the declarant and the unit owners of units to which four-fifths of the votes in the association pertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant, and the mortgagees of

those units or the larger majority that the condominium instruments may specify.

(b) If none of the units in the condominium are restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified by subsection (a) of this Code section.

(c) Agreement of the required majority of unit owners and their mortgagees to termination of the condominium shall be evidenced by their execution of a termination agreement. Any termination agreement shall become effective only when recorded or at such later date as may be specified therein. For the purposes of this Code section, a termination agreement shall be deemed a condominium instrument subject to Code Section 44-3-74.

(d) Upon the effective date of a termination agreement, all of the property constituting the condominium shall be owned by the unit owners as tenants in common and shall be in proportion to their respective undivided interests in the common elements immediately prior to the effective date. As long as the tenancy in common lasts, however, each unit owner and his heirs, representatives, successors, and assigns shall have the same right of occupancy and use of that portion of the property which formerly constituted his unit and the limited common elements appurtenant thereto, if any, as existed immediately prior to termination and a nonexclusive right to use that portion of the property which formerly constituted common elements other than limited common elements.

(e) Upon the effective date of a termination agreement, any rights the unit owners may have to the assets of the association shall be in proportion to their respective undivided interests in the common elements immediately prior to the effective date; and any distribution thereof to the unit owners shall be to such owners and to their mortgagees as their interests may appear.

(f) Upon the effective date of a termination agreement, mortgages and liens affecting each unit shall be deemed to be transferred, in accordance with their existing priorities, to the undivided interest of the unit owner in the property which formerly constituted the condominium.

(g) After the effective date of a termination agreement and except as otherwise expressly provided in this Code section, the property which formerly constituted the condominium and the rights and obligations of the former unit owners with respect thereto shall be subject to and governed by the laws of this state pertaining to tenancies in common for as long as the tenancy in common lasts.

Laws 1975, p. 609, § 30; Laws 1982, p. 3, § 44.

#### **§ 44-3-99. Withdrawal of submitted property**

(a) Unless the condominium instruments expressly prohibit the withdrawal of any submitted property from the condominium, submitted property may be withdrawn but only in accordance with this Code section and any restrictions or limitations which the condominium instruments may specify, the property being withdrawn hereinafter being referred to as the "withdrawn property"; provided, however, that no unit or limited common element may be withdrawn in

part.

(b) Submitted property may be withdrawn from the condominium only by an amendment to the condominium instruments agreed to by the following required persons:

- (1) The owner of each unit which is being withdrawn;
- (2) The owner of each unit to which pertains any limited common element which is being withdrawn;
- (3) The declarant, if, at the time of the withdrawal there shall exist any unexpired option to add any additional property to the condominium, or if, at the time of the withdrawal, the declarant has the right to control the association pursuant to Code Section 44-3-101;
- (4) The owners of the units to which pertain four-fifths of the votes in the association or such larger majority as may be specified in the condominium instruments, exclusive of the votes appertaining to the units owned by the persons required in paragraphs (1) through (3) of this subsection. If none of the units in the condominium are restricted exclusively to residential use, the condominium instruments may specify a majority smaller than four-fifths; and
- (5) Each mortgagee of the units owned by the required persons set forth in paragraphs (1) through (4) of this subsection.

(c) If the withdrawn property includes any unit, the amendment effectuating the withdrawal shall specify the reallocation to the remaining units of the undivided interest in the common elements, the number of votes in the association, and the share of liability for common expenses pertaining to the unit or units being withdrawn. The reallocation of each item shall be in proportion to the allocation of the item among the remaining units immediately prior to the effectuation of the withdrawal.

(d) If the withdrawn property does not include any unit or any limited common element, the withdrawn property shall, upon the effective date of the amendment, be owned by the unit owners as tenants in common in proportion to their respective undivided interest in the common elements immediately prior to the effective date.

(e) If any unit or any limited common element is included in the withdrawn property, the amendment shall allocate to the owner of each such unit or of each unit to which each such limited common element pertains, as the case may be, an undivided interest in the withdrawn property in consideration for the withdrawal of the unit or limited common element. The remaining undivided interest in the withdrawn property shall be allocated among the unit owners, including the owners of any unit or units to which there are appurtenant limited common elements which are being withdrawn, in proportion to their respective undivided interests in the common elements immediately preceding the effective date of the amendment.

(f) The amendment to the declaration effectuating the withdrawal of submitted property shall be executed by those persons whose agreement thereto is required under subsection (b) of this Code section and shall include:

- (1) A legal description by metes and bounds of the withdrawn property;
- (2) A legal description by metes and bounds of the remaining submitted property;

- (3) The effective date of the amendment if subsequent to the date of recording the amendment;
- (4) The undivided interest in the withdrawn property being allocated to each unit owner; and
- (5) The undivided interest in the common elements, the number of votes in the association, and the share of liability for common expenses pertaining to each unit remaining in the condominium.

The amendment shall become effective only when it and all plats required in connection therewith under subsection (e) of Code Section 44-3-83 shall have been recorded or at such later date as may be specified therein.

(g) Upon the effective date of the amendment, the withdrawn property shall be owned by the unit owners as tenants in common having the undivided interests set forth in the amendment. As long as the tenancy in common lasts, however, each unit owner and his heirs, representatives, successors, and assigns shall have the same right of occupancy and use of that portion of the withdrawn property which formerly constituted his unit and the limited common elements appurtenant thereto, if any, as existed immediately prior to the withdrawal and a nonexclusive right to use that portion of the withdrawn property which formerly constituted common elements other than limited common elements.

(h) Upon the effective date of the amendment, mortgages and liens of unit owners theretofore affecting any portion of the withdrawn property shall, regarding the withdrawn property, be deemed to be transferred in accordance with their existing priorities to the undivided interests of the respective owners in the withdrawn property. Mortgages and liens of the unit owners theretofore affecting any portion of the remaining submitted property shall, regarding such remaining submitted property, not be affected by the withdrawal and shall continue in full force and effect; provided, however, that, in the case of mortgages or liens theretofore affecting only a condominium unit or units which are included within the withdrawn property, the lien of such mortgage or lien shall be transferred wholly to the undivided interest of the owner or owners of such unit or units in the withdrawn property, including both the undivided interest allocated in consideration of the withdrawal of said units and the undivided interest allocated in common to all unit owners, and the lien of such mortgage or lien shall not thereafter affect or be applicable to any portion of the remaining submitted property.

(i) After the effective date of the amendment and except as otherwise expressly provided in this Code section, the withdrawn property and the rights and obligations of the unit owners with respect thereto shall be subject to and governed by the laws of this state pertaining to tenancies in common for as long as the tenancy in common lasts.

Laws 1975, p. 609, § 31.

#### **§ 44-3-100. The association: incorporation, articles of incorporation and bylaws**

(a) Prior to recording the declaration, the declarant shall cause the association to be duly incorporated either as a business corporation under Chapter 2 of Title 14 or as a nonprofit

membership corporation under Chapter 3 of Title 14. The corporate name of the association shall include the phrase "unit owners' association" or the phrase "condominium association" and shall otherwise comply with applicable laws regarding corporate names. The articles of incorporation of the association and the bylaws adopted by the association shall contain provisions not inconsistent with applicable law, including, but not limited to, this article, or with the declaration, as may be required by this article or by the declaration and as may be deemed appropriate or desirable for the proper management and administration of the association. Each unit owner shall automatically be a member of the association. The term "member" shall include a shareholder in the event the association is a business corporation or issues stock. Membership shall continue during the period of ownership by such unit owner.

(b) Prior to the first conveyance of a condominium unit, the declarant shall cause the first board of directors to be duly appointed, the officers to be elected, and the organization of the association to be effectuated.

(c) True and correct copies of the articles of incorporation and bylaws of the association and all amendments thereto shall be maintained at the principal and the registered offices of the association and at the sales office of the declarant so long as the declarant has the right to control the association pursuant to Code Section 44-3-101; and copies thereof shall be furnished to any unit owner on request upon payment of a reasonable charge therefor.

Laws 1975, p. 609, § 32.

**§ 44-3-101. Control of association by declarant; surrender of control to unit owners; declarant's responsibility**

(a) If provided for in the condominium instruments and subject to any limitations contained in the condominium instruments, the association's articles of incorporation, the association's bylaws, or this article with respect thereto, the declarant shall be authorized to appoint and remove any member or members of the board of directors and any officer or officers of the association. The declarant's authority to appoint and remove members of the board of directors and officers of the association shall in no event extend beyond and shall in all cases expire immediately upon the occurrence of any of the following:

- (1) The expiration of any time limit specified for such purpose in the condominium instruments, which time limit may not be enlarged or extended after the conveyance by the declarant of a condominium unit without the express consent of all unit owners;
- (2) Unless the declarant at that time has an unexpired option to add additional property, the date as of which units to which four-fifths of the undivided interests in the common elements pertain shall have been conveyed by the declarant to unit owners other than a person or persons constituting the declarant;
- (3) The expiration of seven years after the recording of the declaration in the case of an expandable condominium or the expiration of three years after the recording of the declaration in the case of any other type of condominium; or
- (4) The surrender by the declarant of the authority to appoint and remove members of the board of directors and officers of the association by an express amendment to the declaration which is executed and recorded by the declarant.

No formal or written proxy or power of attorney need be required of the unit owners to vest such authority to appoint and remove members of the board of directors and officers of the association in the declarant, the acceptance of a conveyance of a condominium unit being wholly sufficient for such purpose.

(b) Upon the expiration of the period of the declarant's right to control the association pursuant to subsection (a) of this Code section, the right to control shall automatically pass to the unit owners, including the declarant if the declarant then owns one or more condominium units. The declarant shall be jointly responsible and liable with the members of the board of directors and the officers of the association to the unit owners for ensuring that the books, records, and accounts of the association are in proper order, that the association is in good standing under the laws of this state, and that the affairs of the association have been conducted in a prudent and businesslike manner, all as of the date upon which the declarant's right to control the association expires. The declarant shall not be insulated against liability to the unit owners because any act, omission, or matter complained of during such period of control may have been done, omitted, or permitted by or on behalf of the association as a corporate entity. Nothing contained in this Code section shall make any successor to the declarant responsible or subject to liability by operation of law or through the purchase of the declarant's interest in the property or any part thereof at foreclosure for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of the declarant.

(c) In addition to any right of termination set forth therein, any management contract, any lease of recreational area or facilities, or any other contract or lease executed by or on behalf of the association during the period of the declarant's right to control the association pursuant to subsection (a) of this Code section shall be subject to cancellation and termination at any time during the 12 months following the expiration of such control period by the affirmative vote of the unit owners of units to which a majority of the votes in the association pertain, unless the unit owners by a like majority shall have theretofore, following the expiration of such control period, expressly ratified and approved the same.

Laws 1975, p. 609, § 33; Laws 1990, p. 227, § 9.

#### **§ 44-3-102. Meetings**

Meetings of the members of the association shall be held in accordance with the provisions of the association's bylaws and in any event shall be called not less frequently than annually. A condominium instrument recorded on or after July 1, 1990, shall also provide for the calling of a meeting upon the written request of at least 15 percent of the unit owners. Notice shall be given to each unit owner at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting and shall state the time, place, and purpose of such meeting. Such notice shall be delivered personally, sent by United States mail, postage prepaid, statutory overnight delivery, or issued electronically in accordance with Chapter 12 of Title 10, the "Georgia Electronic Records and Signatures Act," to all unit owners of record at such address or addresses as any of them may have designated or, if no other address has been

so designated, at the address of their respective units. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the association shall be made to the unit owners.

Laws 1975, p. 609, § 34; Laws 1990, p. 227, § 10; Laws 2004, Act 535, § 5, eff. July 1, 2004.

#### **§ 44-3-103. Quorums**

Unless the condominium instruments or bylaws provide otherwise, a quorum shall be deemed present throughout any meeting of the members of the association if persons entitled to cast more than one-third of the votes are present at the beginning of the meeting. Unless the condominium instruments or bylaws specify a larger percentage, the presence of persons entitled to cast one-half of the votes of the board of directors shall constitute a quorum for the transaction of any business at any meeting of the board.

Laws 1975, p. 609, § 35; Laws 1994, p. 1943, § 8; Laws 2004, Act 535, § 6, eff. July 1, 2004.

#### **§ 44-3-104. Directors and officers**

If the condominium instruments provide that any member of the board of directors or any officer of the association must be a unit owner, then, notwithstanding paragraph (1) of subsection (a) of Code Section 44-3-75, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any shareholder, director, officer, partner in, or trustee of any person who is, either alone or in conjunction with any other person or persons, a unit owner. Any individual who would not be eligible to serve as a member of the board of directors or officer were he not a shareholder, director, officer, partner in, or trustee of such a person shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person.

Laws 1975, p. 609, § 36.

#### **§ 44-3-105. Upkeep of the condominium; damage to common elements**

Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement shall pertain to the association in the case of the common elements other than limited common elements and to the individual unit owner in the case of any unit and the limited common elements, if any, appurtenant thereto. Each unit owner shall afford to the other unit owners, to the association, and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements, including, without limitation, limited common elements, or on any unit through which access is taken, the association or unit owner occasioning the same, whether by itself or himself or through agents, employees, or others, shall be liable for the prompt repair thereof.

Laws 1975, p. 609, § 37.

**§ 44-3-106. Powers and responsibilities of the association; tort liability**

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

- (1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association;
- (2) Make or cause to be made additional improvements on and as a part of the common elements; and
- (3) Grant or withhold approval of any action by one or more unit owners or other persons entitled to occupancy of any unit if such action would change the exterior appearance of any unit or of any other portion of the condominium or elect or provide for the appointment of an architectural control committee to grant or withhold such approval.

(b) Except to the extent prohibited by the condominium instruments and subject to any restrictions and limitations specified therein, the association shall have the irrevocable power, as attorney in fact on behalf of all unit owners and their successors in title, to grant easements, leases, and licenses through or over the common elements, to accept easements, leases, and licenses benefiting the condominium or any portion thereof, and to acquire or lease property in the name of the association as nominee for all unit owners. Property so acquired by the association as nominee for the unit owners, upon the recordation of the deed thereto or other instrument granting the same, shall automatically and without more, and for all purposes, including, without limitation, taxation, be a part of the common elements. The association shall also have the power to acquire, lease, and own in its own name property of any nature, real, personal, or mixed, tangible or intangible; to borrow money; and to pledge, mortgage, or hypothecate all or any portion of the property of the association for any lawful purpose within the association's inherent or expressly granted powers. Any third party dealing with the association shall be entitled to rely in good faith upon a certified resolution of the board of directors of the association authorizing any such act or transaction as conclusive evidence of the authority and power of the association so to act and of full compliance with all restraints, conditions, and limitations, if any, upon the exercise of such authority and power. The provisions of Code Section 44-2-2 notwithstanding, any such actions taken by the association as attorney in fact on behalf of all unit owners and their successors in title shall be effective record notice to third parties if recorded in the name of the association as that name is reflected in the recorded declaration or any recorded amendments thereto. Such recorded document shall not require a listing of the names of the unit owners or their successors in title or assigns.

(c) The association shall have the power to amend the condominium instruments, the articles of incorporation, and the bylaws of the association or any of them in such respects as may be required to conform to mandatory provisions of this article or of any other applicable law without a vote of the unit owners.

(d) In addition to any other duties and responsibilities as this article or the condominium instruments may impose, the association shall keep:

- (1) Detailed minutes of all meetings of the members of the association and of the board of directors;
- (2) Detailed and accurate financial records, including itemized records of all receipts and expenditures; and
- (3) Any books and records as may be required by law or be necessary to reflect accurately the affairs and activities of the association.

(e) This Code section shall not be construed to prohibit the grant or imposition of other powers and responsibilities to or upon the association by the condominium instruments.

(f) Except to the extent otherwise expressly required by this article, by Chapter 2 or 3 of Title 14, by the condominium instruments, by the articles of incorporation, or by the bylaws of the association, the powers inherent in or expressly granted to the association may be exercised by the board of directors, acting through the officers, without any further consent or action on the part of the unit owners.

(g) A tort action alleging or founded upon negligence or willful misconduct by any agent or employee of the association or in connection with the condition of any portion of the condominium which the association has the responsibility to maintain shall be brought against the association. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by virtue of his membership in the association. A judgment against the association arising from a tort action shall be a lien against the property of the association.

(h) The association shall have the capacity, power, and standing to institute, intervene in, prosecute, represent in, or defend, in its own name, litigation, administrative or other proceedings of any kind concerning claims or other matters relating to any portions of the units or common elements which the association has the responsibility to administer, repair, or maintain.

Laws 1975, p. 609, § 38; Laws 1990, p. 227, § 11; Laws 1994, p. 1943, § 9.

#### **§ 44-3-107. Insurance**

The association shall obtain:

- (1) A casualty insurance policy or policies affording fire and extended coverage insurance for and in an amount consonant with the full replacement value of all structures within the condominium; provided, however, that the association may exclude from such coverage (A) improvements made by the unit owners, and (B) structures covered by builder's risk insurance, such coverage to be in an amount consonant with the full replacement value thereof, but only during such period of time as the builder's risk insurance remains in full force and effect and only on the condition that the association is named as an additional insured;

(2) A liability insurance policy or policies, in amounts specified by the condominium instruments but not in amounts less than \$500,000.00 for injury, including death, to a single person; \$1 million for injury or injuries, including death, arising out of a single occurrence; and \$50,000.00 for property damage; or, in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than \$1,050,000.00. The policy or policies shall cover the association, the board of directors and the officers of the association, all agents and employees of the association, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium for occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the common elements or other portion of the condominium which the association has the responsibility to maintain; and

(3) Any other types and amounts of insurance coverage as may be specified in the condominium instruments or authorized by the board of directors.

Laws 1975, p. 609, § 39; Laws 1990, p. 227, § 12.

#### **§ 44-3-108. Rights to common profits**

The common profits shall be applied to the payment of common expenses, and the rights in any surplus remaining after such payment shall pertain to the condominium units in proportion to the liability for common expenses pertaining to each such unit. The surplus shall be accordingly distributed to or credited to the next assessments chargeable to the unit owners except to such extent as the condominium instruments may require or permit the same to be added to reserves maintained pursuant to those instruments.

Laws 1975, p. 609, § 40.

#### **§ 44-3-109. Lien for assessments**

(a) All sums lawfully assessed by the association against any unit owner or condominium unit, whether for the share of the common expenses pertaining to that condominium unit, for fines, or otherwise, and all reasonable charges made to any unit owner or condominium unit for materials furnished or services rendered by the association at the owner's request to or on behalf of the unit owner or condominium unit, shall, from the time the same become due and payable, be the personal obligation of the unit owner and constitute a lien in favor of the association on the condominium unit prior and superior to all other liens whatsoever except:

- (1) Liens for ad valorem taxes on the condominium unit;
- (2) The lien of any first priority mortgage covering the unit and the lien of any mortgage recorded prior to the recording of the declaration;
- (3) The lessor's lien provided for in Code Section 44-3-86; and
- (4) The lien of any secondary purchase money mortgage covering the unit, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the unit.

The recording of the declaration pursuant to this article shall constitute record notice of the

existence of the lien, and no further recordation of any claim of lien for assessments shall be required.

(b) To the extent that the condominium instruments provide, the personal obligation of the unit owner and the lien for assessments shall also include:

- (1) A late or delinquency charge not in excess of the greater of \$ 10.00 or 10 percent of the amount of each assessment or installment thereof not paid when due;
- (2) At a rate not in excess of 10 percent per annum, interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto from the date the same was first due and payable;
- (3) The costs of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the unit, and reasonable attorney's fees actually incurred; and
- (4) The fair rental value of the condominium unit from the time of the institution of an action until the sale of the condominium at foreclosure or until the judgment rendered in the action is otherwise satisfied.

(c) Not less than 30 days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the unit owner both at the address of the unit and at any other address or addresses which the unit owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and foreclosure in the same manner as other liens for the improvement of real property, subject to superior liens or encumbrances, but any such court order for judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances to exercise any rights or powers afforded to them under their security instruments. The notice provided for in this subsection shall specify the amount of the assessments then due and payable together with authorized late charges and the rate of interest accruing thereon. Unless prohibited by the condominium instruments, the association shall have the power to bid on the unit at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, four years after the assessment or installment first became due and payable.

(d) Any unit owner, mortgagee of a unit, person having executed a contract for the purchase of a condominium unit, or lender considering the loan of funds to be secured by a condominium unit shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that condominium unit. Such request shall be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association to mail or otherwise furnish such statement regarding amounts due and payable at the expiration of such five-day period with respect to the condominium unit involved to such address as may be specified in the written request therefor within five business days from the receipt of such request shall cause the lien for assessments created by this Code section to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such

request. The information specified in such statement shall be binding upon the association and upon every unit owner. Payment of a fee not exceeding \$ 10.00 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provided.

(e) Nothing in this Code section shall be construed to prohibit actions maintainable pursuant to Code Section 44-3-76 to recover sums for which subsection (a) of this Code section creates a lien.

Laws 1975, p. 609, § 41; Laws 1982, p. 3, § 44; Laws 1990, p. 227, §§ 13, 14; Laws 1994, p. 1943, § 10; Laws 2000, p. 1589, § 3; Laws 2004, Act 535, § 7, eff. July 1, 2004.

#### **§ 44-3-110. Restraints on alienation**

Any rights of first refusal or other restraints on free alienability of the condominium units created by the condominium instruments shall be void unless the condominium instruments make provision for furnishing upon request to any unit owner or person who has executed a contract for the purchase of a condominium unit a recordable statement certifying to any waiver of or failure or refusal to exercise such rights and restraints whenever such waiver, failure, or refusal has occurred. Failure or refusal to furnish that statement within 30 days or such lesser period as the condominium instruments may specify shall cause all such rights and restraints to be inapplicable to the disposition of the condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association and on every unit owner. Payment of a fee not exceeding \$25.00 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

Laws 1975, p. 609, § 42.

#### **§ 44-3-111. Sales; disclosure; contract and advertising requirements; rights of action**

(a) This Code section shall apply only to the first bona fide sale of each residential condominium unit for residential occupancy by the buyer, any member of the buyer's family, or any employee of the buyer. This Code section shall apply to any such sale regardless of whether the seller is the declarant, the association, or any other person. A contract for a sale to which this Code section is applicable is referred to in this Code section as a "covered contract."

(b) Any covered contract shall be voidable by the buyer until at least seven days after the seller has furnished to the prospective buyer the documents specified in this subsection. The copy of any such document which must be executed in order to be effective shall be a copy of the executed document. The documents required under this subsection to be furnished to the prospective buyer are the following:

- (1) A copy of the floor plan of the unit which is the subject of the covered contract;
- (2) A copy of the declaration and of each amendment thereto as of that time;
- (3) A copy of the articles of incorporation and bylaws of the association and of each amendment to either as of that time;

- (4) A copy of any ground lease or other underlying lease of all or any part of the condominium;
- (5) A copy of every management, maintenance, and other contract for the management and operation of either the association, the condominium, or the facilities to be used by the unit owners having a term in excess of one year; contracts renewable without the consent of the association shall be deemed to have a term in excess of one year;
- (6) The estimated or actual operating budget for the condominium for the current year containing the matters set forth in subparagraph (A) of this paragraph and a schedule of estimated or actual expenses pertaining to each condominium unit for the current year containing the matters set forth in subparagraph (B) of this paragraph:

(A) Expenses of the association for:

- (i) Administration;
- (ii) Management fees;
- (iii) Maintenance;
- (iv) Rent for recreational and other commonly used facilities;
- (v) Taxes on property of the association;
- (vi) Insurance;
- (vii) Security provisions;
- (viii) Other expenses;
- (ix) Operating capital;
- (x) Reserve for deferred maintenance;
- (xi) Reserve for depreciation; and
- (xii) Other reserves; and

(B) Expenses of the unit owner for:

- (i) Assessments to cover association expenses;
- (ii) Rent for the unit if part of a leasehold condominium; and
- (iii) Rent, fees, or charges payable by the unit owner directly to the lessor or the lessor's agent under any recreational lease or lease for the use of commonly used facilities, which leases are and payment is a mandatory condition of ownership and which payment is not included in the assessments paid by the unit owner to the association;

- (7) A copy of any lease of recreational or other facilities that will be used only by the unit owners;
- (8) A copy of any lease of recreational or other facilities that will or may be used by unit owners in common with any other person;
- (9) A copy of a statement setting forth the extent of and conditions or limitations applicable to the declarant's commitment to build and submit additional units, additional recreational or other facilities, or additional property; and
- (10) If the covered contract applies to a condominium unit which is part of a conversion condominium:

- (A) A statement by the declarant, based on a report prepared by an independent, registered architect or engineer, describing the present condition of all structural

components and mechanical and electrical systems, excluding fixtures and appliances within the units, material to the use and enjoyment of the condominium;

(B) A statement by the declarant of the expected useful life of each item reported on as provided in subparagraph (A) of this paragraph or a statement that no representations are made in that regard; and

(C) A list of any outstanding notices of uncured violations of building code or other county or municipal regulations together with the estimated cost of curing those violations.

This paragraph shall not apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

The items required by this subsection shall be bound or stapled into a single package and covered by an index sheet listing each item required by this subsection and showing either that the same is attached or does not exist. A nonrefundable deposit not in excess of \$25.00 may be required of the recipient of the documents required by this Code section, such deposit to be applied to the purchase price of the condominium unit in the event of purchase by the recipient. A dated, written acknowledgement of receipt of all items required by this subsection, executed by the recipient, shall be prima facie evidence of the date of delivery of said items.

(c)(1) Any covered contract shall be voidable by the buyer until at least seven days after the seller has furnished to the buyer all of the items required to be furnished under this Code section. This subsection may not be waived. The contract shall contain within the text the following legend in boldface type or capital letters no smaller than the largest type in the text:

**"THIS CONTRACT IS VOIDABLE BY BUYER UNTIL AT LEAST SEVEN DAYS AFTER ALL OF THE ITEMS REQUIRED UNDER CODE SECTION 44-3-111 OF THE 'GEORGIA CONDOMINIUM ACT' TO BE DELIVERED TO BUYER HAVE BEEN RECEIVED BY BUYER. THE ITEMS SO REQUIRED ARE: (1) A FLOOR PLAN OF THE UNIT, (2) THE DECLARATION AND AMENDMENTS THERETO, (3) THE ASSOCIATION'S ARTICLES OF INCORPORATION AND BYLAWS AND AMENDMENTS THERETO, (4) ANY GROUND LEASE, (5) ANY MANAGEMENT CONTRACT HAVING A TERM IN EXCESS OF ONE YEAR, (6) THE ESTIMATED OR ACTUAL BUDGET FOR THE CONDOMINIUM, (7) ANY LEASE OF RECREATIONAL OR OTHER FACILITIES THAT WILL BE USED ONLY BY THE UNIT OWNERS, (8) ANY LEASE OF RECREATIONAL OR OTHER FACILITIES THAT WILL OR MAY BE USED BY THE UNIT OWNERS WITH OTHERS, (9) A STATEMENT SETTING FORTH THE EXTENT OF THE SELLER'S COMMITMENT TO BUILD OR SUBMIT ADDITIONAL UNITS, ADDITIONAL RECREATIONAL OR OTHER FACILITIES, OR ADDITIONAL PROPERTY, AND (10) IF THIS CONTRACT APPLIES TO A CONDOMINIUM UNIT WHICH IS PART OF A CONVERSION CONDOMINIUM, A STATEMENT DESCRIBING THE CONDITION OF CERTAIN COMPONENTS AND SYSTEMS, A STATEMENT REGARDING THE EXPECTED USEFUL LIFE OF CERTAIN COMPONENTS AND SYSTEMS, AND CERTAIN INFORMATION REGARDING ANY NOTICES OF VIOLATIONS OF COUNTY OR MUNICIPAL REGULATIONS. A DATED, WRITTEN ACKNOWLEDGEMENT OF**

RECEIPT OF ALL SAID ITEMS SIGNED BY THE BUYER SHALL BE PRIMA-FACIE EVIDENCE OF THE DATE OF DELIVERY OF SAID ITEM."

This paragraph shall apply to any condominium created on or after July 1, 1980, or to the expansion of any such condominium.

(2) No covered contract executed prior to the expiration of seven days after the actual delivery to the prospective purchaser of the items required to be furnished by subsection (b) of this Code section shall be of any force or effect whatsoever. This subsection may not be waived. The contract shall contain within the text the following legend in boldface type or capital letters no smaller than the largest type in the text:

"UNLESS ALL OF THE ITEMS REQUIRED UNDER CODE SECTION 44-3-111 OF THE 'GEORGIA CONDOMINIUM ACT' TO BE DELIVERED TO BUYER HAVE BEEN RECEIVED BY BUYER AT LEAST SEVEN DAYS PRIOR TO BUYER'S EXECUTION OF THIS CONTRACT, THIS CONTRACT IS OF NO FORCE OR EFFECT AND SHALL NOT BE BINDING ON ANY PARTY. THE ITEMS SO REQUIRED ARE: (1) A FLOOR PLAN OF THE UNIT, (2) THE DECLARATION AND AMENDMENTS THERETO, (3) THE ASSOCIATION'S ARTICLES OF INCORPORATION AND BYLAWS AND AMENDMENTS THERETO, (4) ANY GROUND LEASE, (5) ANY MANAGEMENT CONTRACT HAVING A TERM IN EXCESS OF ONE YEAR, (6) THE ESTIMATED OR ACTUAL BUDGET FOR THE CONDOMINIUM, (7) ANY LEASE OF RECREATIONAL OR OTHER FACILITIES THAT WILL BE USED ONLY BY THE UNIT OWNERS, (8) ANY LEASE OF RECREATIONAL OR OTHER FACILITIES THAT WILL OR MAY BE USED BY THE UNIT OWNERS WITH OTHERS, AND (9) A STATEMENT SETTING FORTH THE EXTENT OF THE SELLER'S COMMITMENT TO BUILD OR SUBMIT ADDITIONAL UNITS, ADDITIONAL RECREATIONAL OR OTHER FACILITIES, OR ADDITIONAL PROPERTY. A DATED, WRITTEN ACKNOWLEDGEMENT OF RECEIPT OF ALL SAID ITEMS SIGNED BY THE BUYER SHALL BE PRIMA-FACIE EVIDENCE OF THE DATE OF DELIVERY OF SAID ITEMS."

This paragraph shall apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

(d) The items required to be furnished or made available to a prospective buyer under this Code section shall constitute a part of each covered contract; and no change may be made in any of such items which would materially affect the rights of the prospective buyer or the value of the unit without the approval of the prospective buyer except to the extent that such items by their own terms, by the express terms of such covered contract, or by the provisions of this article may be changed without the consent of any unit owner or prospective buyer.

(e) In addition to provisions elsewhere required, a covered contract shall include the following provisions:

(1) A caveat in boldface type or capital letters no smaller than the largest type on the page shall be placed upon the first page of the contract in the following words:

"ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE SELLER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY CODE SECTION 44-3-111 OF THE 'GEORGIA CONDOMINIUM ACT' TO BE FURNISHED BY A SELLER TO A BUYER.";

(2) If the contract applies to a condominium unit which is part of an expandable condominium, the contract shall contain within the text the following statement in boldface type or capital letters no smaller than the largest type in the text:  
"THIS CONTRACT APPLIES TO A CONDOMINIUM UNIT WHICH IS PART OF AN EXPANDABLE CONDOMINIUM.";

(3) If the contract applies to a condominium unit which includes a leasehold estate or estate for years in property and if, upon the expiration of such leasehold or estate, the unit will be deemed to have been withdrawn pursuant to subsection (c) of Code Section 44-3-81 or the condominium will be terminated, the contract shall contain within the text a statement in the following words in boldface type or capital letters no smaller than the largest type in the text:  
"THIS CONTRACT IS FOR THE TRANSFER OF A CONDOMINIUM UNIT SUBJECT TO A LEASE THAT EXPIRES \_\_\_\_\_, AND THE LESSEE'S INTEREST WILL TERMINATE UPON EXPIRATION OF THE LEASE.";

(4) If the contract applies to a condominium unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, the contract shall contain within the text a statement in the following words in boldface type or capital letters no smaller than the largest type in the text:  
"THIS CONTRACT IS FOR THE TRANSFER OF A CONDOMINIUM UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF A RECREATIONAL FACILITY, AND FAILURE TO PAY THIS RENT MAY RESULT IN FORECLOSURE OF THE LIEN.";

(5) If, but only if, any applicable statute, ordinance, rule, or regulation requires, permits, or provides for the issuance of a certificate of occupancy by any officer, department, or agency of any governmental entity, the contract shall contain an express obligation on the part of the seller to furnish to the buyer at or prior to closing a true, correct, and complete copy of a duly issued certificate of occupancy covering the unit which is the subject matter of the covered contract; and

(6) If the contract applies to a condominium unit which is part of a conversion condominium, the contract shall contain within the text the following statement in boldface type or capital letters no smaller than the largest type in the text:  
"THIS CONTRACT APPLIES TO A CONDOMINIUM UNIT WHICH IS PART OF A CONVERSION CONDOMINIUM."

This paragraph shall not apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

(f) If any condominium unit is offered for sale prior to the completion of the construction or remodeling of that unit or of improvements which shall constitute common elements, the seller shall make available to each prospective buyer for his inspection at a place convenient to the site a copy of the existing plans and specifications for the construction or remodeling of that unit and of the improvements which shall constitute common elements, whichever is not then complete.

(g) Any sales brochures describing the condominium and the units to be sold shall include a description and location of the recreational facilities proposed to be provided by the seller, the parking facilities, and other commonly used facilities together with a statement indicating:

- (1) Which of the facilities will be owned by the unit owners as part of the common elements and which of the facilities will be owned by others;
- (2) Whether, with respect to each facility so shown, the seller is obligated to complete the same; and
- (3) The limitations or conditions, if any, on the seller's obligation to complete the same.

A caveat in boldface type or capital letters no smaller than the largest type of text material shall be conspicuously placed on the inside front cover of the sales brochure or on the first page containing text material or shall be otherwise conspicuously displayed and shall contain the following words:

**"ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE SELLER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY CODE SECTION 44-3-111 OF THE 'GEORGIA CONDOMINIUM ACT' TO BE FURNISHED BY THE SELLER TO A BUYER."**

(h) If condominium units are sold subject to a lease, all written or printed advertising of the units shall contain a statement in the following words in boldface type or capital letters no smaller than the largest type in the context where used:

**"THESE CONDOMINIUM UNITS WILL BE TRANSFERRED SUBJECT TO A LEASE."**

(i) Any person who, in reasonable reliance upon any false or misleading material statement or information published by or under authority from the seller in advertising and promotional materials, including, but not limited to, the items required to be furnished by this Code section, brochures, and newspaper advertising, or who, without having been furnished with all of the information required to be furnished by this Code section, pays anything of value toward the purchase of a condominium unit located in this state shall be entitled to bring an action against the seller for damages under this Code section at any time prior to the expiration of one year after the date upon which the last of the events described in paragraphs (1) through (5) of this subsection shall occur:

- (1) The closing of the transaction;
- (2) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building

containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidence of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this Code section, evidence of lawful occupancy shall be deemed to have been given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(3) The completion of the common elements and any recreational facilities, whether or not the same are common elements, which the seller is obligated to complete or to provide under the terms of the written contract for the sale of the unit;

(4) As to claims relating to the common elements and other portions of the condominium which are the responsibility of the association to maintain, the date upon which the declarant's right to control the association terminates as provided in Code Section 44-3-101; or

(5) In the event there shall not be a written contract for the sale of the unit, then the completion of the common elements and such recreational facilities, whether or not the same are common elements, which the seller would be obligated to complete under any rule of law applicable to the seller's obligation.

(j) Under no circumstances shall a cause of action created or recognized under this Code section survive for a period of more than five years after the closing of the transaction. Any person who has a right of action for damages as provided in this subsection shall have the additional right to rescind any contract for the purchase of a condominium unit at any time prior to the closing of the transaction. In any action for relief under this Code section, the prevailing party shall be entitled to recover reasonable attorney's fees.

(k) Willful violation of any of the requirements of this Code section by the declarant, the seller, any sales agent or broker, or any other person shall constitute a misdemeanor.

Laws 1975, p. 609, § 43; Laws 1980, p. 487, §§ 1, 2; Laws 1980, p. 1406, §§ 5-7; Laws 1982, p. 3, § 44; Laws 1983, p. 3, § 33; Laws 1986, p. 942, § 1; Laws 1990, p. 227, § 15; Laws 1991, p. 94, § 44.

#### **§ 44-3-112. Escrow of deposits; withdrawal and use of funds**

(a) Any deposit or other payment made prior to closing with respect to the first bona fide sale of each residential condominium unit for residential occupancy by the buyer, any member of the buyer's family, or any employee of the buyer shall be held in escrow until it is delivered at closing, delivered to the seller in accordance with subsection (b) of this Code section, or delivered to the person or persons entitled thereto upon breach of the contract for the sale. Such escrow funds shall be deposited in a separate account designated for this purpose; provided, however, that, in the event any such deposit is held by a real estate broker licensed under the laws of this state, such funds may be placed in such broker's escrow account instead of a separately designated account.

(b) If the contract for sale of the condominium unit so provides and the purchase price of the condominium unit is not less than \$150,000.00, the seller may withdraw escrow funds in excess

of 1 percent of the purchase price from the escrow account required by subsection (a) of this Code section when the construction of improvements has commenced. The seller shall only use the funds in the actual construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, expenses of real estate licensees, or advertising purposes. A contract which permits use of the advance payments for these purposes shall be initialed by the buyer and include the following caveat in boldfaced type or capital letters no smaller than the largest type on the first page of the contract: ANY PAYMENT IN EXCESS OF 1 PERCENT OF THE PURCHASE PRICE MADE TO THE SELLER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE SELLER.

Laws 1975, p. 609, § 44.

#### **§ 44-3-113. Application**

(a) This article shall apply to all property which is submitted to this article and shall also apply to any condominium created prior to October 1, 1975, pursuant to the "Apartment Ownership Act" if the instruments creating such condominium are amended in accordance with their terms in order to submit the condominium to this article.

(b) Existing condominiums created pursuant to the "Apartment Ownership Act" may amend the instruments creating them in certain respects in order to avail themselves of this article; provided, however, that any amendment must conform the instrument or instruments creating the condominium to this article in all necessary respects and the condominium shall thereafter be deemed to be submitted to this article. No condominium shall be established under the "Apartment Ownership Act" on or after October 1, 1975. Nothing contained in this article shall be construed to affect the validity of any provision of any instrument recorded prior to October 1, 1975.

Laws 1975, p. 609, § 2.

#### **§ 44-3-114. Land use, zoning, building and subdivision laws**

(a) No zoning, subdivision, building code, or other real estate use law, ordinance, or regulation shall prohibit the condominium form of ownership or impose any requirement upon a condominium which it does not impose upon a physically identical development under a different form of ownership. No subdivision law, ordinance, or regulation shall apply to any condominium or to any subdivision of any convertible space or unit. Except as stated in this Code section, no provision of this article invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation; and nothing contained in this Code section shall be construed to amend, supersede, or invalidate any provision of Article 1 of this chapter nor shall Code Section 44-3-92 be construed to override any lawful density requirement imposed by any zoning, building, or land use law, ordinance, or regulation. This subsection shall apply to any condominium created on or after July 1, 1980, or to the expansion of any such condominium.

(b) No subdivision law, ordinance, or regulation shall apply to any subdivision of any convertible space or unit as defined in this article. Notwithstanding the foregoing provisions of this subsection, however, nothing contained in this subsection shall be construed to amend, repeal, supersede, or invalidate any provision of Article 1 of this chapter nor shall Code Section 44-3-92 be construed to override any lawful density requirement imposed by any zoning, building, or land use law, ordinance, or regulation. This subsection shall apply to any condominium created prior to July 1, 1980, or to the expansion of any such condominium.

Laws 1975, p. 609, § 5; Laws 1980, p. 1406, § 2; Laws 1983, p. 3, § 33.

**§ 44-3-115. Liberal construction; substantial compliance**

The provisions of this article and of condominium instruments recorded pursuant thereto shall be liberally construed in favor of the valid establishment of a condominium pursuant to this article with respect to the submitted property. Substantial compliance with the requirements of this article for the establishment of a condominium shall suffice to bring property described in condominium instruments recorded pursuant to this article within the purview and application of this article; and any defects in such instruments or want of conformity with this article may be cured by an amendment thereto duly executed by the association and recorded or, upon application of any unit owner, with notice to the declarant, the association, and all other unit owners, by decree of the court.

Laws 1975, p. 609, § 45.

**§ 44-3-116. Certain limitations not apply to covenants contained in condominium instrument created pursuant to this law**

The limitations provided in subsection (b) and in paragraphs (1), (2), and (4) of subsection (d) of Code Section 44-5-60 shall not apply to any covenants contained in any condominium instrument created pursuant to this article.

Laws 1990, p. 227, § 16; Laws 1994, p. 1943, § 11