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DISTRICT OF COLUMBIA STATUTES

CONDOMINIUM ACT

NONPROFIT CORPORATION ACT
(Selected Provisions)

CONDOMINIUM AND COOPERATIVE TRASH COLLECTION TAX CREDIT ACT

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NONPROFIT CORPORATION ACT
(Selected Provisions)
CONDOMINIUM AND COOPERATIVE TRASH COLLECTION TAX CREDIT ACT

With amendments through June 2017
Reprinted from the DISTRICT OF COLUMBIA OFFICIAL CODE

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DISTRICT OF COLUMBIA

CONDOMINIUM ACT

SUBCHAPTER I. GENERAL PROVISIONS.

Section 42-1901.01. Applicability of act; corresponding terms; supersedure of prior law.

(a) This act shall apply to all condominiums created in the District of Columbia; provided, that except as otherwise expressly set forth in this act, any provision of this act that became effective after the creation of a condominium, horizontal property regime, or condominium project shall not invalidate an existing provision of the condominium instruments.

(b) For the purposes of this act:

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

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

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

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

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

(c) This act shall supersede the Horizontal Property Act of the District of Columbia, approved December 21, 1963 (77 Stat. 449; D.C. Official Code § 42-2001 *et seq*.) ("Horizontal Property Act"), and Regulation 74-26 of the District of Columbia City Council, enacted October 18, 1974. No condominium shall be established except pursuant to this act after March 28, 1977. This act shall not be construed, however, to affect the validity of any provision of any condominium instrument complying with the requirements of the Horizontal Property Act and recorded before March 28, 1977. Except for section 411, subtitle IV shall not apply to any condominium created before March 29, 1977. Any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before March 29, 1977, shall be valid and enforceable if the amendment would be permitted by this act and if the amendment was adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect when the amendment was adopted. If an amendment grants a person any right, power, or privilege permitted by this act, any correlative obligation, liability, or restriction in this act shall apply to that person.

(d) This act shall not apply to any condominium located outside the District of Columbia. Sections 402 through 408 and sections 412 through 417 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless

exempt under section 401.

(e) Except as otherwise provided in this act, amendments to this act shall not invalidate any provision of any condominium instrument that was permitted under this act at the time the provision was recorded.

Section 42-1901.02. Definitions.

For the purposes of this chapter:

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

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

(3) Repealed.

(4) "Condominium" shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions designated for separate ownership. Real estate shall not be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

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

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

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

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

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

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

(11) “Declarant” shall mean any person or group of persons acting in concert who:

(A) Offers to dispose of the person’s or group’s interest in a condominium unit not previously disposed of;

(B) Reserves or succeeds to any special declarant right; or

(C) Applies for registration of the condominium.

(11A) (A) “Affiliate of a declarant” shall mean any person who controls, is controlled by, or shares common control with a declarant.

(B) A person controls a declarant if the person:

(i) Is a general partner, officer, director, or employer of the declarant;

(ii) Directly or indirectly or acting in concert with at least 1 other person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies that represent more than 20% of the voting interest in the declarant;

(iii) Controls in any manner the election of a majority of the directors of the declarant; or

(iv) Has contributed more than 20% of the capital of the declarant.

(C) A person is controlled by a declarant if the declarant:

(i) Is a general partner, officer, director, or employer of the person;

(ii) Directly or indirectly or acting in concert with another person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the person; or

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

(12) “Disposition” shall mean any voluntary transfer to a purchaser of a legal or equitable interest in a condominium unit, other than as security for a debt or pursuant to a deed in

lieu of foreclosure.

(12A) "Domestic partner" shall have the same meaning as provided in Section 32-701(3).

(12B) "Electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, which creates a record that may be:

(A) Retained, retrieved, and reviewed by a recipient of the communications; and

(B) Reproduced directly in paper form by a recipient through an automated process.

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

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

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

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

(17) Repealed.

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

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

(19A) "Master association" shall mean an organization described in Section 42-1903.18, whether or not the organization is an association described in Section 42-1903.01.

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

(20A) "Mortgage Electronic Registration System" or "MERS" shall mean the process created by the mortgage banking industry that tracks mortgage ownership and servicing, is used by the real estate finance industry for residential and commercial mortgage loan trading, and that simplifies the mortgage process by using electronic commerce.

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

(21A) "Notice of Foreclosure Sale of Condominium Unit for Assessments Due" or "NFSCUAD" shall mean a notice sent to a condominium unit owner in default in the payment of condominium assessments, fees, charges, or other penalties owed by a unit owner that includes such information as the past due amount of assessments and other charges being foreclosed upon and the time, place, and date of the scheduled sale, sent pursuant to Section 42-1903.13(c).

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

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

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

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

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

(26A) "Real estate" or "land" shall mean any leasehold or other estate or interest in, over, or under land, including but not limited to, any structure, fixture, or any other improvement or interest which by custom, usage, or law passes with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term "real estate" or "land" shall be

deemed to include a parcel with or without an upper or lower boundary, and space that may be filled with air or water. Any requirement in the Condominium Amendment Act of a legally sufficient description shall be deemed to include a requirement that any upper or lower boundary of a parcel be identified with reference to established data.

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

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

(28A) "Special declarant right" shall mean any right reserved for the benefit of a declarant or any person that becomes a declarant to:

(A) Complete improvements indicated on plats and plans filed with the declaration pursuant to Section 42-1902.14;

(B) Expand an expandable condominium pursuant to Section 42-1902.19;

(C) Contract a contractable condominium pursuant to Section 42-1902.20;

(D) Convert convertible land, convertible space, or both pursuant to Section 42-1902.17 or Section 42-1902.18;

(E) Elect, appoint, or remove any officer of the unit owners' association or master association or any executive board member pursuant to Section 42-1903.02 during any period of declarant control;

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

(G) Use easements through the common elements to make improvements within the condominium or real estate that may be added to the condominium pursuant to Section 42-1902.21;

(H) Make the condominium subject to a master association pursuant to Section 42-1903.18;

(I) Make the condominium part of a larger condominium pursuant to Section 42-1903.19; or

(J) Maintain a sales office, management office, or model unit pursuant

to Section 42-1902.22.

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

(29A) "Time share" shall mean a right to occupy a condominium unit or any of several condominium units during 5 or more separate time periods over a period of at least 5 years including renewal options, whether or not the right is coupled with an estate or interest in a condominium or a specified portion of an estate or interest in a condominium.

(30) "Unit" shall mean a portion of the condominium designed and intended for individual ownership. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with Section 42-1902.18(d).

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

(32) "Unit owner in good standing," unless otherwise defined in the condominium instruments, shall mean a unit owner who is not delinquent for more than 30 days in the payment of any amount owed to the unit owners' association, or a unit owner who has not been found by the unit owners' association or its executive board to be in violation of the condominium instruments or the rules of the unit owners' association.

Section 42-1901.03. Ownership of individual units.

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

Section 42-1901.04. Separate taxation.

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

(b) (1) Notwithstanding subsection (a) of this section, for real property tax years beginning after September 30, 2011, horizontally or vertically abutting condominium units owned by the identical unit owner that comprise and are used as a single dwelling unit may be combined for assessment and taxation purposes into a separate and distinct taxable entity ("combined tax lot"); provided, that the unit owner applies for combined tax lot treatment pursuant to § 47-832.

(2) Combined tax lot treatment granted pursuant to paragraph (1) of this subsection shall take effect for the succeeding real property tax year following the date the application is received.

Section 42-1901.05. Ordinances and regulations.

No zoning or other land use ordinance or regulation shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance or regulation which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance or regulation shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance or regulation is by its express terms made applicable thereto. Nothing in this section shall be construed to permit application of any provision of the building code which is not expressly applicable to condominiums by reason of the form of ownership inherent therein to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

Section 42-1901.06. Eminent domain; allocation of award; proportionate shares of common areas and redetermination thereof where units or parts of units taken; reallocation of voting rights, profits, and future liabilities; recordation of decree.

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

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

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree, reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this

subsection and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

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

(e) Votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, with any units partially taken participating in such reallocation as though the voting strength in the unit owners' association, right to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, had been reduced in proportion to the reduction in their undivided interests in the common elements. But in any case where votes in the unit owners' association were originally assigned on the basis of equality (subject to the exception for convertible spaces) votes in the unit owners' association shall not be reallocated. The decree of the court shall provide accordingly.

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

Section 42-1901.07. Variation by agreement.

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

Section 42-1901.08. Interpretation of chapter.

In the application or construction of the provisions of this chapter, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in states that have enacted the Uniform Condominium Act or any other condominium statute that contains provisions similar to the provisions of this chapter.

SUBCHAPTER II. ESTABLISHMENT OF CONDOMINIUMS.

Section 42-1902.01. Creation of condominiums; recordation of instruments; plats; contiguity of units.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be

recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections (a) and (b) of Section 42-1902.14. The foreclosure of any mortgage, deed of trust or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.

Section 42-1902.02. Release of liens prior to conveyance of first unit; exemption; liens for labor or material applied to individual units or common areas; partial release.

(a) At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to Section 42-1903.02(a) has expired, and so long as the bylaws authorize the same.

(b) No labor performed or materials furnished with the consent of or at the request of a unit owner or such unit owner's agent or contractor or subcontractor shall be the basis for the filing of a lien pursuant to the provisions of Section 40-301.01 against the property of any unit owner not expressly consenting to the same, except that such consent shall be deemed to be given by any unit owner in the case of emergency repairs to his unit. Labor performed or materials furnished for the common elements, if duly authorized by the unit owners' association or its executive board subsequent to any period of developer control pursuant to Section 42-1903.02(a), shall be deemed to be performed or furnished with the express consent of every unit owner and shall be the basis for the filing of a lien pursuant to the provisions of Section 40-301.01 against all of the condominium units. Notice of such lien shall be served on the principal officer of the unit owners' association or any member of the executive board.

(c) In the event that any lien, other than a deed of trust or mortgage, becomes effective against 2 or more condominium units subsequent to the creation of the condominium, any unit owner may remove such unit owner's condominium unit from that lien by payment of the amount attributable to that condominium unit, or, in the case of any mechanic's or materialman's lien, by filing a written undertaking for such amount with surety approved by the court as provided in Section 40-303.16. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to Section 42-1903.12(c). Subsequent to such payment, discharge or other satisfaction, or filing of bond, the unit owner of that condominium unit shall be entitled to have that lien released as to such unit owner's condominium unit, and the unit owners' association shall not assess, or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in Sections 42-1903.12 and 42-1903.13.

Section 42-1902.03. Description of condominium units; undivided interest in common elements automatically included.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying

number of that unit, the name of the condominium and the instrument number and date of recordation of the declaration and the condominium book and page number where the plats and plans are 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 defined or referred to therein.

Section 42-1902.04. Declaration, bylaws and amendments of each to be executed by owners and lessees.

The declaration and bylaws, and any amendments of either made pursuant to Section 42-1902.19, shall be executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in Section 42-1902.19 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or curtesy interest, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common elements.

Section 42-1902.05. Recordation of condominium instruments; amendment and certification thereof.

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

Section 42-1902.06. Construction of terms in instruments; designation of unit boundaries; division of property within and without unit boundary; common element serving single unit.

Except to the extent otherwise provided by the condominium instruments:

(1) The terms defined in Section 42-1901.02 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, plastering, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while 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 within 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, while any portions thereof serving more than 1 unit or any portion of the common elements shall be deemed

a part of the common elements;

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

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

Section 42-1902.07. Instruments construed together and incorporate one another; when conflict arises.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. If any conflict exists among the condominium instruments, the declaration controls, except that a construction consistent with this chapter controls in all cases over any inconsistent construction.

Section 42-1902.08. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint.

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

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

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

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

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

Section 42-1902.09. Compliance with condominium chapter and instruments.

(a) Any lack of compliance with this chapter or with any lawful provision of the condominium instruments shall be grounds for an action or suit to recover damages or injunctive relief, or for any other available remedy maintainable by the unit owners' association, the unit owners' association's executive board, any managing agent on behalf of the unit owners'

association, an aggrieved person on his or her own behalf, or, in an otherwise proper case, as a class action.

(b) The decisions and actions of the unit owners' association and its executive board shall be reviewable by a court using the "business judgment" standard. A unit owners' association shall have standing to sue in its own name for a claim or action related to the common elements. Unless otherwise provided in the condominium instruments, the substantially prevailing party in an action brought by a unit owners' association against a unit owner or by a unit owner against the unit owners' association shall be entitled to recover reasonable attorneys' fees and costs expended in the matter.

Section 42-1902.10. Contents of declaration; where condominium contains convertible land; expandable, contractable and leasehold condominiums; easements; additionally required descriptions.

(a) The declaration for every condominium shall contain:

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

(2) A legally sufficient description of the land submitted to this chapter;

(3) A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

(4) A description or delineation of any limited common elements not covered by Section 42-1902.06(5), showing or designating the unit or units to which each is assigned;

(5) A description or delineation of all common elements not within the boundaries of any convertible lands 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 the provisions of Section 42-1902.13. The description of the method whereby an assignment shall be made shall include the following information:

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

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

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

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

(6) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of Section 42-1902.11; and

(7) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land the declaration shall also contain:

(1) A legally sufficient description of each convertible land within the condominium;

(2) A statement of the maximum number of units that may be created within each such convertible land;

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use;

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used and architectural style;

(5) A description of all other improvements that may be made in each convertible land within the condominium;

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein; and

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, 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 elements within each such convertible land; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of Section 42-1902.14 may be used to supplement information furnished pursuant to paragraphs (1), (4), (5), (6), and (7) of this subsection, and that paragraph (3) of this subsection need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium the declaration shall also contain:

(1) The explicit reservation of an option to expand the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a

statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be added to the condominium, henceforth referred to as “additional land”;

(5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations;

(6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions regulating the order in which they may be added to the condominium;

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard;

(8) A statement of the maximum number of units that may be created on additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with paragraph (6) of this subsection, the declaration shall also state the maximum number of units that may be created on each portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with paragraph (6) of this subsection, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium;

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use;

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land 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;

(11) A description of all other improvements that will be made on any portion of the additional land 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;

(12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, 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; and

(13) A description of the declarant’s reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, 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 elements within each such portion, or a statement that no assurances are made in those regards; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of Section 42-1902.14 may be used to supplement information furnished pursuant to paragraphs (4), (5), (6), (7), (10), (11), (12) and (13) of this subsection, and that paragraph (9) of this subsection need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.

(d) If the condominium is a contractable condominium the declaration shall also contain:

(1) The explicit reservation of an option to contract the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be withdrawn from the condominium, henceforth referred to as “withdrawable land”;

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions clearly delineating such portions and regulating the order in which such portions may be withdrawn from the condominium; and

(6) A legally sufficient description of all of the submitted land to which the option to contract the condominium does not extend; provided, that the plats recorded pursuant to Section 42-1902.14(a) may be used to supplement information furnished pursuant to paragraphs (4), (5) and (6) of this subsection, and that paragraph (6) of this subsection shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of Section 42-1902.27.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth:

(1) Instrument number and date of recordation of each such lease;

(2) The date upon which each such lease is due to expire and the rights, if any, to renew such lease and the conditions pertaining to any such renewal;

(3) A statement as to whether any land or improvements, or both, will be owned by the unit owners in fee simple, and if so, either:

(A) A description of the same, including without limitation a legally sufficient description of any such land; or

(B) A statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and

(4) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights; provided, that after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain:

(1) A description of the permitted use or uses;

(2) If less than all of those entitled to the use of all the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization; and

(3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estates therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats.

Section 42-1902.11. Allocation of interests in common elements; proportionate or equal shares; statement in declaration; no alteration nor disposition without unit; no partition.

(a) The declaration may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of Section 42-1902.14 an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided

interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) of this section shall add up to 1 if stated as fractions or 100% if stated as percentages.

(d) If, in accordance with subsection (a) or (b) of this section, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) of this section shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing 3 columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, 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 appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated.

Section 42-1902.12. Allocation where condominium expandable or contains convertible land; reallocation following addition of land; where all convertible space converted to common elements; effect of reduction in number of units.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of Section 42-1902.14; or

(2) Prohibits the creation of any units not described pursuant to Section 42-1902.10(b)(6) (in the case of convertible lands) or Section 42-1902.10(c)(12) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) No allocation of interests in the common elements to any units created within any convertible land or within any additional land shall be effective until plats and plans depicting such units are recorded pursuant to Section 42-1902.14(c). The declarant shall

reallocate the undivided interests in the common elements so that the units within the convertible land or additional land shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of Section 42-1902.14. Promptly upon recording the amendment to the declaration, the declarant shall record an amendment to the plats and plans depicting the units created within the convertible land or additional land.

(c) If all of a convertible space is converted into common elements, then the undivided interest in the common elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

Section 42-1902.13. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.

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

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

(c) A common element not previously assigned as a limited common element shall be assigned only pursuant to Section 42-1902.10(a)(5). The assignment shall be made as follows:

(1) If the assignment is made by the declarant, the amendment to the

declaration that makes an assignment shall be prepared, executed, and recorded by the declarant and a copy sent to the unit owners' association. Unless the declaration provides otherwise, the amendment shall be executed by the condominium unit owner of the unit concerned. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by Section 42-1902.10(a)(5).

(2) If the assignment is made by the unit owners' association, the amendment to the declaration that makes an assignment shall be prepared and executed by the principal officer of the unit owners' association or any other officer the condominium instruments may specify. An amendment shall be executed by the condominium unit owner of the unit concerned, and upon payment by the unit owner for the reasonable costs for the preparation and acknowledgment of the amendment, the amendment shall be recorded by the unit owners' association. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by Section 42-1902.10(a)(5).

(3) Any assignment made prior to March 8, 1991, shall be considered valid if the assignment would be permitted pursuant to this section.

Section 42-1902.14. Recordation of plat and plans; contents; certification; when new plat, survey, and recordation necessary; provisions applicable to limited common elements; filing with Office of Surveyor.

(a) There shall be recorded promptly upon recordation of the declaration, 1 or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there be more than 1 such land the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than 1 withdrawable land, or more than 1 leased land, the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "not yet begun," and which, if any, have been begun but have not been substantially

completed by the use of the phrase “not yet completed.” In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection (b) of this section are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such 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 the provisions of this subsection by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. 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 hereafter required for land title surveys.

(b) There shall also be recorded, promptly upon recordation of the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of 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 thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting 1 or more such structures, the horizontal boundaries thus identified extend, in the case of each such 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 such 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 such structures. The plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer, and the said architect or engineer shall certify that all units or portions thereof depicted thereon have been substantially completed.

(c) When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record new plats of survey conforming to the requirements of subsection (a) of this section. In any case where less than all of a convertible land is being converted, such plats shall show the location and dimensions of the remaining portion or portions of such land in addition to otherwise conforming with the requirements of subsection (a) of this section. At the same time, the declarant shall record, with regard to any structures on the land being converted, or added, either plans conforming to the requirements of subsection (b) of this section, or certifications, conforming to the certification requirements of said subsection, of plans previously recorded pursuant to Section 42-1902.15.

(d) When converting all or any portion of any convertible space into 1 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 vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer.

(e) For the purposes of subsections (a), (b), and (c) of this section, all provisions and requirements relating to units shall be deemed equally applicable to limited common

elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of Section 42-1902.06(5) make such designations unnecessary.

(f) The Office of the Surveyor shall receive plats and plans filed pursuant to this chapter. Unless such plats and plans are filed pursuant to Section 42-1902.15, the Office of the Surveyor shall ascertain whether such plats and plans contain the certification required by subsections (a) and (b) of this section. If plats and plans are filed pursuant to Section 42-1902.15 or if plats and plans are filed with the required certification, the Office of the Surveyor shall record such plats and plans without further certification or review. If plats and plans filed pursuant to Section 42-1902.15 are thereafter certified as required by this section, the Office of the Surveyor shall record such certification with such plats and plans without further certification or review.

Section 42-1902.15. Preliminary recordation of plans.

Plans previously recorded pursuant to the provisos set forth in subsections (b) and (c) of Section 42-1902.10 may be used in lieu of new plans to satisfy in whole or in part the requirements of Sections 42-1902.12(b), 42-1902.17(b) and 42-1902.19 if certifications thereof are recorded by the declarant in accordance with Section 42-1902.14(b); and if such certifications are so recorded, the plans which they certify shall be deemed recorded pursuant to Section 42-1902.14(c) within the meaning of the 3 sections aforesaid.

Section 42-1902.16. Easement for encroachments and support; where liability not relieved.

(a) 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 and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; provided, however, such easement shall not relieve unit owners of liability in cases of wilful and intentional misconduct by them or their agents or employees, nor shall the declarant or any contractor, subcontractor, or materialman be relieved of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

(b) Each unit and common element shall have an easement for support from every other unit and common element.

Section 42-1902.17. Conversion of convertible lands; recordation of appropriate instruments; character of convertible land; tax liability; time limitation on conversion.

(a) The declarant may convert all or any portion of any convertible land into 1 or more units or common elements, or both, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and Section 42-1902.14(c).

(b) The declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to

each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with Section 42-1902.12(b). Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(c) All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes shall be assessed against the declarant rather than the unit owners as to both the convertible land and any improvements thereon. No such conversion shall occur after 5 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

Section 42-1902.18. Conversion of convertible spaces; amendment of declaration and bylaws; recordation; status of convertible space not converted.

(a) The declarant may convert all or any portion of any convertible space into 1 or more units or common elements, or both, including without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and Section 42-1902.14(d).

(b) Simultaneously with the recording of plats and plans pursuant to Section 42-1902.14(d), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into 1 or more units in accordance with this section, the declarant shall prepare, execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with Section 42-1902.26(d).

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

Section 42-1902.19. Expansion of condominiums; amendment of declaration; recordation; reallocation of interests in common elements.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to Section 42-1902.14(c) and the recordation of an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall

contain a legally sufficient description of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of Section 42-1902.12(b). Such amendment may create convertible or withdrawable lands within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to Sections 42-1902.10(d)(3) and 42-1902.17(c).

Section 42-1902.20. Contraction of condominiums; amendment of declaration; recordation; withdrawal of land after conveyance of unit.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legally sufficient description of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to Section 42-1902.10(d)(5), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

Section 42-1902.21. Declarant's easement over common elements for purpose of improvements, etc.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

Section 42-1902.22. Sales offices, model units, etc.; authorization; when become common elements.

The declarant and the declarant's authorized agents, representatives, and employees may maintain sales offices, management offices, and model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office, management office, or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office, management office, or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

Section 42-1902.23. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improvements designated for such; liability for damages arising out of use of certain easements.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. In the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any

other agreement that requires the declarant to add any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done with regard to the condominium or any portion of the condominium, this subsection shall not be construed to nullify, limit, or otherwise affect that obligation.

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

(c) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by Sections 42-1902.21 and 42-1902.22, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

Section 42-1902.24. Improvements or alterations within unit; exterior appearance not to be changed; merger of adjoining 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 impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But 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 such conditions as the condominium instruments may specify.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, if a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of Section 42-1902.25.

Section 42-1902.25. Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a) Unless expressly prohibited in the condominium instruments, the boundaries between adjoining units may be relocated in accordance with:

(1) The provisions of this section and other applicable law; and

(2) Any lawful restrictions and limitations specified in the condominium instruments.

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

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

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

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

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

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

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

(g) Any relocation of boundaries between adjoining units shall be governed by this section and not by Section 42-1902.26. Section 42-1902.26 shall apply only to such subdivisions of units as are intended to result in the creation of 2 or more units in place of the subdivided unit.

Section 42-1902.26. Subdivision of units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a) Unless expressly prohibited by the condominium instruments, a unit may be subdivided in accordance with:

(1) The provisions of this section and other applicable law; and

(2) Any lawful restrictions and limitations specified in the condominium instruments.

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

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

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

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

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

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

(f) If appropriate instruments in accordance with the preceding subsections of this section have been prepared, executed, and acknowledged, the instruments shall be executed by the subdivider and, upon payment by the subdivider of reasonable costs for the preparation and acknowledgment of the instrument, shall be recorded by the unit owners' association. The

instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the subdivision effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocations made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Notwithstanding the provisions of Sections 42-1901.03 and 42-1902.18(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

Section 42-1902.27. Amendment of instruments.

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

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

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

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

(e) Except to the extent expressly permitted or required by other provisions of this chapter, an amendment to the condominium instruments may not:

(1) Create or increase special declarant rights;

(2) Increase the number of units;

(3) Change the boundaries of any unit;

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

(5) Change the uses to which any unit is restricted, in the absence of

the unanimous consent of the unit owners.

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

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

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

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

(g) (1) Unless otherwise specified in the condominium instruments, if the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a unit to amend the condominium instruments, that provision shall be deemed satisfied if the procedures under this subsection are satisfied.

(2) If the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a residential unit to amend the condominium instruments, the unit owners' association shall cause a copy of a proposed amendment to the condominium instruments to be delivered to the last known address of each holder of a mortgage or deed of trust entitled to notice. Absent notice of written instructions to the contrary, the association may reasonably rely upon the address of each holder as contained in the recorded mortgage or deed of trust.

(3) If the holder of a mortgage or deed of trust of a residential unit that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days from the date the proposed amendment is mailed or delivered to the holder, the holder shall be deemed to have consented to the adoption of the amendment.

(4) The inadvertent failure to deliver a copy of any proposed amendment to the condominium instruments to each holder of a mortgage or deed of trust entitled to notice, despite good faith efforts by the unit owners' association, shall not invalidate any action taken pursuant to this section.

Section 42-1902.28. Termination of condominium.

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

This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred.

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

(c) An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement or ratification in the same manner as a deed by the requisite number of unit owners. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association pertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. A termination agreement and any ratification of the termination agreement shall be effective only upon recordation in the Office of the Surveyor.

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

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

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

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

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

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

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

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

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

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

Section 42-1902.29. Condominium lease; recordation; terms; leasehold payments; increases; sale or assignation; offer to unit owners' association; renewal.

(a) The declarant of a leasehold condominium shall record with the condominium instruments any lease pursuant to which the condominium is a leasehold condominium ("condominium lease"); provided, however, it shall be sufficient for the declarant to record a statement of the book, page and date of recordation of such lease if such lease has previously been recorded among the land records of the District of Columbia. Condominium instruments establishing a leasehold condominium containing more than 3 residential units shall not be effective unless the condominium lease(s) comply with the requirements of subsections (b), (c) and (d) of this section.

(b) (1) If a condominium is a leasehold condominium subject to the provisions of this section, any condominium lease shall be for a term of not less than 99 years with a right of renewal for consecutive additional terms of not less than 99 years. The lease shall provide for level, periodic payments which may not be increased during the first 10 years of the leasehold term. If provided in the lease, the lessor may petition the Mayor for an increase in leasehold payments to be effective beginning with the 11th year of the leasehold term, and the Mayor shall approve such increase if he finds that:

(A) Costs borne by the lessor in connection with the lease have increased; or

(B) Costs of living, as measured by a standard statistical index computed and published by the United States government and available for the period of the leasehold term, have increased; and

(C) The increase in the lease payments is in reasonable proportion to such increased costs.

(2) An increase in lease payments shall be effective for a minimum period of 10 years, after which the lessor may again petition for an increase subject to the provisions of this subsection. The lessor shall not require or accept lease payments which do not meet the requirements of this subsection.

(c) A lessor of a condominium lease may sell or assign the lease only after offering the unit owners' association of the condominium the right to purchase the leasehold estate at a price and on terms offered to any other prospective purchaser. The lessor shall give the unit owners' association a period of at least 60 days within which to accept or reject the offer.

(d) The lessor of a condominium lease shall give the lessee of such lease a statement not less than 5 years prior to the expiration of such lease of whether the lease is to be renewed and on what terms the lease is to be renewed. If the lessor offers to renew the lease, the lessor shall give the lessee a period of at least 180 days within which to accept or reject the offer.

Section 42-1902.30. Transfer of special declarant rights.

(a) A special declarant right created or reserved under this chapter may not be transferred except by an instrument that evidences the transfer recorded in the same manner as the condominium instruments. The instrument shall not be effective unless executed by the

transferee.

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

(1) A transferor shall not be relieved of any obligation or liability that arises before the transfer and shall remain liable for any warranty obligation imposed upon him or her by this chapter. Lack of privity shall not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to a special declarant right is an affiliate of a declarant, the transferor shall be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

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

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

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure, mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of any unit owned by a declarant or real estate in a condominium subject to development rights, a person who acquires title to all the real estate being foreclosed or sold, upon his or her request, shall succeed to all special declarant rights related to the real estate held by the declarant, or to any rights reserved in the condominium instruments pursuant to Section 42-1902.22 and held by the declarant to maintain models, sales offices, and signs. The judgment or instrument that conveys title shall provide for transfer of only the special declarant rights requested. For purposes of this subsection, the term “development rights” means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.

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

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

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

(e) The liability or obligation of a person who succeeds to special declarant rights shall be as follows:

(1) A successor to any special declarant right who is an affiliate of a

declarant shall be subject to any obligation or liability imposed on the transferor by this chapter or the condominium instruments.

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

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

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

(i) A misrepresentation by a previous declarant;

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

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

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

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

(4) If the transferor is not an affiliate of the successor to special declarant rights and the successor succeeded to all the special declarant rights pursuant to a deed in lieu of foreclosure or a judgment or instrument that conveys title to units under subsection (c) of this section, the successor may declare his or her intention in a recorded instrument to hold the rights solely for transfer to another person. Until the successor transfers all special declarant rights to any person who acquires title to any unit owned by the successor, or until the successor records an instrument that permits exercise of all special declarant rights, the successor may not exercise the special declarant rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of Section 42-1903.02 for the duration of any period of declarant control. Any attempted exercise of special declarant rights other than a right held by the successor's transferor to control the executive board shall be void. For the period that a successor declarant may not exercise special declarant rights under this subsection, he or she shall not be subject to any liability or obligation as a declarant other than liability or obligation as a declarant for his or her acts or omissions under Section 42-1903.02.

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

SUBCHAPTER III. CONTROL AND GOVERNANCE OF CONDOMINIUMS.

Section 42-1903.01. Bylaws; recordation; unit owners' association and executive board thereof; powers and duties; officers; amendment and contents thereof; responsibility for insurance on common elements.

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

(b) The bylaws shall provide whether or not the unit owners' association shall have an executive board. The executive board, if any, shall, subsequent to the expiration of the period of declarant control specified pursuant to Section 42-1903.02(a), be elected by the unit owners unless the unit owners vote to amend the bylaws to provide otherwise. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

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

(d) In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of Section 42-1902.12, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate to the new units votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, on the same bases as were used for such allocations to the units depicted on plats and plans recorded pursuant to subsections (a) and (b) of Section 42-1902.14; or shall abolish the votes appertaining to former units and reallocate their rights to future surplus funds, and their liabilities for future common expenses not specially assessed, to the remaining units in proportion to the relative rights and liabilities of the remaining units immediately prior to the amendment.

(e) Repealed.

Section 42-1903.02. Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board; strict construction.

(a) The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or members of its executive board, or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. But no amendment to the condominium instruments shall increase the scope of such

authorization if there is any unit owner other than the declarant and no such authorization shall be valid after the time set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Mayor according to Section 42-1904.06. The time limit initially set by the condominium instruments shall not exceed 3 years in the case of an expandable condominium or a condominium containing convertible land, or 2 years in the case of any other condominium containing any convertible land, or 2 years in the case of any other condominium. Such period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

(b) (1) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, no contract or lease entered into with the declarant or an affiliate of a declarant, other than a lease subject to Section 42-1902.10(e), management contract, employment contract, or lease of a recreational or parking area or facility, which is directly or indirectly made by or on behalf of the unit owners' association or the unit owners as a group, shall be entered into for a period in excess of 2 years. Any contract or agreement entered into after March 8, 1991, may be terminated without penalty by the unit owners' association or the executive board of the unit owners' association upon not less than 90 days written notice to the other party.

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

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

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

(1) Not later than the time that units to which 25% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 25% of the members of the executive board shall be selected by unit owners other than declarant; and

(2) Not later than the time units to which 50% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 33 1/3% of the members of the executive board shall be selected by unit owners other than declarant.

(e) Repealed.

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

Section 42-1903.03. Meetings; electronic notice.

(a) Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the unit owners' association and shall be open to all unit owners of record in good standing. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of time, place, and purposes of the meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units and to one other address as any of them may have designated in writing to the officer, or notice may be hand delivered by the officer; provided, that the officer certifies in writing that notice was hand delivered to the unit owner. Alternatively, notice may be sent by electronic means to any unit owner who requests delivery of notice in an electronic manner and who waives notice by mail or hand delivery, pursuant to subsection (e) of this section.

(b) (1) Except as otherwise provided in the condominium instruments, all meetings of the unit owners' association, committees of the unit owners' association, and the executive board shall be open for observation to all unit owners in good standing. Minutes shall be recorded and shall be available for examination and copying by unit owners in good standing. This right of examination may be exercised:

(A) Only during reasonable business hours or at a mutually convenient time and location; and

(B) Upon 5 days' written notice identifying the specific minutes requested.

(2) Notice, including the time, date, and place of each executive board meeting, shall be furnished to a unit owner who requests this information and published in a location reasonably calculated to be seen by unit owners. Requests by a unit owner to be notified on a continual basis must be made at least once a year in writing and include the unit owner's name, address, and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the executive board conducting the meeting.

(3) Unless otherwise exempt as relating to an executive session pursuant to paragraph (5) of this subsection, at least one copy of the agenda furnished to members of the executive board for a meeting shall be made available for inspection by unit owners.

(4) Meetings of the executive board may be conducted or attended by telephone conference or video conference or similar electronic means. If a meeting is conducted by telephone conference, video conference, or similar electronic means, the equipment or system used must permit any executive board member in attendance to hear and be heard by, and to communicate what is said by all other executive board members participating in the meeting.

(5) (A) The executive board, upon a motion and an affirmative vote in an open meeting to assemble in executive session, may convene in executive session to consider:

(i) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;

(ii) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

(iii) Pending or anticipated litigation;

(iv) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

(v) Consultation with legal counsel;

(vi) Matters involving individual unit owners or members, including violations of the condominium instruments or rules and regulations promulgated pursuant to the condominium instruments and the personal liability of a unit owner to the unit owners' association; or

(vii) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings

(B) For the purpose of subparagraph (A)(iii) of this paragraph, the term "anticipated litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

(6) The motion to assemble in executive session shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during an executive session to those purposes specifically set forth in the motion. A motion passed, or other formal action taken, in an executive session shall be recorded in the minutes of the open meeting, but this shall not require disclosure of any details that are properly the subject of confidential consideration in an executive session. The action or actions authorized by a motion passed in an executive session shall be reflected in minutes available to unit owners in good standing. The requirements of this section shall not require the disclosure of information in violation of law.

(c) Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period of time during each regularly scheduled meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics, or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

(d) The executive board may take action without a meeting by resolution issued with the unanimous written consent of the members of the executive board in support of the action being taken. A copy of the resolution shall be attached to the minutes of the next executive board meeting that occurs following its adoption.

(e) (1) Notwithstanding any language contained in the condominium instruments, the unit owners' association may provide notice of a meeting or deliver information to a unit owner by electronic transmission if:

(A) The executive board authorizes the unit owners' association to provide notice of a meeting or deliver information by electronic transmission;

(B) The unit owner provides the unit owners' association with prior written authorization to provide notice of a meeting or deliver material or information by electronic transmission; and

(C) An officer or agent of the unit owners' association certifies in writing that the unit owners' association has provided notice of a meeting or delivery of material or information by electronic transmission as authorized by the unit owner pursuant to this subsection.

(2) Notice or delivery by electronic transmission shall be considered ineffective if:

(A) The unit owners' association is unable to deliver 2 consecutive notices; and

(B) The inability to deliver the electronic transmission becomes known to the person responsible for the sending of the electronic transmission.

(3) The inadvertent failure to deliver notice by electronic transmission shall not invalidate any meeting or other action.

Section 42-1903.04. Meetings--Executive board; quorums.

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

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

Section 42-1903.05. Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.

(a) The bylaws may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of Section 42-1902.14 a number of votes in the unit owners' association proportionate to the liability for common expenses as established pursuant to Section 42-1903.12(c).

(b) Otherwise, the bylaws shall allocate to each such unit an equal number of

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

(c) Since a unit owner may be more than 1 person, if only 1 of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than 1 of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any 1 of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

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

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

(f) Notwithstanding anything in this section to the contrary, during any time that the unit owners' association is the owner of any condominium unit, the votes in the unit owners' association that pertain to the condominium unit shall be included in any calculation to determine the existence of a quorum at any meeting of the unit owners' association pursuant to Section 42-1903.04, but otherwise shall be deemed to be cast in proportion to the affirmative and negative votes cast by all unit owners other than the unit owners' association at any meeting.

(g) (1) Notwithstanding any language contained in the condominium instruments, the executive board may authorize unit owners to submit votes or proxies by electronic transmission if the process used to provide notice of a vote and the means to submit votes or proxies are made in a consistent form approved by the executive board and available to all unit owners and the electronic transmission contains information that verifies that the vote or proxy is authorized by the unit owner or the unit owner's proxy.

(2) If the condominium instruments require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if unit owners have the option of casting printed secret ballots.

(3) The inadvertent failure to submit, receive, or count votes or proxies by electronic transmission shall not invalidate any meeting or other action; provided, that the persons responsible for facilitating electronic transmission shall make good-faith efforts to submit, receive, and count the votes or proxies and resolve problems when they become known.

Section 42-1903.06. Officers; disqualification.

(a) If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee or for a term or terms of 6 months or more shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

(b) If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of Section 42-1902.06(1), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person, which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a 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, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection (a) of this section were it a natural person holding such office.

Section 42-1903.07. Maintenance, repair, etc., of condominiums; right of access for repair; liability for damages arising from exercise thereof; warranty against structural defects; limitations upon actions; bond or other security.

(a) (1) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of a condominium shall belong to:

(A) The unit owners' association in the case of the common elements; and

(B) The individual unit owner in the case of any unit or any part of a unit.

(2) Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either access to the owner's 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 or any unit that is accessed, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair of the damage. Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may elect to

maintain, repair, or replace specified unit components, or limited common element components for which individual unit owners are responsible, using common expense funds, if failure to perform the maintenance, repair, or replacement could have a material adverse effect on the common elements, the health, safety, or welfare of the unit owners, or the income and the common expenses of the unit owners' association. The maintenance, repair, or replacement may be at the expense of the unit owners' association or, in the reasonable judgment of the executive board, if a limited number of units is affected, at the expense of the unit owners affected. The expense will be considered for all purposes an assessment against any unit to which the limited common element appertains.

(b), (c) Repealed.

Section 42-1903.08. Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements.

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

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

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

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

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

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

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

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

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

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

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

(11) Power to impose a charge for late payment of an assessment and, after

notice and an opportunity to be heard, levy a reasonable fine for violation of the condominium instruments or rules and regulations of the unit owners' association;

(12) Power to impose a reasonable charge for the preparation and recordation of an amendment to the condominium instruments, a statement concerning the resale of units required by Section 42-1904.11, or a statement of an unpaid assessment;

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

(14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments to the extent necessary for the reasonable performance of the unit owners' associations' duties and responsibilities, unless expressly prohibited in the condominium instruments;

(14A) Power to reasonably restrict the leasing of residential units; provided, that any restriction described under this paragraph shall not apply to a unit that is leased at the time of any action taken to restrict the leasing of residential units until the unit is subsequently occupied by the owner or ownership transfers;

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

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

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

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any part thereof.

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

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

Section 42-1903.08a. Condominium Association Advisory Council.

(a) There is established a Condominium Association Advisory Council ("CAAC").

(b) The purpose of the CAAC shall be to serve as an advisory body to the Mayor, the Council, and District agencies on matters relating to condominiums located in the District.

(c) The CAAC shall be composed of 14 members appointed as follows:

(1) One community representative from each of the 8 District wards, appointed by the Councilmember representing each respective ward;

(2) One community representative appointed by the chairperson of the Committee of the Council that oversees the Department of Housing and Community Development;

(3) One community representative appointed by the Mayor;

(4) The Director of the Department of Housing and Community Development, or his or her designee;

(5) A representative from the community association management industry with at least 7 years of experience in the profession, appointed by the Mayor;

(6) A representative from the mortgage industry with at least 5 years of experience in the profession, appointed by the Mayor; and

(7) A representative from the legal community who is an attorney licensed to practice in the District and has at least 5 years of experience representing community associations, appointed by the Mayor.

(d) (1) Each community representative shall be a resident of the District who has been a member in good standing of a unit owners' association for at least one year, with a priority for community representatives with experience on a condominium board.

(2) A chairperson shall be elected from among the 10 community representatives, and shall serve for a term of 2 years.

(3) (A) Each community representative member shall be appointed for a term of 3 years.

(B) Initial appointments shall be staggered with 3 members appointed for a one-year term, 4 members appointed for a 2–year term, and 3 members appointed for a 3–year term.

(C) The initial appointment terms shall be determined by lot at the first meeting of the CAAC.

(4) The 3 non-community members appointed by the Mayor shall each be appointed for a term of 3 years.

(e) Meetings of the CAAC shall be open to the public and shall take place at a public location at least 4 times a year. The CAAC shall provide a public listing of members by ward, meeting notices, and meeting minutes on a CAAC website.

Section 42-1903.09. Tort and contract liability of association and declarant; judgment liens against common property and individual units.

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

(b) Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by Section 42-1902.21 and 42-1902.22.

(c) An action arising from a contract made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to Section 42-1903.02(a). No unit owner shall be precluded from bringing such an action by reason of membership in the association or status as an officer.

(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the unit owners' association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to Section 42-1903.12(c), but no unit owner shall be otherwise liable on account of a judgment and, after payment by the unit owner of his or her proportionate share, the association shall not assess or have a lien against the unit owner's condominium unit for any portion of the common expenses incurred in connection with the lien. If after payment by a unit owner of a proportionate share, the unit owners' association elects to pay the balance of the judgment from common funds, the unit owners' association shall reimburse the unit owner for the amount the unit owner paid separately. Any judgment shall be satisfied first out of the property of the unit owners' association. The judgment shall be otherwise subject to the provisions of Title 15.

Section 42-1903.10. Insurance obtained by association; notice to unit owners.

(a) When any insurance policy has been obtained by or on behalf of the unit owners' association, written notice of the procurement thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of the last sentence of Section 42-1903.03.

(b) Unless the condominium instruments expressly provide otherwise, commencing no later than the time of the first conveyance of a condominium unit to a person other than a declarant, the unit owners' association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than 90% of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluded from property

policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the condominium instruments that covers all occurrences commonly insured against for death, bodily injury, or property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

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

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

(d-1) Each unit owner shall, to the extent reasonably available, purchase condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage at a minimum of $10,000 and condominium owner personal liability insurance coverage at a minimum of $300,000; provided, that the executive board may increase the minimum amounts required under this subsection at a meeting properly noticed under this act.

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

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

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

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

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

(f) Any loss covered by the property policy under subsections (b)(1) and (c) of this section shall be adjusted with the unit owners' association, but the insurance proceeds for the loss shall be payable to any insurance trustee designated to receive payments or otherwise to the unit owners' association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the unit owners' association shall hold any insurance proceeds in trust for unit owners or lienholders as the unit owners' or lienholders' interests may appear. Subject to the

provisions of subsection (i) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property. A unit owner or lienholder shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

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

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

(i) Any portion of the condominium for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the unit owners' association unless the condominium is terminated, repair or replacement would be illegal under any health or safety statute, rule, or regulation, or 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense. If the entire condominium is not repaired, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium. The insurance proceeds attributable to the units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements appertained, or to lienholders, as their interests may appear. The remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the interests in the common elements appertaining to all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests shall be automatically reallocated upon the vote as if the unit had been condemned under Section 42-1901.06, and the unit owners' association promptly shall prepare, execute, and record an amendment to the condominium instruments reflecting the reallocations. Notwithstanding the provisions of this subsection, Section 42-1902.28 governs the distribution of insurance proceeds if the condominium is terminated.

(j) (1) The bylaws shall specify insurance coverage and limits with respect to any insurance policy that may be required on the common elements and shall indicate who shall be responsible for payment of any deductible amount in connection with the insurance policy.

(2) Unless the condominium instruments provide otherwise, if the cause of any damage to or destruction of any portion of a condominium originates from the common elements, the association's property insurance deductible shall be a common expense. If the bylaws do not indicate the entity responsible for payment of a deductible amount if the cause of damage to or destruction of a portion of a condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated shall be responsible for the association's property insurance deductible in an amount not to exceed $5,000; provided, that the unit owners' association affords notice to unit owners of this responsibility before the damage is caused. If the owner is responsible for the association's property insurance deductible or an

uncovered loss up to $5,000, this amount shall be assessed against the owner's unit. Nothing in this section is intended to limit the rights of a unit owners' association to pursue its subrogation rights, if any, against a unit owner in whose unit the cause of the property or personal liability damage or destruction originated.

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

Section 42-1903.11. Rights to surplus funds.

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

Section 42-1903.12. Liability for common expenses; special assessments; proportionate liability fixed in bylaws; installment payment of assessments; when assessment past due; interest thereon.

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

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

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

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

(e) Unless the condominium instruments provide otherwise, unpaid assessments for common expense and unpaid installments of such assessments shall become past due on the 15th day from the day such assessment or installment thereof first became due and payable, and any past due assessment or installment thereof shall bear interest at the lesser of 10 percent per annum or the maximum rate permitted to be charged in the District of Columbia to natural persons on first mortgage loans at the time such assessment or installment became past due.

(f) Unless the condominium instruments provide otherwise, the declarant may elect to pay all common expenses for a period not to exceed 1 year from the conveyance of the first condominium unit to a purchaser. If the declarant elects, common expenses shall not be assessed against any condominium unit or imposed upon or collected from any unit owner, and the declarant shall pay all the costs including the costs of any contributions to reserve accounts as set forth in the budget of the condominium described in Section 42-1904.04.

Section 42-1903.12a. Notice of intention to take legal action to collect past due amounts.

The unit owners' association shall, when advising the unit owner of its intention to take legal action to collect any past due amount owed by a unit owner, provide a notice to the unit owner to include:

(1) A statement of the account showing the total amount that is past due, including a breakdown of the categories of amounts claimed to be due and the dates those amounts accrued;

(2) Contact information for the individual or office the unit owner must contact to settle the past due amount; and

(3) An enclosure providing information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18–point font:

> "FAILURE TO PAY PAST DUE AMOUNTS MAY RESULT IN LEGAL ACTION, INCLUDING FORECLOSURE.
> YOU MAY BE ELIGIBLE FOR FREE OR REDUCED–COST ASSISTANCE.
> The D.C. Department of Housing and Community Development maintains a list of Community–Based Non–Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].
> The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors

at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number]."

Section 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments, along with any applicable interest, late fees, reasonable expenses and legal fees actually incurred, costs of collection and any other reasonable amounts payable by a unit owner under the condominium instruments, shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

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

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

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

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien or recordation of a memorandum of lien against the title to the unit by the unit owners' association. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

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

(c) (1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due. By accepting a deed to a condominium unit, the owner shall be irrevocably deemed to have appointed the chief executive officer of the unit owners' association as trustee for the purpose of exercising the power of sale provided for herein. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section

unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

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

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

(4) (A) A foreclosure sale shall not be held until at least 31 days after a Notice of Foreclosure Sale of Condominium Unit for Assessments Due is recorded in the land records and sent by a delivery service providing delivery tracking confirmation and by first-class mail to a unit owner at the mailing address of the unit, any last known mailing address, and at any other address designated by the unit owner to the executive board for purposes of notice.

(B) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall:

(i) State the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure;

(ii) Expressly state that the foreclosure sale is for either:

(I) The 6-month priority lien as set forth in subsection (a)(2) of this section and not subject to the first deed of trust; or

(II) More than the 6-month priority lien set forth in subsection (a)(2) of this section and subject to the first deed of trust; and

(iii) Notify the unit owner that if the past due amount being foreclosed upon is not paid within 31 days after the date the NFSCUAD is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the NFSCUAD.

(C) Substantial compliance with the requirements of subparagraph (B) of this paragraph shall be sufficient until new forms are made available by the Recorder of Deeds.

(D) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be accompanied by an enclosure providing the following information:

(i) A statement of the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure sale;

(ii) A breakdown of the amount being foreclosed on, including amounts past due for assessments, accrued interest, late charges, all other categories of amounts past due, and the dates those amounts accrued;

(iii) A statement that the amount being foreclosed upon may not be the total amount owed to the unit owners' association and instructions on how the unit owner can request a full account statement;

(iv) Information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

> "FAILURE TO PAY AMOUNTS INDICATED IN THE ENCLOSED NOTICE OF FORECLOSURE SALE OF CONDOMINIUM UNIT FOR ASSESSMENTS DUE MAY RESULT IN SALE OF YOUR UNIT.
> YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.
>
> The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].
>
> The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number]."; and

(v) Any other information the Mayor may prescribe by rule.

(E) (i) At least 31 days in advance of the sale, a copy of the Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be sent by a delivery service providing delivery tracking confirmation and by first class mail to:

(I) The Mayor or the Mayor's designated agent;

(II) Any and all junior lien holders of record; and

(III) Any holder of a first deed of trust or first mortgage of record, their successors and assigns, including assignees, trustees, substitute trustees, and MERS.

(ii) The unit owners' association shall be in compliance with this requirement if it sends notice as provided herein to the lienholders as their names and addresses appear in land records.

(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.

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

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

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

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

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

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

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for reasonable costs and attorneys' fees actually incurred by the unit owners' association.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to § 42-1902.09.

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to § 42-1903.12(c).

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

Section 42-1903.14. Books, minutes, and records; inspection.

(a) The unit owners' association, or the declarant, the managing agent, or other person specified in the bylaws acting on behalf of the unit owners' association, shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the association's expenses related to the common elements and any other expenses incurred by or on behalf of the association.

(b) Subject to the provisions of subsection (c) of this section, books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, mailing addresses of unit owners, and financial records, including aggregate salary information of the unit owners' association employees, shall be available in the District of Columbia and within 50 miles of the District of Columbia, for examination and copying by a unit owner in good standing or such unit owner's authorized agent so long as the request is for a proper purpose related to the unit owner's membership in the unit owners' association, and not for pecuniary gain, commercial solicitation, or other purpose unrelated to the unit owner's membership in the unit owners' association. This right of examination may be exercised only during reasonable hours on business days. The books shall be subject to an independent audit upon the request of owners of units to which 33 1/3 % of the votes in the unit owners' association pertain or a lower percentage as may be specified.

(c) (1) Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and their agents to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if the books and records concern:

(A) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;

(B) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

(C) Pending or anticipated litigation;

(D) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

(E) Communications with legal counsel;

(F) Disclosure of information in violation of law;

(G) Minutes or other records of an executive session of the executive board;

(H) Documentation, correspondence, management, or reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or

(I) Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

(2) For the purposes of paragraph (1)(C) of this subsection, the term "anticipated litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

(d) Before providing copies of any books or records, the unit owners' association may impose and collect a fee reflecting the actual costs of materials and labor for providing access to copies of the requests *[sic]* books and records.

Section 42-1903.15. Limitation on right of first refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.

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

Section 42-1903.16. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

(a) As used in this section, the term "structural defect" means a defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement. Nothing in this section shall be construed to make the

declarant responsible for any items of maintenance relating to the units or common elements.

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

(1) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

(2) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;

(3) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or

(4) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

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

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

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

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

(e) (1) Prior to the declarant's first conveyance of a residential unit to a purchaser, the declarant shall post a bond or letter of credit with the Mayor in the amount of 10% of the estimated construction or conversion costs, or shall provide any other form of security the Mayor shall approve to satisfy any costs that arise from the declarant's failure to satisfy the requirements of this section. The other security may include a lien in favor of the Mayor against the declarant's equity in any unsold units, including any non-residential units, in which event the unsold units will be valued, for purposes of computing the declarant's equity, at 90% of the current listed sales price of the units, or if not listed, then the current listed sales price of comparable units in the condominium. The bond, letter of credit, or other security shall be reduced at the declarant's request in pro rata segments (based on the residential unit's percentage interest in the residential portion of the condominium) 2 years after the conveyance of each unit; provided, however, that in no event shall the security be reduced below 50% of the original amount of the security until one year after transfer of control of the residential executive board of the condominium association to purchasing residential unit owners other than the declarant. For purposes of this subsection, "transfer of control" shall have occurred when 51% or more of the

residential executive board is composed of residential unit owners other than the declarant, or successor declarant, or the declarant's selections or nominees. At the end of 5 years from the conveyance of the first residential unit to a purchaser, and provided one year has passed following transfer of control by the declarant, the declarant may sell unsold residential units as resale units, in which event no warranty against structural defects in the units under this section shall be required and the bond shall be reduced pro rata as to those unsold units. The bonding requirements pursuant to this subsection and the warranties required under this section are applicable only to residential condominiums or the residential condominium portion of mixed use condominiums or mixed use projects. If residential condominium units are part of a mixed use condominium, the cost of the residential portion of the condominium shall include the residential condominium units' pro rata share of common elements, based on the residential condominium units' percentage interest in the common elements. If a residential condominium is part of a mixed use project, the cost of the residential condominium includes its pro rata share of those portions of the project directly supporting, enclosing or servicing the residential condominium.

(2) If claims for structural defects under this section are pending at the time the bond or other security posted would otherwise no longer be required, then the bond or other security shall be required to be maintained in the amount of the claim, until the claims have been finally resolved and the bond or other security has been made available to satisfy the declarant's responsibilities to the unit owners and association under this section. The bylaws and other condominium documents to be prepared by the declarant shall not restrict or hinder the residential executive board's right to assert claims under this section.

(f) As used in this section, the term "conveyance" shall mean the transfer of title by written instrument.

(g) (1) The Mayor shall issue proposed rules to implement the provisions of this section within 180 days of October 22, 1999. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2) The Mayor shall report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year.

Section 42-1903.17. Statute of limitations for warranties.

A judicial proceeding for breach of any warranty that arises under Section 42-1903.16 shall be commenced within 5 years after the date the warranty period began.

Section 42-1903.18. Master associations--Authorization; powers; rights and responsibilities of unit owners; election of executive board.

(a) If the condominium instruments for a condominium provide that any of the powers described in Section 42-1903.08 are to be exercised by or may be delegated to a for-profit or nonprofit corporation or incorporated association that exercises the powers described in Section 42-1903.08 or other powers on behalf of 1 or more condominiums or for the benefit of the unit owners of 1 or more condominiums, all provisions of this chapter applicable to unit owners' associations shall apply to the for-profit or nonprofit corporation or unincorporated

association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in Section 42-1903.04, it may exercise the powers set forth in Section 42-1903.08(a)(2) only to the extent expressly permitted in the condominium instruments of condominiums that are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

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

(d) The rights or responsibilities of a unit owner with respect to the unit owners' association set forth in Sections 42-1903.02, 42-1903.03, 42-1903.04, 42-1903.05, and 42-1903.20 shall apply in the conduct of the affairs of a master association only to any person who elects the board of a master association, whether or not the person is otherwise a unit owner within the meaning of this chapter.

(e) Notwithstanding the provisions of Section 42-1903.02(a) with respect to the election of the executive board of a unit owners' association by all unit owners after the period of declarant control ends, and regardless of whether a master association is an association described in Section 42-1903.01, the certificate of incorporation or other instrument that creates the master association and the condominium instruments of each condominium, the powers of which are assigned by the condominium instruments or delegated to the master association, may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

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

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

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

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

Section 42-1903.19. Merger or consolidation of condominiums.

(a) Any 2 or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, if 2 or more condominiums merge or consolidate the resultant condominium shall be, for all purposes, the legal successor of all of the preexisting condominiums, and the operations or activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association. The single unit owners' association shall hold any power, right, obligation, asset, or liability of all preexisting unit owners' associations.

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

(c) (1) A merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which the reallocations are based, or by stating the percentage of overall allocated interests of the new condominiums which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the condominium instruments of the preexisting condominium.

(2) For purposes of this section, the term "allocated interests" shall mean the individual interest in the common elements, the liability for common expenses, and the votes in the unit owners' association that pertain to each unit.

Section 42-1903.20. Conveyance or encumbrance of common elements.

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

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

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

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

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

Section 42-1903.21. Unit owners' association as trustee.

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

SUBCHAPTER IV. REGISTRATION AND OFFIERING OF CONDOMINIUMS.

Section 42-1904.01. Exemptions.

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of Sections 42-1904.02, 42-1904.03, 42-1904.04, 42-1904.05, 42-1904.06, 42-1904.07, 42-1904.08, 42-1904.09, and 42-1904.12 do not apply to:

(1) Dispositions in a condominium in which all units are restricted to commercial, industrial, or other nonresidential use;

(2) Dispositions pursuant to court order;

(3) Dispositions by any government or government agency;

(4) Solicitation and acquisition by the declarant of nonbinding reservation agreements;

(5) Gratuitous dispositions; or

(6) Dispositions by foreclosure or deed in lieu of foreclosure.

Section 42-1904.02. No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.

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

(b) During any period when registration of a condominium is required by this chapter or until the time that all units in the condominium have been initially disposed of to the bona fide purchasers, a declarant may not dispose of any interest in a condominium unit not previously disposed of unless there is delivered to the purchaser a current public offering statement by the time of the disposition. The disposition shall be expressly and without

qualification or condition subject to cancellation by the purchaser before conveyance of the unit, within 15 days after the date of execution of the contract for the disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement shall not be current unless any necessary amendment is incorporated or attached. If the purchaser elects to cancel, he or she may cancel by notice hand-delivered or sent by United States mail, return receipt requested, to the seller. The cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

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

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

Section 42-1904.03. Application for registration; contents; later registration of additional units; availability for public inspection; fee to be determined by Mayor.

(a) The application for registration of the condominium shall be filed as prescribed by the Mayor's rules and shall contain the following documents and information:

(1) An irrevocable appointment of an agent in the District of Columbia, and in the absence of such an agent, the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or applicant's personal representative;

(2) The states or jurisdictions in which an application for registration or similar document pertaining to the condominium has been filed, and any adverse order, judgment, or decree by any regulatory authority or by any court entered against declarant or any other person referred to in paragraph (3) of this subsection in connection with:

(A) Any registration, offer of sale of any condominium or condominium units;

(B) Any violation of any condominium statute or any lack of compliance with a condominium instrument; and

(C) Any breach of contract, fraud or misrepresentation perpetrated against any unit owner, unit owner association or unit purchaser;

(3) The name, address, and principal occupation for the past 5 years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of such person's interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;

(4) A statement, in a form acceptable to the Mayor, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the Mayor;

(5) Copies of any management agreements, employment contracts or other contracts or agreements affecting the use or maintenance of, or access to, all or a part of the condominium;

(6) Plats and plans of the condominium that comply with the provisions of Section 42-1902.14 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands; except that the Mayor may by regulation or order waive or modify this requirement or the requirements of Section 42-1902.14 for plats and plans of a condominium located outside the District of Columbia;

(7) The proposed public offering statement; and

(8) Any other information, including any current financial statement, which the Mayor by his regulations requires for the protection of purchasers.

(b) If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

(c) The declarant shall maintain a copy of the application for registration at the declarant's principal office at the condominium. The application for registration shall be made available for public inspection upon request at reasonable times; provided, however, that the Mayor may grant confidential status to any information required pursuant to Section 42-1904.04(a)(11). The declarant shall promptly report any material changes in the information contained in an application for registration and amend the application accordingly.

(d) Each application shall be accompanied by a fee in an amount determined by the Mayor. The amount of such fee shall be established at a rate adequate to cover the costs related to processing such application and to provide additional funds to be available to defray the costs of administering this chapter, except that the fee shall not be less than $100. Monies collected pursuant to this subsection shall be deposited in the Department of Housing and Community Development Unified Fund, established pursuant to Section 42-2857.01.

Section 42-1904.04. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Mayor shall be in a form prescribed by his rules and shall include:

(1) The name and principal address of the declarant and the condominium;

(2) The applicant's name, address, and the form, date, and jurisdiction of organization, the address of each of its offices in the District of Columbia, the names and addresses of all general partners if applicant is a partnership, and all directors and owners of 10% or more of the beneficial interest in the stock of applicant if applicant is a corporation;

(3) To the extent that such information is reasonably available to applicant, the names and addresses of the attorney primarily responsible for the preparation of the condominium documents, the general contractor, if any, all contractors who are primarily responsible for the construction, reconstruction or renovation of the electrical, plumbing or mechanical systems or the roof of the condominium, and the architect and engineer primarily responsible for the design, construction or renovation of the condominium;

(4) A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and the number of units to be rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

(5) A copy of the condominium instruments, with a brief narrative statement describing each and including:

(A) Information on declarant control;

(B) A projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit);

(C) Provisions for enforcement of liens for assessments;

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

(E) The estimated amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fees;

(F) A description of any restraints on alienation, including restrictions on the rental of units; and

(G) A description of any service not reflected in the proposed budget that the declarant shall provide or expenses that he or she shall pay, and that he or she expects may become, at any subsequent time, a common expense of the unit owners' association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

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

(7) A copy of any management contract, lease of recreational areas, and any other contract or agreement substantially affecting the use or maintenance of, or access to all or any part of the condominium with a brief narrative statement of the effect of each such

agreement upon a purchaser, the condominium unit owners and the condominium, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

(8) A general statement of:

(A) The status of construction;

(B) The project's compliance with zoning, site plan and building permit regulations;

(C) Source of financing available and the estimated amount necessary to complete all improvements shown on the plats and plans as "not yet completed" or "not yet begun" which declarant is obligated to complete; and

(D) The projected date of completion of construction or renovation of the major amenities of the condominium;

(9) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

(10) The significant terms of any financing offered by or through the declarant to purchasers of units in the condominium;

(11) The provisions and any significant limitations of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by Section 42-1903.07(b);

(12) A statement that the contract purchaser of a condominium unit may, prior to conveyance, cancel the purchase transaction within 15 days following the date of execution of the contract by the purchaser or the receipt of a current public offering statement, whichever is later;

(13) A statement as to whether or not the condominium satisfies, or is expected to satisfy, the special requirements pertaining to condominiums established by federal, federally chartered or District of Columbia institutions which insure, guarantee or maintain a secondary market for condominium unit mortgages;

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

(15) Repealed.

(a-1) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by subsection (a) of this section:

(1) The total number of units in which time-share estates may be created;

(2) The total number of time-share estates that may be created in the

condominium;

(3) The projected common expense assessment for each time-share estate and whether the assessment may vary seasonally;

(4) A statement that shall include:

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

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

(5) Repealed;

(6) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against the unit;

(7) The extent to which a suit for partition may be maintained against a unit owned in time-share estates; and

(8) The extent to which a time-share estate may become subject to a tax or other lien that arises out of claims against other time-share owners of the same unit.

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

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

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

Commission.

(e) In the case of a condominium situated wholly outside the District of Columbia, an application for registration or a proposed public offering statement filed with the Mayor, which has been approved by an agency in the state where the condominium is located and substantially complies with the requirements of this chapter, may not be rejected by the Mayor on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by rules and regulations issued by the Mayor pursuant to this chapter. The Mayor may require additional documents or information in a particular case to assure adequate and accurate disclosure to prospective purchasers.

Section 42-1904.05. Application for registration--Investigation by Mayor upon receipt.

Upon receipt of an application for registration in proper form, the Mayor may forthwith initiate an investigation to determine:

(1) That there is reasonable assurance that the declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;

(2) That there is reasonable assurance that all proposed improvements will be completed as represented;

(3) That the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Mayor in its rules and afford full and fair disclosures;

(4) Whether the declarant has, or if a corporation its officers and principals have, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the United States or any foreign country within the past 10 years, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(5) The public offering statement requirements of this chapter have been satisfied.

Section 42-1904.06. Application for registration--Notice of filing; registration or rejection; notice of need for rejection; hearing.

(a) Upon receipt of the application for registration in proper form, the Mayor shall, within 5 business days, issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the Mayor shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the Mayor affirmatively determines, upon inquiry and examination, that the requirements of Section 42-1904.05 have been met, he shall enter an order registering the condominium and may require any additions, deletions, or modifications in and to the public

offering statement in order to assure full and fair disclosure.

(c) If the Mayor determines upon inquiry and examination, that any of the requirements of Section 42-1904.05 have not been met, he shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days or such longer period as he may prescribe. If the requirements are not met within the time allowed the Mayor shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after the lapse of the aforesaid period during which 20-day period the applicant may petition for reconsideration and shall be entitled to a hearing to contest the particulars specified in the Mayor's notice. Such order of rejection shall not take effect during the pendency of a hearing, if requested.

Section 42-1904.07. Registration; annual updating report by declarant; termination.

The declarant shall, during any period of control of the condominium by the declarant pursuant to Section 42-1903.02 file a report in the form prescribed by the rules of the Mayor within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration. In the event that the annual report reveals that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the Mayor shall issue an order terminating the registration of the condominium.

Section 42-1904.08. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate.

(a) Any declarant of a conversion condominium shall include in his public offering statement, in addition to the requirements of Section 42-1904.04:

(1) Repealed;

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

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

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

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

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

(b) In the case of a conversion condominium:

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

(2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with declarant or declarant's predecessor in interest to lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit, during the second 60 days of such 120-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the purchase of such apartment units shall be on terms and conditions at least as favorable to the tenants or subtenants as those being offered by declarant to the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apartment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than 1 tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than 1 subtenant occupying the apartment unit, then each such subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed;

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

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

Section 42-1904.09. Escrow of deposits; to bear interest; not subject to attachment.

(a) Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until either delivered at settlement or returned to the prospective purchaser. Such escrow funds shall be deposited in a separate account for each condominium in a financial institution the accounts of which are insured by a federal or state agency. These deposits shall bear interest at the passbook rate then prevailing in the District of Columbia beginning with the first business day after the date deposited with declarant or declarant's agent. Earned interest shall be credited to the prospective purchaser's deposit. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

(b) The declarant of a condominium may:

(1) Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the District, in the form and amount set forth in subsection (e) of this section; or

(2) Obtain and maintain an irrevocable letter of credit issued by a financial institution insured by the federal government, in the form and amount set forth in subsection (f) of this section.

(c) Except as provided in subsection (d) of this section, the declarant shall maintain the surety bond or letter of credit until the first of the following occurs:

(1) A deed to the unit is granted to the purchaser;

(2) The purchaser defaults under a purchase contract for the unit entitling the declarant to retain the deposit; or

(3) The deposit is refunded to the purchaser.

(d) The declarant may make withdrawals from an escrow account established under subsection (a) of this section that consists of sum received to finance the construction of a unit to pay, in accordance with a draw schedule agreed to by the purchaser in writing, documented claims of persons who have furnished labor or material for the construction of the unit.

(e) The surety bond shall be payable to the District for the use and benefit of every person protected under the provisions of this act. The declarant shall file the bond with the Department of Housing and Community Development. The surety bond may either be in the form of an individual bond for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount of the bond shall be equal to the amount of the deposits.

(f) The letter of credit shall be payable to the District for the use and benefit of persons protected under the provisions of this act. The declarant shall file the letter of credit with the Department of Housing and Community Development. The letter of credit may be in the form of an individual letter of credit for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds $10,000, it may be in the form of a blanket

letter of credit. If the letter of credit is a blanket letter of credit, the amount of the letter of credit shall be equal to the amount of the deposits.

(g) For the purpose of determining the amount of any blanket bond or blanket letter of credit that a declarant maintains, the total amount of deposits considered held by the declarant shall be determined as of May 31 of any given calendar year, and the amount of the bond or letter of credit shall be in accordance with the amount of deposits held as of that May 31 until May 31 of the following calendar year.

(h) Nothing in this section shall be construed to modify or limit the requirements imposed on a declarant by section 316.

Section 42-1904.10. Copies of documents to be furnished to purchaser by declarant; Department of Housing and Community Development website publication.

(a) Unless previously furnished, an exact copy of the recorded declaration, bylaws, and Condominium Association Bill of Rights and Responsibilities shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in §§ 42-1902.01 and 42-1902.05.

(b) The Condominium Association Bill of Rights and Responsibilities shall read as follows:

"Condominium Association Bill of Rights and Responsibilities

Every unit owner who is a member in a unit owners' association has certain rights and responsibilities under the D.C. Condominium Act, with some of those rights and responsibilities restated here:

1. The right to attend and participate in meetings of the unit owners' association held in accordance with the provisions of the unit owners' association's condominium instruments at least once each year, according to and subject to the provisions of D.C. Official Code § 42-1903.03(a).

2. The right to observe all meetings of the unit owners' association, committees of the unit owners' association, and the executive board, except for those meetings held lawfully in executive session, and to examine and copy minutes recorded at meetings, according to and subject to the provisions of D.C. Official Code § 42-1903.03(b).

3. The right to an opportunity to comment on any matter relating to the unit owners' association during each regularly scheduled meeting, according to and subject to the provisions of D.C. Official Code § 42-1903.03(c).

4. The right to have meetings of the unit owners' association and executive board only be conducted with a quorum present as provided in the governing documents of the association.

5. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's voting interest, according to and subject to the provisions of D.C. Official Code § 42-1903.05.

6. The right to an executive board that in the performance of its duties, is obligated to exercise the care required of a fiduciary consistent with business judgment standard, subject to the provisions of D.C. Official Code § 42-1903.08(d) and § 42-1903.09(b).

7. The right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due amounts owed, according to and subject to the provisions of D.C. Official Code § 42-1903.13(c).

8. The right to request a statement that sets forth the amount of unpaid assessments currently levied against the unit owner, according to and subject to the provisions of D.C. Official Code § 42-1903.13(h).

9. The right of access to all books and records kept by or on behalf of the unit owners' association, subject to the provisions and limitations of D.C. Official Code § 42-1903.14 and the unit owners' associations' condominium instruments.".

(c) A copy of a Condominium Association Bill of Rights and Responsibilities shall be made available on the Department of Housing and Community Development website, in at least 12 point type.

Section 42-1904.11. Resale by unit owner; seller to obtain appropriate statements from association and furnish to purchaser; scope of provisions.

(a) In the event of a resale of a condominium unit by a unit owner other than the declarant, the unit owner shall obtain from the unit owners' association and furnish to the purchaser, on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, a copy of the condominium instruments and a certificate setting forth the following:

(1) Appropriate statements pursuant to Section 42-1903.13(h) and, if applicable, Section 42-1903.15, which need not to be in recordable form;

(2) A statement of any capital expenditures approved by the unit owners' association planned at the time of the conveyance that are not reflected in the current operating budget disclosed under paragraph (4) of this subsection;

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

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

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

(6) A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and a statement whether such coverage includes

public liability, loss or damage, or fire and extended coverage insurance with respect to the unit and its contents;

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

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

(9) The date of issuance of the certificate.

(a-1) (1) If the condominium instruments and certificate prescribed pursuant to subsection (a) of this section are not furnished to the purchaser on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, the purchaser shall have the right to cancel the contract by giving notice in writing to the seller prior to receipt of the condominium instruments and certificate, but not after conveyance under the contract.

(2) Except as provided pursuant to paragraph (5) of this subsection, the purchaser shall have the right for a period of 3-business days following the purchaser's receipt of the condominium instruments and certificate prescribed pursuant to subsection (a) of this section, whether or not such receipt occurs within the time period described in subsection (a) of this section, to cancel the contract by giving notice in writing and returning the condominium instruments and certificate to the seller, provided that the purchaser may not so cancel the contract after conveyance under the contract.

(3) If the purchaser cancels the contract pursuant to paragraph (1) or (2) of this subsection, the purchaser shall receive back any earnest money or other deposit without delay or deduction.

(4) From and after the earlier of (i) the expiration of the 3-business-day period for review prescribed pursuant to paragraph (2) of this subsection, or an extension of the 3-business-day period agreed to by the parties in a signed writing, or (ii) conveyance under the contract, if the purchaser has not exercised the right to cancel, the contract shall not be cancellable by the purchaser under this subsection.

(5) If the condominium instruments and certificate are furnished to the purchaser on or prior to execution of the contract of sale by the purchaser, the 3 business-day period for review prescribed pursuant to paragraph (2) of this subsection shall commence when the contract is executed by the purchaser.

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

(c) Subject to the provisions of Section 42-1904.01, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of Chapter 20 of this title.

Section 42-1904.12. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.

(a) This chapter shall be administered by the Mayor or his designee. The Mayor shall prescribe reasonable rules which shall be adopted, amended or repealed in accordance with the provisions of the District of Columbia Administrative Procedure Act (Section 2-501 *et seq*.). The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and such other rules as are necessary and proper to accomplish the purposes of this chapter. The initial such regulations shall be promulgated by the Mayor within 120 days after March 29, 1977.

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

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

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

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

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

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

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

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

(f) The Mayor may:

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

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

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

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

(h) With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with Section 42-1904.03, the agency shall send the lawful process by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in the application or any annual report.

Section 42-1904.13. Investigations and proceedings; powers of Mayor; enforcement through courts.

(a) The Mayor may make necessary public or private investigations in accordance with law within or outside of the District of Columbia to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, and upon the Mayor's own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance.

Section 42-1904.14. Cease and desist and affirmative action orders; temporary cease and desist orders; prior notice thereof.

(a) If the Mayor determines after notice and hearing that a person has: (1) violated any provision of this chapter; (2) directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional, or sales method to offer or dispose of a unit; (3) made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency; (4) disposed of any units which have not been registered with the agency; or (5) violated any lawful order or rule of the agency, the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in his judgment will carry out

the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order to the person affected. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent.

Section 42-1904.15. Revocation of registration; notice; hearing; written finding of fact; cease and desist order as alternative.

(a) (1) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

(A) Failed to comply with the terms of a cease and desist order;

(B) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(C) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(D) Failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(E) Made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the Mayor finds after notice and hearing that the declarant has been guilty of a violation for which revocation could be ordered, the agency may issue a cease and desist order instead.

Section 42-1904.16. Judicial review of mayoral actions.

Proceedings for judicial review of mayoral actions shall be subject to and be in accordance with the District of Columbia Administrative Procedure Act (Section 2-501 *et seq*.) applicable to "rule-making"; provided, however, that review of mayoral actions pursuant to Section 42-1904.06 shall be subject to provisions applicable to "contested cases."

Section 42-1904.17. Penalties; prosecution by Corporation Counsel.

(a) Any person who wilfully violates any provision of this chapter or any rule adopted under or order issued pursuant to Section 42-1904.12 or any person who wilfully in an

application for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than $1,000 or double the amount of gain from the transaction, whichever is the larger but not more than $50,000; or such person may be imprisoned for not more than 6 months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel or his assistants.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

Section 42-1904.18. Severability.

If any provision of this chapter, or any paragraph, section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, paragraph, section, sentence, clause, phrase or word in any circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable.

NONPROFIT CORPORATION ACT

(Selected Provisions)

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NONPROFIT CORPORATION ACT

(Selected Provisions)

SUBCHAPTER I. GENERAL PROVISIONS.

Section 29-401.01. Short title.

This chapter may be cited as the "Nonprofit Corporation Act of 2010".

Section 29-401.02. Definitions.

For the purposes of this chapter, the term:

(1) "Board" or "board of directors" means the group of individuals responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the group. The term includes a designated body to the extent:

(A) The powers, functions, or authority of the board has been vested in, or are exercised by, the designated body; and

(B) The provision of this chapter in which the term appears is relevant to the discharge by the designated body of its powers, functions, or authority.

(2) "Bylaws" means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.

(3) "Charitable corporation" means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.

(4) "Charitable purpose" means a purpose that:

(A) Would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. Section 501(c)(3)) ("Internal Revenue Code"); or

(B) Is considered charitable under law other than this chapter or the Internal Revenue Code.

(5) "Conspicuous" means so written, displayed, or presented that a reasonable person against which it is to operate should have noticed it. Conspicuous terms include:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the

language.

(6) “Corporation”, “domestic corporation”, “domestic nonprofit corporation”, or “nonprofit corporation” means a corporation incorporated under or subject to this chapter that is not a foreign corporation.

(7) “Delegate” means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.

(8) “Designated body” means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles or bylaws in that person or group, would be required by this chapter to be exercised by the board or the members.

(9) “Director” means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position. The term “director” shall not include a member of a designated body, as such.

(10) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of the District.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(13) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign business corporation.

(14) “Eligible interests” means interests or shares.

(15) “Employee” does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

(16) “Entitled to vote” means entitled to vote on the matter under consideration pursuant to the articles of incorporation or bylaws of the nonprofit corporation or any applicable controlling provision of law.

(17) “Foreign business corporation” means a corporation for profit incorporated under a law other than the law of the District that would be a business corporation if incorporated under the law of the District.

(18) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of the District that would be a nonprofit corporation if incorporated under the law of the District.

(19) “Foreign unincorporated entity” means an unincorporated entity whose

internal affairs are governed by an organic law of a jurisdiction other than the District.

(20) "Fundamental transaction" means an amendment of the articles of incorporation or bylaws, merger, membership exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.

(21) "Interest holder liability" means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(A) Solely by reason of the person's status as a shareholder, interest holder, or member; or

(B) By the articles of incorporation, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.

(22) "Material interest" means an actual or potential benefit or detriment, other than one that would devolve on the nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual's judgment when participating in the action to be taken.

(23) "Material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual's judgment when participating in the action to be taken.

(24) "Member" means:

(A) A person that has the right, in accordance with the articles of incorporation or bylaws, and not as a delegate, to select or vote for the election of directors or delegates or to vote on any type of fundamental transaction; or

(B) A designated body to the extent:

(i) The powers, functions, or authority of the members has been vested in, or are exercised by, the designated body; and

(ii) The provision of this chapter in which the term "member" appears is relevant to the discharge by the designated body of its powers, functions, or authority.

(25) "Membership" means the rights and any obligations of a member in a nonprofit corporation.

(26) "Membership corporation" means a nonprofit corporation whose articles of incorporation or bylaws provide that it must have members.

(27) "Nonmembership corporation" means a nonprofit corporation whose articles

of incorporation or bylaws do not provide that it must have members.

(28) "Nonqualified foreign corporation" means a foreign corporation that is not authorized to conduct activities in the District.

(29) "Officer" includes:

(A) An individual who is an officer as provided in Section 29-406.40; and

(B) If a nonprofit corporation is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this chapter.

(30) "Organic record" means a public organic record or the private organic rules.

(31) "Record date" means the date established under Section 29-405.07 on which a nonprofit corporation determines the identity of its members and the membership interests they hold for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(32) "Religious corporation" means a domestic nonprofit corporation that is a church or an integrated auxiliary of a church, as defined under the federal Internal Revenue Code or regulations promulgated thereunder, or any other such nonprofit corporation whose principal purpose is the advancement of religion.

(33) "Secretary" means the corporate officer to whom the articles of incorporation, bylaws, or board of directors has delegated responsibility under Section 29-406.40(b) for custody of the minutes of the meetings of the board of directors, any designated body, committees, and the members, and for authenticating records of the nonprofit corporation.

(34) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(35) "Shares" means the units into which the proprietary interests in a business corporation are divided.

(36) "Unincorporated entity" means an organization that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not a domestic or foreign business or nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government. The term "unincorporated entity" includes a general partnership, limited liability company, limited partnership, limited cooperative association, business or statutory trust, joint stock association, and unincorporated nonprofit association.

(37) "Vote", "voting", or "casting a vote" includes the giving of consent in the form of a record without a meeting. The term does not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes such conduct as voting or casting a vote.

(38) "Voting group" means one or more classes of members that under the articles of incorporation, bylaws, or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation, bylaws, or this chapter to vote generally on the matter are for that purpose a single voting group.

(39) "Voting power" means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

Section 29-401.03. Notice.

(a) Unless the articles of incorporation or bylaws provide otherwise, notice under this chapter shall be in the form of a record.

(b) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice in the form of a record by a membership corporation to a member shall be effective:

(1) Upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member's address shown in the corporation's current record of members; or

(2) When given if the notice is delivered in any other manner that the member has authorized.

(d) Notice to a domestic or qualified foreign nonprofit corporation may be delivered to its registered agent or to the corporation or its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of registration.

(e) Except as otherwise provided in subsection (c) of this section, notice shall be effective at the earliest of the following:

(1) When received;

(2) When left at the recipient's residence or usual place of business;

(3) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed; or

(4) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(f) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

(h) With respect to electronic communications:

(1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:

(A) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(B) It is in a form capable of being processed by that system.

(2) An electronic communication is received under paragraph (1) of this subsection even if no individual is aware of its receipt.

(3) Receipt of an electronic acknowledgment from an information processing system described in paragraph (1) of this subsection establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An authorization by a member of delivery of notices or communications by email or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. The authorization shall be deemed revoked if:

(A) The corporation is unable to deliver 2 consecutive notices or other communications to the member in the manner authorized; and

(B) The inability becomes known to the secretary or other person responsible for giving the notice or other communication, but the failure to treat the inability as a revocation shall not invalidate any meeting or other action.

Section 29-401.04. Reference to extrinsic facts in plans or filed documents.

(a) For the purposes of this subsection, the term:

(1) "Filed record" means a record filed with the Mayor under any provision of this chapter except Section 29-102.11.

(2) "Plan" means a plan of domestication, business conversion, entity conversion, merger or membership exchange.

(b) Whenever a provision of this chapter permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following rules apply:

(1) The manner in which the facts will operate upon the terms of the

plan or filed record shall be set forth in the plan or filed record.

(2) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically:

(i) Statistical or market indices;

(ii) Market prices of any security or group of securities;

(iii) Interest rates;

(iv) Currency exchange rates; or

(v) Similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed record; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.

Section 29-401.20. Definition.

For the purposes of this part, the term "corporate action" means:

(1) The election, appointment, designation, or other selection and the suspension, removal, or expulsion of members, delegates, directors, members of a designated body, or officers of a nonprofit corporation; or

(2) The taking of any action on any matter that is required under this chapter or under any other provision of law to be, or which under the articles of incorporation or bylaws may be, submitted for action to the members, delegates, directors, members of a designated body, or officers of a nonprofit corporation.

Section 29-401.21. Proceedings prior to corporate action.

(a) If, under applicable law or the articles of incorporation or bylaws of a nonprofit corporation, there has been a failure to hold a meeting to take corporate action and the failure has continued for 30 days after the date designated or appropriate therefor, the Superior Court may summarily order a meeting to be held upon the application of any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue, or the Attorney General for the District of Columbia in the case of a charitable corporation.

(b) The Superior Court may determine the right to vote at the meeting of persons claiming that right, may appoint an individual to hold the meeting under such orders and powers as the Superior Court may consider proper, and may take such action as may be required to give

due notice of the meeting and convene and conduct the meeting in the interests of justice.

Section 29-401.22. Review of contested corporate action.

(a) Upon petition of a person whose status as, or whose rights or duties as, a member, delegate, director, member of a designated body, or officer of a corporation are or may be affected by any corporate action, the Superior Court may hear and determine the validity of the corporate action.

(b) The Superior Court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation and other evidence that may relate to the issue. The Superior Court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the Superior Court may order a meeting to be held in accordance with Section 29-401.21.

(c) Subsection (a) of this section shall not apply if a nonprofit corporation has provided in its articles of incorporation or bylaws for a means of resolving a challenge to a corporate action, but the Superior Court may enforce the articles or bylaws if appropriate.

Section 29-401.23. Notice to Attorney General.

The plaintiff in a proceeding under this part shall notify the Attorney General for the District of Columbia within 10 days after commencing the proceeding if it involves a charitable corporation. Notice to the Attorney General under this section shall not stay or otherwise affect the proceeding.

Section 29-401.50. Member-governed corporations.

(a) For the purposes of this section, the term "member-governed corporation" means a membership corporation incorporated under or subject to this chapter which:

(1) Provides in its articles of incorporation or bylaws that it is a member-governed corporation; or:

(2) Meets the following conditions:

(A) It holds regular meeting not less frequently than annually;

(B) Its activities and affairs are governed by its members; and

(C) The board of directors, if any, has only those powers delegated by the articles of incorporation, bylaws, or members.

(b) This section shall apply only to member-governed corporations and shall not be construed to affect in any way the rights, duties, obligations, or other matters pertaining to other types of nonprofit corporations formed under or subject to this chapter or other entities formed under or subject to this title.

(c) Except as otherwise provided in the articles of incorporation or bylaws, the

following rules shall apply to a member-governed corporation:

(1) A member shall vote only in person and not by proxy.

(2) A voting agreement shall not be enforceable.

(3) A fundamental transaction may be approved by a 2/3 vote of the members of the corporation without the approval of the board of directors, if any.

(4) The members may set a record date in the circumstances described in Section 29-405.07(c).

(5) The polls may be closed by a 2/3 vote of the members present and voting in the circumstances described in Section 29-405.08(d).

(6) At a meeting of a member-governed corporation, the members present and voting are the ultimate judge of the validity of ballots under Sections 29-405. 23(c) and 29-405.28.

(7) The qualifications of a director under Section 29-406.08(c)(5) are determined by the members.

(d) The articles of incorporation or bylaws of a member-governed corporation may contain any of the following provisions:

(1) Providing that a meeting of the members under Section 29-405.01 may be held biennially, and, if the articles of incorporation or bylaws establish an assembly of delegates, providing that instead of meetings of members the assembly of delegates shall meet with a regularity the articles of incorporation or bylaws specify, not less frequently than quinquennially;

(2) Establishing the number of mail ballots that constitute a quorum under Section 29-405.09;

(3) Stating the circumstances under which a member who was present at a meeting but who leaves the meeting is or is not deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting under Section 29-405.24(b);

(4) Permitting cumulative voting for directors;

(5) Providing that the maximum term of a director under Section 29-406.05 may be up to six years;

(6) Providing that the resignation of a director under Section 29-406.07 is not effective until approved by the members;

(7) Establishing the quorum required for a meeting of the board of directors under Section 29-406.24(b);

(8) Providing that if a quorum is present when a vote is taken, the

affirmative vote of a majority of the votes cast, rather than a majority of those present, is the act of the board of directors unless a greater vote is required by the articles of incorporation and bylaws;

(9) Stating the circumstances under which a director present at a meeting is not considered to have assented to a corporate action under Section 29-406.24(d);

(10) Creating and defining the membership and powers of committees under Section 29-406.25(b), (e)(2), and (h);

(11) Providing that the same person may not simultaneously hold more than one office in a member-governed corporation; and

(12) Providing that the resignation of an officer under Section 29-406.43 is not effective until approved by the members.

(e) If a member-governed corporation adopts a specified generally accepted parliamentary authority in its bylaws, rules in the specified parliamentary authority and in special rules of order adopted as provided in the parliamentary authority shall be treated as provisions of the bylaws for the purposes of this chapter, except to the extent such rules are inconsistent with explicit provisions of the articles of incorporation or the bylaws. The rules of any such adopted parliamentary authority shall be presumed to be fair to the members pursuant to Section 29-405.08(c).

Section 29-401.60. Notice to Attorney General.

(a) The Attorney General for the District of Columbia shall be given notice of the commencement of any proceeding that this chapter authorizes the Attorney General to bring but that has been commenced by another person.

(b) Whenever any provision of this chapter requires that notice be given to the Attorney General for the District of Columbia before or after commencing a proceeding or permits the Attorney General to commence a proceeding:

(1) If no proceeding has been commenced, the Attorney General may take appropriate action seeking injunctive relief; and

(2) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in the proceeding.

SUBCHAPTER II. INCORPORATION.

Section 29-402.04. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a nonprofit corporation, knowing there was no incorporation under this chapter, shall be jointly and severally liable for all liabilities created while so acting.

Section 29-402.05. Organization of corporation.

(a) After incorporation:

(1) If initial directors or members of a designated body are named in the articles of incorporation, those persons shall hold an organizational meeting, as appropriate, at the call of a majority of them, to complete the organization of the nonprofit corporation by electing directors, when the organization of the corporation is to be completed by a designated body, appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) If initial directors or members of a designated body are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect:

(A) Directors and complete the organization of the nonprofit corporation; or

(B) A board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more consents in the form of a record describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or outside of the District.

Section 29-402.06. Bylaws.

(a) The incorporators or the board of directors of a nonprofit corporation may adopt initial bylaws for the corporation.

(b) The bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

SUBCHAPTER III. PURPOSES AND POWERS.

Section 29-403.01. Purposes.

(a) A nonprofit corporation may be formed for any lawful nonprofit purpose unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of the District may incorporate under this chapter only if incorporating under this chapter is not prohibited by the other statute. The corporation is subject to all the limitations of the other statute.

Section 29-403.02. General powers.

Unless its articles of incorporation provide otherwise, every nonprofit corporation shall have perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including the power to:

(1) Sue and be sued, complain, and defend in its corporate name;

(2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the District, for managing and regulating the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(7) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 29-406.32;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) Conduct its activities, locate offices, and exercise the powers granted by this chapter within or without the District;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit, except as limited by Section 29-406.32:

(12) Pay pensions and establish pension plans, pension trusts, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) Make donations for charitable purposes;

(14) Impose dues, assessments, admission, and transfer fees on its members;

(15) Establish conditions for admission of members, admit members, and issue memberships;

(16) Carry on a business; and

(17) Make payments or donations, or do any other act, not inconsistent with law, that furthers the purposes, activities, and affairs of the corporation.

Section 29-403.03. Emergency powers.

(a) If a nonprofit corporation authorizes the exercise of emergency powers in its articles of incorporation or bylaws, in the event of an emergency, the board of directors may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency, unless the articles of incorporation or bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner; and

(2) One or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority.

(c) Corporate action taken in good faith during an emergency to further the ordinary affairs of the nonprofit corporation:

(1) Binds the corporation; and

(2) Shall not be used to impose liability on a director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the directors cannot readily be assembled because of some catastrophic event.

Section 29-403.04. Ultra vires.

(a) Except as otherwise provided in subsection (b) of this section, the validity of corporate action shall not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(b) The power of a nonprofit corporation to act may be challenged in a proceeding by:

(1) A member, director, or member of a designated body against the corporation to enjoin the act;

(2) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director or member of a designated body, officer, employee, or agent of the corporation; or

(3) The Attorney General for the District of Columbia under Section 29-412.20.

(c) In a derivative proceeding under subchapter XI of this chapter by a member, director, or member of a designated body under subsection (b)(1) of this section to enjoin an unauthorized corporate act, the Superior Court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

SUBCHAPTER IV. MEMBERSHIPS AND FINANCIAL PROVISIONS.

Section 29-404.02. Admission.

(a) The articles of incorporation or bylaws of a membership corporation may establish criteria or procedures for admission of members.

(b) A person shall not be admitted as a member without the person's consent.

(c) If a membership corporation provides certificates of membership to the members, the certificates shall not be registered and shall not be able except as otherwise provided in the articles of incorporation or bylaws.

(d) A person shall not be a member of a nonprofit corporation unless the person meets the definition of a "member" in Section 29-401.02, regardless of whether the corporation refers to the person as a member.

Section 29-404.03. Consideration.

Except as otherwise provided in its articles of incorporation or bylaws, a membership corporation may admit members for no consideration or for such consideration as is determined by the board of directors. The consideration may take any form, including promissory notes, intangible property, or past or future services. Payment of the consideration may be made at such times and upon such terms as are set forth in or authorized by the articles of incorporation, bylaws, or a resolution of the board.

Section 29-404.10. Differences in rights and obligations of members.

Except as otherwise provided in the articles of incorporation or bylaws, each member of a membership corporation shall have the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and other matters.

Section 29-404.11. Transfers.

(a) Except as otherwise provided in the articles of incorporation or bylaws, a member of a membership corporation shall not transfer a membership or any right arising therefrom.

(b) If the right to transfer a membership has been provided, a restriction on that right shall not be binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the affected member.

Section 29-404.12. Member's liability to third parties.

A member of a membership corporation shall not be as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Section 29-404.13. Member's liability for dues, assessments, and fees.

(a) A membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws. Dues, assessments, and fees may be imposed on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees to the extent provided in the articles or bylaws.

(b) The amount and method of collection of dues, assessments, and fees may be fixed in the articles of incorporation or bylaws, or the articles or bylaws may authorize the board of directors or members to fix the amount and method of collection.

(c) The articles of incorporation or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

Section 29-404.14. Creditor's action against member.

(a) A proceeding shall not be brought by a creditor of a membership corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless the proceeding would be useless. In this case, a member remains immune from liability for debts, obligations, and other liabilities of the corporation under Section 29-404.12 and shall be liable only to the extent that the member's failure to pay amounts owed to the corporation has resulted in damages to the creditor.

(b) All creditors of a membership corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this section to reach and apply unpaid amounts due the corporation.

Section 29-404.20. Resignation.

(a) A member of a membership corporation may resign at any time.

(b) The resignation of a member shall not relieve the member from any obligations incurred or commitments made prior to resignation.

Section 29-404.21. Termination and suspension.

(a) A membership in a membership corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.

(b) A proceeding challenging a termination or suspension for any reason shall be commenced within one year after the effective date of the termination or suspension.

(c) The termination or suspension of a member shall not relieve the member from any obligations incurred or commitments made prior to the termination or suspension.

29-404.22. Purchase of memberships.

Except as otherwise provided in the articles of incorporation or bylaws, a membership corporation that is not a charitable corporation shall not purchase any of its memberships or any right arising therefrom.

Section 29-404.30. Delegates.

(a) A membership corporation may provide in its articles of incorporation or bylaws for delegates.

(b) The articles of incorporation or bylaws may set forth provisions relating to:

(1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(2) Calling, noticing, holding, and conducting meetings of delegates; and

(3) Carrying on corporate activities during and between meetings of delegates.

(c) An assembly or other organized group of delegates constitutes a designated body if it has been vested with powers of the board of directors under the articles of incorporation or bylaws.

Section 29-404.40. Distributions prohibited.

(a) Except as permitted under Section 29-404.22 or Section 29-404.41, a nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, delegates, members of a designated body, or officers.

(b) This section shall not apply to a contract or transaction authorized pursuant to Section 29-406.70.

Section 29-404.41. Compensation and other permitted payments.

(a) A nonprofit corporation may pay reasonable compensation or reimburse reasonable expenses to members, directors, delegates, members of a designated body, or officers for services rendered.

(b) A nonprofit corporation may confer benefits upon or make contributions to members or nonmembers in conformity with its purposes, repurchase its memberships only to the extent provided in Section 29-404.22, or repay capital contributions, except when:

(1) The corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes; or

(2) The fair value of the assets of the corporation remaining after the conferring of benefits, contribution, repurchase, or repayment would be insufficient to meet its liabilities.

(c) A nonprofit corporation may make distributions of cash or property to members upon dissolution or final liquidation only as permitted by this chapter.

Section 29-404.42. Debt and security interests.

(a) A nonprofit corporation shall not issue bonds or other evidences of indebtedness except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud, the judgment of the board of directors as to the value of the consideration received by the corporation shall be conclusive.

(b) The board of directors may authorize a mortgage or pledge of, or the creation of a security interest in, all or any part of the property of the nonprofit corporation, or any interest therein. Unless otherwise restricted in the articles of incorporation or bylaws, the vote or consent of the members shall not be required to make effective such action by the board.

SUBCHAPER V. MEMBER MEETINGS.

Section 29-405.01. Annual and regular meetings.

(a) A membership corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.

(b) A membership corporation may hold regular meetings on a regional or other basis at times stated in or fixed in accordance with the articles of incorporation or bylaws.

(c) Except as otherwise provided in subsection (e) of this section, annual and regular meetings of the members may be held in or outside of the District at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated in or fixed in accordance with the articles or bylaws, annual and regular meetings shall be held at the nonprofit corporation's principal office.

(d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles of incorporation or bylaws shall not affect the validity of any corporate action.

(e) The articles of incorporation or bylaws may provide that an annual or regular meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

Section 29-405.02. Special meeting.

(a) A membership corporation shall hold a special meeting of members:

(1) At the call of its board of directors or the persons authorized to do so by the articles of incorporation or bylaws; or

(2) If the holders of at least 10%, or such other amount up to 25% as the articles of incorporation or bylaws specify, of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more demands in the form of a record for the meeting describing the purpose for which it is to be held.

(b) Unless otherwise provided in the articles of incorporation or bylaws, a demand for a special meeting may be revoked by notice to that effect received by the membership corporation from the members calling the meeting prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(c) If not otherwise fixed under Section 29-405.03 or Section 29-405.07, the record date for determining members entitled to demand a special meeting shall be the date the first member signs a demand.

(d) Except as otherwise provided in subsection (f) of this section, special meetings of the members may be held in or outside of the District at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated or fixed in accordance with the articles or bylaws, special meetings shall be held at the corporation's principal office.

(e) Only business within the purpose or purposes described in the meeting notice required by Section 29-405.05(c) may be conducted at a special meeting of the members.

(f) The articles of incorporation or bylaws may provide that a special meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

Section 29-405.03. Court-ordered meeting.

(a) The Superior Court may summarily order a meeting to be held on application of:

(1) Any member entitled to participate in an annual or regular meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(2) A member who signed a demand for a special meeting under Section 29-405.02, if:

(A) Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The Superior Court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose of the meeting.

Section 29-405.04. Action without meeting.

(a) Except as otherwise provided in the articles of incorporation or bylaws, action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action shall be evidenced by one or more consents in the form of a record bearing the date of signature and describing the action taken, signed by all the members entitled to vote on the action, and delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under Section 29-405.03 or Section 29-405.07, the record date for determining members entitled to take action without a meeting shall be the date the first member signs the consent under subsection (a) of this section. A consent shall not be effective to take the corporate action referred to therein unless, within 60 days after the earliest date appearing on a consent delivered to the membership corporation in the manner required by this section, consents signed by members entitled to cast the required number of votes on the action are received by the corporation. A consent may be revoked by a signed notice in the form of a record to that effect received by the corporation prior to receipt by the corporation of unrevoked consents sufficient in number to take corporate action.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such.

(d) If this chapter, the articles of incorporation, or the bylaws require that notice of proposed action be given to members not entitled to vote on the action and the action is to be

taken by consent of the members entitled to vote, the membership corporation shall deliver to the members not entitled to vote notice of the proposed action at least 10 days before the action is taken. The notice shall contain or be accompanied by the same material that would have been required to be delivered to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

Section 29-405.05. Notice of meeting.

(a) A membership corporation shall give notice to the members of the date, time, and place of each annual, regular, or special meeting of the members. Except as otherwise provided in the articles of incorporation or the bylaws, the notice shall be given no fewer than 10 nor more than 60 days before the meeting date. Except as otherwise provided in this chapter, the articles, or the bylaws, the corporation shall give notice only to members entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation, or the bylaws require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(c) Notice of a special meeting shall include a description of the purpose for which the meeting is called.

(d) If not otherwise fixed under Section 29-405.03 or Section 29-405.07, the record date for determining members entitled to notice of and to vote at an annual or special meeting of the members is the day before the first notice is given to members.

(e) Unless the articles of incorporation or bylaws require otherwise, if an annual, regular, or special meeting of the members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 29-405.07, notice of the adjourned meeting shall be given under this section to the members entitled to vote on the new record date.

Section 29-405.06. Waiver of notice.

(a) A member may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice or of the meeting or action. The waiver shall be in the form of a record, be signed by the member entitled to the notice, and be delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(b) The attendance of a member at a meeting waives objection to:

(1) Lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting at the meeting;

(2) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects at the meeting to considering the matter.

Section 29-405.07. Record date.

(a) The articles of incorporation or bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a meeting of the members, to demand a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or provide for fixing a record date, the board of directors of the membership corporation may fix a future date as the record date.

(b) A record date fixed under this section shall not be more than 70 days before the meeting or action requiring a determination of members.

(c) A determination of members entitled to notice of or to vote at a meeting of the members shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Section 29-405.08. Conduct of meeting.

(a) At each meeting of members, an individual shall preside as chair. The chair shall be appointed:

(1) As provided in the articles of incorporation or bylaws;

(2) In the absence of a provision in the articles or bylaws, by the board of directors; or

(3) In the absence of both a provision in the articles or bylaws and an appointment by the board, by the members at the meeting.

(b) Except as otherwise provided in the articles of incorporation or bylaws, the chair shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to the members.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, or any otherwise permissible revocations or changes thereto, shall be accepted.

Section 29-405.09. Action by ballot.

(a) Except as otherwise restricted by the articles of incorporation or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken

without a meeting if the membership corporation delivers a ballot to every member entitled to vote on the matter.

(b) A ballot shall:

(1) Be in the form of a record;

(2) Set forth each proposed action;

(3) Provide an opportunity to vote for, or withhold a vote for, each candidate for election as a director; and

(4) Provide an opportunity to vote for or against each other proposed action.

(c) Approval by ballot pursuant to this section of action other than election of directors shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the membership corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a ballot shall not be revoked.

Section 29-405.20. Members list for meeting.

(a) After fixing a record date for a meeting, a membership corporation shall prepare an alphabetical list of the names of all its members that are entitled to notice of that meeting of the members. The list shall show the address of and number of votes each member is entitled to cast at the meeting.

(b) The list of members shall be available for inspection by any member, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the membership corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member or the member's agent shall be entitled on demand in the form of a record to inspect and, subject to the requirements of Section 29-413.02(c), to copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.

(c) The membership corporation shall make the list of members available at the meeting, and a member or the member's agent is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If a membership corporation refuses to allow a member or the member's agent to inspect the list of members before or at the meeting, or copy the list as permitted by subsection (b) of this section, the Superior Court on application of the member, may:

(1) Summarily order the inspection or copying at the corporation's expense;

(2) Postpone the meeting for which the list was prepared until the inspection or copying is complete;

(3) Order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order; and

(4) Order other appropriate relief.

(e) Refusal or failure to prepare or make available the list of members shall not affect the validity of action taken at the meeting.

(f) Instead of making the list of members available as provided in subsection (b) of this section, a membership corporation may state in a notice of meeting that the corporation has elected to proceed under this subsection. A member of a corporation that has elected to proceed under this subsection shall state in the member's demand for inspection a proper purpose for which inspection is demanded. Within 10 business days after receiving a demand under this subsection, the corporation shall deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the corporation from making the list of members available under subsection (b) of this section, unless within a reasonable time after acceptance of the offer the corporation fails to do the things it offered to do. Any rejection of the corporation's offer shall be in the form of a record and shall indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand.

Section 29-405.21. Voting entitlement of members.

Except as otherwise provided in the articles of incorporation or bylaws, each member shall be entitled to one vote on each matter voted on by the members.

Section 29-405.22. Proxies.

(a) Except as otherwise provided in the articles of incorporation or bylaws, a member may vote in person or by proxy.

(b) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form in the form of a record. An appointment form shall contain or be accompanied by information from which it can be

determined that the member or the member's agent or attorney-in-fact authorized the appointment of the proxy.

(c) An appointment of a proxy shall be effective when a signed appointment in the form of a record is received by the inspectors of election, the officer or agent of the membership corporation authorized to tabulate votes, or the secretary. An appointment shall be valid for 11 months unless a longer period, which may not exceed 3 years, is expressly provided in the appointment form.

(d) The death or incapacity of the member appointing a proxy shall not affect the right of the membership corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspectors of election, the officer or agent authorized to tabulate votes, or the secretary before the proxy exercises his authority under the appointment.

(e) Subject to Section 29-405.23 and to any express limitation on the proxy's authority stated in the appointment form, a membership corporation may accept the proxy's vote or other action as that of the member making the appointment.

Section 29-405.23. Acceptance of votes.

(a) If the name signed on a ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the membership corporation if acting in good faith may accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a ballot, consent, waiver, or proxy appointment does not correspond to the name of its member, the membership corporation if acting in good faith may nevertheless accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(4) The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the ballot, consent, waiver, or proxy appointment; or

(5) Two or more persons are the member as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The membership corporation may reject a ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The membership corporation and its officer or agent that accepts or rejects a ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or Section 29-405.22(b) shall not be liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a ballot, consent, waiver, or proxy appointment under this section shall be valid unless a court of competent jurisdiction determines otherwise.

Section 29-405.24. Quorum and voting requirements for voting groups.

(a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Except as otherwise provided in the articles of incorporation or bylaws, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a member is represented for any purpose at a meeting, the member shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or bylaws require a greater number of affirmative votes.

(d) An amendment of the articles of incorporation or bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section shall be governed by Section 29-405.26.

(e) If a meeting cannot be organized because a quorum is not present, those members present may adjourn the meeting to such time and place as they may determine. Except as otherwise provided in the articles of incorporation or bylaws, when a meeting that has been adjourned for lack of a quorum is reconvened, those members present, although less than a quorum as fixed in this section, the articles, or the bylaws, nonetheless constitute a quorum.

Section 29-405.25. Action by single and multiple voting groups.

(a) If this chapter, the articles of incorporation, or the bylaws provide for voting

by a single voting group on a matter, action on that matter, action on that matter is taken when voted upon by that voting group as provided in Section 29-405.24.

(b) If this chapter, the articles of incorporation, or the bylaws provide for voting by 2 or more voting groups on a matter, action on that matter shall be taken only when voted upon by each of those voting groups counted separately as provided in Section 29-405.24.

Section 29-405.26. Different quorum or voting requirements.

(a) The articles of incorporation or bylaws may provide for a higher or lower quorum or voting requirement for members, or voting groups of members, than is provided for by this chapter.

(b) An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

Section 29-405.27. Voting for directors.

(a) Except as otherwise provided in the articles of incorporation or bylaws, directors of a membership corporation shall be elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

(b) Unless permitted by the articles of incorporation or bylaws, members shall not have a right to cumulate their votes for directors.

Section 29-405.28. Inspectors of election.

(a) A membership corporation may appoint one or more inspectors to act at a meeting of members and make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

(b) The inspectors shall:

(1) Ascertain the number of members and their voting power;

(2) Determine the members present at a meeting;

(3) Determine the validity of proxies and ballots;

(4) Count all votes; and

(5) Determine the result.

(c) An inspector may, but need not, be a director, member of a designated body, member, officer, or employee of the membership corporation. An individual who is a candidate for office to be filled at the meeting may not be an inspector.

Section 29-405.40. Voting agreements.

(a) Two or more members may provide for the manner in which they will vote by signing an agreement in the form of a record for that purpose. A voting agreement shall be valid for a period of up to 10 years. If no time is stated in the voting agreement, the agreement shall be valid for 5 years. The members who signed the voting agreement may, at any time, alter or terminate the agreement by signing a new agreement.

(b) A voting agreement created under this section shall be specifically enforceable, except that a voting agreement is not enforceable to the extent that enforcement of the agreement would violate the purposes of the membership corporation.

SUBCHAPTER VI. DIRECTORS, OFFICERS AND EMPLOYEES.

Section 29-406.01. Requirement for and functions of board of directors.

(a) A nonprofit corporation shall have a board of directors.

(b) Except as otherwise provided in Section 29-406.12, all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors.

Section 29-406.02. Qualifications of directors.

A director of a nonprofit corporation shall be an individual. The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a resident of the District or a member of the corporation unless the articles or bylaws so prescribe.

Section 29-406.03. Number of directors.

(a) A board of directors shall consist of 3 or more directors, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased, but to no fewer than 3, by amendment to, or in the manner provided in, the articles of incorporation or bylaws.

Section 29-406.04. Selection of directors.

(a) The directors of a membership corporation, other than any initial directors named in the articles of incorporation or elected by the incorporators, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner.

(b) The directors of a nonmembership corporation, other than any initial directors named in the articles of incorporation or elected by the incorporators, shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors, other than any initial directors, shall be elected by the board.

Section 29-406.05. Terms of directors generally.

(a) The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons that are not members or who are designated in a manner other than by election or appointment, the term of a director shall not exceed 5 years. Except as otherwise provided in the articles or bylaws, a director shall be appointed, elected, or otherwise designated for additional terms.

(b) A decrease in the number of directors or term of office shall not shorten an incumbent director's term.

(c) Except as otherwise provided in the articles of incorporation or bylaws, the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director shall continue to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office, unless otherwise provided in the articles of incorporation or bylaws.

Section 29-406.06. Staggered terms for directors.

The articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office and number of directors in each group do not need to be uniform.

Section 29-406.07. Resignation of directors.

(a) A director may resign at any time by delivering a signed notice in the form of a record to the chair of the board of directors or to an executive officer or the secretary of the corporation.

(b) A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time.

Section 29-406.08. Removal of directors by members or other persons.

(a) Removal of directors of a membership corporation shall be subject to the following provisions:

(1) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(2) Except as otherwise provided in the articles of incorporation or bylaws, if a director is elected by a voting group of members, by a chapter or other organizational unit, or by a region or other geographic grouping, only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.

(3) The notice of a meeting of members at which removal of a director is to be considered shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(4) The board of directors of a membership corporation shall not remove a director except as otherwise provided in subsection (c) of this section or in the articles of incorporation or bylaws.

(b) The board of directors may remove a director of a nonmembership corporation:

(1) With or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause; provided, that articles or bylaws may specify what constitutes cause for removal; or

(2) As provided in subsection (c) of this section.

(c) The board of directors of a membership corporation or nonmembership corporation may remove a director who:

(1) Has been declared of unsound mind by a final order of court;

(2) Has been convicted of a felony:

(3) Has been found by a final order of court to have breached a duty as a director under part C of this subchapter;

(4) Has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or

(5) Does not satisfy at the time any of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(d) A director who is designated in the articles of incorporation or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a director who is appointed by persons other than the members may be removed with or without cause by those persons.

Section 29-406.09. Removal of directors by judicial proceeding.

(a) The Superior Court may remove a director from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(1) The director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(2) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interests of the corporation.

(b) A member, individual director, or member of a designated body proceeding on behalf of the nonprofit corporation under subsection (a) of this section shall comply with all of the requirements of subchapter XI of this chapter.

(c) The court, in addition to removing the director, may bar the director from being reelected, redesignated, or reappointed for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

(e) If a proceeding is commenced under this section to remove a director of a charitable corporation, the plaintiff shall give the Attorney General for the District of Columbia notice in record form of the commencement of the proceeding.

Section 29-406.10. Vacancy on board.

(a) Except as otherwise provided in subsection (b) of this section, the articles of incorporation, or the bylaws, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by a majority of the directors remaining in office even if they constitute less than a quorum.

(b) Except as otherwise provided in the articles of incorporation or bylaws, a vacancy in the position of a director who is:

(1) Elected by a voting group of members, by a chapter or other organizational unit of members, or by a region or other geographic grouping of members, shall be filled during the first 3 months after the vacancy occurs only by that voting group or chapter, unit, region, or grouping;

(2) Appointed by persons other than the members, may be filled only by those persons; or

(3) Designated in the articles of incorporation or bylaws shall not be filled by action of the board of directors.

(c) A vacancy that will occur at a specific later time, by reason of a resignation effective at a later time under Section 29-406.07(b) or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

Section 29-406.11. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 29-406.12. Designated body.

(a) Some, but less than all, of the powers, authority, or functions of the board of directors of a nonprofit corporation under this chapter may be vested by the articles of incorporation in a designated body. If a designated body is created:

(1) This subchapter and other provisions of law on:

(A) The rights, duties, and liabilities of the board of directors or director individually shall also apply to the designated body and to the members of the designated body individually; and

(B) Meetings, notice, and the manner of acting of the board of directors shall also apply to the designated body in the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body;

(3) To the extent the powers, authority, or functions of the board of directors have been vested in the designated body, the directors shall be relieved from their duties and liabilities with respect to those powers, authority, and functions; and

(4) A provision of the articles of incorporation regarding indemnification of directors or limiting the liability of directors adopted pursuant to Section 29-402.02(b)(8) or (c) applies to members of the designated body, except as otherwise provided in the articles.

(b) Some, but less than all, of the rights or obligations of the members of a nonprofit corporation under this chapter may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

(1) This subchapter and other provisions of law on:

(A) The rights and obligations of members shall also apply to the designated body and to the members of the designated body individually; and

(B) Meetings, notice, and the manner of acting of members shall also apply to the designated body in the absence of an applicable provision in the articles of incorporation, bylaws, or internal operating rules of the designated body;

(2) To the extent the rights or obligations of the members have been vested in the designated body, the members shall be relieved from responsibility with respect to those rights and obligations.

(c) The articles of incorporation or bylaws may prescribe qualifications for members of a designated body. Except as otherwise provided in the articles or bylaws, a member of a designated body does not need to be:

(1) An individual;

(2) A director, officer, or member of the nonprofit corporation; or

(3) A resident of the District.

Section 29-406.20. Meetings.

(a) The board of directors may hold regular or special meetings in or outside of the District.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be considered to be present in person at the meeting.

Section 29-406.21. Action without meeting.

(a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent in the form of a record describing the action to be taken and delivers it to the nonprofit corporation.

(b) Action taken under this section shall be the act of the board of directors when one or more consents signed by all the directors are delivered to the nonprofit corporation. The consent may specify the time at which the action taken in the consent is to be effective. A director's consent may be withdrawn by a revocation in the form of a record signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Section 29-406.22. Call and notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors shall be held with notice of the date, time, place, or purpose of the meeting; provided, that at the beginning of each one-year period, the corporation may provide a single notice of all regularly scheduled meetings for that year, or for a lesser period, without having to give notice of each meeting individually.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

(c) Unless the articles of incorporation or bylaws provide otherwise, the chair of the board, the highest ranking officer of the corporation, or 20% of the directors then in office may call and give notice of a meeting of the board of directors.

(d) The articles of incorporation or bylaws may authorize oral notice of meetings of the board of directors.

Section 29-406.23. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as otherwise provided in subsection (b) of this section, the waiver shall be in the form of a record, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting shall waive any required notice to the director of the meeting, unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 29-406.24. Quorum and voting.

(a) Except as otherwise provided in subsection (b) of this section, the articles of incorporation, or the bylaws, a quorum of the board of directors shall consist of a majority of the directors in office before a meeting begins.

(b) The articles of incorporation or bylaws may authorize a quorum of the board of directors to consist of no fewer than the greater of 1/3 of the number of directors in office or 2 directors.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the board of directors unless a greater vote is required by the articles of incorporation or bylaws.

(d) A director who is present at a meeting of the board of directors when corporate action is taken shall be considered to have assented to the action taken unless one of the following applies:

(1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting at the meeting; or

(2) The director dissents or abstains from the action and:

(A) The dissent or abstention is entered in the minutes of the meeting; or

(B) The director delivers notice in the form of a record of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation promptly after adjournment of the meeting.

(e) The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

Section 29-406.25. Board and advisory committees.

(a) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees of the board that consist of one or more directors.

(b) Unless this chapter otherwise provides, the creation of a committee and appointment of directors to it shall be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles of incorporation or bylaws to take action under Section 29-406.24.

(c) Sections 29-406.20 through 29-406.24 shall apply both to committees of the board and to their members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under Section 29-406.01 except as limited by subsection (e) of this section.

(e) A committee shall not:

(1) Authorize distributions;

(2) In the case of a membership corporation, approve or propose to members action that this chapter requires be approved by members;

(3) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees; or

(4) Adopt, amend, or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in Section 29-406.30.

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification.

(h) A nonprofit corporation may create or authorize the creation of one or more advisory committees whose members need not be directors. An advisory committee shall not:

(1) Be a committee of the board; and

(2) Exercise any of the powers of the board.

Section 29-406.30. Standards of conduct for directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act:

(1) In good faith; and

(2) In a manner the director reasonably believes to be in the best interests of the nonprofit corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted may rely on the performance by any of the persons specified in subsection (f)(1), (3), or (4) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director may rely, in accordance with subsection (d) or (e) of this section, on:

(1) One or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence;

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; or

(4) In the case of a religious corporation, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the director reasonably believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(g) A director shall not be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

Section 29-406.31. Standards of liability for directors.

(a) A director shall not be liable to the nonprofit corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

(A) Subsection (d) of this section or a provision in the articles of incorporation authorized by Section 29-402.02(c);

(B) Satisfaction of the requirements in Section 29-406.70 for validating a conflicting interest transaction; or

(C) Satisfaction of the requirements in Section 29-406.80 for disclaiming a business opportunity; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith;

(B) A decision:

(i) Which the director did not reasonably believe to be in the best interests of the corporation; or

(ii) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(i) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(ii) After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(D) A sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and

circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, also has the burden of establishing that:

(A) Harm to the nonprofit corporation or its members has been suffered; and

(B) The harm suffered was proximately caused by the director's challenged conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section:

(1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under Section 29-406.70(a)(3), alters the burden of proving the fact or lack of fairness otherwise applicable;

(2) Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under Section 29-406.33, a conflicting interest transaction under Section 29-406.70, or taking advantage of a business opportunity under Section 29-406.80; or

(3) Affects any rights to which the corporation or a director or member may be entitled under another statute of the District or the United States.

(d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(1) The amount of a financial benefit received by the director to which the director is not entitled;

(2) An intentional infliction of harm;

(3) A violation of Section 29-406.33; or

(4) An intentional violation of criminal law.

Section 29-406.32. Loans to or guarantees for directors and officers.

(a) A nonprofit corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation.

(b) This section shall not apply to:

(1) An advance to pay reimbursable expenses reasonably expected to be incurred by a director or officer;

(2) An advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;

(3) Advances pursuant to part E of this subchapter;

(4) Loans or advances pursuant to employee benefit plans;

(5) A loan secured by the principal residence of an officer; or

(6) A loan to pay relocation expenses of an officer.

(c) The fact that a loan or guarantee is made in violation of this section shall not affect the borrower's liability on the loan.

Section 29-406.33. Directors' liability for unlawful distributions.

(a) A director who votes for or assents to a distribution made in violation of this chapter shall be personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter if the party asserting liability establishes that, when taking the action, the director did not comply with § 29-406.30.

(b) A director held liable under subsection (a) of this section for an unlawful distribution shall be entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) Recoupment from each person of the pro-rata portion of the amount of the unlawful distribution the person received, whether or not the person knew the distribution was made in violation of this chapter.

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) of this section shall be barred unless it is commenced within 2 years after the date on which the distribution was made; or

(2) Contribution or recoupment under subsection (b) of this section shall be barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

Section 29-406.40. Officers.

(a) The officers of a nonprofit corporation shall be the individuals who hold the offices described in its articles of incorporation or bylaws or are appointed or elected in accordance with the articles and bylaws or as authorized by the board of directors. At a minimum, a nonprofit corporation shall have 2 separate officers, one responsible for the management of the corporation, who may be referred to as the "President" or by any other term used in its articles of incorporation or bylaws and another responsible for the financial affairs of the corporation, who may be referred to as the "Treasurer", or by any other term used in its articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws or the board of directors shall assign to one of the officers responsibility for preparing or supervising the preparation of the minutes of the meetings of the board of directors and the members, if any, and for maintaining and authenticating the records of the corporation required to be kept under Section 29-413.01(a) and (e).

(c) The same individual may simultaneously hold more than one office in a nonprofit corporation.

Section 29-406.41. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles and bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Section 29-406.42. Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) The duty of an officer shall include the obligation to inform:

(1) The superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the nonprofit corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to the superior officer, board, or committee; and

(2) His or her superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the nonprofit corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence;

(3) In the case of a corporation engaged in religious activity, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the officer reasonably believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

Section 29-406.43. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the nonprofit corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board of directors or the appointing officer accepts the future effective time, the board or the appointing officer may designate a successor before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) Except as otherwise provided in the articles of incorporation or bylaws, an officer may be removed at any time with or without cause by:

(1) The board of directors;

(2) The officer who appointed the officer being removed, unless the board provides otherwise; or

(3) Any other officer authorized by the articles, the bylaws, or the board.

(c) For the purposes of this section, the term "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Section 29-406.44. Contract rights of officers.

(a) The appointment of an officer shall not itself create contract rights.

(b) An officer's removal shall not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

Section 29-406.50. Definitions.

For the purposes of this part, the term:

(1) "Corporation" includes any domestic or foreign predecessor entity of a nonprofit corporation in a merger, conversion, or domestication.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a nonprofit corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer shall be considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term "director" includes a member of a designated body. The term "director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Disinterested director" means a director who, at the time of a vote referred to in Section 29-406.53(c) or a vote or selection referred to in Section 29-406.55(b) or (c), is not:

(A) A party to the proceeding; or

(B) An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

(4) "Expenses" include attorneys' fees.

(5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(6) (A) "Official capacity" means:

(i) When used with respect to a director, the office of director in a nonprofit corporation; and

(ii) When used with respect to an officer, as contemplated in Section 29-406.56, the office in a corporation held by the officer; and,

(B) The term “official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(7) “Party” means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(8) “Proceeding” includes a threatened, pending, or completed proceeding.

Section 29-406.51. Permissible indemnification.

(a) Except as otherwise provided in this section, a nonprofit corporation may indemnify an individual who is a party to a proceeding because he or she is or was a director against liability incurred in the proceeding if:

(1) The individual:

(A) Acted in good faith;

(B) Reasonably believed:

(i) In the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(ii) In all other cases, that the individual’s conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; or

(2) The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by Section 29-402.02(b)(8).

(b) A director’s conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(1)(B)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under Section 29-406.54(a)(3), a nonprofit corporation shall not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in an official capacity.

Section 29-406.52. Mandatory indemnification.

A nonprofit corporation shall indemnify a director or officer to the extent the director or officer was successful, on the merits or otherwise, in the defense of any proceeding to which the director or officer was a party because the director or officer was a director or officer of the corporation against reasonable expenses incurred by the director or officer in connection with the proceeding.

Section 29-406.53. Advance for expenses.

(a) A nonprofit corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by an individual who is a party to a proceeding because he or she is or was a director if the individual delivers to the corporation:

(1) An affirmation in the form of a record of his or her good faith belief that he or she has met the relevant standard of conduct described in Section 29-406.51 or that the proceeding involves conduct for which liability has been eliminated by Section 29-406.31(d) or under a provision of the articles of incorporation as authorized by Section 29-402.02(c); and

(2) An undertaking in the form of a record to repay any funds advanced if the individual is not entitled to mandatory indemnification under Section 29-406.52 and it is ultimately determined under Section 29-406.54 or Section 29-406.55 that the individual has not met the relevant standard of conduct described in Section 29-406.51.

(b) The undertaking required by subsection (a)(2) of this section shall be an unlimited general obligation of the director, but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(A) If there are 2 or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom will constitute a quorum for that purpose, or by a majority of the members of a committee of 2 or more disinterested directors appointed by such a vote; or

(B) If there are fewer than 2 disinterested directors, by the vote necessary for by the board in accordance with Section 29-406.24(c), in which authorization directors who do not qualify as disinterested directors may participate; or

(2) By the members.

Section 29-406.54. Court-ordered indemnification and advance for expenses.

(a) A director who is a party to a proceeding because he or she is or was a director may apply for indemnification or an advance for expenses to the Superior Court. After receipt of an application and after giving any notice it considers necessary, the court shall order:

(1) Indemnification if the court determines that the director is entitled to mandatory indemnification under Section 29-406.52;

(2) Indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by Section 29-406.58(a); or

(3) Indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to:

(A) Indemnify the director; or

(B) Advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in Section 29-406.51(a), failed to comply with Section 29-406.53, or was adjudged liable in a proceeding referred to in Section 29-406.51(d)(1) or (d)(2), but if the director was adjudged so liable, his or her indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the Superior Court determines that the director is entitled to indemnification under subsection (a)(1) of this section or to indemnification or advance for expenses under subsection (a)(2) of this section, it shall also order the nonprofit corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (a)(3) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

Section 29-406.55. Determination and authorization of indemnification.

(a) A nonprofit corporation shall not indemnify a director under Section 29-406. 51 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in Section 29-406.51.

(b) The determination shall be made:

(1) If there are 2 or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom will constitute a quorum for that purpose, or by a majority of the members of a committee of 2 or more disinterested directors appointed by such a vote;

(2) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (1) of this subsection; or

(B) If there are fewer than 2 disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than 2 disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection (b)(2)(B) of this section to select special legal counsel.

Section 29-406.56. Indemnification of officers.

(a) A nonprofit corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is or was an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(i) Receipt by the officer of a financial benefit to which the officer is not entitled;

(ii) An intentional infliction of harm on the corporation or the members; or

(iii) An intentional violation of criminal law.

(b) Subsection (a)(2) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director shall be entitled to mandatory indemnification under Section 29-406.52, and may apply to a court under Section 29-406.54 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

Section 29-406.57. Insurance.

A nonprofit corporation may purchase insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, serves or served at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this part.

Section 29-406.58. Variation of indemnification.

(a) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification as permitted by Section 29-406.51 or advance funds to pay for or reimburse expenses as permitted by Section 29-406.53. An obligatory provision satisfies the requirements for authorization referred to in Sections 29-406.53(c) and 29-406.55(c). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Section 29-406.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section shall not obligate the nonprofit corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the organic records, articles of incorporation, bylaws, or a resolution of the governors, board of directors, members or interest holders of a predecessor of the corporation in a fundamental transaction, or in a contract to which the predecessor is a party, existing at the time the fundamental transaction takes effect, shall be governed by:

(1) Section 29-407.05(a)(2) in the case of a domestication;

(2) Section 29-204.06(a)(3) in the case of a for-profit conversion;

(3) Section 29-204.06(a)(3) in the case of a foreign for-profit domestication and conversion;

(4) Section 29-204.06(a)(3) in the case of an entity conversion; or

(5) Section 29-409.07(a)(4) in the case of a merger involving only nonprofit corporations, or § 29-202.06(a)(4) in the case of a merger involving another type of entity.

(c) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part shall not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearance as a witness in a proceeding at a time when the director or officer is not a party.

(e) A nonprofit corporation may indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

Section 29-406.70. Conflicting interest transactions; voidability.

(a) A contract or transaction between a nonprofit corporation and one or more of its members, directors, members of a designated body, or officers or between a nonprofit corporation and any other entity in which one or more of its directors, members of a designated body, or officers are directors or officers, hold a similar position, or have a financial interest, shall not be void or voidable solely for that reason, or solely because the member, director, member of a designated body, or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because his or their votes are counted for that purpose, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(2) The material facts as to the relationship or interest of the member, director, or officer and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved, or ratified by the board of directors or the members.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes a contract or transaction specified in subsection (a) of this section.

(c) This section shall be applicable except as otherwise restricted in the articles of incorporation or bylaws.

Section 29-406.80. Business opportunities.

(a) The taking advantage, directly or indirectly, by a director of a business opportunity shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the nonprofit corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated or entitled respecting the opportunity the director brings it to the attention of the corporation and action by the members or the directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in Section 29-406.70, as if the decision being made concerned a conflicting interest transaction.

(b) In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not support an inference that the opportunity should have been first presented to the nonprofit corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

(c) For the purposes of this section, the term "director" includes a member of a designated body.

Section 29-406.90. Immunity from civil liability for volunteer of corporation.

(a) For the purposes of this section, the term "volunteer" means an officer, director, trustee, or other person who performs services for the corporation and who does not receive compensation other than reimbursement of expenses for those services.

(b) Any person who serves as a volunteer of the corporation shall be immune from civil liability except if the injury or damage was a result of:

(1) The willful misconduct of the volunteer;

(2) A crime, unless the volunteer had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the volunteer; or

(4) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the corporate charter.

(c) This section shall apply only if the corporation maintains liability insurance with a limit of coverage of not less than $200,000 per individual claim and $500,000 per total claims that arise from the same occurrence. This subsection shall not apply to any corporation having annual total functional expenses, exclusive of grants and allocations, of less than $100,000, and which is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, approved August 26, 1954 (68A Stat. 163; 26 U.S.C. Section 501(c)(3)).

(d) This section shall not be exempt the corporation from liability for the conduct of the volunteer, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains.

Section 29-406.91. Limited liability for employee of corporation.

(a) For the purposes of this section, the term "employee" means a person regularly employed to perform a service for a salary or wages.

(b) Except as provided in subsections (c) and (d) of this section, an employee of the corporation shall not be held personally liable in damages for any acts or omissions in providing services or performing duties on behalf of the corporation in an amount greater than the amount of total compensation, other than reimbursement of expenses, received from the

corporation for performing those services or duties during the 12 months immediately preceding the act or omission for which liability was imposed.

(c) The limitation of liability in this section shall not apply if the injury or damage was a result of:

(1) The willful misconduct of the employee;

(2) A crime, unless the employee had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the employee;

(4) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the articles of incorporation.

(d) The limitation of liability in this section does not apply to any licensed professional employee operating in his or her professional capacity.

(e) This section shall not exempt the corporation from liability, but the corporation is liable only to the extent of the applicable limit of insurance coverage it maintains.

SUBCHAPTER VIII. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.

Section 29-408.01. Authority to amend.

A nonprofit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles.

Section 29-408.02. Amendment before issuance of memberships.

If a membership corporation has not yet issued memberships, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the articles of incorporation.

Section 29-408.03. Amendment of articles of membership corporation.

(a) An amendment to the articles of incorporation of a membership corporation shall be adopted in the following manner:

(1) Except as otherwise provided in paragraph (5) of this subsection, the proposed amendment shall be adopted by the board of directors.

(2) Except as otherwise provided in Sections 29-408.05, 29-408.07, and 29-408.08, a proposed amendment shall be submitted to the members entitled to vote for their approval.

(3) The board of directors shall transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.

(4) The board of directors may condition its submission of the amendment to the members on any basis.

(5) Except as otherwise provided in the articles of incorporation or bylaws, an amendment may be proposed by 10% or more of the members entitled to vote on the amendment or by such greater or lesser number of members as is specified in the articles. Paragraphs (1), (3), and (4) of this section shall not apply to an amendment proposed by the members under this paragraph.

(6) If the amendment is required to be approved by the members, and the approval is to be given at a meeting, the corporation shall give notice to each member entitled to vote on the amendment of the meeting of members at which the amendment is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment and shall contain or be accompanied by a copy of the amendment.

(7) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (4) of this subsection, requires a greater vote or a greater number of members to be present, the approval of an amendment requires the approval of the members at a meeting at which a quorum exists, and, if any class of members shall be entitled to vote as a separate group on the amendment, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(8) In addition to the adoption and approval of an amendment by the board of directors and members as required by this section, an amendment shall also be approved by a designated body whose approval is required by the articles of incorporation or bylaws.

(b) Unless the articles of incorporation provide otherwise, the board of directors of a membership corporation may adopt amendments to the corporation's articles of incorporation without approval of the members to:

(1) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) Delete the names and addresses of the initial directors or members of a designated body;

(3) Change the information required by Section 2-104.04;

(4) Change the corporation name by substituting or deleting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name; or

(5) Restate without change all of the then operative provisions of the articles.

Section 29-408.04. Voting on amendments by voting groups.

(a) Except as otherwise provided in the articles of incorporation or bylaws, if a nonprofit corporation has more than one class of members, the members of each class shall be entitled to vote as a separate voting group, if member voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would:

(1) Effect an exchange or reclassification of all or part of the memberships of the class into memberships of another class;

(2) Effect an exchange or reclassification, or create the right of exchange, of all or part of the memberships of another class into memberships of the class;

(3) Change the rights, preferences, or limitations of all or part of the memberships of the class in a manner different than the amendment would affect another class;

(4) Change the rights, preferences, or limitations of all or part of the memberships of the class by changing the rights, preferences, or limitations of another class;

(5) Increase or decrease the number of memberships authorized for that class;

(6) Increase the number of memberships authorized for another class; or

(7) Authorize a new class of memberships.

(b) If a class of members will be divided into 2 or more classes by an amendment to the articles of incorporation, the amendment shall be approved by a majority of the members of each class that will be created.

Section 29-408.05. Amendment of articles of nonmembership corporation.

Except as otherwise provided in the articles of incorporation, the board of directors of a nonmembership corporation may adopt amendments to the corporation's articles. Except as otherwise provided in the articles of incorporation, an amendment adopted by the board of directors under this subsection shall also be approved:

(1) By a designated body whose approval is required by the articles of incorporation or bylaws;

(2) If the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group; and

(3) If the amendment changes or deletes a provision regarding the designation of a director, by the individual designated at the time as that director.

Section 29-408.06. Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the nonprofit corporation shall deliver to the Mayor, for filing, articles of amendment, which shall set forth:

(1) The name of the corporation;

(2) The text of the amendment adopted;

(3) If the amendment provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with Section 29-401.04;

(4) The date of the amendment's adoption; and

(5) If the amendment:

(A) Was adopted by the incorporators, board of directors, or a designated body without member approval, a statement that the amendment was adopted by the incorporators or by the board of directors or designated body, as the case may be, and that member approval was not required; or

(B) Required approval by the members, a statement that the amendment was duly approved by the members in the manner required by this chapter and by the articles of incorporation and bylaws.

Section 29-408.07. Restated articles of incorporation.

(a) The board of directors of a nonprofit corporation may restate its articles of incorporation at any time, without approval by the members or any other person, to consolidate all amendments into a single document without substantive change.

(b) If restated articles of a membership corporation include one or more new amendments that require member approval, the amendments shall be adopted and approved as provided in Sections 29-408.03 and 29-408.04.

(c) A nonprofit corporation that restates its articles of incorporation shall deliver to the Mayor for filing articles of amendment under Section 29-408.06 which include a statement that the articles of amendment are a restatement that consolidates all amendments into a single record.

(d) Duly adopted restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto.

(e) The Mayor shall certify restated articles of incorporation as the articles of incorporation currently in effect.

Section 29-408.08. Amendment pursuant to reorganization.

(a) A nonprofit corporation's articles of incorporation may be amended without action by the board of directors, a designated body, or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) An individual designated by the court shall deliver to the Mayor for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 29-408.09. Effect of articles amendment.

(a) Except as otherwise provided in subsections (b), (c), and (d) of this section, an amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation or persons referred to in the articles. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

(b) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by an amendment of its articles of incorporation unless the corporation obtains an appropriate order of the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(c) Unless a nonprofit corporation obtains an appropriate order of the Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its articles of incorporation shall not affect:

(1) Any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or

(2) The existing rights of persons other than its members.

(d) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with an amendment of the articles of incorporation unless the person is itself a charitable corporation or an unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

29-408.20. Amendment by board of directors or members.

(a) Except as otherwise provided in the articles of incorporation or bylaws, the members of a membership corporation may amend or repeal the corporation's bylaws.

(b) The board of directors of a membership corporation or nonmembership corporation may amend or repeal the corporation's bylaws, unless the articles of incorporation or bylaws or Section 29-408.21 or Section 29-408.22 reserve that power exclusively to the members or a designated body in whole or part.

Section 29-408.21. Bylaw increasing quorum or voting requirement for board of directors or designated body.

(a) A bylaw that increases a quorum or voting requirement for the board of directors or a designated body may be amended or repealed:

(1) If originally adopted by the members, only by the members, unless the bylaws otherwise provide;

(2) If adopted by the board of directors or designated body, either by the members or by the board of directors or designated body.

(b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors or a designated body may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors or designated body.

(c) Action by the board of directors or a designated body under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors or a designated body shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Section 29-408.22. Bylaw amendments requiring member approval.

(a) Except as otherwise provided in the articles of incorporation or bylaws, the board of directors or designated body of a membership corporation that has one or more members at the time shall not adopt or amend a bylaw under:

(1) Section 29-404.10 providing that some of the members have different rights or obligations than other members with respect to voting, dissolution, transfer of memberships or other matters;

(2) Section 29-404.13 levying dues, assessments, or fees on some or all of the members;

(3) Section 29-404.21 relating to the termination or suspension of members;

(4) Section 29-404.22 authorizing the purchase of memberships;

(5) Section 29-406.08(a):

(A) Requiring cause to remove a director; or

(B) Specifying what constitutes cause to remove a director;

(6) Section 29-406.08(e) relating to the removal of a director who is designated in a manner other than election or appointment; or

(7) Section 29-406.12.

(b) The board of directors or designated body of a membership corporation shall not amend the articles of incorporation or bylaws to vary the application of subsection (a) of this section to the corporation.

(c) If a nonprofit corporation has more than one class of members, the members of a class shall be entitled to vote as a separate voting group on an amendment to the bylaws that:

(1) Is described in subsection (a) of this subsection if the amendment would affect the members of that class differently than the members of another class; or

(2) Has any of the effects described in Section 29-408.04.

(d) If a class of members will be divided into 2 or more classes by an amendment to the bylaws, the amendment shall be approved by a majority of the members of each class that will be created.

Section 29-408.23. Effect of bylaw amendment.

(a) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by an amendment of its bylaws unless the corporation obtains an appropriate order of the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(b) Unless a nonprofit corporation obtains an appropriate order of the Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its bylaws shall not affect:

(1) Any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or

(2) The existing rights of persons other than its members.

(c) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with an amendment of the bylaws unless the person is itself a charitable corporation or an unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

Section 29-408.40. Approval by third persons.

(a) The articles of incorporation may require that an amendment to the articles be approved in the form of a record by a specified person or group of persons in addition to the board of directors and members.

(b) The articles of incorporation or bylaws may require that an amendment to the bylaws be approved in the form of a record by a specified person or group of persons in addition to the board of directors and members.

(c) A requirement in the articles of incorporation or bylaws described in subsection (a) or (b) of this section shall only be amended with the approval in the form of a record of the specified person or group of persons.

SUBCHAPTER X. DISPOSITION OF ASSETS.

Section 29-410.01. Disposition of assets not requiring member approval.

Approval of the members of a nonprofit corporation shall not be required, unless the articles of incorporation or bylaws otherwise provide, to:

(1) Sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:

(A) In the usual and regular course of its activities; or

(B) If the corporation and its consolidated subsidiaries retain an activity that represented or was supported by at least 33% of total assets at the end of the most recently completed fiscal year;

(2) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business its activities; or

(3) Transfer any or all of the corporation's assets to one or more corporations or other entities all of the memberships or interests of which are owned by the corporation.

Section 29-410.02. Member approval of certain dispositions.

(a) Except as otherwise provided in the articles of incorporation or bylaws, a sale, lease, exchange, or other disposition of assets, other than a disposition described in Section 29-410.01, shall require approval of the nonprofit corporation's members.

(b) A disposition that requires approval of the members under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the members under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the members under subsection (a) of this section, and if the approval is to be given at a meeting, the nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the meeting of members at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to subsection (c) of this section, requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members shall require the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the disposition, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(f) After a disposition has been approved by the members under subsection (e) of this section, and at any time before the disposition has been consummated, it may be abandoned by the nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under subchapter XII of this chapter shall not be governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent nonprofit corporation for the purposes of this section.

(i) In addition to the approval of a disposition of assets by the board of directors and members as required by this section, the disposition shall also be approved in the form of a record by any person or group of persons whose approval is required under Section 29-408.40 to amend the articles of incorporation or bylaws.

SUBCHAPTER XI. DERIVATIVE PROCEEDINGS.

Section 29-411.01. Definition.

For the purposes of this subchapter, the term “derivative proceeding” means a civil action in the right of a domestic nonprofit corporation or, in the extent provided in Section 29.411.08, in the right of a foreign nonprofit corporation.

Section 29-411.02. Standing.

(a) A derivative proceeding may be brought in the Superior Court by:

(1) A member or members having 5% or more of the voting power, or by 50 members, whichever is less; or

(2) Any director or member of a designated body.

(b) The plaintiff in a derivative proceeding shall be a member, director, or member of a designated body at the time of bringing the proceeding. A plaintiff that is a member shall also have been a member at the time of any action complained of in the derivative proceeding.

Section 29-411.03. Demand.

A person shall not commence a derivative proceeding until:

(1) A demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was effective unless:

(A) The person has earlier been notified that the demand has been rejected by the corporation; or

(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

Section 29-411.04. Stay of proceedings.

If the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint, the Superior Court may stay any derivative proceeding for such period as the court considers appropriate.

Section 29-411.05. Dismissal.

(a) The Superior Court shall dismiss a derivative proceeding on motion by the nonprofit corporation if one of the groups specified in subsection (b) or (e) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by a majority vote of:

(1) Independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) A committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing that:

(1) A majority of the board of directors did not consist of independent directors at the time the determination was made; or

(2) The requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the nonprofit corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

(e) The Superior Court may appoint a panel of one or more independent persons upon motion by the nonprofit corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

(f) A person is independent for purposes of this section if the person does not have:

(1) A material interest in the outcome of the proceeding; or

(2) A material relationship with a person that has such an interest.

(g) None of the following by itself causes a director to be considered not independent for purposes of this section:

(1) The nomination, election, or appointment of the director by persons that are defendants in the derivative proceeding or against whom action is demanded;

(2) The naming of the director as a defendant in the derivative proceeding or a person against whom action is demanded; or

(3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

Section 29-411.06. Discontinuance or settlement.

A derivative proceeding shall not be discontinued or settled without the Superior Court's approval. If the court determines that a proposed discontinuance or settlement will

substantially affect the interests of the members or a class of members of the nonprofit corporation, the court shall direct that notice be given to the members affected.

Section 29-411.07. Security for costs; payment of expenses.

(a) In any derivative proceeding brought under Section 29-411.02(a), the nonprofit corporation shall be entitled at any stage of the proceeding to seek an order requiring the plaintiffs to give security for reasonable expenses, including attorney fees and expenses, that may be incurred by the corporation in connection with the proceeding, to which security the corporation may have recourse in such amount as the Superior Court determines upon termination of the proceeding. The amount of security may be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or excessive. Security may be denied or limited in the discretion of the court upon a preliminary showing, by application and upon such types of proof as may be required by the court, establishing prima facie that the requirement of full or partial security would impose undue hardship on plaintiffs and serious injustice would result.

(b) On termination of the derivative proceeding the Superior Court may order:

(1) The nonprofit corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) The plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) A party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Section 29-411.08. Applicability to foreign corporations.

In any derivative proceeding in the right of a foreign nonprofit corporation, the matters covered by this subchapter shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for Sections 29-411.04, 29-411.06 and 29-411.07.

Section 29-411.09. Notice to Attorney General.

The plaintiff in a derivative proceeding shall notify the Attorney General for the District of Columbia within 10 days after commencing the proceeding if it involves a charitable corporation.

SUBCHAPTER XIII. RECORDS AND REPORTS.

Section 29-413.01. Corporate records.

(a) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members, board of directors, and any designated body, a record of all actions taken by the members, board of directors, or members of a designated body without a meeting, and a record of all actions taken by a committee of the board of directors or a designated body on behalf of the corporation.

(b) A nonprofit corporation shall maintain appropriate accounting records.

(c) A membership corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A nonprofit corporation shall maintain its records in written form or in any other form of a record.

(e) A nonprofit corporation shall keep a copy of the following records at its principal office:

(1) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) The minutes and records described in subsection (a) of this section for the past 3 years;

(4) All communications in the form of a record to members generally within the past 3 years, including the financial statements furnished for the past 3 years under Section 29-413.20;

(5) A list of the names and business addresses of its current directors and officers; and

(6) Its most recent biennial report delivered to the Mayor under Section 29-102.11.

Section 29-413.02. Inspection of records by members.

(a) Subject to Section 29-413.07, a member of a nonprofit corporation shall be entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 29-413.01(e) if the member delivers to the corporation a signed notice in the form of a record at least 5 business days before the date on which the member wishes to inspect and copy.

(b) A member of a nonprofit corporation shall be entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and delivers to the corporation a signed notice in the form of a record at least 5 business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under Section 29-413.01(a), to the extent not subject to inspection under Section 29-413.02(a);

(2) Accounting records of the corporation; and

(3) Subject to Section 29-413.07, the membership list.

(c) A member may inspect and copy the records described in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) The right of inspection granted by this section may be abolished or limited by a nonprofit corporation's articles of incorporation or bylaws.

(e) This section shall not affect:

(1) The right of a member to inspect records under Section 29-405.20 or, if the member is in litigation with the corporation, to the same extent as any other litigant: or

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

Section 29-413.03. Scope of inspection right.

(a) A member's agent or attorney shall have the same inspection and copying rights as the member represented.

(b) The right to copy records under Section 29-413.02 shall include, if reasonable, the right to receive copies. Copies may be provided through an electronic transmission if available and so requested by the member.

(c) The nonprofit corporation may comply at its expense with a member's demand to inspect the record of members under Section 29-413.02(b)(3) by providing the member with a list of members that was compiled no earlier than the date of the member's demand.

(d) The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production, reproduction, or transmission of the records.

Section 29-413.04. Court-ordered inspection.

(a) If a nonprofit corporation does not allow a member who complies with Section 29-413.02(a) to inspect and copy any records required by that subsection to be available for inspection, the Superior Court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a nonprofit corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 29-413.02(b) and (c) may apply to the Superior Court for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the Superior Court orders inspection and copying of the records demanded, it shall also order the nonprofit corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the Superior Court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Section 29-413.05. Inspection of records by directors.

(a) A director of a nonprofit corporation shall be entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this chapter.

(b) The Superior Court may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the nonprofit corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable attorney's fees, incurred in connection with the application.

Section 29-413.06. Exception to notice requirement.

(a) Whenever notice would otherwise be required to be given under any provision of this chapter to a member, the notice need not be given if notice of 2 consecutive

annual meetings, and all notices of meetings during the period between such 2 consecutive annual meetings, have been returned undeliverable or could not be delivered.

(b) If a member delivers to the nonprofit corporation a notice setting forth the member's then-current address, the requirement that notice be given to that member shall be reinstated.

Section 29-413.07. Limitations on use of membership list.

(a) Without consent of the board of directors, a membership list or any part thereof shall not be obtained or used by any person and shall not be:

(1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(2) Used for any commercial purpose; or

(3) Sold to or purchased by any person.

(b) Instead of making a membership list available for inspection and copying under this subpart, a nonprofit corporation may elect to proceed under the procedures set forth in Section 29-405.20(f).

Section 29-413.20. Financial statements for members.

(a) Upon a demand in the form of a record from a member, a nonprofit corporation shall furnish that member with its latest annual financial statements, which may be consolidated or combined statements of the nonprofit corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the nonprofit corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis. A nonprofit corporation may impose a reasonable charge for copying the report.

(b) If the annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the nonprofit corporation's accounting records:

(1) Stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) The rights of a member under this section are in addition to the rights under Section 29-413.02.

SUBCHAPTER XIV. TRANSITION PROVISIONS.

Section 29-414.01. Application to existing domestic corporations.

This chapter shall apply to all domestic nonprofit corporations in existence on its effective date that were incorporated under any general statute of the District providing for incorporation of nonprofit corporations.

Section 29-414.02. Application to qualified foreign corporations.

A foreign nonprofit corporation authorized to do business in the District on the effective date of this chapter shall be subject to this chapter, but is not required to obtain a new certificate of registration to do business under this chapter.

Section 29-414.03. Entitlement to cumulate votes.

Members of a nonprofit corporation that were entitled to cumulate their votes for the election of directors on the effective date of this chapter shall continue to be entitled to cumulate their votes for the election of directors until otherwise provided in the articles of incorporation or bylaws of the corporation.

CONDOMINIUM AND COOPERATIVE TRASH COLLECTION TAX CREDIT ACT

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Section 47-871. Definitions.

For the purposes of this subchapter, the term:

(1) "Condominium", "cooperative housing association", "dwelling unit", or "nontransient" shall have the same meaning as the terms have in Section 47- 813(d); and

(2) "Homeowners association" means a mandatory membership association of owners of residential real property created and formed pursuant to a recorded instrument including a declaration of covenants, limitations, and conditions, which subjects property within the homeowners association to certain restrictive covenants.

Section 47-872. Computation of tax; annual adjustment; limitations.

(a) For purposes of computing taxes on real property in the District of Columbia, Class 1 Property shall be allowed a credit against the tax imposed under Section 47-811.

(b) The credit shall not be allowed for a single dwelling unit owned as a condominium if the single dwelling unit:

(1) Is located in a condominium building with 3 or fewer dwelling units; or

(2) Receives trash collection services provided by the Mayor, other than collection of recyclable materials provided pursuant to Chapter 10 of Title 8 [§ 8-1001 *et seq*.].

(c) The credit shall be an amount equal to $60 and shall be adjusted annually beginning in the tax year beginning July 1, 1992, and ending June 30, 1993, and in each subsequent tax year, in accordance with subsection (d) of this section.

(d) The credit shall be adjusted annually by the addition to the prior tax year credit of an amount equal to the percentage increase in the local Consumer Price Index for all items during the calendar year in which the tax year begins, rounded to the nearest whole dollar.

(e) The amount of the credit allowed under this section shall not exceed the amount of property tax otherwise due.

Section 47-873. Computation of tax; annual adjustment; limitations--Cooperative housing associations.

(a) For purposes of computing taxes on real property in the District of Columbia, Class 1 Property owned by a cooperative housing association shall be allowed a credit against the tax imposed under Section 47-811.

(b) The credit shall not be allowed for Class 1 Property owned by a cooperative housing association if the Class 1 Property:

(1) Has 3 or fewer dwelling units; or

(2) Receives trash collection services provided by the Mayor other than the collection of recyclable materials provided pursuant to Chapter 10 of Title 8.

(c) The credit shall be an amount equal to $60 multiplied by the number of dwelling units that are occupied by the shareholders or members of the cooperative housing association. The credit shall be adjusted annually beginning in the tax year beginning July 1, 1992, and ending June 30, 1993, and in each subsequent tax year, in accordance with subsection (d) of this section.

(d) The credit shall be adjusted annually by the addition to the prior tax year credit of an amount equal to the percentage increase in the local Consumer Price Index for all items during the calendar year in which the tax year begins, rounded to the nearest whole dollar.

(e) The amount of the credit allowed under this section shall not exceed the amount of property tax otherwise due.

Section 47-874. Regulations.

The Chief Financial Officer may promulgate regulations to carry out the purpose of this chapter and amend or repeal any existing regulations promulgated to carry out the purpose of this chapter.

Section 47-875. Applicability of other provisions to this chapter.

The provisions of Chapter 41, Sections 47-4310 and 47-4311, Sections 47-4431 through 47-4440, and Section 47-4452(a) shall apply to this chapter. No other provisions of chapters 42, 43 and 44 shall apply to this chapter.

Section 47-876. Costs for records and data; miscellaneous charges.

The Mayor may establish and collect costs related to the compilation and production of records, data, and maps in electronic media or tangible formats. The Mayor may also establish and collect charges, including royalties, pursuant to a contract, for goods and services and the licensing of intellectual property rights. Costs and charges collected under this section shall be

deposited into the Recorder of Deeds Automation and Infrastructure Improvement Fund under Section 42-1214.

Section 47-877. Appeals under this chapter.

Petitions and appeals under this chapter shall not be deemed adjudicated cases for the purposes of Sections 2-1831.01 through 2-1831.16.

NOTES ON 2017 AMENDMENTS

These amendments are effective as of April 7, 2017. The following notes are summaries of the main revisions to the statutes included in this reference book and are not intended to constitute legal advice.

A copy of our 2017 edition of the D.C. Statutes reference book can also be found on our website at www.chadwickwashington.com.

Amendments to the Condominium Act

1. **Section 42–1901.02. Definitions**. Adds definitions for "Mortgage Electronic Registration System" (or "MERS") and "Notice of Foreclosure Sale of Condominium Unit for Assessments Due."

2. **New Section 42-1903.08a. Condominium Association Advisory Council**. Creates a Condominium Association Advisory Council (CAAC) to serve as an advisory body to the local government on DC condominium matters. The CAAC will be composed of a "community representative" of each of the eight Wards; a community representative appointed by the Council's Committee that oversees the Department of Housing & Community Development (DHCD); and Mayor-appointed representatives from the community, the mortgage industry and condominium law industry.

3. **New Section 42-1903.12a. Notice of intention to take legal action to collect past due amounts**. Adds a new procedure for collecting past due assessments from owners. When a condominium association advises an owner of its intent to take legal action, the association must provide a notice to the owner containing specific information and disclosures.

4. **Section 42-1903.13. Lien for assessments against units**. Adds new procedural requirements for conducting nonjudicial foreclosures to enforce unpaid assessment liens, including, for instance, additional notice requirements and the recording of a "Notice of Foreclosure Sale of Condominium Unit for Assessments Due" containing specific information.

5. **Section 42–1904.10. Copies of documents to be furnished to purchaser by declarant; Department of Housing and Community Development website publication**. Adds a requirement that developers (declarants) provide purchasers with a copy of the "Condominium Association Bill of Rights and Responsibilities." This "Bill of Rights" restates various owner rights found in the Condominium Act.

NOTE: the text of the above amendments is set forth below, showing the differences between the 2016 version and the new 2017 version. *Italics* indicates new language, while a ~~strikethrough~~ indicates deleted language.

<u>Revisions adopted in the Condominium Owner Bill of Rights and Responsibilities Amendment Act of 2016</u>
(D.C. Act 21-657)

Section 42–1901.02. Definitions.

. . .

(20A) "Mortgage Electronic Registration System" or "MERS" shall mean the process created by the mortgage banking industry that tracks mortgage ownership and servicing, is used by the real estate finance industry for residential and commercial mortgage loan trading, and that simplifies the mortgage process by using electronic commerce.

. . .

(21A) "Notice of Foreclosure Sale of Condominium Unit for Assessments Due" or "NFSCUAD" shall mean a notice sent to a condominium unit owner in default in the payment of condominium assessments, fees, charges, or other penalties owed by a unit owner that includes such information as the past due amount of assessments and other charges being foreclosed upon and the time, place, and date of the scheduled sale, sent pursuant to Section 42-1903.13(c).

New Section 42-1903.08a. Condominium Association Advisory Council.

(a) There is established a Condominium Association Advisory Council ("CAAC").

(b) The purpose of the CAAC shall be to serve as an advisory body to the Mayor, the Council, and District agencies on matters relating to condominiums located in the District.

(c) The CAAC shall be composed of 14 members appointed as follows:

(1) One community representative from each of the 8 District wards, appointed by the Councilmember representing each respective ward;

(2) One community representative appointed by the chairperson of the Committee of the Council that oversees the Department of Housing and Community Development;

(3) One community representative appointed by the Mayor;

(4) The Director of the Department of Housing and Community Development, or his or her designee;

(5) A representative from the community association management industry with at least 7 years of experience in the profession, appointed by the Mayor;

(6) A representative from the mortgage industry with at least 5 years of experience in the profession, appointed by the Mayor; and

(7) A representative from the legal community who is an attorney licensed to practice in the District and has at least 5 years of experience representing community associations, appointed by the Mayor.

(d) (1) Each community representative shall be a resident of the District who has been a member in good standing of a unit owners' association for at least one year, with a priority for community representatives with experience on a condominium board.

(2) A chairperson shall be elected from among the 10 community representatives, and shall serve for a term of 2 years.

(3) (A) Each community representative member shall be appointed for a term of 3 years.

(B) Initial appointments shall be staggered with 3 members appointed for a one-year term, 4 members appointed for a 2–year term, and 3 members appointed for a 3–year term.

(C) The initial appointment terms shall be determined by lot at the first meeting of the CAAC.

(4) The 3 non-community members appointed by the Mayor shall each be appointed for a term of 3 years.

(e) Meetings of the CAAC shall be open to the public and shall take place at a public location at least 4 times a year. The CAAC shall provide a public listing of members by ward, meeting notices, and meeting minutes on a CAAC website.

New Section 42-1903.12a. Notice of intention to take legal action to collect past due amounts.

The unit owners' association shall, when advising the unit owner of its intention to take legal action to collect any past due amount owed by a unit owner, provide a notice to the unit owner to include:

(1) A statement of the account showing the total amount that is past due, including a breakdown of the categories of amounts claimed to be due and the dates those amounts accrued;

(2) Contact information for the individual or office the unit owner must contact to settle the past due amount; and

(3) An enclosure providing information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18–point font:

> *"FAILURE TO PAY PAST DUE AMOUNTS MAY RESULT IN LEGAL ACTION, INCLUDING FORECLOSURE.*
> *YOU MAY BE ELIGIBLE FOR FREE OR REDUCED–COST ASSISTANCE.*
> *The D.C. Department of Housing and Community Development maintains a list of Community–Based Non–Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].*
> *The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number]."*

Section 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

(c) . . .

(4) *(A)* A foreclosure sale shall not be held until ~~30 days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by the unit owner to the executive board for purpose of notice. A copy of the notice shall be sent to the Mayor or the Mayor's designated agent at least 30 days in advance of the sale. The notice shall specify the amount of any assessment past due and any accrued interest or late charge, as of the date of the notice. The notice shall notify the unit owner that if the past due assessment and accrued interest or late charge are not paid within 30 days after the date the notice is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the notice.~~ *at least 31 days after a Notice of Foreclosure Sale of Condominium Unit for*

Assessments Due is recorded in the land records and sent by a delivery service providing delivery tracking confirmation and by first-class mail to a unit owner at the mailing address of the unit, any last known mailing address, and at any other address designated by the unit owner to the executive board for purposes of notice.

(B) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall:

(i) State the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure;

(ii) Expressly state that the foreclosure sale is for either:

(I) The 6–month priority lien as set forth in subsection (a)(2) of this section and not subject to the first deed of trust; or

(II) More than the 6–month priority lien set forth in subsection (a)(2) of this section and subject to the first deed of trust; and

(iii) Notify the unit owner that if the past due amount being foreclosed upon is not paid within 31 days after the date the NFSCUAD is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the NFSCUAD.

(C) Substantial compliance with the requirements of subparagraph (B) of this paragraph shall be sufficient until new forms are made available by the Recorder of Deeds.

(D) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be accompanied by an enclosure providing the following information:

(i) A statement of the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure sale;

(ii) A breakdown of the amount being foreclosed on, including amounts past due for assessments, accrued interest, late charges, all other categories of amounts past due, and the dates those amounts accrued;

(iii) A statement that the amount being foreclosed upon may not be the total amount owed to the unit owners' association and instructions on how the unit owner can request a full account statement;

(iv) Information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18–point font:

"FAILURE TO PAY AMOUNTS INDICATED IN THE ENCLOSED NOTICE OF FORECLOSURE SALE OF CONDOMINIUM UNIT FOR ASSESSMENTS DUE MAY RESULT IN SALE OF YOUR UNIT.

YOU MAY BE ELIGIBLE FOR FREE OR REDUCED–COST ASSISTANCE.

The D.C. Department of Housing and Community Development maintains a list of Community–Based Non–Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].

The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by

calling [Department of Housing and Urban Development's phone number]."; and

(v) Any other information the Mayor may prescribe by rule.

(E) (i) At least 31 days in advance of the sale, a copy of the Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be sent by a delivery service providing delivery tracking confirmation and by first class mail to:

(I) The Mayor or the Mayor's designated agent;

(II) Any and all junior lien holders of record; and

(III) Any holder of a first deed of trust or first mortgage of record, their successors and assigns, including assignees, trustees, substitute trustees, and MERS.

(ii) The unit owners' association shall be in compliance with this requirement if it sends notice as provided herein to the lienholders as their names and addresses appear in land records.

Section 42–1904.10. Copies of documents to be furnished to purchaser by declarant; Department of Housing and Community Development website publication.

(a) Unless previously furnished, an exact copy of the recorded declaration, ~~and~~ bylaws, *and Condominium Association Bill of Rights and Responsibilities* shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in Sections 42-1902.01 and 42-1902.05.

(b) The Condominium Association Bill of Rights and Responsibilities shall read as follows:

"Condominium Association Bill of Rights and Responsibilities

Every unit owner who is a member in a unit owners' association has certain rights and responsibilities under the D.C. Condominium Act, with some of those rights and responsibilities restated here:

1. The right to attend and participate in meetings of the unit owners' association held in accordance with the provisions of the unit owners' association's condominium instruments at least once each year, according to and subject to the provisions of D.C. Official Code § 42–1903.03(a).

2. The right to observe all meetings of the unit owners' association, committees of the unit owners' association, and the executive board, except for those meetings held lawfully in executive session, and to examine and copy minutes recorded at meetings, according to and subject to the provisions of D.C. Official Code § 42–1903.03(b).

3. The right to an opportunity to comment on any matter relating to the unit owners' association during each regularly scheduled meeting, according to and subject to the provisions of D.C. Official Code § 42–1903.03(c).

4. The right to have meetings of the unit owners' association and executive board only be conducted with a quorum present as provided in the governing documents of the association.

5. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's voting interest, according to and subject to the provisions of D.C. Official Code § 42–1903.05.

6. The right to an executive board that in the performance of its duties, is obligated to exercise the care required of a fiduciary consistent with

business judgment standard, subject to the provisions of D.C. Official Code § 42–1903.08(d) and § 42–1903.09(b).

7. The right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due amounts owed, according to and subject to the provisions of D.C. Official Code § 42–1903.13(c).

8. The right to request a statement that sets forth the amount of unpaid assessments currently levied against the unit owner, according to and subject to the provisions of D.C. Official Code § 42–1903.13(h).

9. The right of access to all books and records kept by or on behalf of the unit owners' association, subject to the provisions and limitations of D.C. Official Code § 42–1903.14 and the unit owners' associations' condominium instruments."

(c) A copy of a Condominium Association Bill of Rights and Responsibilities shall be made available on the Department of Housing and Community Development website, in at least 12 point type.

QUICK REFERENCE INDEX

ABBREVIATIONS USED IN THE DISTRICT OF COLUMBIA CODE ANNOTATED

et seq. - and following
infra - see within the text below
[*sic*] - text is as printed in statute with error

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