

**REAL ESTATE COOPERATIVE ACT**  
**68 Pa. C.S. §§4101 – 4418**  
**(current through 1/29/05)**

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## Chapter 41

### § 4101. Short title of subpart

This subpart shall be known and may be cited as the Real Estate Cooperative Act.

### § 4102. Applicability of subpart

(A) GENERAL RULE.-- This subpart applies to all cooperatives created within this Commonwealth after the effective date of this subpart, but, if such a cooperative contains only units restricted to nonresidential use, it is subject only to sections 4106 (relating to applicability of local ordinances, regulations and building codes) and 4107 (relating to eminent domain) unless the declaration provides that the entire subpart is applicable.

(B.1) Retroactivity.--

(1) Sections 4103, 4108 (relating to supplemental general principles of law applicable), 4112 (relating to obligation of good faith), 4216 (relating to amendment of declaration), 4217 (G) (relating to termination of cooperative ownership), 4302 (A) (8) (I) and (9) (relating to powers of association), 4303 (A), (B) and (C) (relating to executive board members and officers), 4307 (relating to upkeep of cooperative), 4314 (relating to assessments for common expenses) and 4316 (relating to other liens affecting cooperative) to the extent necessary in construing any of those sections, apply to all cooperatives created in this Commonwealth before the effective date of this subpart; but those

sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate existing provisions of the cooperative documents of those cooperatives.

(2) Section 4303 (D), to the extent necessary in construing that subsection applies to all cooperatives created in this Commonwealth before the effective date of this subpart; but the subsection applies only with respect to events and circumstances occurring 180 days after the effective date of this subsection and does not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those cooperatives.

(C) UNITS RESTRICTED TO NONRESIDENTIAL USE.-- If a cooperative created within this Commonwealth before the effective date of this subpart contains only units restricted to nonresidential use, it is subject only to sections 4106 and 4107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of subsection (d), in which case all the sections enumerated in subsection (b) apply to that cooperative from the date such amended declaration is recorded as required for a declaration under section 4201.

(D) AMENDMENTS TO DECLARATION AND BYLAWS.-- In the case of amendments to the declaration and bylaws of any cooperative created before the effective date of this subpart:

(1) If the result accomplished by the amendment was permitted by law prior to this subpart, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or may be made pursuant to this subpart.

(2) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law prior to this subpart, the amendment may be made pursuant to this subpart.

An amendment to the declaration or bylaws authorized by this subsection to be made under this subpart must be adopted in conformity with applicable law and with the procedures and requirements specified by the declaration and bylaws being amended. If any such amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person.

(E) COOPERATIVE INTERESTS OUTSIDE COMMONWEALTH.-- This subpart does not apply to cooperative interests located outside this Commonwealth, but the public offering statement provisions (sections 4401 through 4408) apply to all cooperative interests offered within this Commonwealth for which either the contract for disposition is executed by any party within this Commonwealth or the disposition is effectuated within this Commonwealth unless exempt under section 4401(b) (relating to applicability; waiver).

(F) LIENS AND SECURITY INTERESTS.-- The enactment of this subpart shall not affect any lien upon a cooperative or any lien upon or security interest in any property of the association or in any cooperative interest if such lien or security interest shall have been perfected prior to the effective date of this subpart.

### **§ 4103. Definitions**

Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"AFFILIATE OF A DECLARANT." Any person who controls, is controlled by or is under common control with a declarant.

(1) 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 one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20% 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.

(2) 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 one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraph (1) or

(2) are held solely as security for an obligation and are not exercised.

"ALLOCATED INTERESTS." The common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"ASSOCIATION" or "PROPRIETARY LESSEES' ASSOCIATION." The proprietary lessees' association organized under section 4301 (relating to organization of association).

"COMMON ELEMENTS." All portions of a cooperative other than the units.

"COMMON EXPENSE LIABILITY." The liability for common expenses allocated to each cooperative interest pursuant to section 4207 (relating to allocation of ownership interests, votes and common expense liabilities).

"COMMON EXPENSES." Expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"CONVERSION BUILDING." A building that, at any time before the conversion notice date with respect to a cooperative in which that building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"CONVERSION NOTICE." The notice to be given to certain tenants or subtenants by the terms of section 4412(a) (relating to cooperatives containing conversion buildings).

"CONVERSION NOTICE DATE." The date on which the notice is placed in the United States mail or is delivered to the unit leased by the recipient, depending upon whether the conversion notice is mailed or hand delivered.

"COOPERATIVE." Real estate owned by an association, each of whose members is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"COOPERATIVE INTEREST." An ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For the purposes of this subpart, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to section 4207 (relating to allocation of ownership interests, votes and common expense liabilities) until that cooperative interest has been created and conveyed to another person.

"DECLARANT." Any person or group of persons acting in concert who:

(1) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; or

(2) reserves or succeeds to any special declarant right.

"DECLARATION." Any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"DEVELOPMENT RIGHTS." Any right or combination of rights reserved by a declarant in the declaration to:

- (1) add real estate to a cooperative;
- (2) create units, common elements or limited common elements within a cooperative;
- (3) subdivide units or convert units into common elements; or
- (4) withdraw real estate from a cooperative.

"DISPOSE" or "DISPOSITION." A voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest. The term does not include the creation, transfer, satisfaction or release of a security interest.

"EXECUTIVE BOARD." The body, regardless of name, designated in the declaration to act on behalf of the association.

"IDENTIFYING NUMBER." A symbol or address that identifies only one unit in a cooperative.

"LEASEHOLD COOPERATIVE." A cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"LIMITED COMMON ELEMENT." A portion of the common elements allocated by the declaration or by operation of section 4202(2) or (4) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"LIMITED EQUITY COOPERATIVE." A cooperative whose declaration and bylaws impose a restriction or limitation, in a specified amount or in an amount determined pursuant to a specified formula, upon the consideration that may be paid to the transferor of a cooperative interest. The formula may not include the fair market value of the cooperative interest as a factor in establishing the restriction or limitation.

"LIMITED EQUITY COOPERATIVE ASSOCIATION." An association for a limited equity cooperative.

"LOW-INCOME AND MODERATE-INCOME PERSONS." Persons who are members of households and whose incomes are less than 80% of the median household income in the area which the cooperative is located, as established by the United States Department of Housing and Urban Development or a successor organization, for the smallest geographic area which includes the cooperative and for which such income data is established by such organization.

"MASTER ASSOCIATION." An organization described in section 4219 (relating to master associations), whether or not it is also an association described in section 4301 (relating to organization of association).

"OFFER" or "OFFERING." Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation or in any broadcast medium to the general public of a cooperative not located in this Commonwealth is not an offer or offering if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"ORIGINAL LEASE TERMINATION DATE." The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of such lease or sublease after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

"PERSON." A natural person, corporation, business trust, estate, trust, general or limited partnership, association, joint venture, government, governmental subdivision or agency, other legal or commercial entity or any combination of the foregoing. In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.

"PROPRIETARY LEASE." An agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"PROPRIETARY LESSEE." A person who owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to section 4207 (relating to allocation of ownership interests, votes and common expense liabilities) until that cooperative interest has been created and conveyed to another person.

"PURCHASER." Any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who, by means of a disposition, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"REAL ESTATE." Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

"RESIDENTIAL PURPOSES." Use for dwelling or recreational purposes or both.

"RESIDENTIAL TENANT" or "RESIDENTIAL SUBTENANT." A tenant or subtenant, respectively, who is a natural person lawfully occupying real estate for residential use.

"SECURITY INTEREST." An interest in real or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, security agreement, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or title retention contract intended as security for an obligation.

"SPECIAL DECLARANT RIGHTS." Rights reserved for the benefit of a declarant to:

- (1) Complete improvements described in the public offering statement (section 4403(a)(2)).
- (2) Exercise any development right (section 4209).
- (3) Maintain sales offices, management offices, signs advertising the cooperative and models (section 4214).
- (4) Use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative (section 4215).
- (5) Make the cooperative part of a larger cooperative or group of cooperatives (section 4220).
- (6) Make the cooperative subject to a master association (section 4219).
- (7) Appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (section 4303(d)).

"TIME SHARE." A right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

"UNIT." A physical portion of the cooperative designated for separate occupancy under a proprietary lease.



#### **§ 4104. Variation by agreement**

Except as expressly provided in this subpart, provisions of this subpart may not be varied by agreement, and rights conferred by this subpart may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this subpart or the declaration.

#### **§ 4105. Property classification of cooperative interests**

A cooperative interest shall be deemed to be a separate leasehold interest in real estate for all purposes except as is otherwise provided in section 4321(b) (relating to limited equity cooperatives).

#### **§ 4106. Applicability of local ordinances, regulations and building codes**

A zoning, subdivision, building code or other real estate tax or use law, ordinance or regulation may not prohibit the cooperative form of ownership or impose any requirement upon a cooperative which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate tax or use law, ordinance or regulation except as is otherwise provided in section 4321(f) (relating to limited equity cooperatives).

#### **§ 4107. Eminent domain**

(A) GENERAL RULE.-- If a unit is acquired by eminent domain or if part of a unit is acquired by eminent domain leaving the proprietary lessee with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the proprietary lessee for the value of his cooperative interest. Upon acquisition of all of a unit by eminent domain, unless the decree otherwise provides, that cooperative interest's allocated interests are automatically reallocated to the remaining cooperative interests in proportion to the respective allocated interests of those cooperative interests before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(B) ACQUISITION OF PART OF A UNIT.-- Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the proprietary lessee for the reduction in value of his cooperative interest. Upon acquisition, unless the decree otherwise provides:

(1) That cooperative interest's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration.

(2) The portion of the allocated interests divested from the cooperative interest of which the partially acquired unit is a part are automatically reallocated to that cooperative interest and the remaining units in proportion to the respective allocated interests of those cooperative interests before the taking, with the cooperative interest of which the partially acquired unit is a part participating in the reallocation on the basis of its reduced allocated interests.

(C) ACQUISITION OF PART OF COMMON ELEMENTS.-- If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the proprietary lessees of the units to which that limited common element was allocated at the time of acquisition.

(D) RECORDING COURT DECREE.-- The court decree shall be recorded in every county in which any portion of the cooperative is located.

#### **§ 4108. Supplemental general principles of law applicable**

The principles of law and equity, including the law of corporations and nonprofit corporations and unincorporated associations, the law of real property and the law relative to the capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance or other

validating or invalidating cause supplement the provisions of this subpart, except to the extent inconsistent with this subpart.

**§ 4109. Construction against implicit repeal**

This subpart being a general statute intended as a unified coverage of its subject matter, no part of it shall be construed to be repealed by subsequent legislation if that construction can reasonably be avoided.

**§ 4110. Uniformity of application and construction**

This subpart shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart among states enacting it.

**§ 4111. Unconscionable agreement or term of contract**

(A) POWERS OF COURT.-- The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

(B) PARTIES MAY PRESENT EVIDENCE.-- Whenever it is claimed or appears to the court that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

- (1) The commercial setting of the negotiations.
- (2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors.
- (3) The effect and purpose of the contract or clause.
- (4) If a sale, any gross disparity at the time of contracting between the amount charged for the cooperative interest and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions, but a disparity between the contract price and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

**§ 4112. Obligation of good faith**

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement.

**§ 4113. Remedies to be liberally administered**

(A) GENERAL RULE.-- The remedies provided by this subpart shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this subpart or by other rule of law.

(B) JUDICIAL ENFORCEMENT OF RIGHTS AND OBLIGATIONS.-- Any right or obligation declared by this subpart is enforceable by judicial proceeding.



## Chapter 42

### § 4201. Creation of cooperative ownership

(A) GENERAL RULE.-- A cooperative may be created pursuant to this subpart only by either of the following:

(1) Recording a declaration executed in the same manner as a deed and subsequently recording an instrument that conveys or leases to the association the real estate that is to be included in the cooperative, which conveyance or lease is subject to the declaration.

(2) Recording an instrument conveying or leasing to the association the real estate to be included in the cooperative, which instrument also includes all provisions required to be in a declaration by section 4205 (relating to contents of declaration) and which instrument shall then be deemed to be a declaration for all purposes of this subpart.

(B) EXECUTION OF INSTRUMENT.-- The instrument by which the conveyance or lease to the association of the real estate to be in the cooperative is to be effected shall be executed and acknowledged by the association as well as by all persons having an interest in the real estate to be included in the cooperative and whose interest is being conveyed to or subjected to a lease in favor of the association.

(C) RECORDING INSTRUMENTS.-- The declaration and any separate instrument of conveyance or lease of the real estate to the association must be recorded in every county in which any portion of the cooperative is located and must be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of every person executing the declaration and such separate instrument.

### § 4202. Unit boundaries

Except as provided by the declaration:

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

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

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

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

### § 4203. Construction and validity of declaration and bylaws

(A) PROVISIONS SEVERABLE.-- All provisions of the declaration and bylaws are severable.

(B) APPLICATION OF RULE AGAINST PERPETUITIES.-- The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws or rules and regulations adopted pursuant to section 4302(a)(1) (relating to powers of association).

(C) CONFLICT BETWEEN DECLARATION AND BYLAWS.-- In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this subpart.

(D) EFFECT OF NONCOMPLIANCE ON TITLE TO UNIT.-- Title to a cooperative interest is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this subpart. Whether a substantial failure impairs marketability is not affected by this subpart.

**§ 4204. Description of units**

A description of a unit which sets forth the name of the cooperative, the recording data for the declaration, the county or counties in which the cooperative is located and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. Proprietary leases and memoranda or short forms thereof as well as all instruments of transfer of cooperative interests and all instruments creating security interests in cooperative interests may be recorded in the same records as are maintained by the recorder for the recording of like instruments and, if recorded, shall be indexed by the recorder in the same manner as like instruments are recorded.

**§ 4205. Contents of declaration**

(A) GENERAL RULE.-- The declaration for a cooperative must contain:

(1) The name of the cooperative, which must include the word "cooperative" or be followed by the words "a cooperative" and the name of the association.

(2) The name of every county in which any part of the cooperative is situated.

(3) A legally sufficient description of the real estate included in the cooperative.

(4) A statement of the maximum number of units which the declarant reserves the right to create.

(5) A description of each unit created by the declaration, either by reference to plats and plans that are included in or attached to the declaration or by a verbal description which shall include each unit's identifying number, its size or number of rooms and its location within a building if it is within a building containing more than one unit.

(6) A description of any limited common elements, other than those specified in section 4202(2) and (4) (relating to unit boundaries).

(7) A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in section 4202(2) and (4), together with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(8) A description of any development rights (section 4103) and other special declarant rights (section 4103) reserved by the declarant.

(9) An allocation to each cooperative interest of the allocated interests in the manner described in section 4207 (relating to allocation of ownership interests, votes and common expense liabilities).

(10) Any restrictions on:

(i) Use and occupancy of the units.

(ii) Alienation or encumbering of the cooperative interests.

(iii) The amount for which a cooperative interest may be sold or the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative.

(11) The recording data for recorded encumbrances, easements and licenses appurtenant to or included in the cooperative or to which any portion of the cooperative is or may become subject.

(12) If all or any of the units are or may be owned in time-share estates, which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the cooperative, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.

(13) All matters required by sections 4206 (relating to leasehold cooperatives), 4207 (relating to allocation of ownership interests, votes and common expense liabilities), 4208 (relating to limited common elements), 4214 (relating to declarant's office, models and signs) and 4303(d) (relating to executive board members and officers).

(14) Any items required to be included in all proprietary leases for the cooperative.

(B) RESERVATION OF DEVELOPMENT RIGHTS.-- The declaration for a cooperative wherein development rights (section 4103) are reserved by the declarant must also contain:

(1) A statement of the time limit, not exceeding seven years after the recording of the declaration, when all development rights will lapse, together with a statement of any circumstances that will terminate the development rights before the expiration of the time limit.

(2) A statement of any limitations on any development rights, other than limitations created by or imposed pursuant to law, or else a statement that there are no such limitations.

(3) A statement of the extent to which the allocated interests may be increased or decreased by the exercise of development rights, including the formulas to be used for those reallocations.

(4) Legally sufficient descriptions of the real estate to which each of the development rights applies.

(5) If development rights may be exercised with respect to different portions of any real estate subject to development rights at different times, a statement to that effect together with:

(i) either a statement fixing the boundaries of those portions and regulating the order in which they may be subjected to the exercise of such development rights or a statement that no assurances are made in those regards; and

(ii) a statement as to whether, if development rights are exercised with respect to any portion of real estate, any development rights with respect to all or any particular portion of that or any other real estate must be exercised.

(6) A statement of:

(i) the maximum number of units that may be created within any real estate subject to development rights or within any portion of such real estate, the boundaries of which are fixed pursuant to paragraph (5);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per acre or per specified volume of space that may be created within any portions the boundaries of which are not fixed pursuant to paragraph (5).

(7) If any of the units that may be built within any real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of such real estate, of the maximum percentage of the real estate areas or volumes of space and the maximum percentage of the floor areas or volumes of space of all units that may be created therein that are not restricted exclusively to residential use.

(8) A statement of the extent to which any buildings and units that may be erected upon each portion of the real estate subject to development rights will be compatible with the other buildings and units in the cooperative in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(9) A statement that all restrictions in the declaration as described in subsection (a)(10) will apply to units created within any real estate subject to development rights or a statement of any differentiations that may be made as to those units.

(10) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the real estate subject to development rights or a statement that no assurances are made in that regard.

(11) A statement of any limitations as to the locations or any buildings or other improvements that may be made within real estate subject to development rights or a statement that no assurances are made in that regard.

(12) A statement that any limited common elements created within any real estate subject to development rights will be of the same general types and sizes as those limited common elements within other parts of the cooperative or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(13) A statement that the proportion of limited common elements to units created within real estate subject to development rights will be approximately equal to the proportion existing within other parts of the cooperative or a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(14) A statement of the extent to which any assurances made in the declaration regarding real estate subject to development rights pursuant to paragraphs (5) through (13) apply in the event any development rights are not exercised.

(15) A statement of any other conditions upon or limitations under which the development rights reserved by the declarant may be exercised or will lapse.

(C) ADDITIONAL MATTERS PERMITTED.-- The declaration may contain any other matters the declarant deems appropriate.

#### **§ 4206. Leasehold cooperatives**

(A) RECORDING LEASE AND CONTENTS OF DECLARATION.-- Any lease the expiration or termination of which may terminate the cooperative or reduce its size shall be recorded in the same county or counties where the declaration is recorded. The declaration for any leasehold cooperative shall state in addition to the applicable provisions of section 4205 (relating to contents of declaration):

(1) The recording data for the lease.

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

(3) A legally sufficient description of the real estate subject to the lease.

(4) Any rights of the proprietary lessees to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have such rights.

(5) Any rights of the proprietary lessees to remove any improvements within a reasonable time after the expiration or termination of the lease or a statement that they do not have those rights.

(6) Any rights of the proprietary lessees to renew the lease and the conditions of any renewal or a statement that they do not have those rights.

(B) MERGER OF LEASEHOLD AND FEE SIMPLE INTERESTS.-- Acquisition of the leasehold interest of any proprietary lessee by the owner of fee simple title to the real estate that is subject to a lease, the expiration or termination of which may limit the cooperative or reduce its size, does not merge the leasehold and fee simple interests unless such owner also acquires the leasehold interests of all proprietary lessees in the leasehold cooperative and all security interests in all such proprietary leases.

(C) REALLOCATION OF INTERESTS IF NUMBER OF UNITS REDUCED.-- If the expiration or termination of a lease decreases the number of units in a cooperative, the allocated interests shall be reallocated in accordance with section 4107(a) (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

### **§ 4207. Allocation of ownership interests, votes and common expense liabilities**

(A) GENERAL RULE.-- The declaration shall allocate an ownership interest in the association and a portion of the votes in the association to each cooperative interest in the cooperative and shall state the formulas used to establish those allocations. Those allocations may not discriminate in favor of cooperative interests owned by the declarant or an affiliate of the declarant. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

(B) ADDITION OR WITHDRAWAL OF UNITS.-- If units may be added to or withdrawn from the cooperative, the declaration must state the formulas to be used to reallocate the allocated interests among all cooperative interests included in the cooperative after the addition or withdrawal.

(C) VOTES.-- The declaration may provide:

(1) That different allocations of votes shall be made to the cooperative interests on particular matters specified in the declaration.

(2) For cumulative voting only for the purpose of electing members of the executive board.

(3) For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this subpart, nor may cooperative interests constitute a class because they are owned by a declarant.

(D) CALCULATIONS FOR UNDIVIDED INTERESTS.-- Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the cooperative interests must equal one if stated as a fraction or 100% if stated as a percentage. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(E) TRANSFER WITHOUT POSSESSORY INTEREST VOID.-- Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of the ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

### **§ 4208. Limited common elements**

(A) ALLOCATION.-- Except for the limited common elements described in section 4202(2) and (4) (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated. The allocation may not be altered without the consent of the proprietary lessees whose units are affected.

(B) REALLOCATION.-- Subject to any provisions of the declaration, a limited common element may be reallocated by any amendment to the declaration executed by the proprietary lessees between or among whose units the reallocation is made. The persons executing the amendment to the declaration shall provide a copy thereof to the association which shall record it. The amendment shall be recorded in the names of the parties and the cooperative.

(C) COMMON ELEMENTS NOT PREVIOUSLY ALLOCATED.-- A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 4205(a)(7) (relating to contents of declaration). The allocation shall be made by amendments to the declaration which shall be recorded by the association in the name of the cooperative.

### **§ 4209. Exercise of development rights**

(A) GENERAL RULE.-- To exercise any development right reserved under section 4205(a)(8) (relating to contents of declaration), the declarant shall prepare, execute and record an amendment to the declaration (section 4216). If the exercise of such development rights causes real estate to be added to a cooperative or withdrawn from a cooperative, the amendment to the declaration shall either convey or refer to the instrument conveying the real estate so added or withdrawn and shall contain a legally sufficient description of the real estate. The amendment to the declaration must

also assign an identifying number to each new unit created, if appropriate, and reallocate the allocated interests among all cooperative interests. The amendment must also describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 4208 (relating to limited common elements).

(B) RESERVATION OF DEVELOPMENT RIGHTS.-- Development rights may be reserved within any real estate added to the cooperative if the amendment adding that real estate includes all matters required by section 4205 or 4206 (relating to leasehold cooperatives), as the case may be. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 4205(b)(1).

(C) SUBDIVISION OR CONVERSION OF UNIT.-- Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the other cooperative interests as if that unit had been taken by eminent domain (section 4107).

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interests created by the subdivision in any reasonable manner prescribed by the declarant.

(D) WITHDRAWAL OF REAL ESTATE.-- If the declaration provides, pursuant to section 4205(a)(8), that all or a portion of the real estate is subject to the development right of withdrawal:

(1) If all of the real estate is subject to withdrawal and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a cooperative interest has been conveyed to a purchaser.

(2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a cooperative interest in the portion has been conveyed to a purchaser.

#### **§ 4210. Alterations of units**

Subject to the provisions of the declaration, section 4321(c) (relating to limited equity cooperatives) and other provisions of law, a proprietary lessee:

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

(2) May not change the common elements or the exterior appearance of a unit without permission of the association.

(3) After acquiring a cooperative interest of which an adjoining unit or an adjoining part of an adjoining unit is a part, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the cooperative. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

#### **§ 4211. Relocation of boundaries between adjoining units**

(A) GENERAL RULE.-- Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be reallocated by an amendment to the declaration upon application to the association by the proprietary lessees of those units. If the proprietary lessees of the adjoining units have specified a reallocation between their cooperative interests of their common interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable or are inconsistent with any restrictions on such reallocation that may be set forth in the declaration, the association shall prepare and record an amendment to the declaration that identifies the units involved,



states the reallocations and shows or describes, by plans or otherwise, the altered boundaries between adjoining units and any changes in their sizes and identifying numbers.

(B) EXECUTION AND RECORDING OF AMENDMENT.-- The amendment to the declaration shall be executed by the proprietary lessees whose units are being changed and by the association and upon recordation shall be indexed in the name of both lessees as well as the association in the grantor and grantee indexes. The amendment shall be prepared and recorded at the expense of the proprietary lessees of the units involved.

#### **§ 4212. Subdivision of units**

(A) GENERAL RULE.-- Subject to the provisions of the declaration and other provisions of law, a unit may be subdivided into two or more units by an amendment to the declaration upon application to the association by the proprietary lessee of the unit to be subdivided. If the proprietary lessee of such unit has specified a reallocation between the newly created units' cooperative interests of their common interests, votes in the association and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable or are inconsistent with any restrictions on such reallocation that may be set forth in the declaration, the association shall prepare and record an amendment to the declaration that identifies the newly created units, states the reallocation and shows or describes, by plans or otherwise, the boundaries of the newly created units and their sizes and identifying numbers.

(B) EXECUTION AND RECORDING OF AMENDMENT.-- The amendment to the declaration shall be executed by the proprietary lessee whose unit is being subdivided and by the association and upon recordation shall be indexed in the name of the proprietary lessee as well as the association in the grantor and grantee indexes. The amendment shall be prepared and recorded at the expense of the proprietary lessee of the unit being subdivided.

#### **§ 4213. Easement for encroachments**

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a proprietary lessee of liability in case of willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to any representation in the public offering statement.

#### **§ 4214. Declarant's office, models and signs**

A declarant may maintain sales or rental offices, management offices and models in units or on common elements otherwise restricted to residential use only if the declaration so provides and specifies the right of the declarant with regard to the number, size, location and relocation thereof. The use of any such sales or rental offices, management offices and models by the declarant shall be confined to the sale, rental or management of units in the cooperative where such units are located. Any sales or rental office, management office or model not designated a unit by the declaration is a common element, and, if a declarant ceases to have an ownership interest in the association, he ceases to have any rights with regard thereto unless such office or model is removed promptly from the cooperative in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs in his units and on the common elements advertising the cooperative owned by the declarant for sale or lease.

#### **§ 4215. Easement rights**

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this subpart or reserved in the declaration.

#### **§ 4216. Amendment of declaration**

(A) NUMBER OF VOTES REQUIRED.-- Except in cases of amendments that may be executed by a declarant under section 4209 (relating to exercise of development rights), the association under section 4107 (relating to eminent domain), 4206(c) (relating to leasehold cooperatives), 4208(c) (relating to limited common elements), 4211(a) (relating to relocation of boundaries between adjoining units) or 4212 (relating to subdivision of units), the executive board of the association under subsection (f) or certain proprietary lessees under section 4208(b), 4211(a), 4212(b) or 4217(b)



(relating to termination of cooperative ownership), and except as limited by subsection (d), and section 4218 (relating to rights of secured lenders and secured creditors), the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least 67% of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(B) **LIMITATION OF ACTION TO CHALLENGE AMENDMENT.**-- No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than six months after the amendment is recorded.

(C) **RECORDING AMENDMENT.**-- Every amendment to the declaration must be recorded in every county in which any portion of the cooperative is located in the same records as are maintained for the recording of deeds of real property and is effective only upon recordation. In cases where the amendment is executed by the association, it shall be indexed in the name of the cooperative and the association in both the grantor and the grantee index. In cases where the amendment is executed by the declarant or one or more proprietary lessees, it shall be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of the declarant or proprietary lessee or lessees, as well as in the name of the association.

(D) **RESTRICTIONS ON AMENDMENTS.**-- Except to the extent expressly permitted or required by the provisions of this subpart, no amendment may create or increase special declarant rights in the absence of the unanimous consent of the proprietary lessees nor may any amendment otherwise duly adopted:

(1) Change the boundaries of any unit without the approval of the proprietary lessee of such unit.

(2) Change the allocated interests of a cooperative interest without the approval of the proprietary lessee who owns such cooperative interest.

(3) Change the uses to which any unit is restricted without the approval of the proprietary lessee of such unit.

(E) **OFFICER AUTHORIZED TO EXECUTE AMENDMENT.**-- Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(F) **CORRECTIVE AMENDMENTS.**-- Except as otherwise provided in the declaration, if any amendment to the declaration is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the declaration that is defective, missing or inconsistent with any other provision thereof or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in cooperative projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to comply with any statute, regulation, code or ordinance applicable to the cooperative or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the proprietary lessees or the holders of any liens on all or any part of the cooperative, upon receipt by the executive board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this subsection.

#### **§ 4217. Termination of cooperative ownership**

(B) **EXECUTION AND RECORDING OF TERMINATION AGREEMENT.**-- An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of proprietary lessees. The termination agreement must specify the date it was first executed or ratified by a proprietary lessee. If, pursuant to a termination agreement, the real estate in the cooperative is to be sold following termination, the termination agreement must set forth the terms of the sale. The termination agreement will become null and void unless it is recorded on or before the earlier of:

(1) The expiration of the year from the date and all ratifications thereof it was first executed and ratified by a proprietary lessee.

(2) Such date as shall be specified in the termination agreement.

A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the cooperative is situated in the same records as are maintained for the recording of deeds of real property and indexed in the name of the cooperative and the association in both the grantor index and the grantee index. A termination agreement is effective only upon recordation.

(C) STATUS IF REAL ESTATE SOLD.-- The association, on behalf of the proprietary lessees, may contract for the sale of real estate in the cooperative, but the contract is not binding until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Except to the extent that any provisions in the declaration limit the amount that may be received by a proprietary lessee upon termination (section 4205(a)(10)), proceeds of the sale must be distributed to holders of liens against the association, against the cooperative interests and to proprietary lessees, all as their interests may appear, in accordance with subsections (d) and (e) with proprietary lessees being entitled to receive the entire balance of the association's assets, after payment of all such lienholders, pursuant to subsection (e), except that, in the case of a limited equity cooperative with a declaration of the type described in section 4321(e) (relating to limited equity cooperatives), the provisions of that section shall govern. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each proprietary lessee and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each proprietary lessee and his successors in interest remain liable for all assessments and other obligations imposed on proprietary lessees by this subpart or the declaration.

(D) PRIORITY OF LIENS.-- Following termination of the cooperative, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for proprietary lessees and holders of liens against the association and the cooperative interests as their interests may appear. The declaration may provide that all creditors of the association have priority over any interests of proprietary lessees and creditors of proprietary lessees. In that event, following termination, creditors of the association holding liens on the cooperative which were perfected before termination may enforce their liens in the same manner as any lienholder, and any other creditor of the association is to be treated as if he had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each cooperative interest as of the date the lien was perfected.

(2) Any other creditor of the association is to be treated upon termination as if he had perfected a lien against the cooperative interests immediately before termination.

(3) The amount of the lien of an association's creditor described in paragraphs (1) and (2) against each of the cooperative interests must be proportionate to the ratio which that cooperative interest's common expense liability bears to the common expense liability of all of the cooperative interests.

(4) The one lien, unless the declaration designates a greater number, against each proprietary lessee which was perfected prior to any other liens against the proprietary lessee and before termination continues as a lien against the proprietary lessee's cooperative interest as of the date the lien was perfected.

(5) Any other creditor of a proprietary lessee is to be treated upon termination as if he had perfected a lien against that proprietary lessee immediately before termination.

(6) The assets of the association shall be distributed to all proprietary lessees and all lienholders against their cooperative interests as their interests may appear in the order described in paragraphs (1) through (5), and creditors of the association are not entitled to payment from any proprietary lessee in excess of the amount of the creditor's lien against that proprietary lessee's cooperative interest. Regardless of the priority given to creditors of the association, no

proprietary lessee shall have any personal liability to a creditor of the association beyond such proprietary lessee's cooperative interest.

(E) VALUATION OF PROPRIETARY LESSEE'S INTEREST.-- The declaration may provide that the respective interests of proprietary lessees referred to in subsections (c) and (d) are the fair market values of the cooperative interests as of a date no earlier than six months prior to the termination as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the proprietary lessees at least 30 days prior to a meeting of the association at which meeting the appraisal will be deemed approved unless it is rejected by vote, in person or by proxy, of proprietary lessees holding more than 50% of the votes in the association. If the declaration provides for such an appraisal procedure, the proportion of any proprietary lessee's interest to that of all proprietary lessees is determined by dividing the fair market value of that proprietary lessee's cooperative interest by the total fair market values of all the cooperative interests. If the declaration does not provide for such an appraisal procedure or if the appraisal is rejected by the requisite number of votes in the association, the interests of all proprietary lessees are their respective ownership interests in the association immediately before the termination. If the declaration provides for an appraisal procedure, there shall be no vote taken among the proprietary lessees as to whether or not the cooperative form of ownership should be terminated until after the vote is first taken as to whether or not the appraisal should be approved.

(F) TERMINATION BY SUCCESSOR IN TITLE.-- In the case of a foreclosure of a lien against the entire cooperative or in the case of the expiration or termination of a lease which has priority over the declaration, the successor in title shall have the right to terminate the cooperative.

(G) INEFFECTIVENESS OF TERMINATION PROVISION. —In the case of a declaration that contains no provision expressly providing for a means of terminating the cooperative other than a provision providing for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the cooperative would otherwise be terminated, the owners of at least 80% of the units in the cooperative vote that the self-executing termination provision shall be annulled in which event the self-executing termination provision shall have no force or effect.

#### **§ 4218. Rights of secured lenders and secured creditors**

(a) SECURED LENDER APPROVAL.--The declaration may provide that all or a specified number or percentage of secured creditors of the association or lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees of the association as a condition to the effectiveness of those actions, and the declaration may provide for procedures that will enable such lenders to have their approval rights recognized by the executive board, but no requirement for approval may operate to:

(1) Deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding.

(3) Receive and distribute any insurance proceeds except pursuant to section 4313 (relating to insurance).

(b) SECURED LENDER APPROVAL PROCEDURES.—If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days, and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the action specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, evidenced by a United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender, or in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record and at the address to which the unit owner mails any periodic payment paid in the secured lender. The notice to the secured lender shall include a statement

of the specified action, a copy of the full text of any proposed amendment, and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.

**§ 4219. Master associations**

(A) GENERAL RULE.-- If the declaration provides that any of the powers described in section 4302 (relating to powers of association) are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more cooperatives, condominiums, homeowners associations or any combination of the foregoing or for the benefit of the proprietary lessees of one or more cooperatives, unit owners of one or more condominiums, members of one or more homeowners associations or some combination of the foregoing, all provisions of this subpart applicable to associations apply to any such corporation or unincorporated association insofar as such association is acting on behalf of one or more cooperatives, except as modified by this section.

(B) EXERCISE OF POWERS OF ASSOCIATION.-- Unless a master association is acting in the capacity of an association described in section 4301 (relating to organization of association), it may exercise the powers set forth in section 4302 only to the extent expressly permitted in the declarations of the cooperatives which are part of the master association or expressly described in the delegations of power from those cooperatives to the master association.

(C) LIABILITY FOR EXERCISE OF DELEGATED POWERS.-- If the declaration of any cooperative provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts of omissions of the master association with respect to those powers following delegation. The officers and members of the governing board of the master association are subject to liability to the cooperative association whose powers are delegated thereto and the proprietary lessees of such cooperative on the same basis as officers and executive board members of such cooperative immediately before such delegation of power.

(D) RIGHTS AND LIABILITIES OF PROPRIETARY LESSEES.-- The rights and responsibilities of proprietary lessees with respect to the association set forth in sections 4303 (relating to executive board members and officers), 4308 (relating to meetings), 4309 (relating to quorums), 4310 (relating to voting; proxies), 4312 (relating to conveyance or encumbrance of cooperative) and 4320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise proprietary lessees within the meaning of this subpart.

(E) ELECTION OF EXECUTIVE BOARD.-- Notwithstanding the provisions of section 4303(f) with respect to the election of the executive board of an association by all proprietary lessees after the period of declarant control ends and even if a master association is also an association described in section 4301, the certificate of incorporation or other instrument creating the master association and the declaration of each cooperative, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All proprietary lessees of all cooperatives subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all cooperatives subject to the master association may elect all members of that executive board.

(3) All proprietary lessees of each cooperative subject to the master association may elect specified members of the executive board.

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

(F) WHEN SECTION APPLICABLE TO COOPERATIVE.-- The provisions of this section shall apply to a cooperative if and when:

(1) there occurs either a date specified in the declaration or any amendment thereto from and after which this section shall apply to the cooperative;

(2) there occurs an event or action that the declaration or any amendment thereto states shall cause this section to become applicable, and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) such event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the cooperative; and

(ii) that a copy of such instrument has been sent to all proprietary lessees; or

(3) the declarant executes and records an instrument stating that this section shall thereafter apply to the cooperative and that a copy of the instrument has been sent to the executive board and all proprietary lessees.

Paragraph (3) shall be applicable only if the declarant expressly reserved in the declaration, pursuant to section 4205(a)(8) (relating to contents of declaration), the special declarant right to make this section applicable to the cooperative and only if the instrument exercising such right is recorded during the time period allowed for the exercise of such right.

(G) WHEN EXECUTIVE BOARD NOT REQUIRED.-- If all of the powers of a cooperative association are delegated to a master association and accepted by the master association pursuant to this section, then the governing body of the master association may act in all respects as the executive board of the cooperative and no separate executive board need be elected or exist.

#### **§ 4220. Merger or consolidation of cooperatives**

(A) GENERAL RULE.-- Any two or more cooperatives, by agreement of the proprietary lessees as provided in subsection (b), may be merged or consolidated into a single cooperative. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant cooperative is, for all purposes, the legal successor of all of the preexisting cooperatives, and the operations and activities of all associations of the preexisting cooperatives shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant cooperative shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting cooperatives have been established under this subpart.

(B) EXECUTION AND RECORDING OF AGREEMENT.-- The merger or consolidation of two or more cooperatives pursuant to subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting cooperatives following approval by proprietary lessees of cooperative interests to which are allocated the percentage of votes in each cooperative required to terminate that cooperative. Any such agreement must be recorded in every county in which a portion of the cooperative is located and is not effective until so recorded.

(C) REALLOCATION OF ALLOCATED INTERESTS.-- Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the cooperative interests of the resultant cooperative either:

(1) by stating the reallocations or the formulas upon which they are based; or

(2) by stating the percentage of overall allocated interests of the new cooperative which are allocated to all of the cooperative interests comprising each of the preexisting cooperatives and providing that the portion of the percentages allocated to each cooperative interest formerly comprising a part of the preexisting cooperative must be equal to the percentages of allocated interests allocated to that cooperative interest by the declaration of the preexisting cooperative.

(D) EXECUTION OF AGREEMENT BY DECLARANT WHO RETAINED RIGHTS.-- Notwithstanding the provisions of subsections (a) and (b), if a declarant expressly retained the special declarant right to merge or consolidate a cooperative pursuant to section 4205(a)(8) (relating to contents of declaration) and if the declarant exercised such right within the time period allowed for such exercise by giving written notice to that effect to all proprietary lessees accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be



executed by the declarant rather than by the president of the association of that cooperative and without the necessity for approval or consent by proprietary lessees or their mortgagees provided the agreement is recorded within the time period allowed for the exercise of this special declarant right.

**§ 4221. Method for transferring a cooperative interest**

(A) GENERAL RULE.-- In order to effectuate the transfer of a cooperative interest, the transferor, the transferee and the association shall execute an instrument which may be recorded in the same manner as a lease and which must include the following:

(1) The names of the transferor and transferee.

(2) A description of the unit that is the subject of the proprietary lease included in such cooperative interest, which description shall contain the items required by section 4204 (relating to description of units).

(3) Language evidencing an intent to transfer the cooperative interest, which may include:

(i) An assignment by the transferor, by endorsement or otherwise, of the instrument, if any, used to evidence the ownership of the cooperative interest, including, but not limited to, a stock or membership certificate.

(ii) The transfer of the cooperative interest on the books of the association.

(iii) An assignment of the transferor's interest in the proprietary lease that is part of the cooperative interest being disposed of.

(4) Joinder by the association for the purpose of:

(i) Acknowledging such transfer on the books of the association.

(ii) Stating the amount, if any, of any unpaid common expense or special assessment currently due and payable from the transferor.

(iii) Stating whether or not such transfer violates any rights of the association restricting the alienation of the cooperative interest or restricting the amount for which the cooperative interest may be sold or restricting the amount that may be received by the transferor upon such sale.

(B) RIGHTS AND LIABILITIES OF TRANSFEREE.-- The transferee shall not be liable for any unpaid assessment or fee greater than the amount set forth in the instrument nor shall the transferee be bound by any restriction in favor of the association which is violated as a result of the transfer but which is not stated as having been violated in the instrument.

## **Chapter 43**

**§ 4301. Organization of association**

An association must be organized prior to the date the first cooperative interest in the cooperative is conveyed to anyone other than the declarant or an affiliate of the declarant. An association may be organized prior to the date on which the real estate subject to the provisions of this subpart is acquired. Immediately upon creation of the cooperative pursuant to section 4201 (relating to creation of cooperative ownership) and at all times thereafter, the membership of the association shall consist exclusively of all the proprietary lessees or, following termination of the cooperative, of all former proprietary lessees entitled to distributions of proceeds under section 4217 (relating to termination of cooperative ownership) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation, trust, trustee or partnership.

**§ 4302. Powers of association**

(A) GENERAL RULE.-- Except as provided in subsection (b) and subject to the provisions of the declaration, the association may:

- (1) Adopt and amend bylaws and rules and regulations.
- (2) Adopt and amend budgets for revenues, expenditures and reserves, which budgets shall include, but shall not be limited to, the financial information listed in section 4403(a)(5) (relating to public offering statement; general provisions), and collect assessments for common expenses from proprietary lessees.
- (3) Hire and discharge managing agents and other employees, agents and independent contractors.
- (4) Institute, defend or intervene in litigation or administrative proceedings, or engage in arbitrations or mediations, in its own name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative.
- (5) Make contracts and incur liabilities.
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements and make reasonable accommodation, or permit reasonable modifications to be made to units or the common elements, to accommodate handicapped as defined by prevailing Federal, State or local statute, regulation, code or ordinance, proprietary lessees, residents, tenants or employees.
- (7) Cause additional improvements to be made as a part of the common elements.
- (8)
  - (i) Acquire, hold encumber and convey in its own name any right, title or interest to real or personal property other than common facilities; and
  - (ii) Convey or subject all or part of the cooperative to a security interest only pursuant to section 4312 (relating to conveyance or encumbrance of cooperative).
- (9) Grant easements, leases, licenses and concessions through or over the common elements. Any such easement, lease, license or concession that is not for the benefit of all or substantially all of the proprietary lessees shall not be granted without the same proprietary lessee approval that is required for an amendment to the declaration or that materially impairs any right or benefit that one or more proprietary lessees may have with respect to the common elements shall not be granted without the prior written approval of those proprietary lessees.
- (10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 4202(2) and (4) (relating to unit boundaries) and for services provided to proprietary lessees.
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 4409 (relating to resales of cooperative interests) or statements of unpaid assessments. In addition, an association may impose a capital improvement fee on the resale or transfer the leasehold interest in units in accordance with the following:
  - (i) The capital improvement fee for any unit may not exceed the annual assessments for general common expense charged to such unit during the most recently completed fiscal year of the association, provided that:
    - (A) in the case of resale or transfer of the leasehold interest in a unit consisting of unimproved real estate, the capital improvement fee may not exceed one-half of the annual assessments for general common expenses charged to such unit during the most recently completed fiscal year of the association;
    - (B) in the case of resale or transfer of the leasehold interest in a unit which was created or added to the cooperative in accordance with section 4209 (relating to exercise of development rights) at some time during the most



recently completed fiscal year of the association but was not in existence for the entire fiscal year, the capital improvement fee may be exceed one-half of the annual assessments for general common expenses charged to a unit comparable to such unit during the most recently completed fiscal year of the association; and

(C) capital improvement fees are not refundable upon any sale, conveyance or other transfer of the proprietary lease to a unit.

(ii) Capital improvement fees allocated by an association must be maintained in a separate capital account, may be expended only for new capital improvements or replacement of existing common elements and improvements on the common elements and may not be expended for operation, maintenance or other purposes.

(iii) No capital improvement fee may be imposed on any gratuitous transfer of a proprietary interest in a unit between any of the following family members: spouses, parent and child, siblings, grandparent and grandchild; nor on any transfer of a unit by foreclosure sale or deed in lieu of foreclosure to a secured lending institution as defined by the act of December 3, 1959 (P.L.1688, No. 621), known as the Housing Finance Agency Law.

(iv) No fees may be imposed upon any person who:

(A) acquires a proprietary interest in a unit consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within 18 months.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Assign its right to future income, including the right to receive the payments made on account of common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(15) Enjoin, abate or remedy by appropriate legal proceedings either at law or in equity any violation of the declaration, bylaws or this subpart by any proprietary lessee or other person.

(16) Terminate proprietary leases and all rights of proprietary lessees with respect to their cooperative interests and redeem cooperative interests of proprietary lessees in connection with the exercise of the association's remedies for nonpayment of assessments pursuant to section 4315 (relating to lien for assessments) or in connection with the association's remedies for other violations of the declaration, bylaws, proprietary lease or this subpart pursuant to section 4319 (relating to termination of cooperative interest), although the declaration may expressly require such termination to be subject to the approval of a specified vote of the proprietary lessees if the cause for such termination is of a type specified in the declaration or is for any cause if the declaration so specifies.

(17) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 4219 (relating to master associations) and accept any assignment or delegation of powers from one or more cooperatives or other incorporated or unincorporated associations.

(18) Exercise any other powers conferred by the declaration or bylaws.

(19) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

(20) Exercise any other powers necessary and proper for the governance and operation of the association.

(B) RESTRICTIONS ON LIMITATIONS IN DECLARATION.-- The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

**§ 4303. Executive board members and officers**

(A) FIDUCIARY STATUS AND EXERCISE OF DUTIES.-- Except as provided in the declaration, the bylaws in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith, in a manner they reasonably believe to be in the best interests of the association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor rule). In performing his duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more other officers or employees of the association whom the officer or executive board member reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the officer or executive board member reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the executive board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the officer or executive board member reasonably believes to merit confidence.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with such care in the manner set forth in this section.

(B) LIMITATION ON AUTHORITY.-- The executive board may not act on behalf of the association to amend the declaration (section 4216), to terminate the cooperative (section 4217) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members (subsection (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. The law governing corporations, including nonprofit corporations, and such other laws governing the legal entities of the same type as the association supplement the provisions of this subsection to the extent not inconsistent with the provisions of this subpart.

(C) ADOPTION AND RATIFICATION OF BUDGET.-- Within 30 days after adoption of any proposed budget for the cooperative, the executive board shall provide the budget to all the proprietary lessees and shall set a date for a meeting of the proprietary lessees to consider ratification of the budget not less than 14 days nor more than 30 days after mailing of the budget. Unless at that meeting a majority of all the proprietary lessees or any larger vote specified in the declaration reject the budget, the budget is ratified whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the proprietary lessees shall be continued until such time as the proprietary lessees ratify a subsequent budget proposed by the executive board.

(D) STATUS DURING PERIOD OF DECLARANT CONTROL.-- Subject to subsection (e), the declaration may provide for a period of declarant control of the association during which period a declarant or persons designated by him may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, any period of declarant control terminates no later than the earlier of:

(1) 180 days after conveyance to proprietary lessees other than a declarant of 75% of the cooperative interests which may be created; or

(2) two years after the date of the first conveyance of cooperative interests to a person other than a declarant.

A declarant may voluntarily surrender the right to appoint and remove some or all of the officers and members of the executive board before termination of that period, but in that event he may require for the duration of the period of declarant control that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(E) ELECTION OF MEMBERS DURING TRANSFER OF DECLARANT CONTROL.-- Not later than 60 days after conveyance to proprietary lessees, other than a declarant, of 25% of the cooperative interests which may be created, at least one member and not less than 25% of the members of the executive board must be elected by proprietary lessees other than the declarant. Not later than 60 days after conveyance to proprietary lessees, other than a declarant, of 50% of the cooperative interests which may be created, not less than 33 1/3% of the members of the executive board must be elected by proprietary lessees other than the declarant.

(F) ELECTION OF EXECUTIVE BOARD FOLLOWING DECLARANT CONTROL.-- Not later than the termination of any period of declarant control, the proprietary lessees shall elect an executive board of at least three members, at least a majority of whom must be proprietary lessees. Unless the declarant has retained such right during the declarant control period, the executive board shall elect the officers. The executive board members and officers shall take office upon election.

(G) REMOVAL OF MEMBER OF EXECUTIVE BOARD.-- Notwithstanding any provision of the declaration or bylaws to the contrary, the proprietary lessees, by a two-thirds vote of all persons present and entitled to vote at any meeting of the proprietary lessees at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant, provided notice of the intention to remove a member of the executive board is given with the notice of the meeting at which such removal is considered.

#### **§ 4304. Transfer of special declarant rights**

(A) EXECUTION AND RECORDING OF INSTRUMENT OF TRANSFER.-- No special declarant rights (section 4103) created or reserved under this subpart may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the cooperative is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the cooperative, the transferor and the transferee in both the grantor and grantee index. The instrument is not effective unless executed by the transferee.

(B) LIABILITY OF DECLARANT FOLLOWING TRANSFER.-- Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this subpart. Lack of privity does not deprive any proprietary lessee of standing to bring an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (section 4103), the transferor is jointly and severally liable with the successor for any liabilities and or obligations or liabilities of the successor relating to the cooperative.

(3) If a transferor retains any special declarant rights but transfers one or more other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this subpart or by the declaration relating to the retained special declarant rights arising after the transfer.

(4) A transferor who retains no special declarant rights has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor and to whom the special declarant right has not theretofore been assigned.

(C) RIGHTS OF PURCHASER IN FORECLOSURE, ETC., PROCEEDINGS.-- Unless otherwise provided in the documents creating a security interest, in case of foreclosure of a security interest, tax sale, judicial sale, sale by a trustee under a security agreement or sale under 11 U.S.C. (relating to bankruptcy) or receivership proceedings of any cooperative interests owned by a declarant or real estate in a cooperative subject to development rights, a person acquiring all the cooperative interests or real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that property held by that declarant or only to any rights reserved in the declaration

pursuant to section 4214 (relating to declarant's office, models and signs) and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(D) RIGHTS OF DECLARANT FOLLOWING FORECLOSURE, ETC., PROCEEDINGS.-- Upon foreclosure, tax sale, judicial sale, sale by a trustee under a security agreement or sale under 11 U.S.C. or receivership or similar proceedings of all cooperative interests or real estate in a cooperative owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control (section 4303(d)) terminates unless the judgment or instrument conveying title provides for transfer to a successor declarant of all special declarant rights held by the transferor declarant.

(E) LIABILITIES AND OBLIGATIONS OF SUCCESSORS.-- The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this subpart or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this subpart or the declaration:

(i) on a declarant which relate to his exercise or nonexercise of special declarant rights; or

(ii) on his transferor, other than:

(A) misrepresentations by any previous declarant, except to the extent knowingly continued or permitted to continue without correcting such misrepresentations;

(B) warranty obligations on improvements made by any previous declarant made before the cooperative was created;

(C) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs (section 4214), if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed or other instrument conveying title to cooperative interests or real estate subject to special declarant rights under subsection (c) may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any cooperative interest or real estate subject to development rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of section 4303(d) (relating to executive board members and officers) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant right under this subsection, he is not subject to any liability or obligations as a declarant except liability for his acts and omissions under section 4303(d) and except the obligations set forth in paragraph (3).

(F) LIMITATION ON LIABILITY OF SUCCESSOR.-- Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations arising under this subpart or the declaration.

**§ 4305. Termination of contracts and leases of declarant**

If entered into before the executive board elected by the proprietary lessees pursuant to section 4303(f) (relating to executive board members and officers) takes office:

- (1) any management contract, employment contract or lease of recreational or parking areas or facilities;
- (2) any other contract or lease between the association and declarant or an affiliate of a declarant; or
- (3) any contract or lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered into under the circumstances then prevailing;

may be terminated without penalty by the association at any time within one year after the executive board elected by the proprietary lessees pursuant to section 4303(f) takes office upon not less than 90 days' notice to the other party. This section does not apply to any agreement of sale for the purchase of land and other real property which has been subjected to the cooperative form of ownership nor does this section apply to any proprietary lease or any lease the termination of which would terminate the cooperative or reduce its size unless the real estate subject to that lease was included in the cooperative for the purpose of avoiding the right of the association to terminate a lease under this section.

**§ 4306. Bylaws**

(A) MANDATORY PROVISIONS.-- The bylaws of the association must provide for:

- (1) The number of members of the executive board and the titles of the officers of the association.
- (2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.
- (3) The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies.
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.
- (5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.
- (6) The method of amending the bylaws.

(B) OTHER PROVISIONS.-- Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

**§ 4307. Upkeep of cooperative**

(A) GENERAL RULE.-- Except to the extent provided by the declaration, subsection (b), section 4313(g) (relating to insurance) or 4321(g) (relating to limited equity cooperatives), the association is responsible for maintenance, repair and replacement of the common elements, and each proprietary lessee is responsible for maintenance, repair and replacement of his unit. Each proprietary lessee shall afford to the association and the other proprietary lessees and to their agents or employees access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any units through which access is taken, the proprietary lessee responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(B) RIGHTS AND LIABILITIES OF DECLARANT.-- In addition to the liability that a declarant as a proprietary lessee has under this subpart, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other proprietary lessee and no other portion of the cooperative is subject to a claim for payment

of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

#### **§ 4308. Meetings**

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by 20%, or any lower percentage specified in the bylaws, of the proprietary lessees. Not less than ten nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the proprietary lessee. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget or assessment changes and, where the declaration or bylaws require approval of the proprietary lessees, any proposal to remove an executive board member or officer.

#### **§ 4309. Quorums**

(A) ASSOCIATION.-- Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

(B) EXECUTIVE BOARD.-- Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on that board are present at the beginning of the meeting.

#### **§ 4310. Voting; proxies**

(A) MULTIPLE OWNERS OF A UNIT.-- If only one of the multiple proprietary lessees of a unit is present or represented by proxy at a meeting of the association, he is entitled to cast all the votes allocated to the cooperative interest of which that unit is a part. If more than one of the multiple proprietary lessees are present, the votes allocated to that cooperative interest may be cast only in accordance with the agreement of a majority in interest of the multiple proprietary lessees, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple proprietary lessees casts the votes allocated to that cooperative interest without protest being made promptly to the person presiding over the meeting by any of the other proprietary lessees of the cooperative interest.

(B) PROXIES.-- Votes allocated to a cooperative interest may be cast pursuant to a proxy duly executed by a proprietary lessee. If there is more than one proprietary lessee of a unit, each proprietary lessee of the unit may vote or register protest to the casting of votes by the other proprietary lessees of the unit through a duly executed proxy. A proprietary lessee may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term. The bylaws may provide for requirements and a limit on the class of persons who may hold proxies pursuant to this subsection.

(C) LESSEES OTHER THAN PROPRIETARY LESSEES.-- If the declaration requires that votes on specified matters affecting the cooperative be cast by lessees other than proprietary lessees of leased units:

- (1) The provisions of subsections (a) and (b) apply to lessees as if they were proprietary lessees.
- (2) Proprietary lessees who have leased their units to other persons may not cast votes on those specified matters.
- (3) Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were proprietary lessees.

Proprietary lessees must also be given notice, in the manner provided in section 4308 (relating to meetings), of all meetings at which lessees may be entitled to vote. For the purposes of this subsection, the association shall maintain a register of lessees, showing the name and address of each lessee.



(D) COOPERATIVE INTERESTS OWNED BY ASSOCIATION.-- No votes allocated to a cooperative interest owned by the association may be cast.

**§ 4311. Tort and contract liability**

(A) GENERAL RULE.-- Neither the association nor any proprietary lessee except the declarant is liable for that declarant's torts in connection with any part of the cooperative which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any proprietary lessee. If the wrong occurred during any period of declarant control, the declarant who then controlled the association is liable to the association or to any proprietary lessee:

(1) For all tort losses suffered by the association or that proprietary lessee not covered by insurance.

(2) For all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission.

(B) CLAIMS AFTER DECLARANT CONTROL.-- If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this section unless the association has given the declarant:

(1) Notice of the existence of such a claim promptly after the date on which one or more members of the executive board who are not designees of the declarant learns of the existence of such a claim.

(2) An opportunity to defend against such claim on behalf of the association but at the declarant's expense.

(C) LIABILITY FOR LITIGATION EXPENSES.-- Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney fees, incurred by the association.

(D) TOLLING STATUTE OF LIMITATIONS.-- Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(E) PROPRIETARY LESSEE AS PARTY.-- A proprietary lessee is not precluded from bringing an action contemplated by this section because he is a proprietary lessee or a member or officer of the association.

(F) LIENS.-- Liens resulting from judgments against the association are governed by section 4316 (relating to other liens affecting cooperative).

**§ 4312. Conveyance or encumbrance of cooperative**

(A) GENERAL RULE.-- Except as is otherwise provided in section 4321(h) (relating to limited equity cooperatives), part of the cooperative may be conveyed and all or part of the cooperative may be subjected to a security interest by the association if persons entitled to cast at least  $66 \frac{2}{3}$  % of the votes in the association, including  $66 \frac{2}{3}$  % of the votes allocated to cooperative interests not owned by a declarant or any larger percentage the declaration specifies, agree to that action. Except as is otherwise provided in section 4321(h), if fewer than all the units or limited common elements are to be conveyed or subjected to a security interest, then all the proprietary lessees of those units or the units to which those limited common elements are allocated must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(B) EXECUTION AND RECORDING OF AGREEMENT TO CONVEY OR ENCUMBER.-- An agreement to convey a part of the cooperative or subject it to a security interest must be evidenced by the execution of an agreement or ratifications thereof, in the same manner as a deed, by the requisite number of proprietary lessees. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the cooperative is situated and is effective only upon recordation.



(C) POWERS OF ASSOCIATION.-- The association, on behalf of the proprietary lessees, may contract to convey a part of the cooperative or subject it to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary to execute deeds or other instruments.

(D) UNAUTHORIZED CONVEYANCE OR ENCUMBRANCE VOID.-- Any purported conveyance, encumbrance or other voluntary transfer of the cooperative, unless made pursuant to this section or section 4217(c) (relating to termination of cooperative ownership), is void.

(E) RIGHT OF ACCESS AND SUPPORT PRESERVED.-- A conveyance or encumbrance of the cooperative pursuant to this section does not deprive any unit of its rights of access and support.

### **§ 4313. Insurance**

(A) INSURANCE TO BE CARRIED BY ASSOCIATION.-- Commencing not later than the time of the first conveyance of a cooperative interest to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

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

(3) Any property or comprehensive general liability insurance carried by the association may contain a deductible provision.

(B) OTHER INSURANCE CARRIED BY ASSOCIATION.-- If the insurance described in subsection (a) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by the United States mail to all proprietary lessees. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance in such reasonable amounts and with such reasonable deductibles as the executive board may deem appropriate to protect the association or the proprietary lessees.

(C) CONTENTS OF INSURANCE POLICIES.-- Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each proprietary lessee is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any proprietary lessee or member of his household.

(3) No act or omission by any proprietary lessee, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

(4) If, at the time of a loss under the policy, there is other insurance in the name of a proprietary lessee covering the same risk covered by the policy, the association's policy provides primary insurance.

(D) PROCEEDS FROM PROPERTY INSURANCE.-- Any loss covered by the property policy under subsection (a)(1) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose or otherwise to the association and not to any mortgagee or beneficiary under a mortgage or deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for the association,

proprietary lessees and the lienholders as their interests may appear. Subject to the provisions of subsection (g), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, proprietary lessees and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the cooperative is terminated.

(E) UNIT OWNER MAY OBTAIN INSURANCE.—A proprietary lessee may insure the lessee’s unit for all losses to his unit, including losses not covered by the insurance maintained by the association, due to a deductible provision or otherwise. An insurance policy issued to the association shall not prevent a proprietary lessee from obtaining insurance for his own benefit, including insurance to cover any deductibles or losses not covered by the association’s property or comprehensive general liability insurance.

(F) EVIDENCE AND CANCELLATION OF INSURANCE.-- An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any proprietary lessee or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each proprietary lessee and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(G) DISPOSITION OF INSURANCE PROCEEDS.--

(1) Any portion of the cooperative for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

(i) the cooperative is terminated;

(ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or

(iii) 80% of the proprietary lessees, including every proprietary lessee of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves which have not been identified by the executive board to fund costs of capital expenditures for the current fiscal year of the association is a common expense.

(2) If the entire cooperative is not repaired or replaced:

(i) the insurance proceeds attributed to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the cooperative; and

(ii) except to the extent that other persons will be distributees and except as is otherwise provided in section 4321(i) (relating to limited equity cooperatives):

(A) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the proprietary lessees of those units and the proprietary lessees of the units to which those limited common elements were located or to lienholders, as their interests may appear; and

(B) the remainder of the proceeds must be distributed to all the proprietary lessees or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the cooperative interests.

If the proprietary lessees vote not to rebuild any unit, the allocated interests of the cooperative interest of which that unit is a part are automatically reallocated upon the vote as if the unit had been condemned under section 4107(a) (relating to eminent domain), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(3) Notwithstanding the provisions of this subsection, section 4217 (relating to termination of cooperative ownership) governs the distribution of insurance proceeds if the cooperative is terminated.

(H) NONRESIDENTIAL COOPERATIVE.-- The provisions of this section may be varied or waived in the case of a cooperative all of whose units are restricted to nonresidential use.

(I) RECOVERY OF DEDUCTIBLES.—If an insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 4314 (c) (relating to assessments for common expenses).

**§ 4314. Assessments for common expenses**

(A) GENERAL RULE.-- Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association, subject, however, to the provisions of section 4303(c) (relating to executive board members and officers) concerning ratification of the budget by the association.

(B) ALLOCATION AND INTEREST.-- Except for assessments under subsections (c), (d) and (e) and except as provided in subsection (g) with respect to cooperative interests owned by declarant, all common expenses must be assessed against all the cooperative interests in accordance with the allocations set forth in the declaration pursuant to section 4207(a) (relating to allocation of ownership interests, votes and common expense liabilities). Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association from time to time by prior written notice to all propriety lessees.

(C) LIMITED EXPENSES.-- Unless otherwise required by the declaration or as is otherwise provided in section 4321(j) (relating to limited equity cooperatives):

(1) any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the cooperative interests for the units to which that limited common element is assigned equally or in any other proportion that the declaration provides; and

(2) any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the cooperative interests for the units benefited.

(D) INSURANCE COSTS.-- If required by the declaration, the costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage.

(E) PAYMENT OF JUDGMENTS.-- Assessments to pay a judgment against the association (section 4317(a)) may be made only against the cooperative interests in the cooperative at the time the judgment was entered, in proportion to their common expense liabilities.

(F) COMMON EXPENSE ATTRIBUTABLE TO PROPRIETARY LESSEE.-- If any common expense is caused by the action or failure to act of any proprietary lessee, the association may assess that expense exclusively against him or his cooperative interest or both of them.

(G) REALLOCATED COMMON EXPENSE LIABILITIES.-- If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(H) CREDITING OF EXCESS ASSESSMENTS.-- Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which such limited common expenses pertain in excess of the amount required for actual limited common expenses and reserves for future limited common expenses shall be credited to the cooperative interest assessed for a share of such limited common expenses in proportion to the share of such limited common expenses so assessed. Unless the declaration provides otherwise, the credits shall be applied to the next monthly assessments of limited common expenses against the cooperative interest under the then current fiscal year's budget and, thereafter, until exhausted. Any amounts accumulated from assessments for general common expenses and income from the operation of the common elements, other than limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common

expenses and reserve for future general common expenses shall be credited to each cooperative interest in accordance with the allocations set forth in the declaration, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against the cooperative interest under the then current fiscal year's budget and thereafter, until exhausted.

**§ 4315. Lien for assessments**

(A) GENERAL RULE.-- The association has a lien on a cooperative interest for any assessment levied against that cooperative interest, including payments to be made by declarant pursuant to section 4314(g) (relating to assessments for common expenses), or fines imposed against its owner from the time the assessment or fine becomes due. A judicial or other sale of the cooperative interest shall not affect the lien of a mortgage thereon if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for cooperative assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 4302(a)(11) and (12) (relating to powers of association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments is not paid when due, the entire outstanding balance becomes effective as a lien from the due date of the delinquent installment. Upon nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed by judicial sale of the cooperative interest in like manner as a mortgage on real estate.

(B) PRIORITY OF LIEN.--

(1) A lien under this section is prior to all other liens and encumbrances on a cooperative interest except:

(i) Liens and encumbrances on the cooperative which the association creates, assumes or takes subject to.

(ii) (A) The first security interest encumbering only the cooperative interest and perfected before the date on which the assessment or the first installment payable on the assessment, if the assessment is payable in installments, sought to be enforced became delinquent.

(B) Judgments obtained for obligations secured by a security interest under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the cooperative or the cooperative interest.

(2) The association's lien for assessments shall be divested by a judicial sale of the cooperative interest:

(i) As to unpaid common expense assessments made under section 4314(b) that come due during the six months immediately preceding the date of a judicial sale of a cooperative interest in an action to enforce collection of a lien against a cooperative interest by a judicial sale, only to the extent that the six months unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 4314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the cooperative interest.

(3) The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

(C) MULTIPLE LIENS ON SAME PROPERTY.-- Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(D) NOTICE AND PERFECTION OF LIEN.-- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien. No further recordation or filing of any claim of lien for assessment under this section is required.

(E) LIMITATION OF ACTIONS.-- A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the date on which the full amount of the assessment becomes due or, if paid in installments, the date on which the first installment payable on the assessment becomes due.

(F) OTHER REMEDIES PRESERVED.-- This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a transfer or assignment in lieu of foreclosure.

(G) COSTS AND ATTORNEY FEES.-- A judgment or decree in any action brought under this section must include costs and reasonable attorney fees for the prevailing party.

(H) STATEMENT OF UNPAID ASSESSMENTS.-- The association, upon written request, shall furnish to a proprietary lessee a statement setting forth the amount of unpaid assessments against his cooperative interest. The statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every proprietary lessee.

(I) APPLICATION OF PAYMENTS.--

(1) Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied:

- (i) First to any interest accrued by the association.
- (ii) Second to any late fee.
- (iii) Third to any costs and reasonable attorney fees incurred by the association in collection or enforcement.
- (iv) Last to the delinquent assessment.

(2) Paragraph (1) shall apply notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

**§ 4316. Other liens affecting cooperative**

(A) GENERAL RULE.-- Property of a proprietary lessee other than his cooperative interest is not subject to claims of the association's creditors, whether or not his cooperative interest is subject to those claims.

(B) NOTICE OF FORECLOSURE.-- If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each proprietary lessee of a unit located within the real estate to be foreclosed and to the holder of the first security interest encumbering the cooperative interest with respect to such unit. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

**§ 4317. Association records**

(A) GENERAL RULE.-- During the period of declarant control, the association shall keep detailed financial records, including without limitation, a record of expenses paid by the declarant until the commencement of common expense assessments by the association under section 4314(a) (relating to assessments for common expenses), the commencement date of common expense assessments by the association and, for the period commencing on such date, a record for each cooperative interest in the cooperative, including those owned by the declarant, of the common expense assessments and the payment thereof.

(B) SUFFICIENCY AND EXAMINATION OF RECORDS.-- The association shall keep financial records sufficiently detailed to enable the association to comply with section 4409 (relating to resales of cooperative interests). All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents.

### **§ 4318. Association as trustee**

With respect to a third person dealing with the association in the association's capacity as a trustee pursuant to section 4217 (relating to termination of cooperative ownership) or 4313 (relating to insurance), the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

### **§ 4319. Termination of cooperative interest**

(A) GENERAL RULE.-- The association's right to terminate a cooperative interest shall be exercised by judicial sale of the cooperative interest in like manner as a foreclosure upon a leasehold interest in real estate. Where the articles of incorporation, declaration or bylaws provide a fixed price or formula for determining the maximum amount which the owner of the cooperative interest may receive upon transfer or where the articles of incorporation, declaration or bylaws provide an option, but not a right of first refusal, in the association to acquire the cooperative interest at a fixed price or price determined by formula and where the association has obtained a judgment authorizing the sale of the cooperative interest, the association may acquire the cooperative interest by payment of such amount to the owner of the cooperative interest or to the sheriff at any time prior to the sale. In case of judicial sale or payment to the sheriff in lieu of sale, liens and encumbrances shall be divested and proceeds distributed as if the right to terminate were deemed to be a lien for nonpayment of assessments under section 4315 (relating to lien for assessments), arising as of the date of commencement of the action.

(B) ENFORCEMENT OF PROPRIETARY LEASE.-- The association shall have the right, at its option, to enforce the provisions of the proprietary lease, including termination of the cooperative interest for default thereunder, under the provisions of the act of April 6, 1951 (P.L. 69, No. 20), known as The Landlord and Tenant Act of 1951, as amended, or by any other means available to it at law or in equity. In any such case, the court shall have the power to order judicial sale of the cooperative interest. In the event the proprietary lessee appeals an adverse decision in any court in which the association seeks to enforce its rights, the appeal may be dismissed, upon motion of the association, by the court in which the appeal is pending, if the proprietary lessee has not paid all the lessee's common expense assessments as they become due both prior to and during the pendency of the appeal, subject to any final judicial determination of the proprietary lessee's liability to make the payments if that is an issue in the appeal.

### **§ 4320. Declarant delivery of items to association**

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant control pursuant to section 4303(d) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the proprietary lessees and of the association held by or controlled by the declarant, including, without limitation, the following items, if applicable, as to each cooperative or other owners' association operated by the association:

(1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy is delivered, the photocopy shall reflect the recording information and shall be accompanied by an affidavit executed by the declarant certifying the photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any tax-exempt elections made by or on behalf of the association.



(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control pursuant to section 4303(d) or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time period between the last audit of the association's financial books and records and the date of termination of the period of declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the declarant and the association. If the cooperative consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property that:

(i) may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements that is otherwise property of the association; and

(ii) inventories of all of such personal property.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any buildings and improvements within the cooperative and in the construction and installation of any mechanical components and equipment serving the buildings and improvements and property, if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the cooperative. If no public offering statement is required for any unit in the cooperative, such period shall commence on the date of the recordation of the cooperative declaration or amendment thereto with respect to such improvements and end on the date by which compliance with this section is required. In the event the construction, rehabilitation, renovation, remodeling or installation was substantially completed within such period but not by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If the construction, rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the cooperative.

(13) All insurance policies insuring the association and then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the cooperative, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the cooperative property which are then currently in force, all notices of violation of governmental regulations then outstanding and uncured and all reports of investigations for the presence of hazardous conditions as defined in section 4403(a)(27) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the cooperative property or have supplied equipment or services to the cooperative property.

(17) A roster of proprietary lessees and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

#### **§ 4321. Limited equity cooperatives**

(A) GENERAL RULE.-- Except as is otherwise expressly provided in this section, limited equity cooperatives shall be created and operated pursuant to the other provisions of this act.

(B) PROPERTY CLASSIFICATION.-- Notwithstanding the provisions of section 4105 (relating to property classification of cooperative interests), unless the declaration filed for the creation of a limited equity cooperative expressly provides otherwise, the cooperative interests shall be personal property for all purposes.

(C) ALTERATION OF UNITS.-- Notwithstanding the provisions of section 4210 (relating to alteration of units), if the association is responsible for the maintenance, repair and replacement of the units as well as the common elements and limited common elements, as provided in subsection (g), a proprietary lessee may make improvements or alterations to his unit only with the prior permission of the association, which shall not be unreasonably withheld, and otherwise in accordance with the provisions of the declaration and other provisions of law.

(D) DISTRIBUTION TO PROPRIETARY LESSEES UPON TERMINATION OF LIMITED EQUITY COOPERATIVES.-- Notwithstanding the provisions of section 4217 (relating to termination of cooperative ownership), distributions to proprietary lessees in limited equity cooperatives shall be no greater than the amount for which their respective cooperative interests could be transferred as restricted by the declaration and bylaws of the association.

(E) DISTRIBUTION OF RESIDUAL PROCEEDS UPON TERMINATION OF LIMITED EQUITY COOPERATIVES.-- If the declaration of a limited equity cooperative states that it is the declarant's intent that some or all units in the cooperative shall be affordable by low-income and moderate-income persons throughout the existence of the cooperative, then any assets of the association remaining after the distributions to lienholders and proprietary lessees as provided above and in the last sentence of section 4217(e) shall be distributed by the executive board to a public or private entity to be used in a manner consistent with the declarant's intent for the creation of additional housing affordable by low-income and moderate-income persons. If the balance of the funds is not so disbursed, the court of common pleas of the county in which the property is located is hereby authorized to distribute the funds as provided in this section.

(F) VALUE OF COOPERATIVE INTEREST.-- The fair market value or actual monetary worth of a cooperative interest in a limited equity cooperative for the purposes of State and local taxation and for all purposes of this subpart, including, but not limited to, sections 4106 (relating to applicability of local ordinances, regulations and building codes) and 4217(e) and subsection (i), shall be the maximum amount for which the cooperative interest may be sold or otherwise transferred pursuant to the controlling provisions of the declaration and bylaws of the association.

(G) UPKEEP OF LIMITED EQUITY COOPERATIVE.-- Notwithstanding the provisions of section 4307(a) (relating to upkeep of cooperative), unless the declaration expressly provides otherwise, limited equity cooperative associations shall be responsible for the maintenance, repair and replacement of all units as well as the common elements and limited common elements, except that a limited equity cooperative association shall not be responsible for maintenance, repair or replacement necessitated by a proprietary lessee's own negligence, misuse or willful misconduct nor shall the association be responsible for repair, maintenance or replacement of items of personalty or realty not owned by the association.

(H) SUBJECTING A LIMITED EQUITY COOPERATIVE TO A SECURITY INTEREST.-- Notwithstanding the provisions of section 4312(a) (relating to conveyance or encumbrance of cooperative) all or part of a limited equity cooperative may be subjected to a security interest by the association if persons entitled to cast at least 51% of the votes in the association, including 51% of the votes allocated to cooperative interests not owned by a declarant or any larger

percentage the declaration specifies agree to that action. If fewer than all the units or limited common elements in a limited equity cooperative are to be subjected to a security interest, then all of the proprietary lessees of those units or the units to which those limited common elements are allocated must consent in order to subject them to a security interest, except that the provisions of the immediately preceding sentence shall govern unless the declaration provides, pursuant to subsection (g), that expenses related to the limited common elements shall be common expenses. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(I) DISPOSITION OF INSURANCE PROCEEDS.-- The disposition of insurance proceeds due proprietary lessees in limited equity cooperatives under section 4313(g)(2)(ii) (relating to insurance) shall be limited to the amount for which the proprietary lessee's cooperative interest may be sold pursuant to the controlling provisions of the declaration and the bylaws of the association.

(J) LIMITED EXPENSES.-- Except as may be otherwise provided in the declaration, the provisions of section 4314(c) (relating to limited expenses) shall not apply to limited equity cooperatives, and expenses covered by that provision shall be deemed common expenses to be assessed against all cooperative interests.

## Chapter 44

### § 4401. Applicability; waiver

(A) GENERAL RULE.-- This chapter applies to all cooperative interests subject to this subpart, except as provided in subsection (b) and section 4414 (relating to implied warranty against structural defects) or as modified or waived by agreement of the purchaser of any cooperative interest the unit of which is intended for nonresidential use at the time of sale of the cooperative interest by the declarant or by agreement of the purchaser of any cooperative interest who is or intends to be in the business of buying or selling cooperative interests, subject to the following:

(1) A purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 4414 with regard to the unit and the common elements.

(2) With regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units shall have agreed to the modification or waiver and, with regard to any common elements, other than limited common elements, in a cooperative in which all units are restricted to nonresidential use, all unit owners shall have agreed to such modification or waiver.

(3) No modification or waiver shall prevent any proprietary lessee from indirectly benefiting from any provision in this chapter by reason of the proprietary lessee being an owner of a cooperative interest in the cooperative and a member of the association.

(B) WHEN PUBLIC OFFERING STATEMENTS OR RESALE CERTIFICATES UNNECESSARY.-- Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- (1) a gratuitous disposition of a cooperative interest;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency which has acquired the cooperative interest by judicial sale or deed in lieu of judicial sale;
- (4) a disposition by foreclosure or transfer in lieu of foreclosure;
- (5) a disposition to a person in the business of selling cooperative interests who intends to offer those cooperative interests to purchasers; or
- (6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty.

(C) SINGLE PUBLIC OFFERING STATEMENTS.-- If a cooperative interest is part of a cooperative and is also part of any other real estate regime in connection with the sale of which the delivery of a public offering statement or similar

disclosure statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 4403 (relating to public offering statement; general provisions), 4404 (relating to public offering statement; cooperatives subject to development rights), 4405 (relating to public offering statement; time shares) and 4406 (relating to public offering statement; cooperatives containing conversion buildings), as those requirements relate to any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

**§ 4402. Public offering statement; requirements**

(A) GENERAL RULE.-- Except as provided in subsection (b), a declarant, prior to the offering of any cooperative interest to the public, shall prepare a public offering statement conforming to the requirements of sections 4403 (relating to public offering statement; general provisions), 4404 (relating to public offering statement; cooperatives subject to development rights), 4405 (relating to public offering statement; time shares) and 4406 (relating to public offering statement; cooperatives containing conversion buildings).

(B) TRANSFER OF DECLARANT RESPONSIBILITY.-- A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (section 4304) or to a person in the business of selling cooperative interests who intends to offer cooperative interests in the cooperative for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(C) OFFERING COOPERATIVE INTEREST FOR OWN ACCOUNT.-- Any declarant or successor declarant or other person in the business of selling cooperative interests who offers a cooperative interest for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in section 4408(a) (relating to purchaser's right to cancel). The person who prepared all or a part of the public offering statement is liable under sections 4408 and 4415 (relating to effect of violations on rights of action) for any false or misleading statement and for any omission of any material fact with respect to that portion of the public offering statement which he prepared. If a person did not prepare a part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth in that part or for any omission of material fact from that part unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

**§ 4403. Public offering statement; general provisions**

(A) GENERAL RULE.-- Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the cooperative.

(2) A general description of the cooperative, including, to the extent possible, the types, number and its declarant's schedule of commencement and completion of construction of buildings and amenities that the declarant anticipates including in the cooperative, and a narrative description of the type and character of units offered, including a statement of the degree of completion to be provided or undertaken by the declarant of the units and the common elements necessary for use and enjoyment of the units upon the conveyance by the declarant of the units offered.

(3) The number of units in the cooperative.

(4) Copies and a brief narrative description of the significant features of the declaration, any other recorded covenants, conditions, restrictions and reservations affecting the cooperative, the bylaws, the agreement of sale and any rules or regulations of the association; copies and a brief narrative description of any contracts, leases or agreements to be signed by purchasers prior to or at closing; and a brief narrative description of any other contracts, leases or agreements of a material nature to the cooperative.

(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for the year commencing on the anticipated date of the first conveyance to a purchaser and, thereafter, the current budget of the association, a statement of who prepared the budget and a statement of the budget's assumptions, including those concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.

(ii) A statement of any other reserves, including, without limitation, reserves for debt service on an obligation of the association and reserves for anticipated material capital expenditures or, if no provision is made for such other reserves, a statement to this effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(6) Any:

(i) services not reflected in the budget that the declarant provides or expenses that he pays and that he expects may become at any subsequent time a common expense of the association; and

(ii) personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and enjoyment of the common elements after such personal property is no longer provided by the declarant and the projected common expense assessment for the association and for each type of cooperative interest attributable to each of those services and purchase or rental of such personal property.

(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(8) A description of any liens, defects or encumbrances on or affecting the title to the cooperative.

(9) A description of any financing for purchasers offered or arranged by the declarant.

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(11) Except in the case of time shares (section 4405), a statement in at least ten-point boldface type, appearing on the first page of the public offering statement, that:

(i) Within 15 days (seven days in the case of a time-share estate) after a purchaser's receipt of a public offering statement or any amendment thereto that would have a material and adverse effect on the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a cooperative interest from a person required to deliver a public offering statement under this subpart.

(ii) If a person required to deliver a public offering statement under this subpart fails to provide a public offering statement and all amendments thereto to a purchaser before conveying a cooperative interest or if the public offering statement or any amendment does not comply with the requirements of this subpart, that purchaser may recover from such person damages, described in detail, as provided in section 4408(f) (relating to purchaser's right to cancel).

(iii) A description of such damages.

(iv) If a purchaser receives the public offering statement more than 15 days before signing a contract for the purchase of a cooperative interest, he cannot cancel the contract, except that, in accordance with subparagraph (i), he shall have the right to cancel, before conveyance, the contract within 15 days after receipt of any amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(12) A statement of any unsatisfied judgments or pending suits against the association and the status of any pending suits material to the cooperative of which a declarant has actual knowledge.

(13) A statement that any deposit made in connection with the purchase of a cooperative interest will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 4408 and that the name and address of the escrow agent will be set forth in the purchaser's agreement of sale.

(14) Any restrictions on:

(i) Use and occupancy of the units.

(ii) Alienation of the cooperative interests.

(iii) The amount for which a cooperative interest may be sold or on the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative.

(15) A description of all insurance coverage provided for the benefit of proprietary lessees, including the types and extent of coverage, and the extent to which such coverage includes or excludes improvements or betterments made to units.

(16) Any current or expected fees or charges to be paid by proprietary lessees for the use of the common elements and other facilities related to the cooperative in addition to monthly common expense assessments described in paragraph (5)(iv) and including, without limitation, user or membership fees that may be charged for the use or enjoyment of common elements and other facilities related to the cooperative.

(17) The extent to which financial arrangements have been provided for completion of all improvements which the declarant is obligated to build pursuant to section 4417 (relating to declarant's obligation to complete and restore).

(18) A brief narrative description of any zoning and other land use requirements affecting the cooperative.

(19) All unusual and material circumstances, features and characteristics of the cooperative and the units.

(20) In the case of a leasehold cooperative, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

(v) Whether the lessee has any right to terminate the lease and, if so, the effect of such a termination on the cooperative.

(vi) The information contained in the declaration as required by section 4206 (relating to leasehold cooperatives).

(vii) The following notice in boldface type: Purchasers should be aware that this is a leasehold cooperative, and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability.

(21) A copy of a legal opinion, based on stated factual assumptions, given to the declarant by legal counsel selected by the declarant and licensed to practice law in the state in which the cooperative is situated stating:

(i) Whether the proprietary lessees will be entitled for Federal, State and local income tax purposes to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative.

(ii) That the proprietary lessees are entitled to rely upon the opinion.



(22) A statement as to the effect on every proprietary lessee if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(23) A description of how votes are allocated among the cooperative interests and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. The statement shall also explain the operation of the cumulative or class voting.

(24) A description of any circumstances under which the association is or may become a master association or part of a master association.

(25) A statement of all governmental approvals and permits required for the use and occupancy of the cooperative indicating the name and expiration date of each approval or permit that has been obtained and, as to any governmental approvals or permits that have not been obtained, a statement indicating when each permit or approval is expected to be obtained and the person who shall bear the expense of obtaining each permit or approval.

(26) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be cured and the person who shall bear the expense of curing such violation.

(27) A statement as to whether the declarant has knowledge of any one or more of the following:

(i) Hazardous conditions, including contamination affecting the cooperative site by hazardous substances, hazardous wastes or the like or the existence of underground storage tanks for petroleum products or other hazardous substances.

(ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the cooperative site.

(iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority in order to correct any hazardous conditions and any action taken pursuant to those recommendations.

If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect.

(B) EXCEPTIONS.-- If a cooperative composed of not more than 12 units is not subject to any development rights and no power is reserved to a declarant to make the cooperative part of a larger cooperative, group of cooperatives or other real estate, a public offering statement may, but need not, include the information otherwise required by the narrative descriptions of documents required by subsection (a)(4).

(C) AMENDMENT FOR MATERIAL CHANGE IN INFORMATION.-- Until all cooperative interests shall have been conveyed to persons not affiliated with the declarant, promptly after any material change in the information required by this section comes to the attention of a person required to deliver a public offering statement pursuant to section 4102(c) (relating to applicability of subpart), such person shall amend the public offering statement to report any material change in the information required by this section and shall deliver copies of such amendments to purchasers in accordance with section 4408(a).

(D) PROVIDING AND MAINTAINING DOCUMENTS.-- The declarant shall provide a copy of the public offering statement and all amendments thereto to the association, and the association shall maintain them in its records.

#### **§ 4404. Public offering statement; cooperatives subject to development rights**

If the declaration provides that a cooperative is subject to any development rights, the public offering statement must disclose, in addition to the information required by section 4403 (relating to public offering statement; general provisions):

(1) The maximum number of units and the maximum number of units per acre that may be created.

(2) A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use or a statement that no representations are made regarding use restrictions.

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use.

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights.

(5) A statement of the maximum extent to which the association's budget and each cooperative interest's allocated interests may be changed by the exercise of any development right described in paragraph (4).

(6) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the cooperative will be compatible with existing buildings and improvements in the cooperative in terms of architectural style, quality of construction and size or a statement that no assurances are made in those regards.

(7) A general description of all other improvements that may be made and limited common elements that may be created within any part of the cooperative pursuant to any development right reserved by the declarant or a statement that no assurances are made in that regard.

(8) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the cooperative pursuant to any development right reserved by the declarant or a statement that no assurances are made in that regard.

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the cooperative or a statement of the types and sizes planned or a statement that no assurances are made in that regard.

(10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the cooperative or a statement of any other assurances in that regard or a statement that no assurances are made in the regard.

(11) A statement that all restrictions in the declaration affecting use and occupancy of units and alienation of cooperative interests will apply to any units and cooperative interests created pursuant to any development rights reserved by the declarant or a statement of any differentiations that may be made as to those units and cooperative interests or a statement that no assurances are made in that regard.

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

#### **§ 4405. Public offering statement; time shares**

If the declaration provides that ownership of cooperative interests or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by section 4403 (relating to public offering statement; general provisions):

(1) The number and identity of units in which time shares may be created.

(2) The total number of time shares that may be created in the cooperative.

(3) The minimum duration of any time shares that may be created.

(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 4315 (relating to lien for assessments).

(5) The projected common expense assessment for each time share and whether those assessments may vary seasonally.

(6) A statement of any services not reflected in the budget which the declarant provides or expenses which he pays and which he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for each time share.

(7) The extent to which time share owners are jointly and severally liable for the payment of common expenses assessments and other charges levied against that cooperative interest.

(8) The extent to which a suit for partition may be maintained against a cooperative interest owned in time shares.

(9) The extent to which a time share may become subject to lien arising out of claims against other time share owners of the same cooperative interest.

(10) In lieu of the statement required under section 4403(a)(11), a statement in at least ten-point boldface type appearing on the first page of the public offering statement, that:

(i) Within seven days after purchaser's receipt of a public offering statement or any amendment thereto that would have a material and adverse effect on the rights or obligations of that purchaser, a purchaser, before conveyance, may cancel any contract for purchase of a time share from a declarant.

(ii) If a person required to deliver a public offering statement under this subpart fails to provide a public offering statement to a purchaser before conveying a time share or if the public offering statement or any amendment does not comply with the requirements of this subpart, the purchaser may recover from such person damages, described in detail, as provided in section 4408(f) (relating to purchaser's right to cancel).

(iii) If a purchaser receives the public offering statement more than seven days before signing a contract, he cannot cancel the contract, except that, in accordance with subparagraph (i), he shall have the right to cancel the contract within seven days after receipt of any amendment thereto that would have a material and adverse effect on the rights or obligations of that purchaser.

#### **§ 4406. Public offering statement; cooperatives containing conversion buildings**

(A) GENERAL RULE.-- The public offering statement of a cooperative containing any conversion building must contain, in addition to the information required by section 4403 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer, describing:

(i) The age, present visible condition and, if known or ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air conditioning and elevators material to the use and enjoyment of the cooperative.

(ii) The results of the inspection of the units and common elements required pursuant to section 4414(c) (relating to implied warranty against structural defects) for visible conditions that adversely affect the health or safety of the residential occupants.

(iii) The extent to which the report by the architect or professional engineer is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1), including the current replacement cost of such item.

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

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence in the conversion building of, if any, visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

(B) APPLICABILITY OF SECTION.-- This section applies only to units that are intended for residential use at the time of sale by the declarant of the cooperative interest of which the unit is a part.

#### **§ 4407. Public offering statement; cooperative securities**

If a cooperative interest is registered with the Securities and Exchange Commission of the United States at the time an offer of such cooperative interest is made, a declarant satisfies all requirements relating to the preparation of a public offering statement required by this subpart if he delivers to the purchaser a copy of the public offering statement or other disclosure statement filed with the Securities and Exchange Commission. An interest in a cooperative is not, in and of itself, a security under the act of December 5, 1972 (P.L. 1280, No. 284), known as the Pennsylvania Securities Act of 1972, and the offer and sale of cooperative interests in accordance with the requirements of this chapter shall not also be subject to the registration requirements of section 201 or 301 of the Pennsylvania Securities Act of 1972 or the promotional real estate sales requirements of the act of February 19, 1980 (P.L. 15, No. 9), known as the Real Estate Licensing and Registration Act.

#### **§ 4408. Purchaser's right to cancel**

(A) DELIVERY OF PUBLIC OFFERING STATEMENT.-- In cases where delivery of the public offering statement is required under section 4402(c) (relating to public offering statement; requirements), a declarant shall provide a purchaser of a cooperative interest with a copy of the public offering statement and all amendments thereto not later than:

- (1) the date the purchaser executes the contract of sale for such cooperative interest; or
- (2) if no contract of sale is executed, 15 days before the time of conveyance of that cooperative interest.

After a public offering statement has been delivered to a purchaser of a cooperative interest, a person required to deliver a public offering statement pursuant to section 4402(c) shall provide to the purchaser copies of all amendments to the public offering statement made between the date of delivery of the public offering statement and the date of conveyance of that cooperative interest.

(B) CANCELLATION WITHIN 15 DAYS.-- Except as provided in subsection (c):

(1) Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a cooperative interest, a purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(2) A purchaser, before conveyance, may cancel a contract for the purchase of a cooperative interest within 15 days after receiving a copy of any amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(C) CANCELLATION WITHIN SEVEN DAYS.-- Unless a purchaser of a time share is given the public offering statement more than seven days before execution of a contract for the purchase of a time share, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement. A purchaser of a time share, before conveyance, may cancel a contract for the purchase of a time share within seven days after receiving a copy of any amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(D) LIMITATIONS AS TO AMENDMENTS.-- Without limiting those amendments that would be deemed not to produce material and adverse effects on the rights or obligations of purchasers, cancellation is not permitted under subsection (a), (b) or (c) if the amendment or possible future promulgation thereof was disclosed in the public offering statement previously delivered to the purchaser.

(E) NOTICE AND EFFECT OF CANCELLATION.-- If a purchaser elects to cancel a contract pursuant to subsection (a), (b) or (c), he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(F) DAMAGES FOR NONCOMPLIANCE.-- If a person required to deliver a public offering statement pursuant to section 4402(c) fails to provide a purchaser to whom a cooperative interest is conveyed with that public offering statement and all amendments thereto as required by subsection (a), (b) or (c) or, if the public offering statement or any amendment does not comply with the requirements of this subpart, the purchaser, in addition to any other rights to damages or relief, is entitled to receive from that person an amount equal to 5% of the sales price of the cooperative interest up to a maximum of \$ 5,000 or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto that is not willful shall entitle the purchaser to recover only actual damages, if any.

#### **§ 4409. Resales of cooperative interests**

(A) INFORMATION SUPPLIED BY PROPRIETARY LESSEE.-- Except in the case of a sale where delivery of a public offering statement is required or unless the transaction is exempt under section 4401(b) (relating to applicability; waiver), a proprietary lessee shall furnish to a purchaser before execution of any contract of sale of a cooperative interest or, if there is no contract of sale, before the time of conveyance a copy of the declaration (other than the plats and plans), the bylaws and the rules or regulations of the association, including all amendments to such documents to the date of their delivery to the purchaser, and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee and any surplus fund credits to be applied with regard to the cooperative interest pursuant to section 4314(h) (relating to assessments for common expenses).

(3) A statement of any other fees payable by proprietary lessees.

(4) A statement of any capital expenditures anticipated by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant.

(9) A statement describing any insurance coverage provided for the benefit of proprietary lessees.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative.

(12) A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof.

(13) Except where no public offering statement was prepared, a statement that the public offering statement and any amendments thereto are records of the association available for inspection by the purchaser.

(14) The most recent statement given to the proprietary lessee by the association stating the amount of the cooperative real estate taxes and mortgage or other interest allocated to the cooperative interest being sold.

(15) A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative.

(16) A statement as to whether the declaration provides for cumulative or class voting.

(17) A statement as to whether an agreement to terminate the cooperative has been submitted to the proprietary lessees for approval and remains outstanding.

(18) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions (section 4403(a)(27)) with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative.

(19) A statement of whether the cooperative is a master association or is part of a master association or could become a master association or part of a master association.

(20) A statement describing the ownership of cooperative interests, if any, or the occupancy of units, if any, which may be in time shares and the maximum number of time-share estates that may be created in the cooperative.

(21) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the cooperative and, if so, the information describing such right which was supplied by the declarant pursuant to section 4205 (relating to contents of declaration), if any.

(B) INFORMATION SUPPLIED BY ASSOCIATION.-- The association, within ten days after a request by a proprietary lessee, shall furnish the documents and a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in or delivered with the certificate.

(C) LIABILITY FOR ERROR OR INACTION BY ASSOCIATION.-- A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(D) PURCHASE CONTRACT VOIDABLE.—The purchase contract is voidable by the purchaser until the certificate has been provided for the five days thereafter or until conveyance, whichever first occurs.

#### **§ 4410. Escrow of deposits**

Any deposit, which shall not include any installment payment under an installment sales contract, made in connection with the purchase or reservation of a cooperative interest from a person required to deliver a public offering statement pursuant to section 4402(c) (relating to public offering statement; requirements) shall be placed in escrow and held in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company, in an account or in the form of a certificate of deposit, designated solely for that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:



(1) delivered to the declarant at closing or, in the case of the sale of a cooperative interest pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit constituting a part of the cooperative interest;

(2) delivered to the declarant because of purchaser's default under a contract to purchase the cooperative interest; or

(3) refunded to the purchaser.

#### **§ 4411. Release of liens**

(A) SALE OF COOPERATIVE INTEREST.-- In the case of a sale of a cooperative interest where delivery of a public offering statement is required pursuant to section 4402(c) (relating to public offering statement; requirements), a seller shall, before conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting that cooperative interest and underlying real estate, unless the public offering statement discloses the amount of the real estate encumbered by and the effect of a default under a lien not being released or unless the purchaser expressly agrees to take subject to or assume liens not being released.

(B) CONVEYANCE TO ASSOCIATION.-- Before conveying real estate to the association, the declarant shall have that real estate released from liens on that real estate unless the public offering statement discloses the amount of the real estate encumbered by and the effect of a default under a lien not being released.

#### **§ 4412. Cooperatives containing conversion buildings**

(A) NOTICE OF CONVERSION.-- The declarant of every cooperative containing one or more conversion buildings shall give each of the residential tenants and subtenants, if any, lawfully in possession of a unit or units in a conversion building a conversion notice no later than one year before the declarant will require residential tenants and residential subtenants to vacate, subject to revocation of such notice in accordance with subsection (k). The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States certified or registered mail, return receipt requested, to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by a residential tenant. Every notice shall be accompanied by a public offering statement concerning the proposed sale of cooperative interests within such conversion building or buildings. Except as otherwise provided in subsection (f), no such residential tenant or residential subtenant in a conversion building may be required to vacate the unit he leases earlier than one year after the conversion notice date, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy, including terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered, but may be enforced, during that period. Failure to give notice to a residential tenant or residential subtenant entitled to such notice pursuant to this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

(B) OFFER TO TENANT TO PURCHASE COOPERATIVE INTEREST.-- For six months after the conversion notice date, the declarant shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use in a conversion building to the tenant who leases that unit. If the tenant fails to purchase the cooperative interest during that six-month period, the offeror may not offer to dispose of an interest in that cooperative interest during the following six months at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection shall not apply to any cooperative interest in a conversion building if the unit which is part of that cooperative interest was, immediately prior to the conversion notice date, restricted or devoted exclusively to nonresidential use or the boundaries of which unit, after the creation of the cooperative, will not substantially conform to the boundaries of such unit on the conversion notice date.

(C) EFFECT OF WRONGFUL CONVEYANCE.-- If a declarant, in violation of subsection (b), conveys a cooperative interest to a purchaser for value who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under subsection (b) to purchase that cooperative interest if the deed states that the declarant has complied with subsection (b), but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

(D) NOTICE TO VACATE.-- If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection (k) and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L. 69, No. 20), known as The Landlord and Tenant Act of 1951.

(E) IMPROPER LEASE TERMINATION PROHIBITED.--

(1) Nothing in this section permits termination of a lease in violation of its terms.

(2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice pursuant to subsection (a), from terminating any lease without any liability for such termination provided such tenant gives the building owner at least 90 days' written notice of the intent to terminate the lease.

(3) The declarant and, if different, the owner shall not engage in any activity of any nature which would coerce any residential tenant of a conversion building into terminating any lease, including, but not limited to, stampeding, harassing tenants or withholding normal services or repairs.

(F) UNITS LEASED TO SENIOR CITIZENS AND BLIND AND DISABLED PERSONS.--

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies the unit as his principal residence and is 62 years of age or older or is disabled. For the purpose of this subsection, a person shall be deemed to be "disabled" if, on the conversion notice date, he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant or subtenant in possession of a unit who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility. Any eligible tenant or subtenant who has established his eligibility shall be entitled to remain in possession of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the cooperative, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date, may not be altered, but may be enforced, during the time period between the original lease termination date and the expiration of this two-year period, except as is provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period between the later to occur of the original lease termination date or the first anniversary of the conversion notice date and the expiration of the two-year period described in paragraph (2) sentence shall be the same monthly rental as was payable for the month immediately preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the cost of living in the United States during the six-month time period commencing on the first day of the first full calendar month after the conversion notice date.

(4) Failure to comply with the provisions of this subsection is a defense to an action for possession.

(G) TENANT MEETINGS.-- With respect to any cooperative containing a conversion building with one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a tenant meeting open to the public in the municipality where the conversion is proposed at a place and time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to tenants and subtenants in lawful possession of their units in the same manner as is required for the giving of the conversion notice and to the general public by a notice in a newspaper of general circulation in the area in which the cooperative is located, except that no notice to the general public need be given with respect to conversion buildings in cooperatives as to which the provisions of subsection 4401(b) (relating to applicability; waiver) are applicable. At such meeting, representatives of the declarant shall briefly describe the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants pursuant to this section.

(2) Improvements, if any, then planned to be made to the cooperative.

(3) The anticipated approximate range of initial cooperative interest sales prices, but specific sales prices need not be provided.

(4) The anticipated approximate range of estimated monthly common expense liabilities for various types of cooperative interests but specific per cooperative interest estimates need not be provided.

(H) WAIVER OF RIGHT TO PURCHASE.-- Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant or subtenant may waive his right to purchase a cooperative interest pursuant to subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) a written extension of the term of that tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsection (A) or (F) as applicable;

(2) the tenant entering into an agreement to purchase another cooperative interest in the cooperative; or

(3) the tenant or subtenant making alternative living arrangements.

(I) ALTERATION OF TERM OF TENANCY.-- Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

(J) LIMITATION TO TENANTS IN OCCUPANCY.-- The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants is in lawful occupancy on the conversion notice date, and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of a conversion building on the conversion notice date; or

(2) who commence their tenancy after the conversion notice date without having been notified in writing at or prior to the commencement of their tenancy that the property is then a cooperative and that they are not entitled to the rights granted under this section.

Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

(K) REVOCATION OF CONVERSION NOTICE.-- A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) is given prior to the conveyance of any unit in the cooperative occurring after the conversion notice date other than a cooperative interest or cooperative interests conveyed to a successor declarant or as a result of a foreclosure of a mortgage on a cooperative interest or a deed in lieu thereof;

(2) is given in the same manner as is required for the giving of the conversion notice; and

(3) is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given.

The giving of a notice of revocation revokes all rights granted under this section, but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

#### **§ 4413. Express warranties of quality**

(A) GENERAL RULE.-- Express warranties made by any seller to a purchaser of a cooperative interest, if made or incorporated by reference in the public offering statement, if the seller is required to deliver a public offering statement

under section 4402(c) (relating to public offering statement; requirements), or in a written statement or document signed by the seller and relied upon by the purchaser, are created as follows:

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

(2) Any model or description of the physical characteristics of the cooperative, including plans and specifications of or for improvements, if incorporated by reference in a public offering statement or other written statement or document signed by the seller and relied upon by the buyer in accordance with this subsection creates an express warranty that the cooperative will conform substantially to the model or description.

(3) Any description of the quantity or extent of the real estate comprising the cooperative if incorporated by reference in a public offering statement or other written statement or document signed by the seller and relied upon by the buyer in accordance with this subsection, including, but not limited to, plats or surveys, creates an express warranty that the cooperative will conform to the description, subject to customary tolerances.

(4) A provision that a buyer of a cooperative interest may put a unit which is part of that cooperative interest only to a specified use is an express warranty that the specified use is lawful.

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

(C) TRANSFER OF WARRANTY.-- Any conveyance of a cooperative interest transfers to the purchaser all express warranties of quality made by previous sellers.

(D) LIMITATION OF ACTIONS.-- No action to enforce the warranty created by this section shall be commenced later than six years after the date of the writing which creates the warranty under subsection (a).

#### **§ 4414. Implied warranty against structural defects**

(A) DEFINITION.-- As used in this section, "structural defects" means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this section shall be construed to make the warrantor responsible for any items of maintenance relating to the units or common elements.

(B) GENERAL RULE.-- A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a bona fide purchaser and all of the common elements for two years. Any conveyance of a cooperative interest during the two-year warranty period shall be deemed to transfer to the purchaser all of the warranties created under this section. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) as to any common element in real estate that may be added to the cooperative, at the time the first cooperative interest for a unit in such real estate is conveyed to a bona fide purchaser;

(2) as to any common element for which a development right to convert such common element to units or limited common elements has been reserved, at the time the first cooperative interest for a converted unit out of such common element is conveyed to a bona fide purchaser; and

(3) as to any common element within any other portion of the cooperative, at the time the first cooperative interest in the cooperative is conveyed to a bona fide purchaser.

(C) SCOPE AND APPLICABILITY OF WARRANTIES.-- A declarant of a cooperative containing one or more conversion buildings warrants:

(1) against structural defects in components installed in each of the conversion buildings by the declarant or in work done or improvements made by the declarant in each of the conversion buildings;

(2) that all units and common elements in each conversion building have been inspected for visible structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants as required by section 4406(a)(1)(i) (relating to public offering statement; cooperatives containing conversion buildings), except that no such inspection is required of any unit the tenant or other lawful occupant of which does not permit such inspection to be conducted; and

(3) that any such defects and other visible conditions found have been repaired.

The warranties set forth in subsection (b) shall be applicable to any units and common elements that are located within a building containing or comprising one or more units that is not a conversion building. Otherwise, such declarant may offer the units, common elements or both in any conversion building in an "as is" condition. If any building containing or comprising units is a conversion building, then the warranty provisions of this subsection shall also apply to all common elements in the cooperative that are located outside of any conversion building and that are not located in a building containing one or more units that is not a conversion building. The declarant of a cooperative containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by this subsection commence and the duration of such warranties shall be as provided in subsection (b).

(D) EXCLUSION OR MODIFICATION OF WARRANTY.-- Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

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

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

(E) LIMITATION OF ACTION.-- No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins.

#### **§ 4415. Effect of violations on rights of action**

If a declarant or any other person subject to this subpart fails to comply with any provision of this subpart or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this subpart. The court, in an appropriate case, may award reasonable attorney fees.

#### **§ 4416. Labeling of promotional material**

No promotional material may be displayed or delivered to prospective purchasers which describes or portrays improvements that are not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "MUST BE BUILT" or "NEED NOT BE BUILT."

#### **§ 4417. Declarant's obligation to complete and restore**

(A) COMPLETION.-- The declarant shall complete all improvements depicted on any site plan or other graphic representation included in the public offering statement or in any promotional material distributed by or for the declarant unless that improvement is labeled "NEED NOT BE BUILT."

(B) REPAIR AND RESTORATION.-- The declarant is subject to liability for the prompt repair and restoration to a condition compatible with the remainder of the cooperative of any portion of the cooperative affected by his exercise of rights reserved pursuant to or created by sections 4209 (relating to exercise of development rights), 4210 (relating to alteration of units), 4211 (relating to relocation of boundaries between adjoining units), 4212 (relating to subdivision of units), 4214 (relating to declarant's office, models and signs) and 4215 (relating to easement rights).

**§ 4418. Substantial completion of unit**

(A) GENERAL RULE.-- In the case of a sale of a cooperative interest where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that cooperative interest may be conveyed until the declaration is recorded and unless all structural components and common element mechanical systems of the structure containing or constituting such unit or units and the common elements appurtenant thereto are substantially completed in accordance with the descriptions set forth in both the declaration pursuant to section 4205 (relating to contents of declaration) and in the public offering statement pursuant to section 4403 (relating to public offering statement; general provisions). Such substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

(B) SALE PRIOR TO COMPLETION OF UNIT.-- Nothing contained in this subpart shall prevent the offering for sale of a cooperative interest or the execution of any agreement to sell and purchase a cooperative interest or any interest in a cooperative interest, as opposed to actual conveyance, prior to the completion of the unit or any other portion of the cooperative.