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**HOUSING COOPERATIVE LAW-A MISSING INGREDIENT**

**THE NEED FOR A HOUSING COOPERATIVE LAW IN IRAQ**

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**USAID | Iraq Economic Governance II**

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**Introduction**

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**1 INTRODUCTION**

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## 1. INTRODUCTION

### Background

Under contract with USAID, BearingPoint has reviewed the existing property rights laws in Iraq, especially those pertaining to housing finance, and issued a diagnostic report.<sup>1</sup> A number of problem areas were discovered that restricted home ownership at all income levels.

- The provisions of the Law of Real Estate Leasing inhibit loans for single family dwellings, which typically are purchased by upper income levels.
- The condominium law, The Law of Apartments and Floors, is so vague that it will create litigation for many years, and is in need of serious upgrading. Condominiums are typically affordable my middle income persons, with some condominiums designed for upper income levels also.
- Housing Cooperative law. There is no housing cooperative law in Iraq. Housing cooperatives are used around the world to provide equity ownership to lower income groups.

The diagnostic report identified the need for improvements in these areas. This paper discussed the benefits and need for a housing cooperative law in Iraq.

### Purpose

The purpose of this report is to identify the benefits of housing cooperatives in the housing mix of Iraq, and the need for implementing legislation, and to propose a strategy for implementation.

Housing cooperatives are found in many parts of the world, from the United States to developing countries. The cooperative form of ownership was developed in the first half of the twentieth century and has continued. It is relatively easy for government housing agencies to provide low-income housing through this method. As opposed to traditional low-income apartment projects which are capital and management intensive, an agency can assist development of affordable housing units through cooperatives with minimum management and capital investment. This has made cooperatives a common tool for low income housing in parts of the developing world.

However, cooperatives cannot entirely replace low-income apartment projects. Cooperatives require owners form an association for maintenance and management. This is not a common experience for low-income persons, and low-income apartments are still a needed option. For cooperatives both careful selection and careful monitoring are required. For those whose education, experience and inclination suit them for this responsibility, however, housing cooperatives are an excellent tool for home ownership that they could not otherwise afford, and with minimum involvement by housing agencies.

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## 2. HOUSING COOPERATIVES

### Definition

In a housing cooperative (or co-op), a housing development is jointly owned and operated as a corporation by its members. They own membership certificates (shares) in the corporation, giving them the right to occupy a dwelling unit and participate in the operations of the corporation. The total property is owned by the cooperative housing corporation. Unlike condominiums, the shareholders do not own individual units. As shareholders, they own a share of the entire real and personal property of the cooperative housing corporation.

### Benefits

It is especially important to develop home ownership in developing countries where political stability is fragile. When large numbers of people have no vested interest in the country, political stability is impossible. One of the ways to develop a widespread interest in the country is with property ownership. Residential property is the investment of choice for those buying their first real estate property. Purchase of real estate effectively means that the person has literally “bought into” the country. The presence of large numbers of homeowners at various income levels is important to political stability, without which economic vitality is impossible.

Housing cooperatives can play an important role in creating equity real estate ownership in localities where there is a substantial lower income class. The building is constructed and financed with a mortgage or other funding. This is often guaranteed or even provided by a government agency or a private foundation. As a result, individual shareholders are not required to obtain a mortgage to purchase their share. The cooperative corporation can sell the shares on a time payment option that covers its debt service. Without the need for a mortgage, persons with little or no credit or with poor credit can still gain equity in residential real property. In the event of default on the payments, shares can be foreclosed on in the same manner as real estate and resold to another purchaser.

The benefits to the shareholder include much lower closing costs. The closing costs for a traditional mortgage are typically several thousand dollars, even for a modest mortgage. The appraisal, loan origination fee, attorney’s fees, etc., all add to a large closing cost that can be insurmountable for low-income persons, even if they otherwise qualify for a mortgage. With a housing cooperative, the mortgage is already in place, and the sale of the share(s) has the same effect as a mortgage, but can be consummated as a personal loan.

### Operation

The operation of a housing cooperative is very similar to that of a condominium. Each of the shareholders has a vote in the association. They may operate directly to manage the affairs of the cooperative. They may also create and elect an executive board comprised of a smaller number of shareholders who manager the affairs. They may also employ a person(s) or company to manage the day-to-day operations of the cooperative.

### Approaches to Equity Appreciation

Housing cooperatives are designed to provide equity-generating housing for low- and moderate-income persons. Housing cooperatives are formed with two means of dealing with equity appreciation through inflation.

1. Market value cooperatives (MVC). When selling the unit in a market value cooperative, the seller can sell the share(s) at their current market value, retaining any capital gain.

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2. Limited equity cooperatives (LEC). When selling the unit in a limited equity cooperative, the seller must sell at a restricted price, limited to the original price only, or to a limited increase.

The limited equity cooperative is most common, because the price remains affordable for successive owners. In poor/slum areas, the conversion of poorly maintained apartments into cooperatives with normal maintenance can improve property values and dramatically increase the value of the cooperative such that low income persons are no longer able to purchase shares in the cooperative. For this reason, cooperatives funded or supported with government or foundation capital normally require that cooperatives be organized as limited equity cooperatives.

## **Challenges**

### **Creation**

Creating a housing project that is designed for low-income persons generally requires some participation from government and/or private charitable foundations. Banks are typically unwilling to loan construction and acquisition money for low-income cooperatives unless there is mortgage insurance. Government agencies typically either provide the capital or guarantee the loan. They may also provide some housing assistance payments to low-income shareholders.

### **Operation**

Housing cooperatives are managed by the shareholders. The shareholders own the property and are responsible for its operation. However, housing cooperatives are typically made up of low-income persons with little or no experience managing large projects. They also have little or no experience with large and complex financial decisions. The possibility of the project getting into financial or legal difficulty is a major concern. The cooperative association must maintain adequate financial reserves to protect the cooperative and its members' interests. These usually include a general operating reserve and a reserve for replacing components of buildings as they deteriorate. Such reserves reduce the possibility of members having to pay unexpected special charges in emergencies. An annual audit should be conducted by professional accountants and/or a regulatory agency, and made available to all members.

This issue must be addressed, and can be handled in three ways.

- The association can hire a professional manager for day-to-day operation and for advice on major decisions. This is the most expensive option.
- The association can hire an advisor to attend meetings and provide advice.
- The governing agency can provide the necessary guidance.

### **Supervision:**

Under any of the scenarios above, there must be an enforcing agency to administer the laws governing housing cooperatives and to ensure that cooperatives are functioning in a way that will prevent failure. The most appropriate agency to administer this law would be the Ministry of Housing and Construction.

### **Sale and leasing:**

1. To protect the interests of the remaining members, the association needs the ability to approve all incoming members.
2. Subleasing should be permitted only for the short-term absence of a member, if allowed at all. If permitted, the length of the sublease agreement and the amount of payment should be determined by the cooperative. Subleasing on any larger scale could turn the cooperative into absentee rental ownership



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**Need for a housing cooperative law**

The statutory framework that establishes the legal foundation for housing cooperatives can take many forms. In a comprehensive framework, the statute not only defines the legal basis for the cooperative ownership regime, it can establish the basis for the interaction between the various parties. Housing cooperatives, like condominiums, represent a collective partnership with all the attendant problems associated with a group of people with conflicting priorities where a great deal of money is concerned. Add to that the interests and activities of the declarant (the person or company who establishes the cooperative), as well as potential purchasers and conflict is inevitable. A good cooperative law can provide clear limits and definitions that can limit the potential for conflict and minimize the effects.

Some areas of concern that a good cooperative law should address are:

- General Provisions (definitions, etc.)
- Creation, alteration and termination
- Management
- Consumer protection for purchasers
- Oversight agencies.

An example of a comprehensive cooperative law is that found in the Commonwealth of Virginia. The table of contents includes the following provisions.

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55-502	General powers and duties of agency
55-503	Investigative powers of agency
55-504	Annual report and amendments
55-504.1	Annual report by associations
55-505	Agency regulation of public offering statement
55-506	Penalties

*\*Table 1*

**Conclusion**

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**3 CONCLUSION**

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Conclusion

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### 3. CONCLUSION

Home ownership, through deed to specific property or through shares in a cooperative increase the owner's interest in the locality and the nation. It is a means of developing political stability in a fragile democracy.

Housing cooperatives can be an important ingredient in the Iraqi housing mix. They provide the benefits of home ownership and the low cost usually associated with apartments. They provide equity ownership to low income persons that are by definition not able to purchase real estate with cash, and are also typically unable to obtain mortgage financing because of income and/or credit history.

A draft cooperative law is attached. The action plan for implementation is detailed below.

1. Translate the law into Arabic.
2. Identify Stakeholders.
  - a. This should include the Ministry of Housing and Construction, and
  - b. Potential builders.
3. Discuss the law with stakeholders. With the Ministry of Housing and Construction, discuss these issues as well as any ancillary issues
  - a. Will the Ministry provide any construction funding? Will the Ministry assist in locating any other source of funding (i.e., donors)?
  - b. Will the Ministry provide any subsidies for low-income people? Will the Ministry assist in locating any other source of funding (i.e., donors) to hold down costs for low-income people?
  - c. Will the Ministry provide monitoring and regulation of cooperative projects to ensure that cooperatives do not get into financial trouble? If there are large assessments for necessary improvements that had not been provided for, the cooperative can fail. Low-income people live on a very thin cushion for contingencies and many cannot deal with large unexpected costs. This is slightly different than condominiums where the owners typically have higher incomes and who can borrow against their equity more easily, even though the same potential exists for problems with condominiums.
4. Modify as needed.
5. Develop rationale/policy in support of the law that includes and addresses the concerns of stakeholders.
6. Propose the law through the appropriate ministry, probably the Ministry of Housing and Construction.

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**X APPENDIX**

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## X. APPENDIX-DRAFT COOPERATIVE LAW

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

### §1. Definitions.

When used in this chapter or in the declaration and bylaws, unless specifically provided otherwise or the context requires a different meaning, the following terms shall have the meanings respectively set forth:

"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant; (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 twenty percent 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 twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent 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 twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" means the association organized under § 29.

"Common elements" means all portions of a cooperative other than the units.

"Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 16.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this act, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 26 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) registers a cooperative with the Land Registry.

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to

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"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 12 paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

"Offering" means 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 offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means 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 § 16 until that cooperative interest has been created and conveyed to another person.

"Purchaser" means 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 voluntary transfer acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any 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. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, 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" means rights reserved for the benefit of a declarant to: (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 49; (ii) exercise any development right pursuant to § 18; (iii) maintain sales offices, management offices, signs advertising the cooperative, and



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models; (iv) 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; (v) make the cooperative part of a larger cooperative or group of cooperatives; or (vi) appoint or remove any officer of the association or any executive board member during any period of declarant control.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

§ 2. Variation by agreement.

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

§ 3. Property classification of cooperative interests

A. A cooperative interest is real estate for all purposes. All cooperative interests shall be recorded in the Land Registry.

§ 4. Applicability of local ordinances, regulations and building codes; county and municipal authority.

No zoning or other land use ordinance shall prohibit cooperatives as such by reason of the form of ownership inherent therein. Neither shall any cooperative be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any cooperative in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership. Nevertheless, counties, cities and towns may provide by ordinance that proposed cooperatives comprised of conversion buildings and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception or variance, as the case may be, prior to such property becoming a cooperative. A request for such a special use permit, special exception or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion, counties, cities, towns, sanitary districts or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion

§ 5. Eminent domain.

A. 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 for such unit must include compensation to the proprietary lessee for the value of his cooperative interest. Upon acquisition, 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. Except as provided in subsection A, if part of a unit is acquired by eminent domain, the award for such unit must compensate the proprietary lessee for the reduction in value of his cooperative interest. Unless the decree provides otherwise, upon acquisition (i) that cooperative interest's allocated interests are reduced in proportion

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to the reduction in the size of the unit, or on any other basis specified in the declaration; and (ii) the portion of the allocated interests divested from the cooperative interest of which the partially acquired unit is a part is 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. 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. The court decree shall be recorded in the Land Registry.

§ 6. General principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performances or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

§ 7. Construction against implicit repeal.

This chapter, being a general act intended as a unified coverage of its subject matter, shall not be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 8. Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to cooperatives in this Commonwealth.

§ 9. Obligation of good faith.

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

§ 10. Remedies to be liberally administered.

A. The remedies provided by this chapter 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 chapter or by other rule of law.

B. Any right or obligation declared by this chapter is enforceable by judicial proceeding.

§ 11. Creation of cooperative ownership.

A cooperative may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed, and by conveying to the association the real estate subject to that declaration. The declaration must be recorded in the Land Registry by the person executing the declaration.

§ 12. Unit boundaries.

Except as provided by the declaration:

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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.

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

- A. All provisions of the declaration and bylaws are severable.
- B. The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws or rules and regulations adopted pursuant to subdivision A 1 of § 30.
- C. 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 chapter.
- D. 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 chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

### § 14. Description of units.

A description of a unit which sets forth the name of the cooperative, the recording data for the declaration, the city or county 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.

### § 15. Contents of declaration.

#### A. The declaration must contain:

1. The names of the cooperative, which must include the word "cooperative" or be followed by the words "a cooperative," and the association;
2. The name of every locality 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, which may be by plats or plans, of each unit created by the declaration, including the 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;



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6. A description of any limited common elements, other than those specified in paragraphs 2 and 4 of § 12;
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 paragraphs 2 and 4 of § 12, together with a statement that they may be so allocated;
8. A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;
9. If any development right may be exercised with respect to different parcels of real estate 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 those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
10. Any other conditions or limitations under which the rights described in paragraph 8 may be exercised or will lapse;
11. An allocation to each cooperative interest of the allocated interests in the manner described in § 16;
12. Any restrictions on (i) use and occupancy of the units; (ii) alienation of the cooperative interests; and (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;
13. The recording data for recorded easements and licenses appurtenant to or included in the cooperative or to which any portion of the cooperative is or may become subject by virtue of a reservation in the declaration; and
14. All matters required by §§, 16, 17,23, 24, and subsection D of § 31.

B. The declaration may contain any other matters the declarant deems appropriate.

§ 16. Allocation of ownership interests, votes and common expense liabilities.

A. The declaration shall allocate an ownership interest in the association a fraction or percentage of the common expenses of the association and a portion of the votes in the association, or to each cooperative interest in the cooperative, and 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.

B. 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. The declaration may provide: (i) that different allocations of votes shall be made to the cooperative interests on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) 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 chapter, nor may cooperative interests constitute a class because they are owned by a declarant.

D. 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 1 if stated as a fraction or 100 percent if stated as a percentage. In the

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event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. 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.

§ 17. Limited common elements.

A. Except for the limited common elements described in paragraphs 2 and 4 of § 12, the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the proprietary lessees whose units are affected.

B. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the proprietary lessees between or among whose units the reallocation is made. The persons executing the amendment 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. 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 subdivision A 7 of § 15. The allocations shall be made by amendments to the declaration.

§ 18. Exercise of development rights.

A. To exercise any development right reserved under subdivision A 8 of § 15, the declarant shall prepare, execute and record in the Land Registry an amendment to the declaration as specified in § 25. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection B, reallocate the allocated interests among all cooperative interests. The amendment must 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 § 18.

B. 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 § 15 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 subdivision A 8 of § 15.

C. 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.

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 interest of which that unit is a part among the cooperative interests created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides, pursuant to subdivision A 8 of § 15, that all of or a portion of the real estate is subject to the development right of withdrawal:

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1. If all 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; and
2. If a portion or portions are subject to withdrawal, no portion may be withdrawn after a cooperative interest in that portion has been conveyed to a purchaser.

§ 19. Alterations of units.

Subject to the provisions of the declaration 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 the electrical or mechanical systems of any portion of the cooperative;
2. May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the cooperative, other than the interior of the 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 electrical or mechanical systems of any portion of the cooperative. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§ 20. Relocation of boundaries between adjoining units.

A. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the proprietary lessees of those units. If the proprietary lessees of the adjoining units have specified a reallocation between their cooperative interests of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines within thirty days that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those proprietary lessees, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

B. The association shall prepare and record amendments to the declaration including any plans necessary to show or describe the altered boundaries between adjoining units and their sizes and identifying numbers. All costs for such preparation and recordation shall be borne by the proprietary lessees involved.

§ 21. Subdivision of units.

A. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a proprietary lessee to subdivide a unit, the association shall prepare, execute and record with the Land Registry an amendment to the declaration, subdividing that unit. All costs for such preparation, execution and recordation shall be borne by the proprietary lessees involved.

B. The amendment to the declaration must (i) be executed by the proprietary lessee of the unit to be subdivided; (ii) assign an identifying number to each unit created; and (iii) reallocate the allocated interests formerly allocated to the cooperative interest of which the subdivided unit is a part to the new cooperative interests in any reasonable manner prescribed by the proprietary lessee of the cooperative interest of which the subdivided unit is a part.



§ 22. Easement for encroachments.



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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 his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to any representation in the public offering statement.

§ 23. Use for sales purposes.

A declarant may maintain sales offices, management offices and models in units or on common elements in the cooperative only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. Any sales 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 it 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 on the common elements advertising the cooperative. The provisions of this section are subject to the provisions of other state law and to local ordinances.

§ 24. 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 chapter or reserved in the declaration.

§ 25 Amendment of declaration.

A. Except in cases of amendments that may be executed by a declarant under § 18, the association under § 5, subsection C of § 17, subsection A of § 20, or § 21, or certain proprietary lessees under subsection B of § 17, subsection A of § 20, subsection B of § 21, or subsection B of § 26, and except as limited by subsection D, the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds 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. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded at the Land Registry.

C. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a cooperative interest or the uses to which any unit is restricted, in the absence of unanimous consent of the proprietary lessees.

E. Amendments to the declaration required by this chapter 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.

§ 26. Termination of cooperative ownership.

A. Except in the case of a taking of all the units by eminent domain or in the case of foreclosure of a security interest against the entire cooperative which has priority over the declaration, cooperative ownership may be terminated only by agreement of proprietary lessees of cooperative interests to which at least four-fifths of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the cooperative are restricted exclusively to nonresidential

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B. An agreement to terminate must be evidenced by the execution of a termination agreement or ratification thereof in the same manner as a deed by the requisite number of proprietary lessees. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every city or county in which a portion of the cooperative is situated and is effective only upon recordation.

C. 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, as set forth in subdivision A 12 of § 15, proceeds of the sale must be distributed to holders of liens against the association and, against the cooperative interests and to proprietary lessees, all as their interests may appear, in accordance with subsections D and E. 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 chapter or the declaration.

D. 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 recorded or docketed before termination may enforce their liens in the same manner as any lienholder, and all other creditors of the association are to be treated as if they had perfected liens against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have such priority:

1. The lien of each creditor of the association, which was perfected against the association before termination, becomes a lien against each cooperative interest upon termination as of the date the lien was perfected;
2. All other creditors of the association are to be treated as if they had perfected liens against the cooperative interests immediately before termination;
3. The amounts of the liens of the association's creditors described in paragraphs 1 and 2 above 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 the cooperative interests;
4. The lien of each creditor of each proprietary lessee which was perfected before termination continues as a lien against that proprietary lessee's cooperative interest as of the date the lien was perfected; and
5. 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 above, 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.

E. The respective interests of proprietary lessees referred to in subsections C and D are as follows:

1. Except as provided in paragraph 2, the respective interests of proprietary lessees are the fair market values of their cooperative interests immediately before the termination, as determined by one or more independent



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appraisers selected by the association. Appraisers selected shall hold a designation awarded by a major, nationwide testing or certifying professional appraisal society or association. The decision of the independent appraisers shall be distributed to the proprietary lessees and becomes final unless disapproved within thirty days after distribution by proprietary lessees of cooperative interests to which twenty-five percent of the votes in the association are allocated. 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.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all proprietary lessees are their respective ownership interests in the association immediately before the termination.

§ 27. Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board, (ii) prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding, or (iii) receive and distribute any insurance proceeds except pursuant to § 41.

§ 28. Merger or consolidation of cooperatives.

A. 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. 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.

B. An agreement of two or more cooperatives to merge or consolidate pursuant to subsection A must be evidenced by an agreement prepared, executed, recorded and certified 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 with the Land Registry.

C. 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 (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interest 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.

§ 29. Organization of the association.

An association must be organized no later than the date the first cooperative interest in the cooperative is conveyed. The membership of the association at all times 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 § 26 or their heirs, successors or assigns. The association shall be organized as a stock or nonstock corporation, trust, trustee, unincorporated association or partnership.

§ 30. Powers of the association.



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- A. Except as provided in subsection B, and subject to the provisions of the declaration, the association, even if unincorporated, may:
1. Adopt and amend bylaws and rules and regulations;
  2. Adopt and amend budgets for revenues, expenditures and reserves 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 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;
  7. Cause additional improvements to be made as a part of the common elements;
  8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but part of the cooperative may be conveyed, or all or part of the cooperative may be subjected to a security interest only pursuant to § 40;
  9. Grant easements, leases, licenses and concessions through or over the common elements;
  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 paragraphs 2 and 4 of § 12 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 fines not to exceed fifty dollars for each instance 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 § 52 or statements of unpaid assessments;
  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 common expense assessments, but only to the extent the declaration expressly so provides;
  15. Exercise any other powers conferred by the declaration or bylaws;
  16. Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association; and
  17. Exercise any other powers necessary and proper for the governance and operation of the association.
- B. 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.

§ 31. Executive board members and officers.



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- A. Except as provided in the declaration, the bylaws, subsection B or other provisions of this chapter, 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 are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the proprietary lessees and (ii) if elected by the proprietary lessees, ordinary and reasonable care.
- B. The executive board may not act on behalf of the association to amend the declaration, to terminate the cooperative, to elect members of the executive board or to determine the qualifications, powers and duties or terms of office of executive board members. The executive board may fill vacancies in its membership for the unexpired portion of any term.
- C. Within thirty days after adoption of any proposed budget for the cooperative, the executive board shall provide a summary of 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. Such meeting shall be held not less than fourteen nor more than thirty days after mailing of the summary. The meeting place, date, and time shall be provided with the budget summary. 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. 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, a period of declarant control terminates no later than the earlier of: (i) sixty days after conveyance of seventy-five percent of the cooperative interests which may be created to proprietary lessees other than a declarant; (ii) two years after all declarants have ceased to offer cooperative interests for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove 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. Not later than sixty days after conveyance of twenty-five percent of the cooperative interests which may be created to proprietary lessees other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by proprietary lessees other than the declarant. Not later than sixty days after conveyance of fifty percent of the cooperative interests which may be created to proprietary lessees other than a declarant, not less than 33 1/3 percent of the members of the executive board must be elected by proprietary lessees other than the declarant.
- F. 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. The executive board shall elect the officers. The executive board members and officers shall take office upon election.
- G. Notwithstanding any provision of the declaration or bylaws to the contrary, the proprietary lessees, by a two-thirds vote of all persons 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.

§ 32. Transfer of special declarant rights.

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A. No special declarant rights created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every city or county in which any portion of the cooperative is located. The instrument is not effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

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

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

3. If a transferor retains any special declarant rights, but transfers 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 chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

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

C. Unless otherwise provided in a security agreement, in case of foreclosure of a security agreement, tax sale, judicial sale, sale by a trustee under a security agreement or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any cooperative interests owned by a declarant or of real estate in a cooperative subject to development rights:

1. A person acquiring all the cooperative interests or real estate being foreclosed or sold shall succeed, but only upon his request, to all special declarant rights related to that property held by that declarant or only to any rights reserved in the declaration pursuant to § 23 and held by that declarant to maintain models, sales offices and signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

D. Upon foreclosure or judicial 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 as provided in subsection D of § 31 terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. 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 chapter or by the declaration.

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

a. On a declarant which relate to his exercise or non-exercise of special declarant rights; or

b. On his transferor, other than:



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- (1) Misrepresentations by any previous declarant;
- (2) Warranty obligations on improvements made by any previous declarant, or made before the cooperative was created;
- (3) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or
- (4) 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 pursuant to § 23, 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 current public offering statement.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to cooperative interests or real estate subject to development 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 subsection D of § 31 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 rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under subsection D of § 31.

F. 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 chapter or the declaration.

§ 33. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the proprietary lessees pursuant to subsection F of § 31 takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) 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 after the executive board elected by the proprietary lessees pursuant to subsection F of § 31 takes office upon not less than ninety days' notice to the other party.

This section does not 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. Nor shall this section apply to any contract, incidental to the disposition of a cooperative interest, to provide to a proprietary lessee for the duration of such proprietary lessee's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the declaration, bylaws or proprietary leases requiring that the proprietary lessees be parties to such contracts.

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A. 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 and responsibilities 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; and
6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate, including provision for the arbitration of disputes or other means of alternative dispute resolution in accordance with subsection B of § 60.

§ 35 Upkeep of cooperative.

A. Except to the extent otherwise provided by the declaration, by subsection B hereof, or by subsection G of § 41, 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 unit 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 and all costs associated with the repair thereof.

B. In addition to the liability that a declarant as a proprietary lessee has under this chapter, 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.

§ 36. 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 twenty percent or any lower percentage specified in the bylaws of the proprietary lessees. Not less than ten nor more than sixty 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 changes and any proposal to remove a director or officer.

§ 37. Quorums.



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A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent 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.

B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

§ 38. Voting; proxies.

A. If only one of the multiple proprietary lessees of a unit is present 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. 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.

C. If the declaration requires that votes on specified matters affecting the cooperative be cast by lessees other than proprietary lessees of leased units: (i) the provisions of subsections A and B apply to lessees as if they were proprietary lessees; (ii) proprietary lessees who have leased their units to other persons may not cast votes on those specified matters; and (iii) 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 § 36, of all meetings at which lessees may be entitled to vote.

D. No votes allocated to a cooperative interest owned by the association may be cast.

§ 39. Tort and contract liability.

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, and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any proprietary lessee: (i) for all tort losses not covered by insurance suffered by the association or that proprietary lessee, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

A proprietary lessee is not precluded from bringing an action contemplated by this subsection because he is a proprietary lessee or a member or officer of the association. Liens resulting from judgments against the association are governed by § 45.

§ 40. Conveyance or encumbrance of the cooperative.



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A. 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 eighty percent of the votes in the association, including a simple majority 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 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. 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 city or county in which a portion of the cooperative is situated, and is effective only upon recordation.

C. 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 and appropriate to effect the conveyance or encumbrance including the power to execute deeds or other instruments.

D. Any purported conveyance, encumbrance or other voluntary transfer of the cooperative, unless made pursuant to this section or pursuant to subsection C of § 26, is void.

E. A conveyance or encumbrance of the cooperative pursuant to this section does not deprive any unit of its rights of access and support.

§ 41. Insurance.

A. 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 eighty percent 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; and

2. Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the 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.

B. If the insurance described in subsection A is not reasonably available, the association shall cause notice of that fact to be hand delivered or sent prepaid by 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 it deems appropriate to protect the association or the proprietary lessees.

C. 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;



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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; and

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. Any loss covered by the property policy under subsection A 1 of this section 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 deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, proprietary lessees and lien holders 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. The association, proprietary lessees and lien holders 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. An insurance policy issued to the association does not prevent a proprietary lessee from obtaining insurance for his own benefit.

F. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance 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 thirty 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 address.

G. 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) eighty percent 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. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire cooperative is not repaired or replaced: (i) the insurance proceeds attributable 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, 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 allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the proprietary lessees or lien holders, 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 subsection A of § 5, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, § 26 governs the distribution of insurance proceeds if the cooperative is terminated.

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

§ 42. Assessments for common expenses.



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- A. 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.
- B. Except for assessments under subsections C, D and E, all common expenses must be assessed against all the cooperative interests in accordance with the allocations set forth in the declaration pursuant to subsection A of § 16. Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent per year.
- C. To the extent required by the declaration:
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;
  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; and
  3. The costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage.
- D. Assessments to pay a judgment against the association 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.
- E. If any common expense is caused by the negligence or other misconduct of any proprietary lessee, or of his family members, tenants or other invitees, the association may assess that expense exclusively against his cooperative interest.
- F. 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.

§ 43. Remedies for nonpayment of assessments.

- A. The association has a lien on a cooperative interest for any assessment levied against that cooperative interest or fines imposed against its owner from the time the assessment or fines become due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to subdivisions A 11 and A 12 of § 30 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. 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 as provided by this section. The association's lien may be foreclosed: (i) by judicial sale in like manner as a mortgage on real estate; or (ii) by power of sale as provided in subsection I.
- B. 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) any first security interest encumbering only the cooperative interest of a proprietary lessee and perfected before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for governmental assessments or charges against the cooperative or the cooperative interest. The lien is also prior to the security interests described in (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection A of § 30 which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association.

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- C. 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.
- D. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.
- E. This section does not prohibit actions to recover sums for which subsection A creates a lien or prohibit an association from taking a transfer in lieu of foreclosure.
- F. A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
- G. 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.
- H. The association, upon nonpayment of assessments and compliance with this subsection, may sell the cooperative interest by request to the Land Registry for a sale in the same manner as foreclosure of a mortgage. The association may buy at the sale.
- I. The proceeds of a sale under subsection I shall be applied in the following order:
1. The reasonable expenses of sale;
  2. The reasonable expenses of securing possession before sale; holding, maintaining and preparing the cooperative interest for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and to the extent provided for by agreement between the association and the proprietary lessee, reasonable attorney's fees and other legal expenses incurred by the association;
  3. Satisfaction in the order of priority of any prior claims of record;
  4. Satisfaction of the association's lien;
  5. Satisfaction in the order of priority of any subordinate claim of record; and
  6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the proprietary lessee is liable for any deficiency.
- J. If a cooperative interest is sold under subsection H, a good faith purchaser for value acquires the proprietary lessee's interest in the cooperative interest free of the association's debt which gave rise to the lien under which the sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The Land Registry will convey the cooperative interest to the successful bidder at the sale.
- K. At any time before the association has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the proprietary lessee or the holder of any subordinate security interest may cure the proprietary lessee's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

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A. Regardless of whether his cooperative interest is subject to the claims of the association's creditors, no property of a proprietary lessee other than his cooperative interest is subject to those claims.

B. 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. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

§ 45. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with § 52. All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents.

§ 46. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. 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.

§ 47. Applicability; waiver.

A. This article applies to all cooperative interests subject to this chapter, except as provided in subsection B or as modified or waived by agreement of purchasers of cooperative interests in a cooperative in which all units are restricted to nonresidential use.

B. 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;
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.

§ 48. Liability for public offering statement; requirements.

A. 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 §§ 49 and 50.

B. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant 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

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shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection A.

C. Any 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 subsection A of § 51. The person who prepared all or a part of the public offering statement is liable under §§ 51, 55-60 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom 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.

D. If a unit is part of a cooperative and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement, conforming to the requirements of §§ 49 and 50 as those requirements relate to each regime 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.

§ 49. Public offering statement; general provisions.

A. 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, declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the cooperative;
3. The number of units in the cooperative;
4. Copies and a brief narrative description of the significant features of the declaration and any other recorded covenants, conditions, restrictions and reservations affecting the cooperative; the bylaws and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 33;
5. Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the 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 concerning occupancy and inflation factors. The budget must include, without limitation:
  - a. A description of any provisions made in the budget for reserves for repairs and replacement, or if no provision is made for such reserves, a statement to that effect;
  - b. A statement of any other reserves;
  - c. The projected common expense assessment by category of expenditures for the association; and
  - d. The projected monthly common expense assessment for each type of unit;
6. Any 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 the projected common

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expense assessment attributable to each of those services or expenses for the association and for each type of unit;

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 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. A statement that:

a. Within ten days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a cooperative interest from a declarant;

b. If a declarant fails to provide a public offering statement to a purchaser before conveying a cooperative interest, that purchaser may recover from the declarant ten percent of the sales price of the cooperative interest, plus ten percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative; and

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 § 51 together with the name and address of the escrow agent;

14. Any restrictions on: (i) use and occupancy of the units; (ii) alienation of the cooperative interests; or (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 the insurance coverage provided for the benefit of proprietary lessees;

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;

17. The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to § 62;

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. 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;

21. 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.



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B. If a cooperative composed of not more than three 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 paragraphs 9, 10, 15, 16, 17, 18 and 19 of subsection A and the narrative descriptions of documents required by paragraph A 4.

C. A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

D. 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.

§ 50. Public offering statement; cooperatives containing conversion building.

A. The public offering statement of a cooperative containing any conversion building must contain, in addition to the information required by § 49:

1. A statement by the declarant, based on a report prepared by an independent, registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

2. A statement by the declarant of the expected useful life of each item reported on in paragraph 1, or a statement that no representations are made in that regard; and

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.

B. This section applies only to buildings containing units that may be occupied for residential use.

§ 51. Purchaser's right to cancel.

A. A person required to deliver a public offering statement pursuant to subsection C of § 48 shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of that cooperative interest and not later than the date of any contract of sale. The purchaser may cancel the contract within ten days after signing the contract.

B. If a purchaser elects to cancel a contract pursuant to subsection A, he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid 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.

C. If a person required to deliver a public offering statement pursuant to subsection C of § 48 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, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sales price of the cooperative interest, plus ten percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative. Execution of a purchase agreement for a cooperative interest which makes reference to the public offering statement and wherein the purchaser acknowledges receipt thereof shall be sufficient proof that the declarant has fully satisfied this requirement.

§ 52. Resales of cooperative interests.



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A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection B of § 47, a proprietary lessee shall furnish to a purchaser before execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association 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;
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 next two 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. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association;
15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the cooperative; and

B. The association, within ten days after a request by a proprietary lessee, shall furnish 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 the certificate.



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C. 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, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

§ 53. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a cooperative interest from a person required to deliver a public offering statement pursuant to subsection C of § 48 shall be placed in escrow and held either in this Commonwealth or in the state where the unit which is a part of that cooperative interest is located in an account designated solely for that purpose by a title insurance company, attorney or real estate broker licensed under the laws of this Commonwealth, an independent bonded escrow company or an institution whose accounts are insured by a governmental agency or instrumentality until: (i) delivered to the declarant at closing; (ii) delivered to the declarant because of purchaser's default under a contract to purchase the cooperative interest; or (iii) refunded to the purchaser.

B. Any deposit made in connection with the purchase of a cooperative interest from a person not required to deliver a public offering statement shall be placed in escrow in the same manner as prescribed in subsection A of this section. Upon receipt of the certificate called for in § 52, should the purchaser elect to void the contract, the seller may deduct the actual charges by the association for preparation of the certificate. Otherwise, the deposit shall be promptly returned to the purchaser.

§ 54. Release of liens.

A. In the case of a sale of a cooperative interest where delivery of a public offering statement is required pursuant to subsection C of § 48, a seller shall, before conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting the unit which is a part of that cooperative interest and any limited common element assigned thereto which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

B. Before conveying real estate to the association the declarant shall have that real estate released from: (i) all liens the foreclosure of which would deprive proprietary lessees of any right of access to or easement of support of their units, and (ii) all other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

§ 55. Conversion buildings.

A. A declarant of a cooperative containing conversion buildings shall give each of the tenants of a conversion building formal notice of the conversion at the time the cooperative is registered. This notice shall advise each tenant of (i) the offering price of the cooperative interests for the unit he occupies, (ii) the projected common expense assessments against that cooperative interest for at least the first year of the cooperative's operation, (iii) any relocation services, public or private, of which the declarant is aware, (iv) any measure taken or to be taken by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation plan, under subsection (E) of this section, to assist tenants in relocating. No tenant or subtenant may be required to vacate upon less than 120 days' notice, 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 may not be altered during that period. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided herein and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations or improvements, provided (i) the making of the same does not constitute an actual or constructive eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. Failure to give notice as required by this section is a defense to an action for possession. The declarant shall also provide general notice to the



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tenants of the cooperative or proposed cooperative at the time of application to the agency, in addition to the formal notice required by this subsection.

B. For sixty days after delivery or mailing of the formal notice described in subsection A, the person required to give the notice shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use to the tenant who leases the unit associated with that cooperative interest. A specific statement of the purchase price and the amount of any initial or special cooperative fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the cooperative interest during that 60-day period, the offeror may not offer to dispose of an interest in that cooperative interest during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any cooperative interest in a conversion building if the unit which is part of that cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

C. If a seller, 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 seller has complied with subsection B, but does not affect the right of a tenant to recover damages from the seller for a violation of subsection B.

D. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, the notice also constitutes a notice to vacate as specified by Law 87 of 1979, the Law of Real Estate Leasing. The details of the relocation plan, shall also be provided to the tenant.

E. The declarant of any residential cooperative containing conversion buildings converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation.

F. Any county, city or town may require by ordinance that elderly or disabled tenants, occupying as their residence up to twenty percent of the apartments or units in a cooperative containing conversion buildings at the time of issuance of the general notice required by subsection A hereof, be offered leases or extensions of leases on the apartments or units they occupy or on other apartments or units of at least equal size and overall quality for up to three years beyond the date of such notice.

The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion building.

Such leases or extensions shall not be required, however, in the case of any apartments or units which will, in the course of the conversion, be substantially altered in physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

G. For the purposes of this section:

"Elderly" means not less than sixty-two years of age.

"Disabled" means suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

H. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

 § 56. Express warranties of quality.

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A. Express warranties made by any seller to a purchaser of a cooperative interest, if relied upon by the purchaser, are created as follows:

1. Any affirmation of fact or promise which relates to the unit, its use or rights appurtenant thereto, area improvements to the 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, creates an express warranty that the cooperative will conform to the model or description;
3. Any description of the quantity or extent of the real estate comprising the cooperative, including plats or surveys, creates an express warranty that the cooperative will conform to the description, subject to customary tolerances; and
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. Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty is 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. Any conveyance of a cooperative interest transfers to the purchaser all express warranties of quality made by previous sellers.

§ 57. Implied warranties of quality.

A. A declarant and any person in the business of selling cooperative interests for his own account warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance of a cooperative interest or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

B. A declarant and any person in the business of selling cooperative interests for his own account impliedly warrant that a unit and the common elements in the cooperative are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him or made by any person before the creation of the cooperative, will be:

1. Free from defective materials; and
2. Constructed in accordance with applicable law, according to sound engineering and construction standards and in a workmanlike manner.

C. In addition, a declarant and any person in the business of selling cooperative interests for his own account warrant to a purchaser of a cooperative interest for a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

D. Warranties imposed by this section may be excluded or modified as specified in § 58.

E. For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.



F. Any conveyance of a cooperative interest transfers to the purchaser all of the declarant's implied warranties of quality.

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§ 58. Exclusion or modification of implied warranties of quality.

A. Except as limited by subsection B with respect to a purchaser of a cooperative interest for a unit that may be used for residential use, implied warranties of quality: (i) may be excluded or modified by agreement of the parties; and (ii) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

B. With respect to a purchaser of a cooperative interest for a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, nor shall any disclaimer of implied warranties of quality be effective as to defects in materials or construction as to any unit, brought to the attention of the declarant within two years from the date of the first conveyance of the cooperative interest associated with such unit, or as to any such defect in the common elements brought to the attention within two years (i) after that common element has been completed or, if later, (ii) after the first cooperative interest has been conveyed in the cooperative. The first conveyance of a cooperative interest associated with a unit situated in real estate subject to development rights shall be treated as the first conveyance of a cooperative interest in the cooperative for the purposes of the preceding sentence as to any such defects in the common elements within that real estate. A declarant and any person in the business of selling cooperative interests for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into became a part of the basis of the bargain.

§ 59. Statute of limitations for warranties.

A. A judicial proceeding for breach of any obligation arising under § 56 or § 57 must be commenced within six years after the cause of action accrues.

B. Subject to subsection C, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

1. As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed, or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and


2. As to each common element, at the time the common element is completed or, if later: (i) as to a common element that may be added to the cooperative or portion thereof, at the time the first cooperative interest for a unit therein is conveyed to a bona fide purchaser; or (ii) as to a common element within any other portion of the cooperative, at the first time a cooperative interest in the cooperative is conveyed to a bona fide purchaser.

C. If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the cooperative, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

§ 60. Effect of violation on rights of action; attorney's fees; arbitration of disputes.

A. If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration of 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 chapter. The court, in an appropriate case, may award reasonable attorney's fees.

B. A declaration may provide for the arbitration of disputes or other means of alternative dispute resolution. The place of any such arbitration or alternative dispute resolution shall be held at a location mutually agreed by the parties.

 § 61. Labeling of promotional material.

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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 either as "MUST BE BUILT" or "NEED NOT BE BUILT."

§ 62. Declarant's obligation to complete and restore.

A. 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. 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 the exercise of rights reserved pursuant to or created by §§ 18, 19, 20, 21, 23 and 24.

§ 63. Substantial completion of units.

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 the unit which is a part of that cooperative interest is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent, registered architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.

**§ 64. Administrative agency.**

This chapter shall be administered by the Real Estate Board, which herein is called the "agency."

**§ 65. Registration required.**

A declarant may not offer or dispose of a cooperative interest intended for residential use unless the cooperative and the cooperative interest are registered with the agency. A cooperative consisting of no more than three units which is not subject to development rights is exempt from the requirements of this section.

**§ 66. Application for registration; approval of uncompleted unit.**

A. An application for registration must contain the information and be accompanied by any reasonable fees required by the agency's regulations. A declarant promptly shall file amendments to report any factual or expected material change in any document or information contained in his application.

B. If a declarant files with the agency a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units for which he proposes to convey cooperative interests before the units are substantially completed in the manner required by § 55-495, the declarant shall also file with the agency:

1. A verified statement showing all costs involved in completing the buildings containing those units;
2. A verified estimate of the time of completion of construction of the buildings containing those units;
3. Satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;
4. A copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;
5. A 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;
6. Plans for the units;
7. If purchasers' funds are to be utilized for the construction of the cooperative, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which

provides that:





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- a. Disbursements of purchasers' funds may be made from time to time to pay for construction of the cooperative, architectural, engineering, finance and legal fees, and other costs for the completion of the cooperative in proportion to the value of the work completed by the contractor as certified by an independent, registered architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;
- b. Disbursement of the balance of purchasers' funds remaining after completion of the cooperative shall be made only when the escrow agent or lender receives satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and
- c. Any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

8. Any other materials or information the agency may require by its regulations.

The agency may not register the units described in the declaration or the amendment unless the agency determines, on the basis of the material submitted by the declarant and any other information available to the agency, that there is a reasonable basis to expect that the cooperative interests to be conveyed will be completed by the declarant following conveyance.

**§ 67. Receipt of application; order or registration.**

A. The agency shall acknowledge receipt of an application for registration within five business days after receiving it. Within sixty days after receiving the application, the agency shall determine whether:

1. The application and the proposed public offering statement satisfy the requirements of this chapter and the agency's regulations;
2. The declaration and bylaws comply with this chapter; and
3. It is likely that the improvements the declarant has undertaken to make can be completed as represented.

B. If the agency makes a favorable determination, it shall issue promptly an order registering the cooperative. Otherwise, unless the declarant has consented in writing to a delay, the agency shall issue promptly an order rejecting registration.

**§ 68. Cease and desist order.**

If the agency determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a cooperative, or that any person has otherwise violated any provision of this chapter or the agency's rules, regulations or orders, the agency may issue an order to cease and desist from that conduct to comply with the provisions of this chapter and the agency's rules, regulations and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

**§ 69. Revocation of registration.**

A. The agency, after notice stating the deficiency complained of and hearing, may issue an order revoking the registration of a cooperative upon determination that a declarant or any officer or principal of a declarant has:

1. Failed to comply with a cease and desist order issued by the agency affecting that cooperative;
2. Concealed, diverted or disposed of any funds or assets of any person in a manner impairing rights of purchasers of cooperative interests in that cooperative;
3. Failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that cooperative;
4. Intentionally misrepresented or failed to disclose a material fact in the application for registration; or
5. Failed to meet any of the conditions described in §§ 55-498 and 55-499 necessary to qualify for registration.

B. Without the consent of the agency a declarant shall not convey, cause to be conveyed, or contract for the conveyance of any cooperative interest while an order revoking the registration of the cooperative is in effect.

C. In appropriate cases the agency, in its discretion, may issue a cease and desist order in lieu of an order of

**§ 70. General powers and duties of agency.**

- A. The agency may adopt, amend and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the agency may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter. The agency may prescribe forms and procedures for submitting information to the agency.
- B. If it appears that any person has engaged, is engaging or is about to engage in any act or practice in violation of this chapter or any of the agency's regulations or orders, the agency without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The agency is not required to post a bond or prove that no adequate remedy at law exists.
- C. The agency may intervene in any action or suit involving the powers or responsibilities of a declarant in connection with any cooperative for which an application for registration is on file.
- D. The agency may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.
- E. The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards and uniform administrative practices, and may develop information that may be useful in the discharge of the agency's duties.
- F. In issuing any cease and desist order or order rejecting or revoking registration of a cooperative, the agency shall state the basis for the adverse determination and the underlying facts.
- G. The agency, in its sound discretion, may require bonding, escrow of portions of sales proceeds or other safeguards it may prescribe by its regulations to guarantee completion of all improvements labeled "MUST BE BUILT" pursuant to § 55-494.

**§ 71. Investigative powers of agency.**

- A. The agency may initiate public or private investigations within or outside this Commonwealth to determine whether any representation in any document or information filed with the agency is false or misleading or whether any person has engaged, is engaging or is about to engage in any unlawful act or practice.
- B. In the course of any investigation or hearing, the agency may subpoena witnesses and documents, administer oaths and affirmations and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the agency may apply to the appropriate court for a contempt order or injunctive or other appropriate relief to secure compliance.

**§ 72. Annual report and amendments.**

- A. A declarant, within thirty days after the anniversary date of the order of registration, shall file annually a report to bring up-to-date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection B.
- B. A declarant shall file promptly amendments to the public offering statement with the agency.
- C. If an annual report reveals that a declarant owns or controls cooperative interests representing less than twenty-five percent of the voting power in the association and that a declarant has no power to increase the number of units in the cooperative or to cause a merger or confederation of the cooperative with other cooperatives, the agency shall issue an order relieving the declarant of any further obligation to file annual reports. Thereafter, so long as the declarant is offering any cooperative interests for sale, the agency has jurisdiction over the declarant's activities, but has no other authority to regulate the cooperative.

**§ 73 Annual report by associations.**

- A. The association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of any declarant control period reserved pursuant to § 55-460.
- B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

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C. The annual report shall be accompanied by a fixed fee in an amount established by the agency. All fees shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

**§ 74 Agency regulation of public offering statement.**

A. The agency at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

B. The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the cooperative, the disclosure statement or any of the documents contained in the application for registration.

C. In the case of a cooperative situated wholly outside of this Commonwealth, no application for registration or proposed public offering statement, filed with the agency, which has been approved by an agency in the state where the cooperative is located and substantially complies with the requirements of this chapter, may be rejected by the agency on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by the agency's regulations. However, the agency may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

**§ 75. Penalties.**

Any person who willfully violates §§ 55-478, 55-481, 55-482, 55-485, 55-487, 55-498, 55-504, or any rule adopted under, or order issued pursuant to § 55-502, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact, shall be guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than \$50,000; or he may be imprisoned for not more than 6 months; or both, for each offense.