

TEXAS UNIFORM CONDOMINIUM ACT

**Overview of Chapter 82, Texas Property Code,
with emphasis on drafting documents required by new law**

SHARON REULER

(since November 2002)

Settle & Pou, P.C.

4131 N. Central Expressway, Suite 1000

Dallas, Texas 75204

Tel: (214) 560-4243

Fax: (214) 560-4025

**STATE BAR OF TEXAS
ADVANCED REAL ESTATE DRAFTING COURSE
San Antonio, Texas
February 3-4, 1994**

Table of Contents

I. INTRODUCTION	5
II. FROM WHENCE COMETH TUCA?	5
A. Texas' Old Condo Law	5
B. Three Generations of Model Acts	6
C. Thirteen Year History of TUCA	6
III. OVERVIEW OF TUCA	7
A. Purpose	7
B. Format	7
C. Affect on Existing Condominiums	7
D. Some Interesting Features	7
E. Development Rights v. Special Declarant Rights	8
F. Failure to Comply	8
IV. COMPARING TUCA AND UCA	9
A. Why Compare?	9
B. Overview Comparison	9
C. Section by Section Comparison	9
V. DRAFTING DOCUMENTS	14
A. Drafting Philosophy	14
B. TUCA's Provisos	15
C. Drafting Considerations	15
D. Resources for Drafting Attorney	15
VI. DOCUMENTS REQUIRED OR INDICATED BY TUCA	16
A. Plats and Plans	16
1. PLATS AND PLANS	16
2. CERTIFICATION OF PLATS AND PLANS	16
3. CONSTRUCTION PLANS AND SPECIFICATIONS	16
B. Governing Documents	16
1. DECLARATION	16
a. TUCA Provisions Pertinent to Declaration	16
b. Required Contents of Declaration	16
c. Nonresidential Provisos	16
d. Development and Declarant Provisos	16
e. Leasehold Provisos	17
f. Physical Property Provisos	17
g. Money Provisos	18
h. Provisos - Governance/Administration	18
i. Insurance Provisos	19
j. Miscellaneous Provisos	19
k. Declaration Forms	20
2. AMENDMENTS TO DECLARATION	20
a. Applicability of TUCA	20
b. Correcting Defective Execution	20
c. Declarant Exercising Development Right	20
d. Declarant Exercising Development Right	20
e. Declarant Complying with Lender Requirements	20
f. Declarant Adding Real Property to Condominium	20
g. Declarant Converting Unit to Common Element	20
h. Declarant Subdividing Unit	20
i. Allocation of Limited Common Element	20
j. Reallocation of Limited Common Element	20
k. Reallocation of Interests After Partial Loss	20
l. Reallocation of Interests After Condemnation	20
m. Reallocation of Interests After Expiration of Leasehold	20
n. Relocating Boundary Between Units	20
o. Owner Subdividing Unit	20
p. Enforcement Against Tenants	20

q. Termination of Condominium	20
3. BYLAWS	20
4. RULES	20
5. ARTICLES OF INCORPORATION	20
6. CERTIFICATE OF INCORPORATION	21
C. Declarant Documents	21
1. CONSENT TO DECLARATION BY PRIOR MORTGAGEE	21
2. DECLARATION AMENDMENT TO EXERCISE DEVELOPMENT RIGHT	21
3. DECLARANT'S CONSENT TO MODIFICATION OF RIGHTS OR OBLIGATIONS	21
4. TRANSFER OF SPECIAL DECLARATION RIGHTS	21
5. MORTGAGE INSTRUMENT OR DEED OF TRUST	21
6. JUDGMENT OR INSTRUMENT CONVEYING TITLE	21
7. SUCCESSOR DECLARANT'S NOTICE OF INTENT TO HOLD SPECIAL DECLARANT RIGHTS	21
8. SUCCESSOR DECLARANT'S NOTICE OF INTENT TO EXERCISE SPECIAL DECLARANT RIGHTS	21
9. DECLARANT'S CONTRACTS AND LEASES	21
10. PUBLIC OFFERING STATEMENT	21
11. WARRANTIES	21
12. INTEREST ON ESCROW AGREEMENT	21
13. RELEASE OF LIENS	21
14. PROMOTIONAL MATERIAL	21
D. Conversion-Related Documents	21
1. CONVERSION CONDITION STATEMENT	21
2. NOTICE OF CONVERSION	21
E. Declarant Sale Documents	21
1. <u>CONDOMINIUM INFORMATION STATEMENT</u>	21
F. Unit Resale Documents	22
1. RESALE CERTIFICATE	22
2. SELLER'S RESALE AFFIDAVIT	22
3. WAIVER OF RESALE CERTIFICATE	22
G. Insurance Documents	22
1. UNAVAILABLE INSURANCE NOTICE	22
2. INSURANCE CANCELLATION NOTICE	22
H. Budget Documents	22
1. BUDGETS	22
I. Assessment Lien Foreclosure Documents	22
1. APPOINTMENT TO EXERCISE POWER OF SALE	22
2. REDEMPTION DEED	22
3. REDEMPTION AFFIDAVIT	22
4. MORTGAGEE'S REQUEST FOR NOTIFICATION	22
5. DEED IN LIEU OF FORECLOSURE	22
J. Documents Related to Association Operations	22
1. MANAGEMENT CERTIFICATE	22
2. TERMINATION AGREEMENT	22
3. RESCISSION AGREEMENT	22
4. VIOLATION NOTICE	22
5. NOTICE OF INTENT TO TERMINATE DECLARANT CONTRACTS AND LEASES	23
6. NOTICE TO ENTER UNIT	23
7. NOTICE OF ASSOCIATION MEETINGS	23
8. PROXY	23
9. ANNUAL AUDIT	23
10. OWNER INFORMATION	23
VII. APPENDICES	24
INDEXES	25
INDEX 1 - TUCA PROVISIONS PERTAINING TO PLATS & PLANS	25
INDEX 2 - TUCA PROVISIONS PERTAINING TO DECLARATION	26

INDEX 3 - TUCA PROVISIONS PERTAINING TO BYLAWS	29
INDEX 4 - TUCA PROVISIONS PERTAINING TO RULES	31
INDEX 5 - TUCA PROVISIONS PERTAINING TO CONDOMINIUM INFORMATION STATEMENT	32
CHECKLISTS	33
CHECKLIST 1 - CHECKLIST FOR NEW PROJECT	33
CHECKLIST 2 - CHECKLIST FOR PREPARING CONDOMINIUM INFORMATION STATEMENT	37
FORMS	41
FORM 1 - MODEL SHORT FORM DECLARATION	41
FORM 2 - CONDOMINIUM BYLAWS	50
FORM 3 - SAMPLE INITIAL RULES	67
FORM 4 - ARTICLES OF INCORPORATION	76
FORM 5 - SAMPLE CONDOMINIUM INFORMATION STATEMENT	80
FORM 6 - AFFIDAVIT OF PURCHASER	89
FORM 7 - ACKNOWLEDGEMENT OF RECEIPT OF CONDOMINIUM INFORMATION STATEMENT	91
FORM 8 - ACKNOWLEDGEMENT OF RECEIPT OF CONDOMINIUM INFORMATION STATEMENT	92
FORM 9 - CONDOMINIUM MANAGEMENT CERTIFICATE	93
SELECT ("RETROACTIVE") TUCA PROVISIONS	95
FANNIE MAE SELLING GUIDE - PART VIII - PROJECT STANDARDS	111

TEXAS UNIFORM CONDOMINIUM ACT

by Sharon Reuler

I. INTRODUCTION

Texas' Uniform Condominium Act became effective on January 1, 1994, as Chapter 82 of the Property Code. Although this long and comprehensive statute is based on a model act, at least one-third of the new law was written in Texas, by Texans, for Texas. The bill's drafters are as curious as anyone to see how the new law "works." We are actively compiling questions and problems that may warrant amendment of the new law during the next legislative session. Please send me your suggestions.

A. Work in Progress

There are many ways of approaching a major new law. Because this paper is prepared for a document drafting course, it focuses on the *documents* indicated or required by the new law - of which there are at least 65. Instead of focusing on a select number of documents, this paper tries to provide some pertinent information about each of the 65 documents. The paper was intentionally prepared as a "work in progress," to be expanded as time, resources, and publication opportunities permit.

To help the attorney drafting documents under TUCA, this paper tries to identify every TUCA reference pertinent to each of the 65 documents. The declaration, for example, has 67 references.

To assist the drafter who has access to documents or forms prepared for use in a UCA or UCIOA-state, this paper compares TUCA with the model UCA. The differences are numerous and significant.

B. Jargon

1. NAME CONFUSION. The "Condominium Act" is the name of the old condominium law, Chapter 81 of the Property Code. The "Condominium Act" is also the name people will use for every condominium law, old or new.

The "Uniform Condominium Act" is the name of the new condominium law, Chapter 82 of the Property Code. It is also the name of the model statute on which Chapter 82 is based, but from which it differs.

It gets confusing. For this presentation, and possibly for everyday use, the following acronyms are used to distinguish the laws - old from new, prototype from actual. In time, the public and practitioners may settle on a better shorthand for distinguishing among them.

2. "TUCA". Since 1980, Texas' version of the Uniform Condominium Act has been nicknamed "**TUCA**" (pronounced "too-kah"), as an acronym for the Texas Uniform Condominium Act. Throughout this presentation, "TUCA" is used to refer to Chapter 82 of the Property Code, even though "Texas" is not part of the law's formal name.

3. "OLD TCA". Unfortunately, the old law's nicknames are not printable. In this presentation, Chapter 81 of the Property Code, the original 1963 Texas Condominium Act, will be referred to as the "**Old TCA**."

4. "UCA". Throughout this paper, the T-less "UCA" is used to refer to the model Uniform Condominium Act, published in 1980 by the National Conference of Commissioners on Uniform State Laws.

II. FROM WHENCE COMETH TUCA?

A. Texas' Old Condo Law

Once upon a time, Texas had not a condominium nor a condominium law. Seeing the plight of Texas, an Arizona developer decided to convert a Houston highrise apartment building to condominium ownership. The year was 1962. His lender said "Whoa! Texas air is might fine, and your building is darn good, but we don't think air space is real property in Texas. Show us a law saying it's so."

The Arizona developer's timing was perfect. In 1962, the Federal Housing Administration had just published the Model Act for the Creation of Apartment Ownership, based on Puerto Rico's 1958 statute. Using the FHA Model Act as a base, the developer got an enabling statute through the 1963 Texas legislature. (Beginner's luck!)

In 1963, no one in Texas knew what a condominium looked like. So, our Old TCA specifically describes the type of structure that was then being condominiumized - a high rise apartment building with janitor lodgings, garbage incinerators, elevators, basements, flat roofs, central heat and air, sanitary services, balconies, and terraces.

Until 1993, Texas had the dubious distinction of having a nearly pristine first-generation condominium statute. Since its adoption in 1963 as Article 1301a, the Old TCA has been once codified (in 1983 as Chapter 81 Property Code), and has been twice amended (1984 and 1989).

B. Three Generations of Model Acts

1. FIRST GENERATION.

First generation statutes "enable" condominium ownership, and are characterized by brevity, rigidity, and a distinct lack of consumer protections. The prototype for first generation condominium statutes was the 1962 FHA Model Act for the Creation of Apartment Ownership. By the late 1960s, every state had adopted a condominium enabling statute, many of which were based on the FHA model. By the early 1970s, it was apparent that first generation statutes were inadequate to deal with the variety and complexity of the emerging condominium market.

2. SECOND GENERATION.

Development of a second generation condominium statute fell to the National Conference of Commissioners on Uniform State Laws (the "**Conference**"). The first version of the Uniform Condominium Act appeared in the Uniform Land Transactions Act ("**ULTA**"). The UCA was separated from ULTA in 1975, and was published in 1977 by the Conference as a free-standing Uniform Condominium Act. The UCA was revised and republished in 1980.

When Texans began working on a second generation statute in 1979, they used the 1977 version of the UCA as the base. In 1991, the Texas drafters

incorporated many of the changes made in the 1980 version of the UCA. For the most part, TUCA is based on the 1980 UCA, not the earlier 1977 version.

In 1993, Texas became the twenty-first state to adopt a second generation statute based on the UCA or UCIOA. Some states, such as Florida and California, have developed second generation statutes by continually amending their first generation statutes.

While revising the UCA, the Conference published a similar model statute for planned unit developments, the Uniform Planned Community Act ("UPCA") in 1980. In 1981 the Conference published a companion model statute for cooperatives, the Model Real Estate Cooperative Act ("MRECA"). By 1982, there were three parallel second generation model statutes, for condominiums, planned unit developments, and cooperatives.

3. THIRD GENERATION.

In the lingo of the Uniform Acts, "third generation" refers to the movement to make condominiums, planned unit developments, and cooperatives subject to a single statute. Although condominiums and cooperatives are creatures of statute, planned unit developments have not been. And because cooperatives are relatively rare, the essence of the third generation statute is to create statutory authority for planned unit developments - to treat PUDs like condos.

In 1982, the Conference rolled the three model acts (UCA, UPCA, and MRECA) into a single Uniform Common Interest Ownership Act ("UCIOA"). By 1993, five states had adopted UCIOA: Alaska, Colorado, Connecticut, Nevada, and West Virginia.

Instead of continuing to revise the three single-ownership acts, the Conference will probably concentrate its efforts on UCIOA. Fortunately, revisions to UCIOA can often be easily adapted to the UCA.

C. Thirteen Year History of TUCA

In 1979, Larry Niemann, an Austin attorney and veteran lobbyist, brought the UCA to the attention of the Texas legislature. Thanks largely to his efforts, TUCA made its first appearance in the 1980 Interim Report of the Committee on Business and Industry, of the Texas House of Representatives, which recommended adoption of the UCA.

Based on that 1980 recommendation, TUCA was first introduced as a bill in 1991. Between 1981 and 1983, during the heat of Texas' building boom, TUCA was substantially revised to appease the homebuilding and Realtor lobbies. The Realtors scuttled the bill in 1981, but strongly supported it in 1983, when the powerful Houston homebuilders killed it. TUCA was filed, but not promoted, in 1985. It sat out the sessions in 1987 and 1989.

In 1991 a bill was introduced to tack some lengthy UCA-type provisions onto the Old TCA. Fearing that such an amendment would undermine future efforts to adopt a modern, comprehensive, uniform act, an ad hoc group of TUCA supporters tried to stop the amendatory bill by filing a quickly updated version of the 1983-vintage TUCA.

The tactic worked. Both bills were sent to a subcommittee of the House Judiciary Committee with

the warning that only one would emerge. When the smoke cleared, TUCA stepped forward - intact, but sporting the other bill's number.

TUCA made more progress in 1991 than its proponents had originally expected. It helped that TUCA had "been around" for 10 years, and that the UCA or UCIOA had been adopted by 20 other states. TUCA attracted no organized opposition, possibly due to Texas' dispirited real estate industry. However, because the bill got a late start and was held in subcommittee, the five-month biennial session ended before TUCA could clear the last hurdle to adoption.

To preserve TUCA's coalition of supporters, the bill that ended the 1991 session was re-filed in 1993. The word around the Capital was that, after 13 years, TUCA's time had finally come. The bill started in the House Committee on Business and Industry, and passed to the Senate Committee on Economic Development. Thanks to skillful handling by the bill's chief House sponsor, Rep. Robert Eckels of Houston, TUCA moved through both chambers without difficulty, and was signed by Governor Ann Richards on May 22, 1993, to be effective January 1, 1994.

Sidenote. In 1983, anticipating that TUCA would then become law, the State-sponsored broker/lawyer committee issued a condominium resale contract and certificate based on the then proposed TUCA. Even though the law did not pass until 1993, Texas real estate brokers have been using the condominium resale certificate since 1983 - a 10-year head start.

III. OVERVIEW OF TUCA

A. Purpose

TUCA is a lengthy, modern, comprehensive, second-generation condominium statute that deals with the creation and operation of condominiums, and the sale of units. TUCA applies wholly to every condominium developed in Texas on or after January 1, 1994, and, to a lesser extent, to those created before the effective date. TUCA offers flexibility for the development of condominiums. It enhances the association's ability to collect money and enforce rules. It backs-up the project documents by providing a number of "default provisions" that apply unless the governing documents provide otherwise. In short, TUCA has something for everyone.

B. Format

TUCA is divided into the same four parts as the UCA. The subchapter titles are self-explanatory: A - General Provisions; B - Creation, Alteration, and Termination of Condominiums; C - Condominium Management; D - Protection of Purchasers. Although the first three titles are nearly identical to those of the Old TCA, the similarity ends there.

C. Affect on Existing Condominiums

Section 82.002 deals with TUCA's affect on condominiums created before January 1, 1994. Pre-TUCA condominiums will continue to be governed by the Old TCA, with two exceptions.

1. "RETROACTIVE PROVISIONS". Thirteen sections of TUCA, nicknamed the "Retroactive Provisions," apply to every condominium in Texas, regardless of when created. However, they apply only to events and circumstances occurring on or after January 1, 1994. The Retroactives give existing

condominiums many of the benefits that are significant to established homeowner controlled associations. Listed in TUCA §82.002(c), the Retroactives are printed in full in the Appendices.

2. AMEND FOR TUCA. A pre-TUCA condominium can remove itself from the effects of the Old TCA by amending its declaration to be governed by TUCA exclusively. Such a step, however, should be taken cautiously. Because those pre-TUCA documents were not drafted with TUCA in mind, coming wholly under the new law may have unanticipated effects. A decision to amend should be preceded by a thoughtful legal review of the governing documents, a report on how the documents will be affected by TUCA, and a comparison of the merits of coming exclusively under TUCA versus the benefits of the Retroactive Provisions alone.

D. Some Interesting Features

TUCA is chock full of interesting notions. Texas real estate attorneys may find the following TUCA features particularly interesting:

1. LOTS AS UNITS. Under the Old TCA, the land had to be a general common element, and fee simple lots could not be condominiumized. Welcome to TUCA! Units are whatever the declaration describes - even fee simple lots. (*You read it here first.*) What makes it a condo? A common element that is owned in undivided interests by the unit owners. Thus, a single family subdivision in which the lot owners have undivided interests in the formal landscaped entrance would be a condominium under TUCA. See §82.003(a)(8).

2. LEGAL DESCRIPTION OF UNIT. TUCA's requirements (§82.054) depart from the Old TCA's (§81.106) in at least two important ways.

a. TUCA does not require the unit's legal description to state the unit's ownership interest in the common elements. This eliminates the dilemma of what to do when a unit's interests are periodically diluted as a result of phasing.

b. TUCA *does* require recording data for *amendments* to the declaration, plats, and plans, as well as the originals. We can expect long legal descriptions for projects with many phases or amendment-happy owners.

3. STATUTORY ASSESSMENT LIEN. TUCA creates a statutory lien for assessments in favor of the association. Because the lien provision is Retroactive, its affect on pre-TUCA declarations bears watching. Although most pre-TUCA declarations contain assessment liens, they typically limit the types of charges subject to the lien. TUCA, on the other hand, broadly defines the types of charges subject to TUCA's lien. See §82.113(a).

4. NONJUDICIAL FORECLOSURE. TUCA grants associations a private power of sale for nonjudicial foreclosure of the assessment lien. TUCA also grants the right of judicial foreclosure. See §82.113(d).

5. RIGHT OF REDEMPTION. During the lobbying of TUCA, the trade-off for nonjudicial foreclosure was a right of redemption. TUCA gives the foreclosed unit owner 90 days during which to buy back his unit, but only if the unit is used for residential purposes and the association buys it at the sale. See §82.113(g).

6. SWAP STORIES WITH MORTGAGEES. Associations that chase unit owners for delinquent assessments have discovered that mortgagees are notoriously reluctant to divulge information about the unit owner's mortgage. TUCA tackles this problem two ways. First, it requires the unit owner to give the association his mortgagee's name and address *and* his loan number (*which opens doors*). See §82.114(e)(2). TUCA also instructs mortgagees to share debt-relevant information with the association. See §82.113(m). The effect of the Privacy of Information Act? Good question.

7. INCORPORATION REQUIRED. Condominiums created on or after January 1, 1994, must have incorporated associations - either profit or nonprofit. Issuance of the corporate charter is a prerequisite for conveyance of the first unit. See §82.101. Although many pre-TUCA condos are incorporated, there is no statutory requirement.

8. NONRESIDENTIAL CONDOS. Like the UCA, TUCA does not provide many distinctions between residential and nonresidential developments. This aspect of TUCA warrants more attention.

9. MANAGEMENT CERTIFICATE. People who work with condominiums complain that it is often difficult to find a contact for a project. Because there is no central registry for condominiums, TUCA drafters decided to use the county records as the repository for contact information. TUCA requires every condominium development in Texas to publicly record a Management Certificate that identifies the property and gives a contact name and address. This provision may be unique to Texas. See §82.116.

E. Development Rights v. Special Declarant Rights

If you are new to the Uniform Acts, welcome to some fun new jargon. Two phrases that are easily confused are "development rights" and "special declarant rights." The exercise of development rights is one of the special declarant rights.

Development rights are created by the declaration, not by TUCA. If the declaration so provides, the declarant may expand or contract the condominium project, convert units into common elements, and create units and common elements. Although TUCA does not create development rights, it does address how they are to be exercised. See §82.003(a)(12) and §82.060.

The concept of special declarant rights is broader than and incorporates development rights. The special declarant rights are listed in §82.003(a)(22). Although special declarant rights are enabled by TUCA, they must be reserved in the declaration. TUCA *does* provide one "default" special declarant right - the declarant's right to maintain one model and one office if the declaration is silent. See §82.065. Another significant special declarant right is the appointment and removal of officers and directors during the period of declarant control of the association.

F. Failure to Comply

Like the Old TCA, TUCA will be enforced through private civil suits in the courts of Texas. TUCA provides no penalties for failure to comply. No state agency is responsible for enforcing TUCA. Texas did not adopt Article 5 of the UCA, which creates a state regulatory agency.

IV. COMPARING TUCA AND UCA

A. Why Compare?

With 21 states having adopted some version of the UCA or UCIOA, there is a growing market for materials relating to the uniform acts. The use of nationally marketed UCA and UCIOA-ready materials by Texas attorneys requires a knowledge of how TUCA differs from the UCA. Such knowledge also helps in evaluating articles and opinions interpreting uniform acts of different jurisdiction.

More important, a knowledge of the differences makes a Texas practitioner seem worldly. As Texas begins appearing on lists of "UCA states," our colleagues in other states may be expected to compare notes, such as asking whether Texas has the "super lien" for assessments. Without hesitating, you may respond that Texas did not adopt the UCA's super lien provision, which gives the association a superior lien position for six months' worth of assessments.

When our colleagues in other UCA states boast of how they have built practices around the onerous reporting requirements for condominium developers, you can complain that Texas watered down the disclosures required of developers. It is small consolation that Texas added a requirement for publicly recorded management certificates, which are likely to be prepared by non-attorneys. By knowing the differences between TUCA and the UCA, you can play tit for tat with attorneys in other UCA states.

B. Overview Comparison

1. **TUCA is shorter.** Criticized as "way too long," the proposed TUCA was continually relieved of provisions deemed non-essential. TUCA omits 20 sections of the UCA, in addition to Article 5, which no state has adopted. Otherwise, TUCA retains UCA's overall format and section titles.

2. **TUCA renames "public offering statement".** To TUCA drafters, the UCA's "public offering statement" seemed intimidating - like a federal securities regulation. So, the drafters chose a friendlier name, "condominium information statement" - acronym CIS, possibly pronounced "kiss."

3. **No Super-Priority of Lien.** To keep the support of Texas' powerful lender lobby, TUCA proponents never tried to get the UCA provision that gives the assessment lien priority over mortgage and improvement liens for up to six months' of assessments.

4. **TUCA eases-up on developers.** Texas enjoys a reputation as a pro-developer pro-business state. Although the homebuilders never articulated their concerns during the 13 years of TUCA development, TUCA drafters continually diluted requirements on developers in hopes of appeasing that once powerful lobby. The changes in TUCA include: no warranty provisions; no penalty if declarant fails to provide purchaser with a condominium information statement; if declaration is silent, declarant may maintain one unit as a model, and one unit as an office; declarant may use offices and models for leasing, as well as sales and management; during declarant control period, declarant has option of covering deficits in the

association's operating budget, instead of paying assessments on his vacant units.

5. **TUCA adds duties for unit owners.** TUCA contains several affirmative duties for individual unit owners, including compliance with the documents by the owner and his tenants.

6. **TUCA beefs up assessment collection.** TUCA permits nonjudicial foreclosure of the assessment lien. Each owner must furnish mortgage information to the association, which, in turn, is authorized by TUCA to communicate with other lienholders about the owner's debt. The board may terminate certain utilities and may suspend votes and common element privileges for nonpayment of assessments. Boards may adopt rules regarding application of payments.

7. **No Indexing Specifications.** TUCA deletes the UCA's several requirements on how recorded instruments are to be indexed by the county clerks.

C. Section by Section Comparison

This section of the paper should be useful with materials prepared for use in UCA or UCIOA states, or when evaluating materials that interpret the UCA.

1. SECTIONS OF UCA ENTIRELY DELETED FROM TUCA

- §1-108. Supplemental General Principles of Law Applicable.
- §1-109. Construction Against Implicit Repeal.
- §1-110. Uniformity of Application and Construction.
- §1-111. Severability.
- §1-112. Unconscionable Agreement or Term of Contract.
- §1-113. Obligation of Good Faith.
- §1-114. Remedies to be Liberally Administered.
- §2-120. Master Associations.
- §2-121. Merger or Consolidation of Condominiums.
- §3-111. Tort and Contract Liability.
- §3-112. Conveyance or Encumbrance of Common Elements.
- §3-114. Surplus Funds.
- §3-117. Other Liens Affection the Condominium.
- §4-104. Public Offering Statement: Condominiums Subject to Development Rights.
- §4-105. Public Offering Statement: Time Shares.
- §4-113. Express Warranties of Quality.
- §4-114. Implied Warranties of Quality.
- §4-115. Exclusion or Modification of Implied Warranties of Quality.
- §4-116. Statute of Limitations for Warranties.
- §4-120. Substantial Completion of Units.
- Article 5 - Administration and Registration of Condominiums.

2. ENTIRELY NEW SECTIONS OF TUCA - NOT IN UCA

- §82.116. Management Certificate. How to contact a condominium association has long been a problem in Texas, which has no central registry. §82.116 requires each condominium to record a statement in the county's real property records with the name and location of the condominium, the name of the association, recording data for the declaration, and a mailing address for the association or its managing agent. This provision is retroactive.

- §82.117. Obligations of Unit Owners. Adds affirmative duties for unit owners, including payment of assessments, compliance with governing documents, reimbursement for damage to common elements, and responsibility for document violations by invitees or employees of owners and occupants. This provision is not retroactive.
- §82.008. Venue. Mandates venue for enforcement of the governing documents in the county in which the condominium is located.
- §82.164. Loans as Eligible Investments. Restates a provision in Texas' original Condominium Act intended for the benefit of mortgage lenders.
3. TUCA SECTIONS THAT REWRITE UCA SECTIONS:
- §82.002. Applicability (UCA §1-102). TUCA adds insurance (§82.111) and management certificate (§82.116) as applicable to existing condominiums.
- §82.003. Definitions (UCA §1-103). TUCA deletes (17) "Master association," (18) "Offering," (19) "Person," (21) "Real estate", and (24) "Time Share." TUCA adds "General common elements," "Plan," and "Plat." TUCA changes "Executive Board" to "Board." TUCA revises the definitions of "Condominium" by clarifying how common elements are owned; "Declaration" by specifying a *recorded* instrument or amendment; and "Purchaser" by eliminating "or a person in the business of selling real estate for his own account" and the qualifier on leasehold interests.
- §82.004. Variation by Agreement (UCA §1-104). In second sentence, "declarant" is changed to "person."
- §82.051. Creation of Condominiums (UCA §2-101). TUCA deletes UCA's indexing requirement and subsection (b), which requires substantial completion of buildings.
- §82.058. Limited Common Elements (UCA §2-108). TUCA adds mortgagee consent to alter allocation of a limited common element.
- §82.059. Plats and Plans (UCA §2-109). TUCA (b)(5) adds underground utility lines of which declarant has actual knowledge; TUCA (b)(11) changes "matters customarily shown on land surveys" to "matters required by law on land surveys"; TUCA (b)(12) adds each building's distance from all other buildings and from a boundary line; TUCA (e) states that a unit's partition walls need not be shown; TUCA (g) rewords UCA's (g).
- §82.062. Relocation of Boundaries Between Adjoining Units (UCA §2-112). TUCA requires *written* application for relocation, and requires the applying unit owners to pay the association's expenses related to the amendment.
- §82.065. Use for Sales Purposes (UCA §2-115). TUCA adds "leasing" to the purposes for which a declarant may use offices and models. Even if declaration is silent, declarant may maintain one office and one model, and may modify office exteriors. Declarant has "a reasonable time" within which to remove models and offices after he ceases owning units.
- §82.067. Amendment of Declaration (UCA §2-117).
- Approval.* To avoid the constraints of the old Condominium Act, which requires that amendments be approved "at a meeting," TUCA adds methods for amending a declaration: by written ballot, at a meeting, or by any method permitted by the declaration.
- Declarant Protection.* TUCA requires declarant approval of any amendment that modifies declarant's rights or obligations.
- Underwriting Compliance.* Under TUCA, a declaration may permit amendment by board or declarant to meet requirements of FNMA, FHLMC, FHA, or VA.
- Permission.* In response to the oft asked "What can we do to tenants?", TUCA expressly permits amendment of a declaration to authorize board's eviction of tenants who violate documents or fail to pay for their damage of common elements, and to authorize board's collection of rents when the owner is delinquent in paying money to the association.
- §82.068. Termination of Condominium (UCA §2-118). TUCA revises and restates several subparts of this section. Termination requires unanimous consent by owners *and lienholders*, "unless the declaration provides otherwise." TUCA deletes UCA's (c), (d), (j), the last half of (i), and most of (g). The termination agreement must state the terms of sale. Owners may rescind a termination agreement by the same percentage to terminate. Inexplicably, TUCA's (h) provides that foreclosure of lien against withdrawable real estate has the effect of withdrawing that property from the condominium *without* the requirement of an amendment.
- §82.102. Powers of Unit Owners Association (UCA §3-102). TUCA adds some powers, and states that the powers may be exercised by the board. The changes include:
- Rules.* Instead of UCA's (a)(1) broad grant to adopt and amend rules and regulations, TUCA adds 3 provisions, each of which is retroactive:
- (a)(7) - "adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units." [Retroactive]

- (a)(13) - "adopt and amend rules regulating the collection of delinquent assessments and the application of payments." [Retroactive]
- (a)(14) - "adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility." [Retroactive]
- Regulation.* TUCA revises UCA's (a)(6) to add "appearance" to the regulatory areas, and by permitting regulation of the entire condominium, not just the common elements. [Retroactive]
- Insurance.* TUCA's (a)(19) replaces UCA's (a)(13) by permitting the purchase of appropriate or necessary insurance and fidelity bonds. [Retroactive]
- Charges.* TUCA's (a)(12) revises UCA's (a)(11) to add interest and returned check charges. [Retroactive]
- Access.* TUCA adds (a)(16) to authorize emergency access to units. [Retroactive]
- Suspension.* TUCA adds (a)(18) to suspend voting and common element privileges for delinquent owners. [Retroactive]
- Enforceability.* TUCA adds (c) which prohibits arbitrary or capricious rules.
- Due Process.* TUCA adds (d) and (e) which elaborate on the notice and hearing requirements before the association levies a fine or charges an owner for property damage.
- §82.103. Executive Board Members and Officers (UCA §3-103).
- Standards.* TUCA deletes UCA's two standards of care and provides that all directors and officers are fiduciaries of the owners. TUCA adds that the board acts for the association "if in the good faith judgment of the board the action is reasonable."
- Budget.* TUCA deletes UCA's (c), which deals with adoption, ratification, and rejection of the budget.
- Declarant Control.* TUCA revises UCA's (d) to allow declarant control until 120 days after conveyance of 75 percent of the units.
- Transition.* TUCA revises UCA's (e) to start transition at 120 days after conveyance of 50 percent of the units, when 1/3 of the board must be owner elected.
- Qualification.* TUCA revises UCA's (f) by providing that directors need not be unit owners.
- Removal.* TUCA deletes UCA's (g) regarding removal of directors.
- Liability.* TUCA adds its (f) and (g) which limit the liability of an officer or director to (1) breach of fiduciary duty, (2) receipt of improper benefit, or (3) bad faith acts, intentional misconduct, or acts of statutory liability.
- §82.104. Transfer of Special Declarant Rights (UCA §3-104). TUCA revises UCA's (b) and (e) by deleting some of the subparts.
- §82.105. Termination of Contracts and Leases of Declarant (UCA §3-105). TUCA limits termination to contracts or leases between the association and a declarant or affiliate of a declarant, with 90 days' notice, during the first year of an owner-elected board.
- §82.106. Bylaws (UCA §3-106). TUCA adds "the manner of notice of meetings of the association" to the required contents of the bylaws.
- §82.107. Upkeep of Condominium (UCA §3-107). TUCA deletes UCA's (b) regarding liability for development-related expenses. TUCA adds three new subparts, "except as provided in the declaration":
- (b) - each owner maintains his unit's utility installations or equipment.
 - (c) - each owner maintains his unit's windows and doors.
 - (d) - association may enter unit to prevent waste of or damage by water.
- §82.108. Meetings (UCA §3-108).
- Notice.* TUCA's (a) revises UCA by replacing detailed notice procedures with statement that meeting notices will be given according to bylaws.
- Open Meetings.* TUCA adds (b) requiring open meetings and permitting closed executive sessions.
- Board Action Without Meeting.* TUCA adds (c) permitting electronic or telephonic communication and unanimous written consents.
- §82.109. Quorums (UCA §3-109). TUCA prohibits quorums of less than 10 percent.
- §82.110. Voting and Proxies (UCA §3-110). TUCA deletes UCA's (c) regarding voting by lessees, and UCA's (d) prohibiting casting of votes belonging to association-owned units. TUCA requires unanimous, instead of majority, agreement among multiple owners of a unit. TUCA prohibits cumulative voting. TUCA allows proxies for a term greater than one year.
- §82.111. Insurance (UCA §3-113). TUCA adopts the UCA provision, with a few text changes.

The big difference is that the TUCA provision is retroactive.

§82.112. Assessments for Common Expenses (UCA §3-115).

Declarant Control. (a) provides that during the declarant control period, reserves and capital contributions may not be used to pay operational expenses. (b) gives a declarant the option, during the declarant control period but for no more than 3 years, of paying the allocated assessment on each declarant-owned unit or covering the "red ink" on the association's operational expenses. However, (c) obligates declarant to pay allocated assessments on each declarant-owned unit that is leased or used as an office or model.

Interest. (c) permits, rather than requires, interest on past due assessments.

Repair of Limited Common Element. (d) revises UCA's (c) by treated limited common elements as general common elements for purposes of repair expenses, *except as provided in the declaration and TUCA §82.107.*

Reserves. (f) permits a declaration to allow accumulated reserves.

Prepays. (g) allows declarant to be reimbursed at closing for prepaids related to the unit.

§82.113. Association's Lien for Assessments (UCA §3-116). The UCA section was entirely rewritten in Texas. TUCA provides:

Assessment Defined. (a) defines "assessment," for purposes of this TUCA section, to include any monetary charges owed by the owner or the unit, *unless the declaration provides otherwise.*

Obligation. (a) makes the owner personally obligated for assessments levied against him or his unit.

Lien. (a) creates a continuing lien on the unit and on rents and insurance proceeds received by a unit owner.

Priority of Lien. (b) lists four types of lien superior to the assessment lien.

Perfection of Lien. (c) restates UCA's (d), with the proviso that the declaration may require recordation of a lien notice.

Power of Sale. (d) grants the association a private power of sale to foreclose the lien nonjudicially, pursuant to §51.002 of the Property Code. It permits appointment of a person to exercise the power of sale.

Foreclosure. (e) permits both judicial and nonjudicial foreclosure of the assessment lien, provided the debt does not consist solely of fines. (j) permits an owner to

avoid nonjudicial foreclosure by curing the debt any time before the sale.

Purchase. (f) permits the association to purchase the unit at the foreclosure sale as a common expense.

Right of Redemption. Anticipating opposition by consumer groups to a retroactive statutory lien and right of nonjudicial foreclosure, TUCA adds (g), which grants a 90-day right of redemption to the owner of a residential unit that is purchased by the association at the foreclosure sale of the association's lien.

Communicating with Mortgagees. (h) and (m) authorize the association and other lienholders to communicate with each other about the owner's debts and "other relevant information."

Other Remedies. (i) restates UCA's (f) regarding the association's right to take a deed in lieu of foreclosure or to seek a money judgment.

Homestead. (k) addresses Texas' unique homestead laws by providing that, if the declaration does not contain a lien, the statutory assessment lien does not attached to a unit homesteaded on January 1, 1994, until the unit ceases being that owner's homestead.

Tax Lien. (l) emphasizes that foreclosure of a property tax lien does not extinguish the association's lien for assessments arising after the tax lien sale.

§82.114. Association Records (UCA §3-118). The UCA's 2 sentence section was entirely rewritten in Texas. TUCA provides:

Types of Records. (a) requires the association to keep 6 types of records: financial records, construction plans, the CIS, owners' names and addresses, records of declaration amendments, and meeting minutes. (d) requires the declarant to provide such records when the first unit is sold.

Availability. (b) requires records to be available for inspection.

Attorney's Records. To reverse the effect of Burton v. Cravey, 759 S.W.2d 160 (Tex. App. - Houston [1st Dist.] 1988) no writ history, (b) states that an attorney's records are not records of the association and are not available for inspection or production.

Audit. (c) maintains the Old TCA's requirement of an annual independent audit. A House floor amendment adds that the audit must be done by a CPA if so required by the bylaws, the board, or a majority of owners.

Owner Data. (e) and (f) obligate a unit owner to provide the association with certain types of information within 30 days,

including the owner's address, phone number, and drivers license number; mortgage data; tenants' names and phone numbers; and information about the owner's unit manager, if any.

§82.153. Public Offering Statement (UCA §4-103 - Condominium Information Statement). TUCA deletes approximately half of the UCA's required contents, including §4-103(a)(6),(7),(9),(11),(13),(14),(17),(18), and (19); modifies others; eliminates the (b) exemption for small condominiums; adds 2 items from §4-104(1) and (4); and limits declarant's duty to give CIS amendments to prospective purchasers.

§82.156. Purchaser's Right to Cancel (UCA §4-108). TUCA creates parallel 5-day cancellation on resales and declarant sales. No penalty if CIS or resale certificate not provided. But, may not require closing until purchaser gets CIS from declarant, or declaration, bylaws, and rules from selling owner.

§82.157. Resale of Units (UCA §4-109). TUCA slightly modifies contents of resale certificate; e.g., *approved* capital expenditures for next 12 months, instead of *anticipated* expenditures for next 24 months. Certificate must be 3-months current. Owner's agent has no liability. Association has no liability for failure to furnish, unless willful or grossly negligent. If association does not provide, seller may provide affidavit and buyer may waive certificate requirement.

§82.160. Conversion Buildings (UCA §4-112). TUCA eliminates tenant's right to purchase, reduces notice to vacate from 120 to 60 days, and prevents declarant from substantially altering the interior of a leased unit for conversion purposes.

V. DRAFTING DOCUMENTS

A. Drafting Philosophy

There are three basic approaches or philosophies to drafting documents under TUCA. The first approach avoids repeating, in the document, any portion of the statute. This approach produces shorter documents containing only those provisions that vary from the statute. It assumes that anyone using the document will have access to and be knowledgeable about TUCA or the Corporation Acts.

The second approach is the converse of the first. It assumes that the document user will never know what is in the statutes unless the pertinent provisions are restated in the document. Obviously, the second approach produces longer documents that require careful reading to determine if and how they vary from the statutes.

The third approach is a hybrid of the first two. It recites those statutory provisions that are most likely to be used by the association's manager and directors in the daily operation of the condominium. It references, but does not restate, the statutory provisions that are legally complex or infrequently used. This third approach produces documents that are more utilitarian

than the first, and somewhat less voluminous than the second.

Because one approach is not inherently better than another, each drafter should be aware of his own philosophy before tackling the drafting of condominium documents under TUCA. The circumstances of the condominium project and the developer's financial resources may also help determine the selection of drafting approach.

B. TUCA's Provisos

From a drafter's perspective, one of the most significant aspects of TUCA is its "proviso," "trigger," or "toggle" feature. This feature is found in the many conditional or optional provisions that permeate the statute, such as:

- unless otherwise provided by . . .
- except as otherwise provided by . . .
- the [document] may . . .
- subject to . . .
- if . . .
- unless . . .

These provisos can be a blessing for the drafter. They are hallmarks of flexibility in the drafting of documents and in the development and operation of condominiums. No longer is there just one way of doing things. In some cases, the provisos shorten the drafting process by allowing the drafter to defer to the TUCA provision.

However, these provisos can also be a curse. By failing to attend to a detail in a governing document, the drafter may inadvertently trigger an unwanted proviso. Because almost every project is unique in some way, the drafter is under pressure to consider the various effects of TUCA's many provisos.

Because of the provisos' significance in the drafting process, the author has tried to locate them. In the portion of this paper that lists the documents required or indicated by TUCA, the author has tried to cross-reference the provisos with documents. The declaration appears to be the front runner, with 54 provisos, which this paper groups in categories. The obvious next step is to convert the provisos into a drafting checklist.

C. Drafting Considerations

Issues to be considered by the drafter include the following:

1. Should the declaration restate applicable TUCA provisions? Should the bylaws and articles restate applicable provisions of the Corporation Acts? The answer depends largely on the drafter's philosophy.
2. How will the documents be tailored to the unique circumstances and features of the particular project?
3. Which of TUCA's many provisos should be activated by the documents?
4. What must the documents contain (or avoid) to satisfy the underwriting guidelines of an institutional lender or insurer, such as Fannie Mae or FHA?
5. Will the governing documents support and complement each other - will they "work together"? For example, one purpose of the declaration is to allocate maintenance responsibilities between owners

and the association. The drafter should review the proposed budget to confirm that maintenance responsibilities allocated to the association are funded. For example, if patio fences are to be maintained by the association, the budget should provide for their periodic maintenance and replacement. If it appears that the budget and the rate of assessment are unmarketably high, the drafter should consider reallocating some maintenance responsibilities to the unit owner. The persons preparing the budget and the declaration must work in tandem so the documents support each other.

6. Will the appearance, size, and format of the documents be suitable for the declarant's marketing program? Because the governing documents are distributed to prospective purchasers as part of the Condominium Information Statement, they become "promotional materials."

D. Resources for Drafting Attorney include, but are not limited to, the following:

1. *Uniform Condominium Act (1980)*, with prefatory note and comments, may be purchased from the National Conference of Commissioners on Uniform State Laws, 676 N. St. Clair Street, Suite 1700, Chicago, Illinois 60611, telephone (312) 915-0195.
2. *Condominium Development - Forms with Commentary* by Gurdon H. Buck, published by Clark Boardman Callaghan, 1 Publishers Parkway, Webster, New York 14580, telephone (800) 323-1336. As an added bonus, our own Frank A. St. Claire is a contributing author. In addition to being updated, the book comes with Don Buck's forms on diskette. Although the forms are for a state that has adopted the Uniform Common Interest Ownership Act, they can be adapted for use with TUCA.
3. *Fannie Mae Selling Guide*, which may be purchased through the Southwestern Regional Office of Fannie Mae, 13455 Noel Road, Suite 600, Dallas, Texas 75265, telephone (214) 773-HOME. Fannie Mae publishes three guides - Selling, Servicing, and Multi-Family. If you buy all three, you seem to get the updates forever. If you buy only the Selling Guide, you may not be able to get updates. Check it out. A copy of the current pertinent portions are in the Appendices.
4. Texas Non-Profit Corporation Act
5. Texas Miscellaneous Corporation Laws Act
6. Texas Time Share Act, if appropriate
7. Texas Property Code
8. Texas Property Tax Code
9. Magnusen-Moss Warranty Act
10. Fair Housing Laws - federal and state laws, and local ordinances, if any
11. Federal Housing Administration (FHA) underwriting guidelines
12. Veterans Administration (VA) underwriting guidelines
13. Federal Home Loan Mortgage Corporation ("Freddie Mac") underwriting guidelines

VI. DOCUMENTS REQUIRED OR INDICATED BY TUCA

A. Plats and Plans

1. PLATS AND PLANS

a. Pertinent TUCA Provisions. See Index 1 in Appendices.

b. Required Contents of Plats & Plans.

§82.059(a) - plats and plans must be certified and must contain all the information required by §82.059.

§82.059(d) - certain information must be shown on plans, if not shown on plats.

2. CERTIFICATION OF PLATS AND PLANS - §82.059(a),(f)+(g)

3. CONSTRUCTION PLANS AND SPECIFICATIONS - §82.114(a)(2)+(d) - kept as permanent association records

B. Governing Documents

1. DECLARATION

a. TUCA Provisions Pertinent to Declaration - See Index 2 in Appendices.

b. Required Contents of Declaration

(1) Contents of Declaration - §82.055(16). In addition to the contents required in §82.055, the declaration must contain all matters required by TUCA to be stated in the declaration.

(2) Allocated Interests - §82.057(a). The declaration shall (i) allocate to each unit a fraction of undivided interests, common expenses, and votes, and (ii) state the formulas used to establish those allocations. The first part of this provision echoes §82.055(8). The second part, however, is an additional requirement.

(3) Interest Rate - §82.113(g). To redeem a unit following foreclosure of the association's assessment lien, the owner must pay interest from the date of foreclosure sale at the "rate provided by the declaration for delinquent assessments". §82.102(a)(12) and §82.112(c) allow the board and the association, respectively, to set the interest rate. The declaration should expressly permit the board to set the interest rate, from time to time, and should also provide a default rate of interest if the board should fail to set a rate.

c. Nonresidential Provisos. TUCA has certain provisions for condominiums in which all units are restricted to nonresidential use. To take advantage of these provisions, the declaration should contain a provision restricting the use of units to nonresidential purposes.

(1) Amending the Declaration - §82.067(a). If all of the units are nonresidential, a declaration may provide for amendment by less than 67 percent of the votes.

(2) Insurance - §82.111(j). If all the units in the condominium are nonresidential, TUCA's insurance provisions may be varied or waived.

(3) Purchaser Protections - §82.151. If all the units in a condominium are nonresidential, a unit purchaser

may agree to modify or waive TUCA's purchaser protections.

d. Development and Declarant Provisos

(1) Special Declarant Rights - §82.003(a)(22). TUCA permits the declaration to reserve for the declarant several substantial rights for completing the development and marketing of the condominium.

(2) Development Rights - §82.060(a). To exercise a development right, declarant must amend the declaration and record new plats and plans. The amendment must contain the information required by §82.060(a) and (c).

(3) Additional or Withdrawable Real Property - §82.057(b). If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests.

(4) Withdrawable Real Property - §82.060(d). If the declaration provides that all of the real property is subject to the declarant's right of withdrawal, and does not describe separate portions subject to that right, then none of the real property may be withdrawn after a unit has been conveyed. [i.e., declaration should describe small parcels subject to right of withdrawal.]

(5) Declarant's Use of Units - §82.065. A declarant may maintain one model unit and one office unit unless the declaration specifically authorizes the declarant to maintain and relocate models and offices. Does the declarant want more than one office and one model? If so, expressly provide.

(6) Declarant's Advertising - §82.065. Subject to limitations in the declaration, a declarant may maintain advertising signs (for sale or for lease) on the common elements. Should the declaration limit the declarant's right to maintain advertising signs?

(7) Declarant's Easement - §82.066. Subject to the declaration, a declarant has an easement through the common elements to discharge his duties and exercise his rights.

(8) Compliance Amendments - §82.067(f). If permitted by the declaration, the board or declarant (without a vote of owners) may amend the declaration to comply with the requirements of FNMA, FHLMC, FHA, or VA.

(9) Declarant Control Period - §82.103(c)+(d). The declaration may provide for a period of declarant control. However, not later than 120 days after conveyance of: (i) 50 percent of all units that may be created, at least 1/2 of the board must be elected by unit owners other than declarant; (ii) 75 percent of all units that may be created, declarant control terminates.

(10) Securities - §82.155. If an interest in the condominium is registered with the Securities and Exchange Commission, the declarant may provide a copy of the filed public offering statement instead of a CIS.

(11) Release of Liens - §82.159. If real property is subject to liens the foreclosure of which would deprive owners of any right to access to or easement of support of the owner's units, the declarant must remove all liens on that property unless the CIS describes certain real property that may be conveyed subject to liens in

specified amounts. Make sure CIS discloses property that may be conveyed subject to liens in specified amounts.

(12) Tenant Leases - §82.160(c). Unless a rental agreement expressly authorizes, a declarant may not make substantial alterations to the interior of a leased premises for purposes of a condominium conversion.

(13) Need Not Be Built - §82.162. If a plat or plan labels any improvement "Need Not Be Built," all promotional material must conspicuously label the improvement "Need Not Be Built."

e. Leasehold Provisos

(1) Leaseholds - §82.056(a). If the condominium is subject to a lease, the termination of which may terminate the condominium or reduce its size, the declaration must contain the information required by §82.056(a).

(2) Reallocating Interests When Leaseholds Terminate - §82.057(d). Unless otherwise provided by the declaration, the interests allocated to units that are removed from the condominium due to termination of a lease shall be reallocated to the remaining units as if those leasehold units had been condemned.

f. Physical Property Provisos

(1) Unit Boundaries - §82.052(1). Except as otherwise provided by the declaration or plat, if walls, floors, or ceilings are designated as boundaries of a unit, the boundaries of a unit shall be those described in §82.052(1). To activate the default boundaries of §82.052(1), the declaration should designate walls, floors, and ceilings as the boundaries of the unit.

(2) Components Within Units - §82.052(3). Except as otherwise provided by the declaration or plat, and subject to §82.052(2), the spaces, partitions, fixtures, and improvements within a unit are part of the unit.

(3) Interior Limited Common Elements - §82.052(2). Except as otherwise provided by the declaration or plat, if any chute, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a unit, then the characterization of those components as common elements in controlled by §82.052(2). To vary from the designations of §82.052(2), the declaration should expressly provide other characterizations of the building components.

(4) Exterior Limited Common Elements - §82.052(4). Except as otherwise provided by the declaration or plat, certain exterior components are limited common elements allocated to the unit they are designed to serve.

(5) Unit Boundaries - §82.059(e). Unless the declaration provides otherwise, horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(6) Maintenance - §82.107(a)-(c). Except as provided by the declaration: (c) the owner maintains his unit's windows and doors; (b) the owner maintains utility equipment serving his unit; (a) otherwise, the owner maintains his unit, and the association maintains the

common elements (general and limited common elements).

(7) Reallocating Limited Common Elements - §82.058(b). Except as otherwise provided by the declaration, unit owners may reallocate limited common elements among themselves by executing an amendment to the declaration.

(8) Converting Common Elements to Limited Common Elements - §82.058(c). A common element may not be allocated as a limited common element unless the declaration describes any real property that may be allocated subsequently as limited common elements, together with a statement that the property may be so allocated, as required by §82.055(7).

(9) Alterations of Units - §82.061. Subject to the provisions of the declaration, a unit owner may alter his unit according to the terms of §82.061.

(10) Reallocating Boundaries - §82.062. Subject to the declaration, the board may amend the declaration to reallocate a boundary between adjoining units if the owners of those units apply for the reallocation, and if the requested reallocation is not unreasonable.

(11) Subdividing Units - §82.063. If the declaration expressly permits, a unit may be subdivided into two or more units. Subject to the declaration, the board may amend the declaration to subdivide a unit upon the owner's application. A unit may not be subdivided by the unit owner unless the declaration expressly permits. Otherwise, a standard amendment is required to subdivide the unit.

g. Money Provisos

(1) Cost of Maintaining Limited Common Elements - §82.112(d). Except as provided by the declaration and §82.107 [except as provided by declaration, association maintains common elements, owner maintains windows, doors, utility equipment, and unit] the costs of maintaining limited common elements shall be as if for general common elements. Should the declaration put the cost of maintaining limited common elements on the owner?

(2) Reserves - §82.112(f). A declaration may allow the accumulation of reserve funds.

(3) Assessments Defined - §82.113(a). Unless the declaration provides otherwise, every monetary obligation of the owner or his unit is enforceable as an assessment under TUCA's §82.113.

(4) Interest Rate - §82.102(a)(12). Unless the declaration provides otherwise, the board may impose interest for late payments of assessments.

(5) Priority of Assessment Lien - §82.113(b)(4). Unless the declaration provides otherwise, the association's assessment lien is inferior to improvement liens and assignments of rights to insurance proceeds if recorded before the assessment becomes delinquent. Should the declaration provide for superiority of the assessment lien? Yes, in most cases.

(6) Notice of Assessment Lien - §82.113(c). Unless the declaration provides otherwise, it is not necessary to record a notice of lien to perfect the association's lien. Should the declaration require or permit

recording of a lien notice before the association exercises its remedies?

(7) Power of Sale - §82.113(d). Except as provided by the declaration, an association shall exercise its power of sale pursuant to Property Code §51.002. Should the declaration vary the requirements for exercising the power of sale, such as to require 30 days opportunity to cure before posting for foreclosure?

(8) Power of Sale - §82.113(e). The association may foreclose its lien nonjudicially under TUCA's power of sale or under a power of sale created by the declaration. Should the declaration provide a power of sale in addition to TUCA's? In most cases, yes, because the law may be changed and because the private power of sale is an important remedy - worth duplicating.

h. Provisos - Governance/Administration

(1) Association/Board Powers - §82.102(a). Unless otherwise provided by the declaration, the association, acting through its board, has the powers enumerated in §82.102(a).

(2) Assignment of Income - §82.102(a)(17). Only to the extent the declaration so provides, the board may assign the association's right to future income, including the right to receive common expenses assessments. Should the declaration allow board to assign rights to future income?

(3) Other Powers - §82.102(a)(20). Board has the power to exercise any powers conferred by the declaration or bylaws.

(4) Board Acts for Association - §82.103(a). Except as provided by the declaration, bylaws, or TUCA, the board shall act in all instances on behalf of the association if in the good-faith judgment of the board the action is reasonable.

(5) Board Acts for Association - §82.103(a). Unless otherwise provided by the declaration or bylaws or by law, all acts of the association must be by and through the board. Declaration should specify which acts, if any, are permitted or required to be performed by someone other than the board, such as by unit owners, the insurance trustee, the declarant, or the mortgagees.

(6) Limits of Board Powers - §82.103(b). Except as permitted by TUCA, the board may not act on behalf of the association to: (i) terminate the condominium, (ii) elect members of the board, or (iii) determine the qualifications, powers and duties, or terms of office of board members.

(7) Special Meetings - §82.108(a). Unless the declaration provides otherwise, special meetings of the association may be called by the president, a majority of the board, or unit owners having at least 20 percent of the votes in the association. Should the declaration change this requirement? eg, higher percentage for smaller property, lower percentage for larger property? Could the declaration refer to the bylaws on this point?

(8) Board Meetings - §82.108(c). Unless the declaration, bylaws, or articles of incorporation provide otherwise, the board may meet electronically or telephonically, and may act by unanimous written consents in lieu of meeting. Should the documents modify, limit, or expand this meeting provision?

(9) Allocated Votes - §82.057(c). The declaration may provide some variations in voting.

i. Insurance Provisos

(1) Liability Insurance - §82.111(a)(2). The board may determine the amount of liability insurance, *but not less than any amount specified by the declaration* Should the declaration specify the amount of liability insurance?

(2) Insurance on Stacked Units - §82.111(b). If the declaration described stacked units, the association's property insurance must cover the units, but need not include improvements and betterments. Does the declaration describe stacked units?

(3) Other Insurance - §82.111(c). The declaration may require the association to carry any other insurance. Should the declaration require additional insurance?

j. Miscellaneous Provisos

(1) Definitions - §82.003(b). Unless otherwise provided by the declaration or bylaws, a TUCA-defined term has the same meaning if used in a declaration or bylaws.

(2) Voting to Amend Declaration - §82.067(a). The declaration may provide methods for amending the declaration, in addition to the two methods described in §82.067(a). Should the declaration offer additional methods for amending the declaration?

(3) Termination - §82.068. Unless the declaration provides otherwise, termination requires 100 percent of the votes of owners and holders of a deed of trust or vendor's lien. Definitely want a more flexible termination provision.

(4) Mortgagee Approval - §82.069. The declaration may require that some or all mortgagees approve certain actions.

(5) Access to Units - §82.107(d). Unless otherwise provided by the declaration, the association may enter a unit, after giving notice to owner and occupant, to prevent utility waste or water damage. Should the declaration modify, limit, or expand this access provision or the notice requirement?

(6) Owner's Obligations - §82.117. Except as provided by the declaration, bylaws, rules, of TUCA, the unit owner has certain obligations to pay assessments and comply with the restrictions. Should the declaration, bylaws, or rules modify TUCA's obligations for the unit owner?

(7) Permitted Purposes - §82.007(a). Refers to the use of a unit for "any purpose permitted by the declaration." Similarly, the nonresidential provisions of TUCA refer to limitations on use. The drafter should consider whether to limit the use of units in the declaration.

(8) Document Conflicts - §82.053(c). Except to the extent the declaration is inconsistent with TUCA, the declaration prevails over the bylaws in event of conflict.

k. Declaration Forms - See Form 1 in Appendices, for the model short form declaration published by the National Conference of Commissioners on Uniform State Laws.

2. AMENDMENTS TO DECLARATION. This section lists the types of amendments that are required or indicated by TUCA. The amendments are grouped by topic, and not by chronological section numbers. The amendment "names" are the author's invention.

a. Applicability of TUCA - §82.002.

b. Correcting Defective Execution - §82.051(c).

c. Declarant Exercising Development Right - §82.059(f). Declarant required to record new plats and plans or certifications of plats and plans.

d. Declarant Exercising Development Right - §82.060(a).

e. Declarant Complying with Lender Requirements - §82.067(f).

f. Declarant Adding Real Property to Condominium - §82.060(b).

g. Declarant Converting Unit to Common Element - §82.060(c)(1).

h. Declarant Subdividing Unit - §82.060(c)(2).

i. Allocation of Limited Common Element - §82.058(c).

j. Reallocation of Limited Common Element - §82.058.

k. Reallocation of Interests After Partial Loss - §82.111(i).

l. Reallocation of Interests After Condemnation - §82.007.

m. Reallocation of Interests After Expiration of Leasehold - §82.056(d).

n. Relocating Boundary Between Units - §82.062.

o. Owner Subdividing Unit - §82.063.

p. Enforcement Against Tenants - §82.067(h).

q. Termination of Condominium - §82.068(b).

3. BYLAWS

a. TUCA Provisions Pertinent to Bylaws - See Index 3 in Appendices.

b. Bylaws Provisos

(1) Contents of Bylaws - §82.106(b). Subject to the declaration, the bylaws may provide for other matters the association considers desirable, necessary, or appropriate. Should the declaration limit the contents of the bylaws?

(2) Quorum for Association Meetings - §82.109(a). Unless the bylaws provide otherwise, a quorum is 20 percent of the votes at the start of the meeting. The bylaws may not go lower than 10 percent.

(3) Quorum for Board Meetings - §82.109(b). Unless the bylaws specify a larger percentage, a quorum is at least 50 percent of the votes on the board at the start of the meeting.

c. Bylaws Forms - See Form 2 in Appendices.

4. RULES

a. TUCA Provisions Pertinent to Rules - See Index 4 in Appendices.

b. Rules Forms - See Form 3 in Appendices.

5. ARTICLES OF INCORPORATION

a. Drafting Articles. When starting to draft the Articles of Incorporation in the Appendices, the author discovered that, in 1993, Texas had adopted House Bill 1494 - 20 pages of amendments to the Texas Non-Profit Corporation Act. Because the changes to the Non-Profit Corporation Act are numerous and significant, the attached Articles of Incorporation are heavily annotated. In preparing this paper, time did not permit a thorough evaluation of the relationship between TUCA and the 1993 amendments to the Non-Profit Corporation Act. The annotations indicate which issues are addressed in both statutes.

b. TUCA Provisions Pertinent to Articles -

§82.103(g) - limit on officer or director's liability

§82.108(c) - conduct of board meeting

§82.153(a)(5) - to be provided with CIS

c. Articles Form - See Form 4 in Appendices.

6. CERTIFICATE OF INCORPORATION - §82.101. A Certificate of Incorporation, issued by the Secretary of State, is a prerequisite to declarant's conveyance of the first unit.

C. Declarant Documents

1. CONSENT TO DECLARATION BY PRIOR MORTGAGEE:

§82.051(b) - required to convey unit

§82.068(h) - effect of foreclosure

2. DECLARATION AMENDMENT TO EXERCISE DEVELOPMENT RIGHT - §82.060(a)

3. DECLARANT'S CONSENT TO MODIFICATION OF RIGHTS OR OBLIGATIONS - §82.067(e)

4. TRANSFER OF SPECIAL DECLARATION RIGHTS - §82.104(a)

5. MORTGAGE INSTRUMENT OR DEED OF TRUST on a unit owned by declarant or on property subject to development rights - §82.102(c). Unless that instrument provides otherwise, the person acquiring title may request to succeed to all special declarant rights or only to declarant's rights to maintain models, offices, and signs.

6. JUDGMENT OR INSTRUMENT CONVEYING TITLE to declarant's units - §82.104(c)+(d)(2) - may

provide for transfer of special declarant rights or §82.065 sales rights.

7. SUCCESSOR DECLARANT'S NOTICE OF INTENT TO HOLD SPECIAL DECLARANT RIGHTS - §82.104(e)(4) - Successor who acquires special declarant rights under certain circumstances may record an instrument that declares his intention to hold those special declarant rights solely for transfer to another person.

8. SUCCESSOR DECLARANT'S NOTICE OF INTENT TO EXERCISE SPECIAL DECLARANT RIGHTS - §82.104(e)(4) - Successor who records a notice of intent to hold special declarant rights, may not exercise those rights (except right to control board) until he records a instrument permitting exercise of all those rights.

9. DECLARANT'S CONTRACTS AND LEASES:

§82.153(a)(5) - contracts and leases that declarant requires purchasers to sign at closing must be included with CIS.

§82.105(3) - contracts and leases executed by declarant are subject to cancellation by owner-controlled board.

10. PUBLIC OFFERING STATEMENT - §82.155 - Declarant may substitute CIS with a public offering statement filed with the SEC.

11. WARRANTIES - §82.153(a)(8) - copies of any written warranties provided by declarant must be included with CIS.

12. INTEREST ON ESCROW AGREEMENT - §82.158 - declarant and purchaser may agree in writing to provide for interest on escrow deposits.

13. RELEASE OF LIENS - §82.159 - declarant must release liens on land conveyed to the association, unless the CIS discloses that the land may be conveyed subject to certain liens.

14. PROMOTIONAL MATERIAL - §82.162 - improvements must be conspicuously labeled "Need Not Be Built" if same is shown on a plat or plan.

D. Conversion-Related Documents

1. CONVERSION CONDITION STATEMENT - §82.154 - as part of CIS on a conversion building, declarant must provide two dated statements and a list of code violations.

2. NOTICE OF CONVERSION - §82.160(a) - declarant must give each tenant at least 60 days' notice to vacate the apartment before converting to condominium.

E. Declarant Sale Documents

1. CONDOMINIUM INFORMATION STATEMENT

a. Required Contents for All Condominiums - §82.153. See also §82.159 which requires a release of liens that are not described in the CIS.

b. Additional Contents Required for Conversions - §82.154.

c. TUCA Provisions Pertinent to CIS. See Index 5 in Appendices.

d. Forms. See Appendices for:

- (1) Checklist for Preparing CIS
- (2) Sample CIS
- (3) Acknowledgements of Receipt of CIS

F. Unit Resale Documents

1. RESALE CERTIFICATE

§82.151(a) - waiver of protections if nonresidential use

§82.151(b) - dispositions for which resale certificate not requires

§82.156(a),(c)+(d) - resale purchaser's right to cancel if not received

§82.157 - defined and contents

2. SELLER'S RESALE AFFIDAVIT - §82.157(b) - If association does not provide a resale certificate in response to an owner's request, the owner may provide a sworn affidavit of that fact.

3. WAIVER OF RESALE CERTIFICATE - §82.157(b) - Buyer and seller of a resale unit may agree in writing to waive the resale certificate requirement if the seller provides a sworn affidavit of his attempt to obtain the certificate from the association.

G. Insurance Documents

1. UNAVAILABLE INSURANCE NOTICE - §82.111(c) - If insurance required by TUCA is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders.

2. INSURANCE CANCELLATION NOTICE - §82.111(h) - The insurer must give the association at least 30 day's written notice before the insurer may cancel or refuse to renew a policy.

H. Budget Documents

1. BUDGETS

§82.102(a)(2) - adopt and amend budgets

§82.112(a) - annual budget is basis for assessments

§82.153(a)(6)+(b) - first budget to be provided with CIS

§82.157(a) - current operating budget to be provided with resale certificate

I. Assessment Lien Foreclosure Documents

1. APPOINTMENT TO EXERCISE POWER OF SALE - §82.113(d) - By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the association's power of sale.

2. REDEMPTION DEED - §82.113(g) - The association shall execute a deed to the redeeming unit owner, following foreclosure of the association's assessment lien. The redeeming owner may record the redemption deed.

3. REDEMPTION AFFIDAVIT - §82.113(g) - The redeeming unit owner may record an affidavit that he has exercised the right of redemption (instead of recording the redemption deed from the association).

4. MORTGAGEE'S REQUEST FOR NOTIFICATION - §82.113(h) - The holder of a recorded lien may give the association a written request for notification of the owner's delinquency or the association's intent to foreclose.

5. DEED IN LIEU OF FORECLOSURE - §82.113(i) - The association may accept from the defaulting unit owner a deed in lieu of foreclosing the association's lien.

J. Documents Related to Association Operations

1. MANAGEMENT CERTIFICATE - §82.116 - The association must record a certificate, signed by an officer of the association, providing certain information about the association, the condominium project, and its mailing address. The association must record changes in any item of information.

2. TERMINATION AGREEMENT - §82.068(b)

3. RESCISSION AGREEMENT - §82.068(i) - to rescind a termination agreement.

4. VIOLATION NOTICE - §82.102(a)(12), (d)+(e) - Given by board to owner in violation of documents.

5. NOTICE OF INTENT TO TERMINATE DECLARANT CONTRACTS AND LEASES - §82.105(3)

6. NOTICE TO ENTER UNIT - §82.107(d) - (Unless otherwise provided by the declaration. . .) Association must give unit owner and occupant notice before it enters the unit to prevent waste of common expense utilities or to perform maintenance that prevents water damage.

7. NOTICE OF ASSOCIATION MEETINGS - §82.108 - Must be given in accordance with the bylaws.

8. PROXY - §82.110(b): Must be dated, else it is void. May state a termination date, else it terminates one year after its date. Must be signed by unit owner. Revocation requires actual notice to person presiding over meeting. A proxy stating that it is revocable without notice is void.

9. ANNUAL AUDIT - §82.114(c) - Copies of the annual independent audit must be made available to unit owners.

10. OWNER INFORMATION - §82.114(e)+(f) - The unit owner shall provide the association with certain data relating to the owner, his mortgagee, the occupants of his unit, and his unit manager, if any. The unit owner shall report changes in any item of information.

VII. APPENDICES

INDEXES

- 1 - Index to TUCA Provisions Pertaining to Plats & Plans
- 2 - Index to TUCA Provisions Pertaining to Declaration
- 3 - Index to TUCA Provisions Pertaining to Bylaws
- 4 - Index to TUCA Provisions Pertaining to Rules
- 5 - Index to TUCA Provisions Pertaining to CIS

CHECKLISTS

- 1 - Checklist for New Project
- 2 - Checklist for Preparing CIS

FORMS

- 1 - Model Short-Form Declaration
- 2 - Bylaws
- 3 - Sample Initial Rules
- 4 - Articles of Incorporation
- 5 - Sample Condominium Information Statement
- 6 - Affidavit of Purchaser
- 7 - Receipt for CIS - Addendum to Contract
- 8 - Receipt for CIS
- 9 - Condominium Management Certificate - Annotated & Sample

SELECT ("RETROACTIVE") PROVISIONS OF TUCA

FANNIE MAE SELLING GUIDE - Part VIII - Project Standards

INDEXES

INDEX 1

TUCA PROVISIONS PERTAINING TO PLATS & PLANS**A. CONTENT OF PLATS & PLANS:**

§82.059 - required contents

§82.052 - unit boundaries

§82.060(a)+(b) - exercising development rights

§82.062 - altering boundaries between adjoining units

§82.063(a) - subdividing units

§82.162 - labelling "Need Not Be Built"

§82.163 - labelling "Must Be Built"

B. PLATS & PLANS AS PART OF DECLARATION:

§82.003(a)(22)(A) - filed with declaration

§82.055(12) - required as content of declaration

§82.059(a) - part of declaration

C. OTHER PROVISIONS DEALING WITH PLATS AND PLANS:

§82.003(a)(18)+(19) - defined terms

§82.003(a)(22) - special declarant rights include right to complete improvements on plats and plans

§82.051(d) - recording by county clerk

§82.054 - recording data required in unit's legal description

§82.064 - liability for failure to adhere to plats and plans

§82.067(a) - amending plats and plans

INDEX 2

TUCA PROVISIONS PERTAINING TO DECLARATION**A. CONTENT OF DECLARATION:**

- §82.003(a)(12) - reservation of development rights
- §82.003(a)(17) - allocation of limited common elements
- §82.003(a)(23) - description of unit boundaries
- §82.003(b) - defined terms
- §82.052 - unit boundaries
- §82.055 - contents for all condominiums
- §82.056 - additional contents for leasehold condominiums
- §82.057 - allocation of interests, votes, and assessments
- §82.058(a) - right to use limited common elements
- §82.058(b)+(c) - allocating limited common element
- §82.059(e) - horizontal boundaries of units
- §82.060(b) - time limit to exercise development right
- §82.060(d) - withdrawable real property
- §82.061(a) - alterations of units
- §82.062 - relocating boundary between units
- §82.063(a) - subdividing units
- §82.065 - declarant's use of property for sales purposes
- §82.066 - declarant's easement
- §82.067(a) - amendment of declaration
- §82.067(f) - declarant's right to amend
- §82.068(a) - termination of condominium
- §82.069 - actions requiring mortgagee approval
- §82.102(a) - powers of unit owners association
- §82.102(a)(17) - assigning right to future income
- §82.102(a)(20) - exercise powers conferred by declaration
- §82.102(b) - association's power over declarant

§82.103(a) - board acting for association
§82.103(c) - declarant control of association
§82.103(g) - limit on officer or director's liability
§82.106(b) - contents of bylaws
§82.107 - upkeep of condominium
§82.108(a) - special meetings of association
§82.108(c) - board meetings
§82.110(a) - votes by co-owners of unit
§82.111(a)(2)+(c) - insurance requirements
§82.112(d) - assessing to maintain limited common element
§82.112(f) - reserve funds
§82.113(a) - enforceability of assessments
§82.113(b)(3)+(4) - delinquency of assessment
§82.113(c) - notice of assessment lien
§82.113(d) - exercise of power of sale
§82.113(e) - power of sale to foreclose nonjudicially
§82.113(g) - interest rate for delinquent assessments
§82.113(b)(4) - priority of improvement liens
§82.117 - obligations of unit owners

B. ENFORCING THE DECLARATION:

§82.008 - venue
§82.067(h) - enforcement against tenants
§82.102(a)(12)+(d) - fines for violations
§82.117(4) - reimbursement of compliance costs
§82.161 - attorney's fees in enforcement action
§82.157(a)(9) - notice of violation in resale certificate

C. OTHER DECLARATION-RELATED PROVISIONS:

§82.002 - applicability of TUCA
§82.003(a)(11) - defined
§82.004 - evading declaration's prohibitions

- §82.007 - use of allocations in condemnation
- §82.051(a)+(d) - recording and executing declaration
- §82.051(c) - curing defective execution
- §82.053 - construction and validity
- §82.054 - recording data required in unit's legal description
- §82.103(b) - limit on board's power to amend declaration
- §82.104(e)+(f) - transfer of declarant's risks and obligations
- §82.113(k) - lack of assessment lien on 1/1/94
- §82.113(l) - effect of tax foreclosure on assessment lien
- §82.153(a)(5) - to be provided with CIS
- §82.156(a),(c)+(d) - resale purchaser's right to cancel if not received
- §82.157(a) - to be provided with resale certificate
- §82.157(a)(1) - resale certificate states any right of first refusal to transfer unit

INDEX 3

TUCA PROVISIONS PERTAINING TO BYLAWS

A. CONTENT OF BYLAWS:

- §82.003(b) - defined terms
- §82.102(a)(20) - exercise powers conferred by bylaws
- §82.103(a) - board acting for association
- §82.103(g) - limit on officer or director's liability
- §82.106 - required contents
- §82.108(a) - notice of meeting
- §82.108(c) - board meetings
- §82.109 - quorum requirement
- §82.113(b)(3)+(4) - delinquency of assessment
- §82.114(c) - annual audit of records
- §82.117 - owner's duty to comply

B. ENFORCING THE BYLAWS:

- §82.008 - venue
- §82.067(h) - enforcement against tenants
- §82.102(a)(12)+(d) - fines for violations
- §82.117(4) - reimbursement of compliance costs
- §82.157(a)(9) - notice of violation in resale certificate
- §82.161 - attorney's fees in enforcement action

C. OTHER BYLAWS-RELATED PROVISIONS:

- §82.053 - construction and validity
- §82.102(a)(1) - adoption and amendment of bylaws
- §82.153(a)(5) - to be provided with CIS
- §82.156(a),(c)+(d) - resale purchaser's right to cancel if not received
- §82.157(a) - to be provided with resale certificate

INDEX 4

TUCA PROVISIONS PERTAINING TO RULES

A. CONTENT OF RULES:

§82.102(a)(7) - rules regulating property use

§82.102(a)(13) - rules regulating assessment collection

§82.102(a)(14) - rules terminating utilities

§82.113(b)(3)+(4) - delinquency of assessment

B. ENFORCING THE RULES:

§82.008 - venue

§82.067(h) - enforcement against tenants

§82.102(a)(12)+(d) - fines for violations

§82.117(4) - reimbursement of compliance costs

§82.157(a)(9) - notice of violation in resale certificate

§82.161 - attorney's fees in enforcement action

C. OTHER RULES-RELATED PROVISIONS:

§82.053(b) - rule against perpetuities

§82.117 - owner's duty to comply

§82.153(a)(5) - to be provided with CIS

§82.156(a),(c)+(d) - resale purchaser's right to cancel if not received

§82.157(a) - to be provided with resale certificate

INDEX 5

TUCA PROVISIONS PERTAINING TO
CONDOMINIUM INFORMATION STATEMENT

A. CONTENTS OF CIS:

§82.153(a)+(b) - defined and contents (in general)

§82.154 - additional contents for conversions

§82.159 - disclosure of liens

§82.153(c) - amendment of CIS

B. OTHER CIS-RELATED PROVISIONS:

§82.104(e)(3) - successor's duty to provide CIS

§82.114(a)(3) - required to be kept as an association record

§82.151(a) - waiver of protections if nonresidential use

§82.151(b) - dispositions for which CIS not requires

§82.152 - liability for preparing CIS

§82.155 - public offering statement instead of CIS

§82.156(b)-(d) - purchaser's right to cancel if CIS not received

CHECKLISTS

CHECKLIST 1

CHECKLIST FOR NEW PROJECT

I. INTRODUCTORY INFORMATION

File No.:
Date File Opened:

Client name:
Project:
Status of fee agreement:
Referred by:

Declarant:
Declarant's Address:
Declarant's Telephone:
Declarant's Fax:

Our Primary Client Contact Name:
Contact's Role with Client:
Contact Address:
Contact Telephone:
Contact Fax:

This Form Prepared By:
Date This Form Started:
Information Provided By:

II. INFORMATION FOR PREPARING DRAFT DOCUMENTS

A. Condominium Information

1. Name of condominium: <Project Name>
2. Address of condominium: <Project Address>
3. City in which condominium is located: <Project City>
4. County in which condominium is located: <Project County>

B. Association Information

1. Name of Association: <Assn Name>
2. Profit or Nonprofit Corporation:
3. Initial Association Directors:
 - <Director 1 Name>
 - <Director 1 Address>
 - <Director 2 Name>
 - <Director 2 Address>
 - <Director 3 Name>
 - <Director 3 Address>
4. Initial Association Officers:
 - President <Assn Pres>
 - Vice President <Assn VP>
 - Secretary <Assn Secy>

Treasurer <Assn Treas>

C. Declarant Information

1. Name of Declarant: <Declarant Name>
2. Type of entity of Declarant: <Declarant Entity>
3. City in which Declarant is located: <Declarant City>
4. County in which Declarant is located: <Declarant County>
5. State in which Declarant is located: <Declarant State>
6. Declarant Principal: <Declarant Principal>
7. Title of Declarant Principal: <Declarant Title>

D. Basic Project Information:

1. New construction or conversion?
2. Leasehold?
3. Residential, commercial, mixed?
4. To be phased?
5. Within a master association?
6. To have sub-associations?
7. Seeking FNMA, FHLMC, FHA, VA approvals?

III. INFORMATION ABOUT DECLARANT & DEVELOPMENT TEAM

A. Additional Information About Declarant:

1. Where and when was Declarant entity organized? Organized yet?
2. Where is it qualified to do business?
3. Declarant's other projects:
4. Declarant's other attorneys:
5. Declarant's tax goals:
6. Declarant's tax advisor:
7. Have tax strategies been planned in advance?

B. Development Team: List name, address, phone, and contact person for each

- | | |
|--------------------------------------|----------------------------------|
| 1. Surveyor | 10. Insurance agent |
| 2. Architect | 11. Construction superintendent |
| 3. Appraiser | 12. Association manager |
| 4. Accountant | 13. Title insurance company |
| 5. Structural engineer | 14. Marketing/promotion company |
| 6. Mechanical engineer | 15. Real estate broker for units |
| 7. Construction lender | 16. Construction mortgage lender |
| 8. Permanent lender/Mortgage broker | 17. Permanent or take-out lender |
| 9. Marketing director/Listing broker | |

IV. BACKGROUND INFORMATION

A. Condominium Information

1. Description of site: Comments on limitations, such as unusual terrain features, environmental concerns, historical designations.
2. Character of project:
 - a. Architectural style
 - b. Recreational amenities
 - c. Describe targeted occupants
3. Special characteristics of the project:
 - a. If mixed use, describe types of uses
 - b. Within a master or tiered association
 - c. Conversion (with or without tenants)
 - d. Nonresidential units
 - e. Unit owner maintains exterior
 - f. Age restricted (seniors only)
4. Size of project:
 - a. Minimum number of units (first phase)
 - b. Maximum number of units
 - c. Number of phases anticipated
 - d. Additional land
 - e. Withdrawable land
 - f. Improvements which must be built
 - g. Improvements which need not be built
5. Nature of units: air space, fee simple lot, other
6. Describe parking:
 - a. Garages attached to residential units - part of unit or limited common element?
 - b. Carport parking - to be assigned or unassigned? If assigned, as limited common element? How many spaces per unit?
 - c. Uncovered parking - to be assigned or unassigned? If assigned, as limited common element? How many spaces per unit?
7. Other assigned features. Describe any components outside the unit that is to be assigned to or conveyed with the unit, such as storage closets.

B. Marketing Information

1. Demographics of targeted unit purchasers (if different from occupants)

2. How property will be marketed to public. What features will be emphasized? What options are available to purchasers? What is overall marketing theme?
3. Does Declarant plan to solicit sales in another state? If so, does that state require licensing or registration?
4. Does Declarant plan to give written warranties to purchasers?

CAUTION

This checklist provides only a starting point for working on a new condominium project. Additional detailed, project-specific checklists should be used to prepare (1) Surveys, plats, and plans, (2) Condominium declaration, (3) Association bylaws, (4) Articles of incorporation, (5) Initial rules and regulations. Examples of such checklists are available in Condominium Development - Forms with Commentary, by Gurdon H. Buck, published by Clark Boardman Callaghan.

CHECKLIST 2
CHECKLIST FOR PREPARING
CONDOMINIUM INFORMATION STATEMENT
INFORMATION REQUIRED BY TUCA
(listed in same order as statutory contents)

A. INFORMATION REQUIRED FOR ALL CONDOMINIUMS

1. §82.153(a)(1) - The Declarant. The name and principal address of the declarant.
 - a. Full name of declarant
 - b. Principal address of declarant (also give mailing address if different)
2. §82.153(a)(1) - The Condominium. The name and principal address of the condominium.
 - a. Full name of condominium
 - b. Principal address of condominium (also give mailing address if different)
3. OPTIONAL - The Association. The name and principal address of the association.
 - a. Full name of association
 - b. Principal address of association (also give mailing address if different)
4. §82.153(a)(2) - Description of Condominium. A general description of the condominium that includes the types of units and the maximum number of units.
 - a. Provide a general description of the condominium.
 - b. Describe the types of units.
 - c. State the maximum number of units in the condominium. List the types and numbers of units of each type.
5. §82.153(a)(3) - Number of Units. The minimum and maximum numbers of additional units, if any, that may be included in the condominium are:
 - a. Minimum number of additional units:
 - b. Maximum number of additional units:
6. §82.153(a)(4) - Development Rights. A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights. Description of development rights:
 - a. Initial number of units:
 - b. Withdrawal of land - description and number of units affected:
 - c. Limited common elements which may be allocated:
 - d. Maximum years for creation?
7. §82.153(a)(5) - Condominium Information Statement Instruments. Copies of the following documents are attached:
 - a. Declaration
 - b. Articles of Incorporation
 - c. Bylaws
 - d. Rules of the association
 - e. Copies of leases and contracts that declarant requires purchasers to sign at closing
8. §82.153(a)(6)+(b) - Projected Budget. Attached is a copy of a projected or pro forma budget that complies with the following requirements:

- a. The budget was prepared in accordance with generally accepted accounting principles. (attach preparer's affidavit)
 - b. The budget was prepared with consideration of the physical condition of the condominium. (attach preparer's affidavit)
 - c. The budget contains a statement of who prepared the budget.
 - d. The budget contains a statement of its assumptions concerning:
 - (1) Occupancy factors
 - (2) Inflation factors
 - e. The budget is based on assumptions that, to the best of declarant's knowledge and belief, are reasonable. (attach declarant's affidavit)
 - f. The budget contains a statement of the amount, or a statement that there is no amount included in the budget as a reserve for repairs and replacement.
 - g. The budget shows the projected monthly common expense assessment for each type of unit.
9. §82.153(a)(7) - Encumbrances. A general description of each lien, lease, or encumbrance on or affecting title to the condominium after conveyance by the declarant.
- a. Has a title search of the property been performed? If a search has not been performed, does the declarant want drafter to obtain such a search? If a search has been performed, attach a copy of the title report, the abstract, or the title insurance policy, with copies of the encumbrances.
 - b. Attach to the CIS copies of all encumbrances that will not be released prior to closings of individual units.
 - c. Which encumbrances will be released prior to closings of individual units?
 - d. Has the tax assessor agreed to any matters regarding future assessments, e.g., amounts, splitting the assessment among units and billing individual unit owners?
10. §82.153(a)(8) - Warranties. A copy of each written warranty provided by the declarant. Is declarant providing written warranties? If so, describe.
11. §82.153(a)(9) - Suits. A description of any unsatisfied judgments against the association and any pending suits to which the association is a party or which are material to the land title and construction of the condominium of which a declarant has actual knowledge.
- a. Are there any unsatisfied judgments against the association?
 - b. Are there any pending suits to which the association is a party?
 - c. Are there any pending suits which are material to the land title and construction of the condominium of which a declarant has actual knowledge. (get declarant affidavit)
12. §82.153(a)(10) - Insurance. A description of the insurance coverage provided for the benefit of unit owners.
- a. Casualty insurance:
 - (1) Includes interiors of units?
 - (2) Amount of coverage
 - (3) Name of insurer
 - (4) Name, address, telephone number, and contact at insurance servicer.
 - (5) Deductible - amount and who pays?

- b. Liability insurance:
 - (1) Amount of coverage (minimum \$1,000,000 required by FNMA).
 - (2) Medical payments of \$_____ per person, \$_____ per incident
 - (3) Non-owned auto \$_____
 - (4) Limit of liability of BI and PD combined \$_____
 - c. Fidelity bond coverage.
 - d. Directors' and officers' liability coverage amount \$_____, deductible \$_____.
 - e. Other insurance, if any.
13. §82.153(a)(11) - Fees. Any current or expected fees or charges to be paid by unit owners for the use of common elements and other facilities related to the condominium.
- a. Rental or cleaning fee for use of clubhouse or recreation facilities?
 - b. Individually metered electricity.
 - c. Individually metered or submetered water?
 - d. Individually metered or submetered gas?
 - e. Separate or user fees for:
 - (1) Cable television
 - (2) Door-to-door trash pick-up
 - (3) Security services
 - (4) Additional parking spaces
 - (5) Rental of storage spaces

B. ADDITIONAL INFORMATION REQUIRED FOR CONVERSIONS

1. §82.154(1) - Statement of Current Condition. A statement by the declarant, based on a report prepared by an independent 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.
- a. Name of engineer or architect.
 - b. Date report ordered and by whom.
 - c. If report not yet ordered, who is to order it.
 - d. Date of declarant's statement.
2. §82.154(2) - Statement of Useful Life. A statement by the declarant of the useful life of each item reported on in the Statement of Current Condition, or a statement that no representations are made in this regard.
- a. Declarant prefers to make no representations.
 - b. Date of construction or installation of each item to be considered.
 - c. Date and remaining useful life of each item.
 - d. Date of major repair of each item.
 - e. Extended useful life of each item.
3. §82.154(3) - Statement of Violations. A list of outstanding notices of uncured violations of building code or other governmental regulations, together with the estimated cost of curing those violations.
- a. Date on which declarant was asked about outstanding violations.
 - b. Notice of violations of codes.
 - c. Estimated cost to cure each violation.

FORMS

FORM 1 - MODEL SHORT FORM DECLARATION

Reprinted with Permission of
National Conference of Commissioners on Uniform State Laws

Official Form No. 1
Declaration of Condominium

PREFATORY NOTE

The Uniform Common Interest Ownership Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 1982, is now the law in three jurisdictions: Alaska, Connecticut and West Virginia. The Act resulted from the recognition that comprehensive treatment of "common interest communities" - most commonly, the condominium, planned community and cooperative - was required. Today, the Act, the Uniform Condominium Act and comparable legislation, govern the creation and governance of most common interest communities in 14 states.

Each of these laws provides that a common interest community can be created only by the recording of a declaration containing certain information. See UCIOA §2-101.

The length and content of the declaration will be dictated by the complexity of the regime, the declarant's undertakings and the role of the association. A primary goal of the Act is to shorten, and thereby make more meaningful, the documentation needed to create and govern a common interest community. For a project in which no development rights are reserved, the Act contemplates that the declaration will be only a few pages in length for two reasons: First, the Act sets forth standards, powers, and procedures which, unless varied by the express terms of the declaration, will govern the creation of the regime; and second, information meaningful to purchasers must be set forth in a separate public offering statement.

For example, the Act, in Section 2-102, provides a practical procedure for the definition of unit boundaries. For most regimes, this provision will be sufficient to shorten the declaration to a provision like that suggested in Section 4.03 (the "boundaries of a unit are its Walls, Floors and Ceilings"). Similarly, in attempting to assure declarants the continuing protection required to complete a project, the Act employs the concept of "special declarant rights". Although these rights must be reserved in the declaration, the use of defined terms in the Act will make preservation of the rights substantially easier for the drafter and more understandable the powers reserved. Likewise, common boundaries between units may be reallocated pursuant to the procedures specified in Section 2-112 of the Act, unless the declaration provides otherwise.

The Joint Editorial Board of Real Property Acts has been established by joint action of the National Conference, the American Bar Association Section on Real Property, Probate and Trust Practice, and the American College of Real Estate Lawyers. In addition to monitoring judicial and legislative developments which affect the Uniform Acts in the real property arena, the Board also encourages adoptions of these laws by the states. Official Form No. 1 has been promulgated to assist practitioners in those jurisdictions which have adopted the Act.

Official Form No. 1 satisfies all of the Act's requirements for the declaration of a residential condominium as to which no development rights are reserved by the declarant (§1-103(14)) and which contain no unusual features. For example, commercial or mixed uses, a leasehold project, or a regime in which time sharing may occur, a conversion project, and other uses and interests will require additional drafting.

Although not appropriate for insertion in the Form, mortgagee protections, commonly required by the secondary mortgage market purchasers and others, should be considered by the drafter. Such provisions may include, for example, restrictions and limitations on occupancy throughout the regime, as well as limitations on voting rights of the mortgagor.

Because adoptions of the Act may include non-uniform amendments, the drafter should check local law to determine if variations exist with respect to the contents of the declaration.

DECLARATION

OF

[insert name of condominium], a Condominium

ARTICLE I

SUBMISSION; DEFINED TERMS

Section 1.01. Submission of Real Estate. [Insert name of Declarant] (the "Declarant"), owner in fee simple of the real estate described in Section 2.02 located in [insert name of every county in which any portion of the Condominium is located], hereby submits the real estate, together with all easements, rights and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Property") to the provisions of Chapter 82 of the Property Code, known as the Texas Uniform Condominium Act (the "Act").

Section 1.02. Defined Terms. Each capitalized term not otherwise defined in this Declaration or in the Plats and Plans shall have the meanings specified or used in the Act.

ARTICLE II

NAMES; DESCRIPTION OF REAL ESTATE

[§82.055(1)-(3)]

Section 2.01. Names.

(a) Condominium. The name of the Condominium is [insert name of Condominium §82.055(1)].

(b) Association. The name of the Association is [insert name of Association §82.055(1)].

Section 2.02. Real Estate. The Condominium is located in [insert name of every county in which any portion of the Condominium is located §82.055(2)] County, Texas. The real estate of the Condominium is described in Exhibit A. [§82.055(3)]

ARTICLE III

THE ASSOCIATION

Section 3.01. Authority. The business affairs of the Condominium shall be managed by the Association, *acting through its board of directors*. [§82.103(a)] The Association shall be governed by its bylaws, as amended from time to time. [§82.106]

Section 3.02. Powers.

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Condominium. [§82.102(a)]

(b) The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose. [§82.102(a)(17)]

COMMENT: The power to assign future income is significant and, for that reason, the Act requires that any such right to assign must be specifically stated in the Declaration, "but only to the extent the declaration provides".

Accordingly, the Declaration need not restate the power but it must contain restrictions on the extent and exercise of the power. Purposes for which each assignment may be made, the procedures by which it is exercised, the sources of the income and the like are only some example.

Certain income of the Association should be protected, such as funds needed for mandatory reserve accounts or to pay known expenses.

Section 3.03. Declarant Control. The Declarant shall have all the powers reserved in Section 82.103(c) of the Act to appoint and remove officers and members of the Board.

ARTICLE IV

UNITS [§82.055(4),(5)]

Section 4.01. Number of Units. The number of Units in the Condominium is [insert number]. The Declarant reserves no rights to create additional Units [§82.055(5)]

COMMENT: The right to create additional units is a development right, see §82.003(a)(12). If any development right is to be reserved by the declarant, this Form will require substantial modification.

Section 4.02. Identification of Units. The identification number of each Unit is shown on the Plats or Plans or both. [§82.055(4)]

Section 4.03. Unit Boundaries. The boundaries of each Unit are located as shown on the Plats and Plans and are more particularly described as follows: [§82.055(4), §82.052]

- (i) Walls, Floors, and Ceilings are designated as boundaries of a Unit; and
- (ii) *[insert here any variations from the default provisions of §82.107(a), (b) & (c). Subparagraphs (b) & (c) are substantially different from the corresponding provisions in the model act.]*

[Section 4.04. Subdivision of Units. Upon approval by the Board, a Unit may be subdivided into two or more Units if the Owner of the Unit to be subdivided shall submit to the Board such application as shall be reasonably required.] [§82.063]

COMMENT: Section 4.04 is optional. Unless the declaration expressly permits subdivision of units, any subdivision must be accomplished as an amendment to the declaration. Of course, no subdivision that does not otherwise comply with local zoning and planning laws can occur without first complying with such laws. See §82.006

ARTICLE V

LIMITED COMMON ELEMENTS [§82.055(6),(7)]

Section 5.01. Limited Common Elements.

(a) A "Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on the Plats and Plans, or by the Act, for the exclusive use of one or more but fewer than all of the Units.

(b) The following portions of [the] building[s], in addition to the portions described in Sections 82.052(2) and 82.052(4) of the Act, [are] [is] designated as Limited Common Elements: [§82.055(6)]

[list building features, such as balconies, that are to be characterized as Limited Common Elements]

COMMENT: In each condominium, there will likely be portions which should be designated as Limited Common Elements. The consequence of such a designation is important, not only to limit use but also to determine responsibility for maintenance, repair, or replacement and the costs thereof.

TUCA COMMENT: TUCA varies from the model act. The drafter should carefully review §82.052, §82.058, §82.107, §82.112(d).

[Section 5.02. Allocation of Reserved Limited Common Elements. [§82.055(7)]]

(a) Portions of the Common Elements are marked on the Plats and Plans as "Common Elements which may be allocated as Limited Common Elements." These portions of the Common Elements include, without limitation, vehicle parking areas, portions of the basement of the building which may be used for storage purposes, and others.

(b) The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which these specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of Section 82.058 of the Act (i) by making such an allocation in a recorded instrument or (ii) in the deed to the Unit to which such Limited Common Element storage area shall be appurtenant or (iii) by recording an appropriate amendment to this Declaration. Such allocations by the Declarant may be to Units owned by the Declarant. Subsequent to the Declarant Control Period, the right of allocation pursuant to this Sections shall pass from the Declarant to the Board and the Declarant may not thereafter exercise any such right.

COMMENT: Section 5.02 is optional. Unless the declaration contains a provision similar to Section 5.02, a reallocation of Limited Common Elements can be undertaken only by an amendment to the declaration.

[Section 5.03. Allocation of Specified Common Elements. The Board may designate parts of the Common Elements from time to time for use by less than all of the Unit owners or by non-owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board. Any such designation by the Board shall not be a sale or disposition of such portions of the Common Elements.] [§82.102(a)(11)]

COMMENT: Section 5.03 is optional. Among the powers granted by the Act to the Association is the power to impose charges for use of the Common Elements. The purpose of Section 5.03 is to expressly authorize such charges and to provide a procedure to the Association.

ARTICLE VI

ALLOCATED INTERESTS [§82.055(8) & (16)]

Section 6.01. Allocated Interests. The undivided interest on the Common Elements, the Common Expense liability and votes in the Association allocated to each Unit are set forth in Exhibit B. [§82.055(8), §82.057(a)]

Section 6.02. Determination of Allocated Interests. The interests allocated to each Unit have been calculated as follows: [§82.055(16), §82.057(a)]

- (i) the undivided interest in Common Elements, on the basis of [insert here the method or calculation used];
- (ii) the percentage of liability for Common Expenses, on the basis of [insert here the method or calculation used]; and
- (iii) the number of votes in the Association, on the basis of [insert here the method or calculation used].

COMMENT: The formulas used to establish the allocations of interests must be stated in the declaration. Attention should be given to §82.057(c), which permits special provisions relating to voting rights.

ARTICLE VII

RESTRICTIONS ON USE, ALIENATION, AND OCCUPANCY

[§82.055(9)]

Section 7.01. Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units and to the Common Elements: [§82.055(9)]

[insert list]

COMMENT: The nature and extent of the limitations will depend on the declarant's plans and expectations for the condominium. In addition, lenders may require that restrictions be incorporated to protect their interests and the security of mortgages.

Section 7.02. Restrictions on Alienation. [§82.055(9)] [Identify restrictions on alienation, if any. For example: A Unit may not be conveyed pursuant to a time-sharing arrangement. A Unit may not be leased or rented for a term of less than 60 days. All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Board.]

ARTICLE VIII

EASEMENTS AND LICENSES

[§82.055(10)]

Section 8.01. Recording Data. All easements and licenses to which the Condominium is presently subject are recited in Exhibit A. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to Section 7.01 in this Declaration. [§82.055(10)]

ARTICLE IX

AMENDMENT OF DECLARATION

[§82.055(11)]

Section 9.01. Permitted Methods. In addition to the methods permitted by Section 82.067(a) of the Act, an amendment to this declaration may be adopted: [§82.055(11), §82.067(a)]

[insert additional methods of amending the declaration, such as by use of petitions, or by any combination of permitted methods.]

TUCA COMMENT: Unlike the model act, TUCA requires the declaration to contain the method of its amendment. The drafter may merely reference the two methods described in §82.067(a), or may include additional methods. Some thought should be given to technological advances and the size and nature of the anticipated membership.

ARTICLE X

PLAT OR PLAN

[§82.055(12)]

Section 10.01. Plat and Plans. A project plat and unit plans are attached to this Declaration as Exhibit C. [or, A project plat and unit plans were recorded on [Recording Date], as Instrument No. _____, Real Property Records, _____ County, Texas.] [§82.003(a)(18) & (19), §82.055(12), §82.059]]

TUCA COMMENT: The model act requires that plats and plans be part of the recorded declaration. TUCA also permits the plats and plans to be recorded separately. Unlike the model act, TUCA adds plats and plans (or their recording data) to the checklist for the declaration contents.

ARTICLE XI

RECONSTRUCTION AFTER LOSS

[§82.055(13)]

Section 11.01. Obligation to Rebuild. In the event of a casualty to the Condominium, the Association shall rebuild or repair according to Section 82.111(i) of the Act. [§82.055(13), §82.111(i)]

TUCA COMMENT: Although TUCA's §82.111(i) is nearly identical to the corresponding provision in the model act, TUCA adds an affirmative statement regarding the association's obligation to rebuild to the checklist for the declaration contents.

ARTICLE XII

SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS [§82.055(14), (15)]

Section 12.01. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights: [§82.003(a)(22), §82.055(14)]

- (i) the right to complete or make improvements indicated on the Plats and Plans; [§82.003(a)(22)(A), §82.059]
- (ii) the right to maintain sales offices, management offices, *leasing offices*, and models in Units or on the Common Elements, but only [insert limitations in number, size, location, and relocation]; [§82.003(a)(22)(D), §82.065]
- (iii) the right to maintain signs on the Condominium to advertise the Condominium; [§82.003(a)(22)(D), §82.065]
- (iv) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this declaration; [§82.003(a)(22)(E), §82.066] and
- (v) the right to appoint or remove any officer of the Association or any director during the Declarant Control Period consistent with the Act. [§82.003(a)(22)(F), §82.103(c)]

COMMENT: Unless special declarant rights are expressly reserved in the declaration, they do not arise under the Act.

Section 12.02. Limitations on Special Declarant Rights. Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act. [§82.103]

Section 12.03. Development Rights. The Declarant reserves the following development rights: [§82.003(a)(12), §82.003(a)(22)(B), §82.055(14)] None reserved.

TUCA COMMENT: NCCUSL's Official Form No. 1 is designed for a residential condominium as to which no development rights are reserved by the declarant. Section 12.03 is inserted merely as a reminder that if development rights are reserved, this form will require substantial modification.

ARTICLE XIII

INTEREST RATE [§82.055(16)]

Section 13.01. Interest on Delinquent Assessments. In the event of default in the payment of any monetary obligation to the Association, an owner shall be obligated to pay interest on the principal amount, from the due date, at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. [§82.102(a)(12), §82.112(c), §82.117(1)]

Section. 13.02. Default Interest Rate. If the Board shall refuse or fail, from time to time, to determine a rate of interest, the rate of interest shall be 18 percent per annum. [§82.113(g)]

TUCA COMMENT: Article XIII is included because §82.113(g) refers to interest "at the rate provided by the declaration for delinquent assessments." The model act has no such provision.

ARTICLE XIV

MAINTENANCE, REPAIR AND REPLACEMENT

[§82.055(17)]

Section 14.01. Limited Common Elements. The owner of a Unit to which any doorstep, stoop, porch, balcony or patio is allocated shall be responsible for removal of snow, leaves and debris therefrom. [The Owner of a Unit to which the Limited Common Elements described in Exhibit ___ are allocated shall maintain, repair and replace those Limited Common Elements.]

COMMENT: The second sentence of Section 14.01 is optional. In some condominiums, this responsibility may be better left in the Association. In others, the declaration may assign these responsibilities to the Association in some instances (repair or replacement of a deck), but to the unit owner in others (maintenance).

Section 14.02. Expense Allocation. Any common expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed equally against the Units to which the Limited Common Element is assigned. [§82.112(d)]

COMMENT: Unless the declaration expressly provides, these expenses will be incurred by the Association generally without allocation to the Unit owner. Once the decision is made to limit the expenses to those benefitted by the Limited Common Element, the Act provides flexibility to the drafter in allocating that liability. It may be equally or in any other proportion the declaration provides. Non-equal allocation may be appropriate if, for example, the Association will have responsibility for wooden deck surfaces of varying sizes and shapes allocated to different Units. However, the declaration must set out the basis for the non-equal allocation.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a general partner and duly authorized agent this ___ day of _____ 19__.

[INSERT DECLARANT'S NAME]

By: _____
[insert name and capacity]

COMMENT: The declaration must be executed with the same formalities as a deed.

[ACKNOWLEDGMENT]

ATTACHED EXHIBITS:

Exhibit A - Description of Land, including all easements and licenses to which the Condominium is presently subject.

Exhibit B - Table of Interests, showing each unit's (i) Percentage Share of Common Elements (totalling 100 percent); (ii) Percentage Share of Common Expenses (totalling 100 percent); (iii) Vote in the Affairs of the Association (totalling 100 percent if percentage based); and (iv) Limited Common Elements.

Exhibit C - Plats and Plans

FORM 2 - CONDOMINIUM BYLAWS

BYLAWS
OF
<ASSOCIATION NAME>
(A Texas Nonprofit Corporation)

Prepared by

BYLAWS

OF

<ASSOCIATION NAME>
(A Texas Nonprofit Corporation)

ARTICLE 1

INTRODUCTION

1.1. PURPOSE OF BYLAWS. These bylaws provide for the governance of the condominium known as <Project Name>, located in the City of <City>, <County> County, Texas, subject to and more fully described in the <Title of Declaration>, recorded on <Declaration recording date>, as Instrument No. ___ [or "to be recorded"] in the Real Property Records of <County> County, Texas (the "**Declaration**").

1.2. PARTIES TO BYLAWS. All present or future unit owners and all other persons who use or occupy the condominium in any manner are subject to these bylaws and the other governing documents as defined below. The mere acquisition or occupancy of a unit will signify that these bylaws are accepted, ratified, and will be strictly followed.

1.3. DEFINITIONS. Words and phrases defined in the declaration shall have the same meanings when used in these bylaws. Unless defined otherwise in the declaration or in these bylaws, words and phrases defined in Section 82.003 of the Texas Uniform Condominium Act ("**TUCA**") shall have the same meaning when used in these bylaws. The following words and phrases shall have specified meanings when used in these bylaws: [TUCA §82.003(b)]

a. "**Director**" means a director of the Association.

b. "**Governing documents**" means, collectively, the declaration, these bylaws, the articles of incorporation of the Association, and the rules and regulations of the Association, as any of these may be amended from time to time.

c. "**Majority**" means more than 50 percent.

d. "**Member**" means a member of the Association, each member being a unit owner, unless the context indicates that member means a member of the board of directors or a member of a committee of the Association.

e. "**Officer**" means an officer of the Association. "President," "Secretary," "Treasurer," and "Vice-President" mean, respectively, the president, secretary, and treasurer of the Association.

f. "**Resident**" means the occupant of a unit, whether or not such occupant is a unit owner.

1.4. NONPROFIT PURPOSE. The Association is not organized for profit. [TUCA §82.101]

1.5. COMPENSATION. A director, officer, member, or resident shall not be entitled to receive any pecuniary profit from the operation of the Association, and no funds or assets of the Association may be paid as a salary or as compensation to, or be distributed to, or inure to the benefit of a director, officer, member, or resident; provided, however: [TNPCA Art. 1396-2.24.A]

a. that reasonable compensation may be paid to a director, officer, member, or resident for services rendered to the Association;

b. that a director, officer, member, or resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided such expense has been approved by the board; and

c. that this provision does not apply to distributions to unit owners permitted or required by the declaration or TUCA.

1.6. GENERAL POWERS AND DUTIES. The Association, acting through the board, shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the condominium as may be required or permitted by the governing documents and State law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the governing documents.

ARTICLE 2

BOARD OF DIRECTORS

2.1. NUMBER AND TERM OF OFFICE. The board shall consist of five persons. Upon election, each director shall serve a term of two years. Three directors shall be elected in odd-numbered years. Two directors shall be elected in even-numbered years. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The number of directors may be changed by amendment of these bylaws, but shall not be less than three. [TUCA §82.106(a)(1)+(3), TNPCA 1396-2.15.A.+B.]

[COMMENT: TNPCA 1396-2.15.A. requires at least 3 directors. Although 5 is the most typical number of directors, the number should be tailored to the size and circumstances of each condominium. It is customary to stagger the terms of directors, with 2- or 3-year terms. Absent a term provision, as required by TUCA, TNPCA provides for 1-year terms.]

2.2. QUALIFICATION. No person shall be eligible for election or appointment to the board unless such person is a member. [TUCA §82.106(a)(3), TNPCA 1396-2.14.A.]

[COMMENT 1: TUCA §82.106(a)(3) requires the bylaws to state the qualifications of directors. TUCA §82.103(b) prohibits the board from determining those qualifications. If the bylaws provide for amendment by the board, this provision should specify that it may not be amended without a vote of the owners.]

[COMMENT 2: There is no legal requirement that directors be owners. TNPCA 1396-2.14.A. states that directors need not be members or Texas residents unless the articles or bylaws so require. Consider alternatives, such as (i) stating that ownership is not a criteria, or (ii) requiring that at least a majority of directors be owners, or (iii) adding a broader range of qualifying criteria, such as non-owner residents, relatives of owners, roommates of owners. Also consider adding provisions (i) dealing with corporate members, (ii) to make delinquent owners ineligible to serve, (iii) permitting or prohibiting family members or roommates from serving on board at same time.]

EXAMPLES OF QUALIFICATION PROVISIONS:

2.2.1. Entity Member. If a unit is owned by a legal entity, such as a partnership or corporation, any officer, partner, or employee of that entity member shall be eligible to serve as a director and shall be deemed to be a member for the purposes of this section. If the relationship between the entity member and the director representing it terminates, that directorship shall be deemed vacant.

2.2.2. Co-Owners. Co-owners of a single unit may not serve on the board at the same time. Co-owners of more than one unit may serve on the board at the same time, provided the number of co-owners serving at one time does not exceed the number of units they co-own.

2.2.3. Delinquency. No member may be elected or appointed as a director if any assessment against the member or his unit is delinquent at the time of election or appointment. No member may continue to serve as a director if any assessment against the member or his unit is more than ____ days' delinquent.

2.3. ELECTION. Directors shall be elected by the members. The election of directors shall be conducted at the annual meeting of the Association, at any special meeting called for that purpose, or by mail, facsimile transmission, or a combination of mail and facsimile transmission. [TUCA §82.106(a)(3), TNPCA 1396-2.13.B]

[COMMENT: It is customary to elect directors at the annual meeting. However, TNPCA 1396-2.13.B. permits balloting by mail and fax if the bylaws so provide. Consider whether to permit mail or fax balloting, or to limit their use to certain circumstances.]

2.4. VACANCIES. Vacancies on the board caused by any reason, except the removal of a director by a vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the board. Each director so elected shall serve out the remaining term of his predecessor. [TUCA §82.106(a)(3), TUCA §82.103(b), TNPCA 1396-2.16.A.]

[COMMENT: TUCA §82.106(a)(3) requires the bylaws to specify how board vacancies are to be filled. However, TUCA §82.103(b) permits the board to fill unexpired terms.]

2.5. REMOVAL OF DIRECTORS. At any annual meeting or special meeting of the Association, any one or more of the directors may be removed with or without cause by members representing at least two-thirds of the votes present in person or by proxy at such meeting, and a successor shall then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting. [TUCA §82.106(a)(3), TNPCA 1396-2.15.D]

[COMMENT: TNPCA 1396-2.15.D is a default provision if the bylaws or articles do not provide removal procedures. Consider whether to permit the board to remove a director under specified circumstances, such as delinquency, suit against association, or non-participation.]

2.6. MEETINGS OF THE BOARD.

2.6.1. Organizational Meeting of the Board. Within 10 days after the annual meeting, the directors shall convene an organizational meeting for the purpose of electing officers. The time and place of such meeting shall be fixed by the board and announced to the directors.

2.6.2. Regular Meetings of the Board. Regular meetings of the board may be held at such time and place as shall be determined, from time to time, by the board, but at least one such meeting shall be held each calendar quarter. Notice of regular meetings of the board shall be given to each director, personally or by telephone or written communication, at least three days prior to the date of such meeting.

2.6.3. Special Meetings of the Board. Special meetings of the board may be called by the president or, if he is absent or refuses to act, the secretary, or by any two directors. At least three days notice shall be given to each director, personally or by telephone or written communication, which notice shall state the place, time, and purpose of such meeting.

2.6.4. Conduct of Meetings. The president shall preside over all meetings of the board and the secretary shall keep, or cause to be kept, a record of all resolutions adopted by the board and a record of all transactions and proceedings occurring at such meetings. When not in conflict with law or the governing documents, the then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the board.

2.6.5. Quorum. At all meetings of the board, a majority of directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the board. If less than a quorum is present at any meeting of the board, the majority of those present may adjourn the meeting from time to time. At any such reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

2.6.6. Open Meetings. Regular and special meetings of the board shall be open to members of the Association; provided that members who are not directors may not participate in any deliberations or discussions unless the board expressly so authorizes at the meeting. The board may adjourn any meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or sensitive nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.6.7. Telephone Meetings. Members of the board or any committee of the Association may participate in and hold meetings of the board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. [TUCA §82.108(c)(1), TNPCA 1396-9.11]

[COMMENT: This section restates TNPCA 1396-9.11]

2.6.8. Action Without a Meeting. Any action required or permitted to be taken by the board at a meeting may be taken without a meeting, if all of the directors individually or collectively consent in writing to such action. The written consent shall be filed with the minutes of the board. Action by written consent shall have the same force and effect as a unanimous vote.

2.7. LIABILITIES AND STANDARD OF CARE. In performing their duties, the directors are required to exercise certain standards of care and are subject to certain liabilities, including but not limited to the following provisions of State law: Section 82.103(a) and (f) of TUCA, and Articles 1396-2.20.D., -2.25, -2.26, -2.28, -2.29, and -2.30 of the Corporation Act. [TUCA §82.103(a)+(f), TNPCA 1396-2.20.D., -2.25, -2.26, -2.28, -2.29, -2.30]

[COMMENT: Drafter may prefer to recite or summarize those provisions here.]

2.8. POWERS AND DUTIES. The board shall have all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the condominium. The board may do all such acts and things except those which, by law or the governing documents are reserved to the members and may not be delegated to the board. Without prejudice to the general and specific powers and duties set forth in laws or the governing documents, or such powers and duties as may hereafter be imposed on the board by resolution of the Association, the powers and duties of the board shall include, but shall not be limited to, the following: [TUCA §82.106(a)(3), §82.102(a)]

[COMMENT: TUCA §82.106(a)(3) requires the bylaws to provide for the powers and duties of directors and officers. TUCA §82.102(a) lists specific board powers which operate unless otherwise provided by the declaration. If drafting specific board powers here, avoid confusion with board powers under TUCA and the declaration.]

2.8.1. Appointment of Committees. The board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the board with its responsibilities. The resolution shall establish the purposes and powers of each committee created, provide for the appointment of its members, as well as a chairman, and shall provide for reports, termination, and other administrative matters deemed appropriate by the board. Members of committees shall be appointed from among the owners and residents.

2.8.2. Manager. The board may employ a manager or managing agent for the Association, at a compensation established by the board, to perform duties and services authorized by the board.

2.8.3. Fines. The board may levy fines for each day or occurrence that a violation of the governing documents persists after notice and hearing, provided the amount of the fine does not exceed the amount necessary to ensure compliance with the governing documents.

2.8.4. Delinquent Accounts. The board may establish, levy, and collect reasonable late charges for members' delinquent accounts. The board may also establish a rate of interest to be charged on members' delinquent accounts, provided the rate of interest does not exceed 18 percent or the maximum rate permitted by State law, whichever is smaller.

2.8.5. Fidelity Bonds. The board shall require that all officers, agents, and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds may be a common expense of the Association.

2.8.6. Ex-Officio Directors. The board may, from time to time, designate one or more persons as ex-officio members of the board, pursuant to Article 1396-2.14.F. of the Corporation Act.

[COMMENT: TNPCA 1396-2.14.F, permits the articles or bylaws to provide for ex-officio members. If the drafter wants to include such a provision, it is preferable in the bylaws.]

ARTICLE 3

OFFICERS

3.1. DESIGNATION. The principal officers of the Association shall be the president, the secretary, and the treasurer. The board may appoint one or more vice-presidents and such other officers and assistant officers as it deems necessary. The president and secretary shall be directors. Other officers may, but need not, be members or directors. Any two offices may be held by the same person, except the offices of president and secretary. If an officer is absent or unable to act, the board may appoint a director to perform the duties of that officer and to act in place of that officer, on an interim basis. [TUCA §82.106(a)(1), TNPCA 1396-2.20.A.+B.]

3.2. ELECTION OF OFFICERS. The officers shall be elected no less than annually by the directors at the organizational meeting of the board and shall hold office at the pleasure of the board. Except for resignation or removal, officers shall hold office until their respective successors have been designated by the board. [TUCA §82.106(a)(2), TNPCA 1396-2.20.A.]

3.3. REMOVAL AND RESIGNATION OF OFFICERS. A majority of directors may remove any officer, with or without cause, at any regular meeting of the board or at any special meeting of the board called for that purpose. A successor may be elected at any regular or special meeting of the board called for that purpose. An officer may resign at any time by giving written notice to the board. Unless the notice of resignation states otherwise, it is effective when received by the board and does not require acceptance by the board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the board. [TNPCA 1396-2.21]

3.4. STANDARD OF CARE. In performing their duties, the officers are required to exercise the standards of care provided by Section 82.103(a) and (f) of TUCA and by Article 1396-2.20.D. of the Corporation Act. [TUCA §82.103(a)+(f), TNPCA 1396-2.20.D.]

[COMMENT: Drafter may prefer to recite those provisions here.]

3.5. DESCRIPTION OF PRINCIPAL OFFICES.

3.5.1. President. As the chief executive officer of the Association, the president shall: (i) preside at all meetings of the Association and of the board; (ii) have all the general powers and duties which are usually vested in the office of president of a corporation organized under the laws of the State of Texas; (iii) have general supervision, direction, and control of the business of the Association, subject to the control of the board; and (iv) see that all orders and resolutions of the board are carried into effect.

3.5.2. Secretary. The secretary shall: (i) keep the minutes of all meetings of the board and of the Association; (ii) have charge of such books, papers, and records as the board may direct; (iii) maintain a record of the names and addresses of the members for the mailing of notices; and (iv) in general, perform all duties incident to the office of secretary.

3.5.3. Treasurer. The treasurer shall: (i) be responsible for Association funds; (ii) keep full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepare all required financial data and tax returns; (iv) deposit all monies or other valuable effects in the name of the Association in such depositories as may from time to time be designated by the board; (v) prepare the annual and supplemental budgets of the Association; (vi) review the accounts of the managing agent on a monthly basis in the event such managing agent is responsible for collecting and disbursing Association funds; and (vii) perform all the duties incident to the office of treasurer.

3.6. AUTHORIZED AGENTS. Except when the governing documents require execution of certain instruments by certain individuals, the board may authorize any person to execute instruments on behalf of the Association. In the absence of board designation, the president and the secretary shall be the only persons authorized to execute instruments on behalf of the Association. [TUCA §82.103(a)]

ARTICLE 4

COMMITTEES

[COMMENT: An article dealing with committees is recommended for large or diverse associations that may be expected to have a number of committees. In most medium-to-small associations, the board "does it all," or may be assisted by one person "committees." For small to average-size condominium association, detailed provisions for committees are impractical and cumbersome.]

ARTICLE 5

MEETINGS OF THE ASSOCIATION

5.1. ANNUAL MEETING. An annual meeting of the Association shall be held during the month of <Annual Meeting Month> of each year. At annual meetings the members shall elect directors in accordance with these bylaws. The members may also transact such other business of the Association as may properly come before them. [TUCA §82.108(a), TNPCA 1396-2.10.A(2)]

5.2. SPECIAL MEETINGS. It shall be the duty of the president to call a special meeting of the Association if directed to do so by a majority of the board or by a petition signed by members representing at least 20 percent [*] of the votes in the Association. Such meeting shall be held within 30 days after the board resolution or receipt of petition. The notice of any special meeting shall state the time, place, and purpose of such meeting. No business, except the purpose stated in the notice of the meeting, shall be transacted at a special meeting. [See: TUCA §82.108(a), TNPCA 1396-2.10.A(3)]

[* COMMENT: TUCA §82.108(a) permits the declaration, but not the bylaws, to alter the requirements for calling a special meeting, including calls by members with at least 20 percent of the votes. TNPCA 1396-2.10.A.(3) permits calls by members with at least 10 percent of the votes, which should be considered for large projects.]

5.3. PLACE OF MEETINGS. Meetings of the Association shall be held at the condominium or at a suitable place convenient to the members, as determined by the board. [TNPCA 1396-2.10.A(1)]

[COMMENT: TNPCA 1396-2.10.A.(1) requires that meetings be held at the corporation's registered office unless the bylaws provide another location.]

5.4. NOTICE OF MEETINGS. At the direction of the board, written notice of meetings of the Association shall be given to an owner of each unit [*] entitled to vote [**] at least 10 days [***] but not more than 60 days prior to such meeting. Notices of meetings shall state the date, time, and place such meeting is to be held. Notices shall identify the type of meeting as annual or special, and shall state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the board. [TUCA §§82.106(a)(7) & 82.108(a), TNPCA 1396-2.11; See general notices provision above.]

[* COMMENT: Although TNPCA 1396-2.11.A requires that a notice of meeting be delivered to each member entitled to vote, it is costly and impractical to send notices to every co-owner of each unit; e.g. co-owning spouses. In practice, condominium associations are typically in contact with one owner per unit, even if a unit has multiple owners.]

[** COMMENT: Although TNPCA 1396-2.11.A requires notices to each member entitled to vote, author recommends requiring that notices be sent to owners regardless of their voting eligibilities.]

[*** COMMENT: It is not uncommon to require more than 10 days minimum notice for the annual meeting.]

5.5. INELIGIBILITY. [*] The board may determine that no member may (i) receive notice of meetings of the Association [**], (ii) vote at meetings of the Association, or (iii) be elected to serve as a director if the member's financial account with the Association is in arrears on the record dates provided below, provided each ineligible member shall be given notice of the arrearage and an opportunity to become eligible. The board may specify the manner, place, and time for payment for purposes of restoring eligibility.

[* COMMENT: The issue of eligibility is a double edged sword. If a large number of owners are delinquent and declared ineligible, it is more difficult to attain a quorum and the requisite consents of owners. If the drafter favors the concept of voting ineligibility, author recommends that all quorums, votes, and consents be based on "eligible votes" rather than total votes.]

[** COMMENT: Although TNPCA 1396-2.11.A requires notices to each member entitled to vote, author recommends requiring that notices be sent to owners regardless of their voting eligibilities.]

5.6. RECORD DATES. [See 1993 amendments to TNPCA.]

5.6.1. Determining Notice Eligibility. The board shall fix a date as the record date for determining the members entitled to notice of a meeting of the Association. The record date may not be more than 60 days before the date of a meeting of the Association at which members will vote. [TNPCA 1396-2.11A.A&D]

[COMMENT: This provision may be deleted if the bylaws require that a notice be sent to an owner of every unit regardless of voting eligibility.]

5.6.2. Determining Voting Eligibility. The board shall fix a date as the record date for determining the members entitled to vote at a meeting of the Association. The record date may not be more than 60 days before the date of a meeting of the Association at which members will vote. [TNPCA 1396-2.11A.B&D]

5.6.3. Determining Rights Eligibility. The board shall fix a date as the record date for determining the members entitled to exercise any rights other than those described in the preceding two paragraphs. The record date may not be more than 60 days before the date of the action for which eligibility is required, such as nomination to the board. [TNPCA 1396-2.11A.C&D]

5.6.4. Adjournments. A determination of members entitled to notice of or to vote at a meeting of the Association is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote. The board must fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than 90 days after the record date for determining members entitled to notice of the original meeting. [TNPCA 1396-2.11A.E.]

5.7. VOTING MEMBERS LIST. The board shall prepare and make available a list of the Association's voting members in accordance with Art. 1396-2.11B of the Texas Non-Profit Corporation Act.

5.8. QUORUM. At any meeting of the Association, the presence in person or by proxy of members entitled to cast at least ___ percent of the votes that may be cast for election of the board shall constitute a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of members constituting a quorum. [TUCA §82.109(a), TNPCA 1396-2.12]

[COMMENT: As a practical matter, it is advisable to keep quorums small enough to be attainable. The exact percentage should reflect the association's size and nature. Generally, the larger the association, the smaller the percentage.]

5.9. LACK OF QUORUM. [OPTIONAL]

[COMMENT: If drafter uses a relatively high quorum requirement, or anticipates that the nature of the project will make a quorum of any size difficult to attain, consider adding a provision for "what to do when you can't get a quorum on the first call."]

5.10. VOTES. The vote of members representing at least a majority of the votes cast at any meeting at which a quorum is present shall be binding upon all members for all purposes, except when a higher percentage is required by these bylaws, the declaration, or by law. There shall be no cumulative voting.

[COMMENT: TUCA §82.110(c) prohibits cumulative voting.]

5.10.1. Co-Owned Units. If a unit is owned by more than one member, the vote appurtenant to that unit shall be cast in accordance with Section 82.110(a) of TUCA.

5.10.2. Corporation-Owned Units. If a unit is owned by a corporation, the vote appurtenant to that unit may be cast by any officer of the corporation in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning

corporation. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote.

5.10.3. Association-Owned Units. Votes allocated to a unit owned by the Association [insert text].

[COMMENT: The bylaws should state whether or not the votes of Association-owned unit may be cast, and if so, by whom. Bylaws that make certain votes "ineligible" should require that all votes and quorums be based on the total number of "eligible" votes.]

5.11. PROXIES. Votes may be cast in person or by written proxy. To be valid, each proxy shall (i) be signed and dated by a member or his attorney-in-fact; (ii) identify the unit to which the vote is appurtenant; (iii) name the person in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (iv) identify the purpose or meeting for which the proxy is given; (v) not purport to be revocable without notice; and (vi) be delivered to the secretary or to the person presiding over the Association meeting for which the proxy is designated. Unless the proxy specifies a shorter or longer time, it shall terminate one year after its date. To revoke a proxy, the granting member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled shall be valid when such meeting reconvenes. [TUCA §82.110(b), TNPCA 1396-2.13.B]

[COMMENT: TUCA §82.110(b) permits proxy voting. TNPCA 1396-2.13.B permits proxy voting unless the bylaws or articles of incorporation provide otherwise. Although this provision is large redundant of TUCA §82.110(b), it is handy to have it in the bylaws. Consider addressing proxies delivered by fax.]

5.12. CONDUCT OF MEETINGS. The president, or any person designated by the board, shall preside over meetings of the Association. The secretary shall keep, or cause to be kept, the minutes of the meeting which shall record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the governing documents. Votes shall be tallied by tellers appointed by the person presiding over the meeting.

5.13. ORDER OF BUSINESS. Unless the notice of meeting states otherwise, the order of business at meetings of the Association shall be as follows:

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Reading and approval of minutes of preceding meeting
- Reports
- Election of directors (when required)
- Unfinished or old business
- New business

5.14. ADJOURNMENT OF MEETING. At any meeting of the Association, a majority of the members present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

5.15. ACTION WITHOUT MEETING. Subject to board approval, any action which may be taken by a vote of the members at a meeting of the Association may also be taken without a meeting by written consents. The board may permit members to vote by ballots delivered by hand, mail, facsimile transmission, or any combination of these. Written consents by members representing at least a majority of votes in the Association, or such higher percentage as may be required by the governing documents, shall constitute approval by written consent. This Paragraph may not be used to avoid the requirement of an annual meeting. This Paragraph shall not apply to the election of directors unless expressly permitted in Paragraph _____. [TNPCA 1396-2.13.B]

5.16. TELEPHONE MEETINGS. Members of the Association may participate in and hold meetings of the Association by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such

meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. [TUCA §82.108(c)(1), TNPCA 1396-9.11]

[COMMENT: This section restates TNPCA 1396-9.11]

ARTICLE 6

RULES

6.1. RULES. The board shall have the right to establish and amend, from time to time, reasonable rules and regulations for: (i) the administration of the Association and the governing documents; (ii) the maintenance, management, operation, use, conservation, and beautification of the condominium; and (iii) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with law or the governing documents. The board shall, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the members. Rules need not be recorded in the county's real property records.

6.2. ADOPTION AND AMENDMENT. Any rule may be adopted, amended, or terminated by the board, provided that the rule and the requisite board approval are properly recorded as a resolution in the minutes of the meeting of the board.

6.3. NOTICE AND COMMENT. The board shall give written notice to an owner of each unit of any amendment, termination, or adoption of a rule, or shall publish same in a newsletter or similar publication which is circulated to the members, at least 10 days before the rule's effective date. The board may, but shall not be required, to give similar notice to residents who are not members. Any member or resident so notified shall have the right to comment orally or in writing to the board on the proposed action.

6.4. DISTRIBUTION. Upon request from any member or resident, the board shall provide a current and complete copy of rules. Additionally, the board shall, from time to time, distribute copies of the current and complete rules to an owner of each unit and, if the board so chooses, to non-member residents.

ARTICLE 7

ENFORCEMENT

The violation of any provision of the governing documents shall give the board the right, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in the governing documents:

a. To enter the unit or limited common element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing, or condition (except for additions or alterations of a permanent nature that may exist in that unit) that is existing and creating a danger to the common elements contrary to the intent and meaning of the provisions of the governing documents. The board shall not be deemed liable for any manner of trespass by this action; or

b. To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

ARTICLE 8

OBLIGATIONS OF THE OWNERS

8.1. NOTICE OF SALE. Any owner intending to sell his unit or any interest therein shall give written notice to the board of such intention, together with (i) the address or legal description of the unit being conveyed, (ii) the name and address of the intended purchaser, (iii) the name, address, and phone number of the title company or attorney designated to close such transaction, (iv) names and phone numbers of real estate agents, if any, representing seller or purchaser, and (v) scheduled date of closing. An owner shall furnish this information to the board no less than 10 working days before the date of conveyance of the unit or any interest therein.

8.2. PROOF OF OWNERSHIP. Except for those owners who initially purchase a unit from declarant, any person, on becoming an owner of a unit, shall furnish to the board evidence of ownership in the unit, which copy shall remain in the files of the Association. A member shall not be deemed to be in good standing nor be entitled to vote at any annual or special meeting of the Association unless this requirement is first met. This requirement may be satisfied by receipt of a board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the unit or any interest therein.

8.3. OWNERS' ADDRESSES. The owner or the several co-owners of a unit shall register and maintain one mailing address to be used by the Association for mailing of monthly statements, notices, demands, and all other communications. The owner shall keep the Association informed of the member's current mailing address. If an owner fails to maintain a current mailing address with the Association, the address of that owner's unit shall be deemed to be his mailing address. [TUCA §82.114(a)(4),(e)+(f)]

8.4. REGISTRATION OF MORTGAGEES. An owner who mortgages his unit shall furnish the board with the name and mailing address of his mortgagee.

8.5. ASSESSMENTS. All owners shall be obligated to pay assessments imposed by the Association to meet the common expenses as defined in the declaration. A member shall be deemed to be in good standing and entitled to vote at any meeting of the Association if he is current in the assessments made or levied against him and his unit.

8.6. COMPLIANCE WITH DOCUMENTS. Each owner shall comply with the provisions and terms of the governing documents, and any amendments thereto. Further, each owner shall always endeavor to observe and promote the cooperative purposes for which the condominium was established.

ARTICLE 9

ASSOCIATION RECORDS

9.1. RECORDS. The Association shall use its best efforts to keep the following records:

a. Minutes or a similar record of the proceedings of meetings of the Association. A recitation in the minutes that notice of the meeting was properly given shall be sufficient evidence that such notice was given. [TUCA 82.114(a)(6)]

b. Minutes or a similar record of the proceedings of meetings of the board. [TUCA 82.114(a)(6)]

c. Names and mailing addresses of the members, the currency and accuracy of the information being the responsibility of the members. [TUCA 82.114(a)(4)]

d. Names and mailing addresses of the mortgagees, the currency and accuracy of the information being the responsibility of the members and their mortgagees.

e. Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles.

f. A copy of the plans and specifications used to construct the condominium, except for buildings originally constructed before January 1, 1994.

g. A copy of plans and specifications acquired by the Association over time for improvements to the condominium.

h. Copies of income tax returns prepared for the Internal Revenue Service.

i. Copies of the governing documents and all amendments to any of these. Also, for at least four years, a record of all votes or written consents by which amendments to the governing documents were approved.

9.2. INSPECTION OF BOOKS AND RECORDS. Books and records of the Association shall be made available for inspection and copying pursuant to Section 82.114(b) of TUCA and Article 1396-2.23.B. of the Corporation Act. [TUCA §82.114(b), TNPCA 1396-2.23.B.]

9.3. RESALE CERTIFICATES. Any officer may prepare or cause to be prepared, certify, and execute resale certificates in accordance with Section 82.157 of TUCA. The Association may charge a reasonable fee for preparing resale certificates. The Association may refuse to furnish resale certificates until the fee is paid. Any unpaid fees may be assessed against the unit for which the certificate is furnished.

ARTICLE 10

NOTICES

10.1. CO-OWNERS. If a unit is owned by more than one person, notice to one co-owner shall be deemed notice to all co-owners.

10.2. DELIVERY OF NOTICES. Any written notice required or permitted by these bylaws may be given personally, by mail, or by facsimile transmission. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by facsimile, the notice is deemed delivered on successful transmission of the facsimile. [TNPCA 1396-2.11.A.]

10.3. WAIVER OF NOTICE. Whenever any notice is required to be given to an owner, member, or director, a written waiver of the notice, signed by the person entitled to such notice, whether before or after the time stated in the notice, shall be equivalent to the giving of such notice. Attendance by a member or director at any meeting of the Association or board, respectively, shall constitute a waiver of notice by such member or director of the time, place, and purpose of such meeting. If all members or directors are present at any meeting of the Association or board, respectively, no notice shall be required and any business may be transacted at such meeting. [TNPCA 1396-9.09]

[COMMENT: The first sentence restates TNPCA 1396-9.09]

ARTICLE 11

DECLARANT PROVISIONS

11.1. CONFLICT. The provisions of this Article 10 shall control over any provision to the contrary elsewhere in these bylaws.

11.2. BOARD OF DIRECTORS. During the declarant control period, Section ___ of the declaration shall govern the number, qualification, and appointment of directors. The initial directors shall be appointed by declarant and need not be owners or residents. Directors appointed by declarant may not be removed by the owners and may be removed by declarant only. Declarant has the right to fill vacancies in any directorship vacated by a declarant appointee.

11.3. ORGANIZATIONAL MEETING. Within 60 days of the end of the declarant control period, or sooner at declarant's option, declarant shall call an organizational meeting of the members for the purpose of electing directors, by ballot of members. Notice of the organizational meeting shall be given as if it were notice of an annual meeting.

ARTICLE 12

AMENDMENTS TO BYLAWS

12.1. PROPOSALS. These bylaws may be amended by the members according to the terms of this Article. The Association shall provide an owner of each unit with a detailed description, if not exact wording, of any proposed amendment. Such description shall be included in the notice of any annual or special meeting of the Association if such proposed amendment is to be considered at said meeting.

12.2. CONSENTS. An amendment shall be adopted by the vote, in person or by proxy, or written consents of members representing at least a majority of the votes cast or present at a meeting for which a quorum is obtained.

12.3. EFFECTIVE. To be effective, each amendment must be in writing, reference the names of the condominium and the Association, be signed by at least two officers acknowledging the requisite approval of members, and be delivered to an owner of each unit at least 10 days before the amendment's effective date. Further, if these bylaws are publicly recorded, the amendment must recite the recording data for the bylaws, be in a form suitable for recording as a real property record, and be delivered to the county clerk for recordation.

[COMMENT: TNPCA 2.09.B. permits the board to amend the bylaws unless the articles of incorporation reserves the power exclusively to the members. TUCA §82.102(a)(1) permits the board to amend the bylaws unless the declaration provides otherwise. TUCA §82.103(b) prohibits the board from determining the qualifications, powers and duties, or terms of office of board members. Therefore, if the bylaws are amendable by the board, those particular provisions may require approval by the members. Drafter, first decide who will have the power to amend the bylaws, and then carefully draft corresponding provisions in the three documents.]

12.4. DECLARANT PROTECTION. As long as the declarant owns a unit in the condominium, no amendment of these bylaws may affect the declarant's rights herein without the declarant's written and acknowledged consent. Specifically, this section and Article 10 may not be amended without prior written approval of the declarant. The declarant's written consent shall be part of the amendment instrument.

ARTICLE 13

GENERAL PROVISIONS

13.1. CONFLICTING PROVISIONS. If any provision of these bylaws conflicts with any provision of the laws of the State of Texas, such conflicting bylaws provision shall be null and void, but all other provisions of these bylaws shall remain in full force and effect. In the case of any conflict between the articles of incorporation of the Association and these bylaws, the articles shall control. In the case of any conflict between the declaration and these bylaws, the declaration shall control.

13.2. SEVERABILITY. Invalidation of any provision of these bylaws, by judgment or court order, shall in no wise affect any other provision which shall remain in full force and effect. The effect of a general statement shall not be limited by the enumerations of specific matters similar to the general.

13.3. FISCAL YEAR. The fiscal year of the Association shall be set by resolution of the board, and is subject to change from time to time as the board shall determine. In the absence of a resolution by the board, the fiscal year shall be the calendar year.

13.4. WAIVER. No restriction, condition, obligation, or covenant contained in these bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, complete, and correct copy of the bylaws of <ASSOCIATION NAME>, a Texas non-profit corporation, as adopted by the initial Board of Directors at its organization meeting on the ____ day of _____ 19__.

IN WITNESS WHEREOF, I hereunto set my hand this the ____ day of _____ 19__.

<ASSOCIATION NAME>

By: _____, Secretary

Printed: _____

THE STATE OF TEXAS §
 §
COUNTY OF <COUNTY> §

Before me, the undersigned authority, on this ____ day of _____ 19__, personally appeared _____, Secretary of <Association Name>, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the Association.

Notary Public, The State of Texas

FORM 3

SAMPLE

INITIAL RULES OF

<ASSOCIATION NAME>

(A Texas Condominium)

[COMMENT: Rules should fit the property and the expected resident population. This sample set was taken from rules developed for a small, moderately-priced, garden-style, high-density, residential condominium with a high percentage of renter occupants.]

These Rules apply to the units and common elements of <Project Name>. By owning or occupying a unit in <Project Name>, each owner and resident agrees to abide by these Rules, as well as the obligations of owners and residents provided in the Declaration and Bylaws.

For the convenience of <Project Name> owners and residents, these Rules restate some of the rules and covenants contained in the Declaration. Most of these Rules, however, are in addition to the restrictions found in the Declaration. Words and phrases defined in the Declaration shall have the same meaning when used in these Rules. In the event of a conflict between governing documents, the hierarchy of authority shall be as follows: Declaration (highest), Bylaws, these Rules (lowest).

A. COMPLIANCE

- A-1. **Compliance.** Each owner shall comply with the provisions of these Rules, the Declaration, the Bylaws, and community policies promulgated by the board to supplement these Rules, as any of these may be revised from time to time (collectively, the "**governing documents**"). Each owner, additionally, shall be responsible for compliance with the governing documents by the occupants of his unit, and his or their respective family, invitees, tenants, agents, employees, or contractors. Use of "owner" or "resident" in these Rules shall be deemed to include and apply to the owner and to all persons for whom owner is responsible. An owner should contact the board if he has a question about these Rules.
- A-2. **Additional Rules.** Each resident shall comply with all rules and signs posted from time to time on the condominium by the Association, including those regulating the use of recreational facilities. Such posted rules are incorporated in these Rules by reference. Each resident shall comply with notices communicated by the Association, from time to time, in the nature of seasonal or temporary rules, or notice of a change affecting use of the condominium. Such temporary rules are incorporated in these Rules by reference.
- A-3. **Waiver.** Certain circumstances may warrant waiver or variance of these Rules. An owner must make written application to the board for such waiver or variance. If the board deems the waiver or variance warranted, the board may condition its approval, which must be in writing to be effective.

B. OBLIGATIONS OF OWNERS AND RESIDENTS

- B-1. **Safety.** Each resident is solely responsible for his own safety and for the safety, well-being and supervision of his guests and any person on the condominium to whom the resident has a duty of care, control, or custody.
- B-2. **Damage.** Each owner is responsible for any loss or damage to his unit, other units, the personal property of other residents or their guests, or to the common elements and improvements, if such loss or damage is caused by the owner or by any person for whom the owner is responsible.
- B-3. **Association Does Not Insure.** Each resident is solely responsible for insuring his personal property in the unit and on the condominium, including his furnishings, automobile, and items

kept in storage areas provided by the Association. Personal property placed in or on the condominium shall be solely at the risk of resident or the owner of such personal property. **The Association urges owners and residents to purchase insurance on their personal belongings.**

- B-4. Risk Management. No resident shall permit anything to be done or kept in his unit or the common elements which will result in the cancellation of insurance on any unit, or any part of the common elements, or which may be in violation of any law.
- B-5. Reimbursement for Enforcement. An owner shall promptly reimburse the Association for any expenses incurred by the Association in enforcing the governing documents against the owner, his unit, or persons for whom the owner is responsible.
- B-6. Reimbursement for Damage. An owner shall promptly reimburse the Association for the cost of damage to the condominium caused by the negligent or willful conduct of the owner or the persons for whom the owner is responsible.

C. OCCUPANCY STANDARDS

- C-1. Numbers. A unit may be occupied by no more than two persons per bedroom, unless higher occupancy is mandated by public agencies that enforce compliance with the familial status protection of the Fair Housing Act.
- C-2. Danger. The Association may prohibit occupancy by a person who constitutes a direct threat to the health or safety of other persons, or whose occupancy would result in substantial physical damage to the property of others, pursuant to the Fair Housing Act.
- C-3. Occupancy Defined. Occupancy of a unit, for purposes of these Rules, shall mean occupancy of at least 30 continuous days or 60 non-continuous days in any 12-month period.
- C-4. Term of Lease. A unit may not be leased for hotel or transient purposes. Less than the entire unit may not be leased.
- C-5. Written Leases. Each lease must be in writing, and an owner shall provide the board with a copy of each lease of that owner's unit.

D. GENERAL USE AND MAINTENANCE OF UNIT

- D-1. Residential Use. Each unit must be used solely for residential use, and may not be used for commercial or business purposes. This restriction shall not prohibit a resident from using his unit for personal business or professional pursuits, provided that: (i) such use is incidental to the unit's residential use; (ii) such use conforms to all applicable laws and ordinances; (iii) there is no external evidence of such use; and (iv) such use does not entail visits to the unit by the public, employees, suppliers, or clients.
- D-2. Annoyance. No unit may be used in any way that: (i) may reasonably be considered annoying to occupants of neighboring units; (ii) may be calculated to reduce the desirability of the condominium as a residential community; (iii) may endanger the health or safety of other residents; or (iv) may violate any law or any provision of the governing documents.
- D-3. Maintenance. Each owner, at his sole cost and expense, shall maintain his unit and keep it in good repair, including the inner, finished surfaces of the unit's perimeter walls, floors, and ceilings.
- D-4. Patio/Balcony. Each resident shall keep his unit and patio or balcony in a good state of cleanliness, taking care that the cleaning of his patio or balcony does not annoy or inconvenience other residents. A patio/balcony may not be enclosed or used for storage purposes. If the board determines that a patio/balcony is unsightly, the owner shall be given notice by the board to correct the problem within 5 days, after which the board may take corrective action at the owner's expense.

- D-5. Glass. Each owner, at his sole cost and expense, shall promptly repair and replace any broken or cracked glass in his unit's windows and doors.
- D-6. Air Conditioning Equipment. Each owner, at his sole cost and expense, shall maintain, repair, and replace the heating and cooling equipment/system serving his unit.
- D-7. Combustibles. A resident shall not store or maintain, anywhere on the condominium (including within a unit) explosives or materials capable of spontaneous combustion.
- D-8. Barbecue Grills. The board reserves the right to prohibit or restrict the use of all or certain outdoor cooking grills if, in the board's discretion, such grills constitute a fire hazard. If the use of outside grills is permitted, (i) open fires must be supervised at all times; (ii) gas tanks must be properly used and maintained; (iii) no flames may be higher than the cooking surface; and (iv) a grill may not be used near combustible materials.
- D-9. Report Malfunctions. A resident shall immediately report to the board his discovery of any leak, break, or malfunction in any portion of his unit or the adjacent common elements for which the Association has a maintenance responsibility. The failure to promptly report a problem may be deemed negligence by the resident, who may be liable for any additional damage caused by the delay.
- D-10. Utilities. Each resident shall endeavor to conserve the use of utilities furnished through the Association, including water consumption within his unit.
- D-11. Frozen Water Pipes. Because the condominium is constructed with water lines in exterior walls, it is the duty of every owner and resident to protect such water lines from freezing during winter months. Between November 1 and March 25 of any year, no unit may be left unheated. During periods of anticipated below-freezing temperatures, water lines in exterior walls should be allowed to drip continuously, and cabinets enclosing plumbing lines should be left ajar. Dishwashers on exterior walls should not be used during and immediately after periods of extreme cold. Failure by an owner or resident to monitor the local weather and take appropriate precautions shall be deemed negligence.

E. GENERAL USE & MAINTENANCE OF COMMON ELEMENTS

- E-1. Intended Use. Every area and facility in the condominium may be used only for its intended and obvious use. For example, walkways, stairways, sidewalks, elevators, and driveways are to be used exclusively for purposes of access, not for social congregation or recreation.
- E-2. Grounds. Unless the board designates otherwise, residents may not use or abuse the landscaped areas, lawns, beds, and plant materials on the common elements. The following are expressly prohibited: digging, planting, pruning, and climbing.
- E-3. Abandoned Items. No item or object of any type shall be stored, placed, or maintained anywhere on the general common elements, including window sills, passageways and courtyards, except by the board or with the prior written consent of the board. Items of personal property found on general common elements are deemed abandoned and may be disposed of by the board.
- E-4. Stored Items. If the Association provides storage areas for use by residents, resident agrees that the Association is not responsible for items stored there by resident, who shall be solely liable at all times for his personal property.

F. COMMUNITY ETIQUETTE

- F-1. Courtesy. Each resident shall endeavor to use his unit and the common elements in a manner calculated to respect the rights and privileges of other residents.
- F-2. Annoyance. A resident shall avoid doing or permitting anything to be done that will annoy, harass, embarrass, or inconvenience other residents or their guests, or the Association's employees and agents.

- F-3. Noise and Odors. Each resident shall exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb residents of other units.
- F-4. Reception Interference. Each resident shall avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, or electronic reception on the condominium.
- F-5. No Personal Service. The Association's employees and agents are not permitted or authorized to render personal services to residents. Each resident agrees that the Association is not responsible for any item or article left with or delivered to the Association's employees or agents on behalf of such resident.
- F-6. Compliance with Law. Residents may not use the condominium for unlawful activities. Residents shall comply with applicable laws and regulations of the United States and of the State of Texas, and with ordinances, rules, and regulations of <City>, Texas. A resident who violates this provision shall hold the Association and other owners and residents harmless from all fines, penalties, costs, and prosecutions for the resident's violation or noncompliance.

G. ARCHITECTURAL CONTROL

- G-1. Common Elements. Without the board's prior written approval, a person may not change, remodel, decorate, destroy, or improve the common elements, nor do anything to change the appearance of the common elements, including without limitation the entry door, balcony or patio, and landing or walkway appurtenant to the unit.
- G-2. Prohibited Acts. No person may:
- a. Post signs, notices, or advertisements on the common elements or in a unit if visible from outside his unit.
 - b. Place or hang an object in, on, from, or above any window, interior window sill, balcony, or patio that, in the board's opinion, detracts from the appearance of the condominium.
 - c. Hang, shake, or otherwise display linens, clothing, towels, rugs, shoes, mops, bedding or other similar items from windows, doors, balconies, patios, or passageways.
 - d. Erect or install exterior horns, lights, speakers, aerials, antennas, or other transmitting or receiving equipment, or cause anything to protrude through an exterior wall or roof.
 - e. Place decorations on exterior walls or doors, or on the general common elements.
- G-3. Window Treatments. An owner may install window treatments inside his unit, at his sole expense, provided:
- a. Any window treatment, including drapes, blinds, shades, or shutters, must be clear or white when viewed from outside the unit;
 - b. Aluminum foil and reflective window treatments are expressly prohibited; and
 - c. Window treatments must be maintained in good condition, and must be removed or replaced if they become stained, torn, damaged, or otherwise unsightly in the opinion of the board.
- G-4. Board Approval. To obtain the board's written consent for a modification, an owner must submit to the board complete plans and specifications showing the nature, kind, shape, size, materials, colors, and location for all proposed work, and any other information reasonably requested by the board. The board's failure to respond to the owner's written request within 45 days after it receives the owner's request shall be construed as no objection to the proposed changes.

H. VEHICLE RESTRICTIONS

- H-1. Permitted Vehicles. To be permitted on the condominium, a vehicle must be operable. For purposes of these Rules, vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. The following are not permitted on the condominium without the board's consent: trailers, boats, recreational vehicles, buses, large commercial trucks, industrial vehicles.
- H-2. Repairs. Washing, repairs, restoration, or maintenance of vehicles is prohibited, except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility.
- H-3. Space Use. Because of limited offstreet parking, all parking spaces on the condominium, including assigned covered spaces, shall be used for parking purposes only, and may not be used for storage. No parking space may be enclosed or used for any purpose that prevents the parking of vehicles.
- H-4. No Obstruction. No vehicle may be parked in a manner that interferes with ready access to any entrance to or exit from the condominium. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the condominium. No vehicle may be parked, even temporarily, in spaces reserved for others, in firelanes, or in any area designated as "No Parking."
- H-5. Nuisances. Each vehicle shall be muffled and shall be maintained and operated to minimize noise, odor, and oil emissions. The use of car horns on the condominium is discouraged. No vehicle may be kept on the condominium if the board deems it to be unsightly, inoperable, inappropriate, or otherwise violative of these Rules.
- H-6. Violations. Any vehicle in violation of these Rules may be stickered, wheel-locked, and towed or otherwise removed from the condominium by the board, at the expense of the vehicle's owner. The Association expressly disclaims any liability for damage to vehicles on which the Association exercises these remedies for Rules violations.

I. TRASH DISPOSAL

- I-1. General Duty. Resident shall not litter common elements, shall endeavor to keep the condominium clean, and shall dispose of all refuse in receptacles provided specifically by the Association for that purpose.
- I-2. Hazards. Resident may not store trash inside or outside his unit in a manner that encourages vermin, causes odors, or may permit the spread of fire. Before discarding coals, ashes, logs, or other materials used in barbecue grills or fireplaces, resident shall ensure that the debris is thoroughly cold.
- I-3. Excess Trash. Resident shall place trash entirely within a dumpster, and may not place trash outside, next to or on top of dumpster. If a dumpster is full, resident should locate another dumpster or hold his trash. Boxes and large objects should be crushed or broken down before placed in dumpster. Dumpster doors are to be closed at all times when not in use. Resident shall arrange privately for removal of discarded furnishings or any unusually large volume of debris.

J. PETS

- J-1. Subject to Rules. A resident may not keep or permit on the condominium a pet or animal of any kind, at any time, except as permitted by these Rules and the governing documents.
- J-2. Permitted Pets. Subject to these Rules, a resident may keep in his unit not more than two housepets (two cats, or two dogs, or one cat and one dog) each of which, at maturity, may not exceed the greater of 20 inches in height at the shoulder or 25 pounds in weight. Permitted housepets include domesticated dogs, cats, caged birds, and aquarium fish. Permitted housepets also include specially trained animals that serve as physical aids to handicapped residents, regardless of the animal's size or type.

- J-3. Prohibited Animals. No resident may keep a dangerous or exotic animal, pit bull terrier, trained attack dog, or any other animal deemed by the board to be a potential threat to the well-being of people or other animals. No animal or housepet may be kept, bred, or maintained for a commercial purpose.
- J-4. Indoors/Outdoors. A permitted pet must be maintained inside the unit, and may not be kept on patios or balconies. No pet is allowed on general common elements unless carried or leashed. No pet may be leashed to any stationary object on the common elements.
- J-5. Disturbance. Pets shall be kept in a manner that does not disturb another resident's rest or peaceful enjoyment of his unit or the common elements. No pet shall be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time.
- J-6. Damage. Resident is responsible for any property damage, injury, or disturbance his pet may cause or inflict. Resident shall compensate any person injured by his pet. Any resident who keeps a pet on the condominium shall be deemed to have indemnified and agreed to hold harmless the board, the Association, and other owners and residents, from any loss, claim, or liability of any kind or character whatever resulting from any action of his pet or arising by reason of keeping or maintaining such pet on the condominium.
- J-7. Pooper Scooper. No resident may permit his pet to relieve itself on the condominium, except in areas designated by the board for this purpose. Resident is responsible for the removal of his pet's wastes from the common elements. The board may levy a fine against a unit and its owner each time feces are discovered on the common elements and attributed to an animal in the custody of that unit's resident.
- J-8. Removal. If a resident or his pet violates these Rules or the community policies pertaining to pets, or if a pet causes or creates a nuisance, odor, unreasonable disturbance, or noise, the resident or person having control of the animal shall be given a written notice by the board to correct the problem. If the problem is not corrected within the time specified in the notice (not less than 10 days), the resident, upon written notice from the board, may be required to remove the animal. Each resident agrees to permanently remove his violating animal from the condominium within 10 days after receipt of a removal notice from the board.

K. MISCELLANEOUS

- K-1. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the condominium designed to make the condominium less attractive to intruders than it otherwise might be. The Association, its directors, committees, members, agents, and employees, shall not in any way be considered an insurer or guarantor of security within the condominium, and shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each owner, resident, guest, and invitee on the condominium assumes all risk for loss or damage to his person, to his unit, to the contents of his unit, and to any other of his property on the condominium. The Association expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment or measures recommended, installed or undertaken within the condominium.
- K-2. Right to Hearing. An owner may request in writing a hearing by the board regarding an alleged breach of these Rules by the owner or a resident of the owner's unit. The board will schedule a hearing within 30 days of receiving the owner's written request. At the hearing, the board will consider the facts and circumstances surrounding the alleged violation. The owner may attend the hearing in person, or may be represented by another person or written communication.
- K-3. Mailing Address. An owner who receives mail at any address other than the address of his unit shall be responsible for maintaining with the Association his current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to owners by the governing documents shall be sent to an owner's most recent address as shown on the records of the Association. If an owner fails to provide a forwarding address, the address of that owner's unit shall be deemed effective for purposes of delivery.

- K-4. Revision. These Rules are subject to being revised, replaced, or supplemented. Owners and residents are urged to contact the management office to verify the rules currently in effect on any matter of interest. These Rules shall remain effective until 10 days after the Association mails notice of an amendment or revocation of these Rules to an owner of each unit.
- K-5. Other Rights. These Rules are in addition to and shall in no way whatsoever detract from the rights of the Association under the Declaration, Bylaws, Articles of Incorporation, and the laws of the State of Texas.
- K-6. Effective Date. These Rules are the initial Rules of <Association Name>, and shall become effective January 1, 1994.

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, complete, and correct copy of the initial Rules of <Association Name>, a Texas nonprofit corporation and condominium association, as adopted by the initial Board of Directors at its organization meeting on the ____ day of _____ 19__.

IN WITNESS WHEREOF, I hereunto set my hand this the ____ day of _____ 19__.

<ASSOCIATION NAME>

By: _____, Secretary

Printed: _____

THE STATE OF TEXAS §
 §
COUNTY OF <COUNTY> §

Before me, the undersigned authority, on this ____ day of _____ 19__, personally appeared _____, Secretary of <Association Name>, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the Association.

Notary Public, The State of Texas

FORM 4
ARTICLES OF INCORPORATION
OF
<ASSOCIATION NAME>
A Texas Nonprofit Corporation

I, the undersigned natural person over the age of eighteen years, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE 1. CONDOMINIUM ASSOCIATION. The corporation shall be, mean, and constitute the unit owners' association, organized pursuant to Section 82.101, Texas Uniform Condominium Act, which is defined as the "**Association**" in the <Title of Declaration> for <Project Name>, recorded as Instrument No. ___ [or "to be recorded"] in the Real Property Records of <County> County, Texas, as amended from time to time (the "**declaration**"), with respect to certain real property located in the City of <City>, <County> County, Texas, known as <Project Name>, and described in the declaration.

[COMMENT: This article (Condominium Association) is not required by law, but should be treated as if it were.]

ARTICLE 2. NAME. The name of the Association is <Association Name>.

ARTICLE 3. NONPROFIT. The Association is a nonprofit corporation, organized pursuant to the Texas Non-Profit Corporation Act.

[COMMENT: TUCA §82.101 requires incorporation as either profit or nonprofit.]

ARTICLE 4. DURATION. The duration of the Association shall be perpetual.

ARTICLE 5. PURPOSES. The general purposes for which the Association is formed are to exercise the rights and powers and to perform the duties and obligations of the Association, in accordance with the declaration, the bylaws of the Association, and State law, including the Uniform Condominium Act, as each may be amended from time to time. By way of explanation, but not limitation, the Association's specific purposes may include:

[COMMENT: Specific purposes are not required by law. Some drafters, however, favor them. Avoid duplication with lists of purposes and powers in declaration or bylaws.]

ARTICLE 6. POWERS. In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by these articles, the declaration, the bylaws, or State law, may be exercised by the board of directors:

1. All rights and powers conferred upon nonprofit corporations by State law in effect from time to time;
2. All rights and powers conferred upon condominium associations by State law, including the Uniform Condominium Act, in effect from time to time; and
3. All powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in these articles, the bylaws, the declaration, or State law.

[COMMENT: This article (Powers) is not required by law.]

ARTICLE 7. MEMBERSHIP. The Association shall be a non-stock membership corporation. The declaration and bylaws shall determine the number and qualifications of members of the

Association; the classes of membership, if any; the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

[NOTE: Use this article (Membership) as checklist. Do not repeat membership provisions of declaration or bylaws. However, if not there, insert here. TUCA §82.110(c) prohibits cumulative voting.]

ARTICLE 8. MANAGEMENT BY BOARD. The management and affairs of the Association shall be vested in the board of directors, except for those matters expressly reserved to others in the declaration and bylaws.[*] The bylaws shall determine the number and qualification[**] of directors; the term of office of directors; the methods of electing, removing, and replacing directors; and the methods of holding a board meeting and obtaining consents.[***]

[NOTE: * Drafter may want to insert or reference the declaration's declarant control provisions. ** Neither TUCA nor TNPCA requires that directors be members. *** TUCA §82.108(c) permits bylaws or articles to modify TUCA's methods for holding a board meeting and obtaining consents in lieu of meeting.]

ARTICLE 9. LIMITATIONS ON LIABILITY. a. Except as provided in Paragraph b below, an officer or director of the Association is not liable to the Association or its members for monetary damages for acts or omissions that occur in the person's capacity as an officer or director, except to the extent a person is found liable for (i) a breach of the officer or director's duty of loyalty to the Association or its members; (ii) an act or omission not in good faith that constitutes a breach of duty of the officer or director to the Association; (iii) an act or omission that involves intentional misconduct or a knowing violation of the law; (iv) a transaction from which the officer or director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office; or (v) an act or omission for which the liability of an officer or director is expressly provided by an applicable statute. The liability of officers and directors of the Association may also be limited by the Charitable Immunity and Liability Act of 1987, Chapter 84, Texas Civil Practice and Remedies Code, as amended.

b. The limitation on the liability of an officer or director does not eliminate or modify that person's liability as a member of the Association. It is intended that the liability of any member arising out of any contract made by the Association, or out of the indemnification of officers or directors, or for damages as a result of injuries arising in connection with the common elements, or for liabilities incurred by the Association, shall be limited to the same proportion in which he is liable for common expenses as a member of the Association.

[COMMENT: This article (Limitations) is indicated by Art. 1302-7.06 of Tex. Misc. Corp. Laws Act; See also Chapter 82, Tex. Civ. Prac. & Rem. Code; and TUCA §82.103(f) and (g)]

ARTICLE 10. INDEMNIFICATION. Subject to the limitations and requirements of Art. 1396-2.22A of the Nonprofit Corporation Act, the Association shall indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was an officer or director of the Association. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in such a capacity and arising out of his status as such a person. [TNPCA 1396-2.22A.G, which is very complicated.]

ARTICLE 11. AMENDMENT OF ARTICLES. These articles may be amended in accordance with the Nonprofit Corporation Act, subject to the following:

1. An amendment shall not conflict with the declaration or the Uniform Condominium Act.
2. An amendment shall not impair or dilute a right granted to a person by the declaration, without that person's written consent.[*]
3. Without member approval, the board of directors may adopt amendments permitted by Art. 1396-4.02.A(4) of the Nonprofit Corporation Act.

[COMMENT: * This provision is to prevent attempts to circumvent provisions that protect the declarant.]

ARTICLE 12. AMENDMENT OF BYLAWS.

[ALTERNATIVE A] The board of directors may amend or repeal the bylaws of the Association, or adopt new bylaws.

[ALTERNATIVE B] The members shall have the exclusive right to amend or repeal the bylaws of the Association, or to adopt new bylaws, according to the amendment provision of the bylaws.

[ALTERNATIVE C] The bylaws of the Association shall be amended or repealed according to the amendment provision of the bylaws, which may reserve those powers to the members, exclusively.

[COMMENT: TNPCA 1396-2.09.B. permits the board to amend the bylaws unless the articles of incorporation reserve the power exclusively to the members. TUCA §82.102(a) permits the board to amend the bylaws unless otherwise provided by the declaration. Decide who will have the power to amend the bylaws, and then carefully draft corresponding provisions in the articles, declaration, and bylaws.]

ARTICLE 13. DISSOLUTION. The Association may be dissolved only as provided in the declaration, bylaws, and by State law. On dissolution, the assets of the Association shall be distributed in accordance with the declaration provision for distribution upon termination. If the declaration has no such provision, then in accordance with the termination provision of the Uniform Condominium Act. [TNPCA 1396-6.02.A.(3)]

ARTICLE 14. ACTION WITHOUT MEETING. Pursuant to Article 1396-9.10.C. of the Nonprofit Corporation Act, any action required by the Nonprofit Corporation Act to be taken at a meeting of the members or directors, or any action that may be taken at a meeting of the members or directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or members of the committee were present and voted. [TNPCA 1396-9.10.C.]

ARTICLE 15. INITIAL BOARD OF DIRECTORS. The initial board shall consist of three directors who shall serve as directors until their successors shall have been elected and qualified, as provided in the bylaws. The name and address of each initial director is as follows:

<u>Name</u>	<u>Address</u>
<Director 1 Name>	<Director 1 Address>
<Director 2 Name>	<Director 2 Address>
<Director 3 Name>	<Director 3 Address>

ARTICLE 16. INITIAL REGISTERED AGENT. The name of the Association's initial registered agent is <Registered Agent>. The address of its initial registered office is <Registered Office>.

ARTICLE 17. INCORPORATOR. The name and address of the incorporator are as follows:

<Incorporator Name>
<Incorporator Address>

[COMMENT: Because older associations often restate the articles to delete the provisions dealing with the initial directors, initial registered agent, and incorporator, they are inserted at the end to facilitate later renumbering of articles.]

I execute these Articles of Incorporation on this ____ day of _____ 19__.

<Incorporator Name>

[COMMENT: Until 1987, TNPCA 1396-3.01.A. required incorporator to sign and verify the articles. Verification is not required now.]

FORM 5

SAMPLE
CONDOMINIUM INFORMATION STATEMENT
DILLO HEIGHTS

**PURCHASER, READ THIS DOCUMENT FOR YOUR OWN PROTECTION.
IT CONTAINS INFORMATION REQUIRED BY STATUTE FOR ALL
TEXAS CONDOMINIUMS CREATED AFTER JANUARY 1, 1994.**

NAME OF CONDOMINIUM: Dillo Heights

LOCATION OF CONDOMINIUM: 23 Willie Trail
Shafter, Texas 79850

NAME OF DECLARANT: Dillo Heights Joint Venture

ADDRESS OF DECLARANT: c/o Chisos Construction, Inc.
General Delivery
Study Butte, Texas 79852

EFFECTIVE DATE OF CONDOMINIUM INFORMATION STATEMENT: January 1, 1994

This Condominium Information Statement presents certain information regarding the condominium development and the units being offered for sale by the declarant. It consists of two parts, a narrative portion and an exhibits portion. The exhibits include legal documents that are required for the creation and operation of the condominium. The exhibits will control any inconsistency between the exhibits and the narrative. The declarant's representatives are prohibited from changing or attempting to interpret any of the terms and conditions of this Condominium Information Statement.

The Condominium Information Statement is not intended to be all inclusive or to address every significant feature of the condominium. Because purchasing real property is an important decision, the purchaser is encouraged to review this Condominium Information Statement with an attorney and to consult other sources for information not covered by the Condominium Information Statement.

Under limited circumstances, a purchaser has a five-day period after receiving the Condominium Information Statement during which the purchaser may cancel the contract of sale and obtain full refund of any money deposited in connection with the contract. This right to cancel does not apply if the purchaser received the Condominium Information Statement before signing the contract or if the contract contains an underlined or bold-print provision acknowledging the purchaser's receipt of the Condominium Information Statement and recommending that the purchaser read the Condominium Information Statement before signing the contract. If the purchaser elects to cancel, notice of cancellation must be given pursuant to Section 82.156 of the Texas Uniform Condominium Act.

SAMPLE
DILLO HEIGHTS
CONDOMINIUM INFORMATION STATEMENT
TABLE OF CONTENTS

I.	Narrative Portion	<u>Page</u>
	Names & Addresses	
	Description of the Condominium	
	Additional Units, if any	
	Development Rights	
	Governing Documents	
	Budget	
	Encumbrances	
	Warranty	
	Judgments & Suits	
	Insurance	
	Fees	
	General Information	
II.	Exhibits Portion	<u>Tab</u>
	Declaration (with exhibits) [Proposed, to be recorded]	Exhibit A
	Articles of Incorporation [Proposed, to be filed]	Exhibit B
	Bylaws [Proposed]	Exhibit C
	Rules [Proposed]	Exhibit D
	Purchaser's Affidavit	Exhibit E
	Projected Budgets	Exhibit F

SAMPLE
DILLO HEIGHTS
CONDOMINIUM INFORMATION STATEMENT

1. NAMES & ADDRESSES [TUCA §82.153(a)(1)]

a. DECLARANT:

(1) NAME: Dillo Heights Joint Venture

(2) PRINCIPAL ADDRESS:

c/o Chisos Construction, Inc.
General Delivery
Study Butte, Texas 79852

b. CONDOMINIUM PROJECT:

(1) NAME: Dillo Heights

(2) PRINCIPAL ADDRESS:

(a) Physical location address:

23 Willie Trail
Shafter, Texas 79850

(b) Mailing and Manager's address:

c/o Giant Condo Management Co.
3-D James Dean Blvd.
Marfa, Texas 79843

2. DESCRIPTION OF CONDOMINIUM PROJECT [TUCA §82.153(a)(2)]

a. GENERAL DESCRIPTION OF THE CONDOMINIUM:

Dillo Heights is located on approximately four lechuga-covered acres of land at the southwest corner of the intersection of Willie and Waylon Trails in Shafter, Texas. The first phase consists of six residential buildings containing 24 units, attached and detached garages, attached and detached carports, a swimming pool, a cabana room, and a satellite dish. A second phase may be built containing up to six residential buildings with up to 24 units, attached and detached garages, attached and detached carports, and a cow chip tossing court.

The residential buildings will be "early Lajitas" in style, and one to three stories in height. Exteriors will be 80 percent masonry, with combinations of stucco, adobe brick, and wood siding. Sloped portions of the roof will be shingled with clay tiles. Flat portions of the roof will consist of tar and gravel over a porous membrane.

The recreation amenities will consist of a Clay Henry-shaped swimming pool, the adjoining deck, and a poolside cabana, the use of which will be determined by the residents. During the Declarant Control Period, the cabana will be used by the Declarant as a construction office. The amenities may also include an unpaved cow chip tossing court which NEED NOT BE BUILT by the Declarant.

b. DESCRIPTION OF TYPES OF UNITS:

As of the date of this statement, the Declarant anticipates four basic floorplans:

The Jeff Davis - a two bedroom-two bath flat with approximately 1,200 sq.ft.

The Presidio - a two-story townhouse with two bedrooms and two and a half bathrooms, having approximately 1,300 sq.ft.

The Pecos - a three-story townhouse with two bedrooms, an electronic gadget study, and two and a half bathrooms, having approximately 1,500 sq. ft.

The Brewster - a two story townhouse with three bedrooms, an exercise equipment room, and three bathrooms, having approximately 1,700 sq.ft.

The Declarant discloses that he reserves the right in the Declaration to change the numbers, sizes, and types of units, including the right to combine and subdivide units.

c. **MAXIMUM NUMBER OF UNITS:**

Dillo Heights, as described in the attached Declaration, contains 24 units. The Declarant discloses that he reserves the right in the Declaration to change the numbers, sizes, and types of units, including the right to combine and subdivide units.

3. **ADDITIONAL UNITS, IF ANY** [TUCA §82.153(a)(3)]

The Declarant reserves the right in the Declaration to create up to 24 additional units, which **NEED NOT BE BUILT**.

4. **DEVELOPMENT RIGHTS** [TUCA §82.153(a)(4)]

Declarant has created 24 units and reserved the right to create up to 24 additional units, common elements, and limited common elements, in the location shown on the Plats and Plans as "NEED NOT BE BUILT." Declarant has also reserved the right to assign to particular units the parking spaces shown on the Plat as limited common elements. The quality and style of construction of all buildings and improvements will be compatible with the buildings and improvements constructed in the first phase.

Declarant makes no assurances regarding the portions of the areas shown as "NEED NOT BE BUILT" as to where or in which order declarant will exercise its development rights. Declarant's exercise of development rights in some portions will not obligate it to exercise them in other portions.

Declarant has reserved the right to construct improvements in, on, over, and under the land designated "MUST BE BUILT" on the Plat for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the land designated "NEED NOT BE BUILT" on the Plat. Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the condominium for the above-mentioned purposes.

The development rights may be executed at any time, but not more than five years after recording of the declaration. Declarant may terminate some or all of the development rights prior to the five-year expiration date by a recorded instrument.

5. **DOCUMENTS** [TUCA §82.153(a)(5)]

Unless otherwise noted, the following documents are attached to this statement and incorporated by reference:

a. Declaration.

The Condominium Declaration for Dillo Heights is attached as Exhibit A.

b. Articles of Incorporation.

The Articles of Incorporation of Dillo Heights Owners Association, Inc., are attached as Exhibit B.

c. Bylaws.

The Bylaws of Dillo Heights Owners Association, Inc., are attached as Exhibit C.

d. Rules.

The Rules of Dillo Heights Owners Association, Inc., are attached as Exhibit D. These are the initial rules of the Association, to be adopted at the organizational meeting of the Association.

e. Leases and contracts, other than loan documents, that are required by the declarant to be signed by purchasers at closing.

There are no leases or contracts to be executed by the purchaser at closing. The declarant does require the purchaser to sign an affidavit at closing. The purpose of the affidavit is to induce lenders to make mortgage loans on units, to induce title insurance companies to issue policies with respect to the units, and to affirm purchasers' understanding of the nature and condition of the property they are purchasing. A form of the purchaser's affidavit is attached as Exhibit E.

6. PROJECTED OR PRO FORMA BUDGET [TUCA §82.153(a)(6)]

a. Budget. The projected budget for the first fiscal year of the Association following the date of the first conveyance to a purchaser is attached as Exhibit F.

b. Preparer. The budgets were prepared for the Declarant by Will E. Coyote, Giant Condo Management Co., 3-D James Dean Blvd., Marfa, Texas 79843.

c. Assumptions About Occupancy. The projected budget is based on the assumption that all 24 units declared in the first phase are occupied for all or most of the budget year. That projected budget is attached as Exhibit F-1. It is possible that the Declarant may add an additional 24 units, together with their limited common elements, or the cow chip tossing court, or both, during the fiscal year following the first conveyance to a purchaser. For this reason, the Declarant has attached, as Exhibits F-2 and F-3, two other projected budget based on the varying assumptions about the numbers of units and amenities that are added and occupied during the budget year.

d. Assumptions About Inflation. All budgets are based on a 100 percent net collection rate and the estimates are in current dollars unadjusted for possible inflation.

7. LIENS, LEASES, OR ENCUMBRANCES [TUCA §82.153(a)(7)]

Title to the condominium and each unit is subject to the following:

a. Thirty-foot utility easement as shown on plat recorded in Volume 784, Page 14, Map Records, Presidio County, Texas.

b. Access easement to Sotol Mining Company, recorded in Volume 522, Page 253, Real Property Records, Presidio County, Texas.

c. Deed of Trust granted by Dillo Heights Joint Venture, recorded in Volume 811, Page 196, Real Property Records, Presidio County, Texas, to secure a note in the original principal amount of \$1 million payable to Alpine Savings & Loan.

d. The terms and provisions of that certain satellite television service agreement evidenced by a Memorandum of Agreement and Easement, dated January 1, 1994, and recorded in Volume 811, Page 276, Real Property Records, Presidio County, Texas.

e. Taxes, including any reassessment or reallocation from the creation of the condominium, which become due and payable after the date of conveyance of the unit.

8. WRITTEN WARRANTY [TUCA §82.153(a)(8)]

The following written warranty is attached to this statement and incorporated by reference: None. The Declarant provides no written warranty to the purchaser.

9. UNSATISFIED JUDGMENTS OR PENDING SUITS [TUCA §82.153(a)(9)]

Declarant has actual knowledge of the following unsatisfied judgments against the Association and the following pending suits to which the Association is a party, or which are material to the land title and construction of the condominium:

- a. Unsatisfied judgments against the Association: None.
- b. Pending suits to which the Association is a party: None.
- c. Pending suits which are material to the land title and construction of the condominium: Sotol Mining Co. v. Dillo Heights Joint Venture, Case No. 93-1003, 1st Judicial District, Presidio County, Texas. This case involves the nature of Sotol Mining's access easement across the condominium. The court has ordered mediation before setting the case for trial.

10. INSURANCE COVERAGE provided for the benefit of unit owners [TUCA §82.153(a)(10)]

The Declarant, for the benefit of the Association, will obtain a master insurance policy from Shafter Insurance Company. The effective date of the coverage will be upon declaration and will expire three years after its effective date. The following information was provided by ___ of Shafter Insurance Company, who may be reached at (905) XXX-XXXX.

- a. **PROPERTY EXPOSURE TO LOSS:** The policy is written on a blanket broad form covered causes of loss basis with agreed amount and full insurable replacement cost coverages less the applicable deductible. Total coverage for all buildings will be equal to 100% of their insurable replacement value.
- b. **LIABILITY EXPOSURE TO LOSS:**
 - (1) Commercial General Liability.
 - (a) Bodily Injury and Property Damage Liability--\$_____ combined single limit per occurrence.
 - (b) Personal Injury Liability & Advertising Injury Liability.
 - (c) Fire Damage Legal Liability.
 - (d) Medical Payment--\$_____ per person; \$_____ per accident.
 - (e) Nonowned Auto--\$_____ single limit.

This policy contains an aggregate limit of liability of \$_____ bodily injury and property damage combined, covering the common property.

We are not providing liability coverage for accidents or occurrences that occur within that portion of the premises which is reserved for an owner's exclusive use and occupancy.

- (2) Directors and Officers Liability. \$_____ with a \$_____ deductible per occurrence.
- c. **FIDELITY COVERAGE:** \$_____ Employee Dishonesty.
- d. **INCOME EXPOSURE TO LOSS:**
 - (1) Business Income Insurance.
 - (2) Assessment Fees Receivable Insurance. Lost assessments because of a covered loss to the Property.
- e. **PERSONNEL EXPOSURE TO LOSS:**
 - (1) Workers Compensation Employers Liability Insurance.

- f. ADDITIONAL AREAS NOT COVERED: Because of the exclusions in the master policy, you should consult with your own agent about purchasing a policy to cover the following exposures:
- (1) Value of household and personal property.
 - (2) Additional living expense.
 - (3) Personal injury.
 - (4) Loss assessment coverage.
 - (5) Value of jewelry, furs, silverware, fine art.
 - (6) Business interruptions.
 - (7) Value of betterments and improvements made or acquired at the expense of an individual unit owner.

Should a situation occur where you would like to present a claim under the master policy, or if you have any questions regarding your insurance coverage, please feel free to contact us.

11. FEES OR CHARGES FOR USE OF COMMON ELEMENTS [TUCA §82.153(a)(11)]

The Association's board of directors has the authority to impose charges for the use, rental, or operation of common recreational facilities, in accordance with Section ___ of the Declaration. The initial Rules of the Association permit any resident to reserve the poolside cabana, subject to certain restrictions, upon payment of a \$50.00 refundable cleaning fee.

12. GENERAL INFORMATION [Not required by TUCA]

The exhibits which follow this narrative portion provide a more detailed description of the condominium and the rights and obligations of the unit owner. The purchaser should carefully consider the exhibits, as well as this narrative portion of the Condominium Information Statement. If the purchaser does not understand any aspect of this Condominium Information Statement, the sales contract, and any other materials provided in connection with the sale of units, the purchaser should obtain competent legal counsel.

The declarant reserves the right to amend, in writing, the terms of this Condominium Information Statement. If the change may adversely affect a purchaser under contract who has received a Condominium Information Statement but who has not yet closed, the declarant shall furnish a copy of the amendment to that purchaser before closing. This Condominium Information Statement may not be changed or modified orally.

Dated: January 1, 1994

DILLO HEIGHTS JOINT VENTURE

BY: CHISOS CONSTRUCTION, INC.,
managing venturer

By: _____
Red Redford, President

FORM 6
AFFIDAVIT OF PURCHASER
CONDOMINIUM INFORMATION STATEMENT

<PROJECT NAME>

THE STATE OF TEXAS §
 §
COUNTY OF <COUNTY> §

PURCHASER: <Purchaser 1 Name>

SELLER: <Declarant Name>

CONDOMINIUM: <Project Name>, <City>, <County> County, Texas

UNIT: <Unit Legal Description - Short>

CONTRACT OF SALE DATE: <Unit Contract Date>

PURPOSES: This affidavit is made for the following purposes: (i) to induce lenders to make mortgage loans in connection with the purchase of units in the Condominium; (ii) to affirm Purchaser's understanding with respect to the nature and condition of the Unit; and (iii) to induce title insurance companies to issue title insurance policies on units in the Condominium, knowing that the Seller, lenders, and title insurance companies will rely on the truth of this affidavit.

BEFORE ME, the undersigned official, on this day appeared the above-named Purchaser, who is personally known to me, and first being duly sworn according to law upon Purchaser's oath deposed and said:

1. I am the person named above as Purchaser. I am over the age of 18 years and am fully competent to make this affidavit. I have personal knowledge of all statements, matters, and facts stated herein, and am able to swear that all are true and correct.

2. I signed the Contract of Sale to purchase the Unit located in the Condominium, as each is described above.

3. [3 ALTERNATIVES - SELECT 1]

[ALT #1] I received a Condominium Information Statement from the Seller before I signed the Contract of Sale.

[ALT #2] The Contract of Sale contained an underlined or bold-print provision acknowledging my receipt of the Condominium Information Statement and recommending that I read the Condominium Information Statement before executing the Contract or Sale.

[ALT #3] During the 5-day period after I received the Condominium Information Statement, I took no steps to cancel the Contract of Sale nor did I signify to the Seller my wish to cancel the Contract of Sale, the terms of which remain in effect.

4. Even though I may have seen or been shown a furnished model, a condominium unit maintained by the Seller as a sales office, or a "typical unit" which has been newly decorated, I have

received no promise or representation from the Seller or any of its representatives that I will receive as part of my purchase any such decorations or furnishing, except as completed in the Unit I purchased.

5. I am purchasing the Unit for my own personal use, for residential purposes, and, in purchasing the Unit, I have not sought out, nor am I relying upon, the skill or judgment of the Seller nor its representatives in advising me as to the suitability of the Unit for any particular commercial use or other purpose for which I am purchasing it.

6. I am am not purchasing the Unit for my own occupancy. If the Unit is for my own occupancy, it will be my primary secondary home.

<Purchaser 1 Name>

[JURAT]

FORM 7

ACKNOWLEDGEMENT OF RECEIPT OF
CONDOMINIUM INFORMATION STATEMENT

ADDENDUM TO CONTRACT OF SALE

<PROJECT NAME>

UNIT _____

**I, THE UNDERSIGNED PURCHASER, HEREBY ACKNOWLEDGE THAT ON THE
DATE SHOWN BELOW I RECEIVED THE CONDOMINIUM INFORMATION STATEMENT
FOR <PROJECT NAME>.**

**I UNDERSTAND IT IS RECOMMENDED THAT I READ THE CONDOMINIUM
INFORMATION STATEMENT BEFORE EXECUTING THE CONTRACT OF SALE.**

PURCHASER 1:

Date I received Condominium Information Statement:

Signed: _____

Date Signed: _____

PURCHASER 2:

Date I received Condominium Information Statement:

Signed: _____

Date Signed: _____

FORM 8

ACKNOWLEDGEMENT OF RECEIPT OF
CONDOMINIUM INFORMATION STATEMENT

<PROJECT NAME>

UNIT _____

I, the undersigned, hereby acknowledge that on the ____ day of _____
19____, I received a copy of the Condominium Information Statement for <Project Name>, located in
<City>, <County> County, Texas. The Condominium Information Statement I received is dated <CIS
First Date>, with revisions or amendments through _____, 19____.

Date Signed: _____

PURCHASERS:

FORM 9

CONDOMINIUM MANAGEMENT CERTIFICATE
ANNOTATED

THE STATE OF TEXAS §
 §
 COUNTY OF <COUNTY> §

1. **Name of condominium regime/property/project.** State property name used in declaration. Also state other names, if any, used in connection with the real property. Note that the property name and the association name may not be the same.
2. **Name of condominium association.** State the association name used in the declaration. Also, state association names, if different, used in the bylaws, in the articles of incorporation, and in everyday usage.
3. **The location of the condominium.** State the county, city, and street location of the property. If property has more than one address, name nearest intersecting streets or the block numbers and street names.
4. **The recording data for the declaration.**
 Name of Instrument [Insert title of declaration]
 Recorded on [Insert date recorded by county clerk], in Volume _____, Page _____,
 [Note: some counties use "Instrument No." instead of Volume & Page Numbers]
 Condominium or Real Property Records of _____ County, Texas.
 Amendments, if any, recorded:
5. **The mailing address of the association, or the name and mailing address of the person or entity managing the association.** Recommend the most permanent address available.
6. **Other information the association considers appropriate.** Examples: unusual use restrictions, rights of first refusal, things to distinguish from similarly named property.

TUCA REQUIRES EXECUTION & ACKNOWLEDGEMENT BY OFFICER OF ASSOCIATION

SIGNED this ____ day of _____ 19____.

<ASSOCIATION NAME>

By: _____
 <Officer Name>, <Office>

[ACKNOWLEDGMENT]

THE STATE OF TEXAS §
COUNTY OF BREWSTER §

SAMPLE
CONDOMINIUM MANAGEMENT CERTIFICATE

- 1. Name of condominium property. Terlingua Springs Townhomes
2. Name of condominium association. Council of Co-Owners of Terlingua Springs Townhomes, also known as Terlingua Springs Owners Association, Inc., also known as Terlingua Springs Homeowners Association
3. The location of the condominium. Terlingua, Texas - between the cemetery and the world headquarters for Far Flung Adventures. You can't miss it.
4. The recording data for the declaration. Enabling Declaration and Master Deed for Terlingua Springs Townhomes, recorded on October 1, 1976, in Volume 1, Page 1, Condominium Records of Brewster County, Texas.
5. The mailing address of the association. Terlingua Springs Townhomes, Box 6, Terlingua, Texas 79852
6. Other information the association considers appropriate. Terlingua Springs Townhomes is not related to Terlingua Arriba Mobile Home Park or Lajitas Springs Townhomes.

SIGNED this ___ day of _____ 19__.

TERLINGUA SPRINGS HOMEOWNERS ASSOCIATION

By: _____
Chilihead Pete, President

THE STATE OF TEXAS §
COUNTY OF BREWSTER §

This instrument was acknowledged before me on this ___ day of _____ 1994, by Chilihead Pete, President of Terlingua Springs Homeowners Association, a Texas condominium association, on behalf of said association.

Notary Public - The State of Texas

SELECT ("RETROACTIVE") PROVISIONS

(TEXAS) UNIFORM CONDOMINIUM ACT

CHAPTER 82
TEXAS PROPERTY CODE

SELECT PROVISIONS

SECTIONS THAT APPLY TO A CONDOMINIUM
FOR WHICH THE DECLARATION WAS RECORDED
BEFORE JANUARY 1, 1994

Prepared by:

Sharon Reuler, Attorney
Sharon Reuler, P.C.
4851 LBJ Freeway, Suite 504
Dallas, Texas 75244

Tel: (214) 934-9991
Fax: (214) 934-9955

October 1993

(TEXAS) UNIFORM CONDOMINIUM ACT
CHAPTER 82
TEXAS PROPERTY CODE

Although this paper contains only select provisions of Chapter 82, a table of contents to the entire Chapter 82 is provided for purposes of reference and illustration.

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 82.001. SHORT TITLE
- Sec. 82.002. APPLICABILITY
- Sec. 82.003. DEFINITIONS
- Sec. 82.004. VARIATION BY AGREEMENT
- Sec. 82.005. SEPARATE TITLES AND TAXATION
- Sec. 82.006. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES
- Sec. 82.007. CONDEMNATION
- Sec. 82.008. VENUE

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

- Sec. 82.051. CREATION OF CONDOMINIUM
- Sec. 82.052. UNIT BOUNDARIES
- Sec. 82.053. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS
- Sec. 82.054. DESCRIPTION OF UNITS
- Sec. 82.055. CONTENTS OF DECLARATION FOR ALL CONDOMINIUMS
- Sec. 82.056. LEASEHOLD CONDOMINIUMS
- Sec. 82.057. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES
- Sec. 82.058. LIMITED COMMON ELEMENTS
- Sec. 82.059. PLATS AND PLANS
- Sec. 82.060. EXERCISE OF DEVELOPMENT RIGHT
- Sec. 82.061. ALTERATIONS OF UNITS
- Sec. 82.062. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS
- Sec. 82.063. SUBDIVISION OF UNITS
- Sec. 82.064. EASEMENT FOR ENCROACHMENTS
- Sec. 82.065. USE FOR SALES PURPOSES
- Sec. 82.066. EASEMENT RIGHTS
- Sec. 82.067. AMENDMENT OF DECLARATION
- Sec. 82.068. TERMINATION OF CONDOMINIUM
- Sec. 82.069. RIGHTS OF SECURED LENDERS

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

- Sec. 82.101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION
- Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION
- Sec. 82.103. BOARD MEMBERS AND OFFICERS
- Sec. 82.104. TRANSFER OF SPECIAL DECLARANT RIGHTS
- Sec. 82.105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT
- Sec. 82.106. BYLAWS
- Sec. 82.107. UPKEEP OF CONDOMINIUM
- Sec. 82.108. MEETINGS

- Sec. 82.109. QUORUMS
- Sec. 82.110. VOTING AND PROXIES
- Sec. 82.111. INSURANCE
- Sec. 82.112. ASSESSMENTS FOR COMMON EXPENSES
- Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS
- Sec. 82.114. ASSOCIATION RECORDS
- Sec. 82.115. ASSOCIATION AS TRUSTEE
- Sec. 82.116. MANAGEMENT CERTIFICATE
- Sec. 82.117. OBLIGATIONS OF UNIT OWNERS

SUBCHAPTER D. PROTECTION OF PURCHASERS

- Sec. 82.151. APPLICABILITY
- Sec. 82.152. LIABILITY FOR CONDOMINIUM INFORMATION STATEMENT
- Sec. 82.153. CONDOMINIUM INFORMATION STATEMENTS IN GENERAL
- Sec. 82.154. CONDOMINIUMS WITH CONVERSION BUILDINGS
- Sec. 82.155. CONDOMINIUM SECURITIES
- Sec. 82.156. PURCHASER'S RIGHT TO CANCEL
- Sec. 82.157. RESALE OF UNIT
- Sec. 82.158. ESCROW OF DEPOSITS
- Sec. 82.159. RELEASE OF LIENS
- Sec. 82.160. CONVERSION BUILDINGS
- Sec. 82.161. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES
- Sec. 82.162. LABELING OF PROMOTIONAL MATERIAL
- Sec. 82.163. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE
- Sec. 82.164. LOANS AS ELIGIBLE INVESTMENTS

SELECT PROVISIONS OF
(TEXAS) UNIFORM CONDOMINIUM ACT

CHAPTER 82
TEXAS PROPERTY CODE

SECTIONS THAT APPLY TO A CONDOMINIUM
FOR WHICH THE DECLARATION WAS RECORDED
BEFORE JANUARY 1, 1994

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Uniform Condominium Act.

Sec. 82.002. APPLICABILITY. (a) This chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. A condominium for which the declaration was recorded before January 1, 1994, may be governed exclusively under this chapter if either:

(1) the owners of units vote to amend the declaration, in accordance with the amendment process authorized by the declaration, to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or

(2) a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.

(b) An amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter may not affect the rights of a declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7) and (12)-(22), 82.111, 82.113, 82.114, 82.116, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

(d) Chapter 81 does not apply to a condominium for which the declaration was recorded on or after January 1, 1994, and does not invalidate any amendment to the declaration, bylaws, or plats and plans of any condominium for which the declaration was recorded before January 1, 1994, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 81. If the amendment grants to a person a right, power, or privilege permitted by this chapter, all correlative obligations, liabilities, and restrictions prescribed by this chapter also apply to that person.

Sec. 82.003. DEFINITIONS. (a) In this chapter:

(1) "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 is a general partner, officer, director, or employer of the declarant; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20 percent of the voting interests in the declarant; determines in any manner the election of a majority of the directors of the declarant; or has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant is a general partner, officer, director, or employer of the person; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the person; determines in any manner the election of a majority of the directors of the person; or has contributed more than 20 percent of the capital of the person.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

- (3) "Association" means the unit owners' association organized under Section 82.101.
- (4) "Board" means the board of directors or the body, regardless of name, designated to act on behalf of the association.
- (5) "Common elements" means all portions of a condominium other than the units and includes both general and limited common elements.
- (6) "Common expense liability" means the liability for common expenses allocated to each unit.
- (7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- (8) "Condominium" means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.
- (9) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.
- (10) "Declarant" means a person, or group of persons acting in concert, who:
- (A) as part of a common promotional plan, offers to dispose of the person's interest in a unit not previously disposed of; or
 - (B) reserves or succeeds to any special declarant right.
- (11) "Declaration" means a recorded instrument, however denominated, that creates a condominium, and any recorded amendment to that instrument.
- (12) "Development rights" means a right or combination of rights reserved by a declarant in the declaration to:
- (A) add real property to a condominium;
 - (B) create units, common elements, or limited common elements within a condominium;
 - (C) subdivide units or convert units into common elements; or
 - (D) withdraw real property from a condominium.
- (13) "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit but does not include the transfer or release of a security interest.
- (14) "General common elements" means common elements that are not limited common elements.
- (15) "Identifying number" means a symbol or address that identifies only one unit in a condominium.
- (16) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.
- (17) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units.
- (18) "Plan" means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings.
- (19) "Plat" means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.

(20) "Purchaser" means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest or as security for an obligation.

(21) "Residential purposes" means recreational or dwelling purposes, or both.

(22) "Special declarant rights" means rights reserved for the benefit of a declarant to:

- (A) complete improvements indicated on plats and plans filed with the declaration;
- (B) exercise any development right;
- (C) make the condominium part of a larger condominium or a planned community;
- (D) maintain sales, management, and leasing offices, signs advertising the condominium, and models;
- (E) use easements through the common elements for the purpose of making improvements within the condominium or within real property that may be added to the condominium; or
- (F) appoint or remove any officer or board member of the association during any period of declarant control.

(23) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration.

(24) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

(b) Unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.

Sec. 82.004. [not applicable]

Sec. 82.005. SEPARATE TITLES AND TAXATION. (a) If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(b) If there is a unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements for which a declarant has not reserved development rights. Any portion of the common elements for which a declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(c) If there is no unit owner other than a declarant, the real property constituting the condominium may be taxed and assessed in any manner provided by law.

(d) The laws relating to homestead exemptions from property taxes apply to condominium units, which are entitled to homestead exemptions in those cases in which the owner of a single family dwelling would qualify.

Sec. 82.006. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. A zoning, subdivision, building code, or other real property use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership. Otherwise, this chapter does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

Sec. 82.007. CONDEMNATION. (a) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the condemnation award must compensate the unit owner for the unit and its common element interest, whether or not any common element interest is acquired. On acquisition, unless the decree provides otherwise, the condemned unit's entire allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. A remnant of a unit remaining after part of a unit is taken under this subsection is a common element.

(b) Except as provided by Subsection (a), if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. On acquisition, the condemned unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified by the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by condemnation, the award must be paid to the association, as trustee for the unit owners, and to persons holding liens on the condemned property, as their interests may appear. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) The court decree shall be recorded in each county in which any portion of the condominium is located.

Sec. 82.008. [not applicable]

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Secs. 82.051 - 82.052. [not applicable]

Sec. 82.053. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS. (a) The 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 of the association.

(c) If there is 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 unit and common elements is not made unmarketable or otherwise affected by a provision of unrecorded bylaws or 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.

Sec. 82.054. DESCRIPTION OF UNITS. A description of a unit is a sufficient legal description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws if the description contains:

- (1) the name of the condominium;
- (2) the recording data for the declaration, including any amendments, plats, and plans;
- (3) the county in which the condominium is located; and
- (4) the identifying number of the unit.

Secs. 82.055 - 82.069. [not applicable]

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 82.101. [not applicable]

Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Unless otherwise provided by the declaration, the association, acting through its board, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;

- (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (5) make contracts and incur liabilities relating to the operation of the condominium;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium;
- (7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;
- (8) [not applicable]
- (9) [not applicable]
- (10) [not applicable]
- (11) [not applicable]
- (12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given, reasonable fines for violations of the declaration, bylaws, and rules of the association;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;
- (15) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;
- (16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another unit, or the occupants;
- (17) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration so provides;
- (18) suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;
- (19) purchase insurance and fidelity bonds it considers appropriate or necessary;
- (20) exercise any other powers conferred by the declaration or bylaws;
- (21) exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and
- (22) exercise any other powers necessary and proper for the government and operation of the association.
 - (b) [not applicable]
 - (c) [not applicable - see box below]
 - (d) [not applicable - see box below]
 - (e) [not applicable - see box below]

Although Subsections (c), (d), and (e) of Section 82.102 are not expressly applicable to condominiums created before January 1, 1994, they may be applicable by implication.

(c) To be enforceable, a bylaw or rule of the association must not be arbitrary or capricious.

(d) Before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration, bylaws, or rules, the association shall give to the unit owner a written notice that:

(1) describes the violation or property damage and states the amount of the proposed fine or damage charge;

(2) states that not later than the 30th day after the date of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and

(3) allows the unit owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve months.

(e) The association may give a copy of the notice required by Subsection (d) to an occupant of the unit. The association must give notice of a levied fine or damage charge to the unit owner not later than the 30th day after the date of levy.

Secs. 82.103 - 82.110. [not applicable]

Sec. 82.111. INSURANCE. (a) Beginning not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the insurable common elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy; and

(2) commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified by 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.

(b) If a building contains units having horizontal boundaries described in the declaration, the insurance maintained under Subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

(d) Insurance policies carried under Subsection (a) must provide that:

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

(2) the insurer waives its right to subrogation under the policy against a unit owner;

(3) no action or omission of a unit owner, unless within the scope of the unit owner's 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 unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

(e) A claim for any loss covered by the policy under Subsection (a)(1) must be submitted by and adjusted with the association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the association for that purpose, if the designation of an insurance trustee is considered by the board to be necessary or desirable, or otherwise to the association, and not to any unit owner or lienholder.

(f) The insurance trustee or the association shall hold insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to Subsection (i), the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(g) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(h) The insurer issuing the policy may not cancel or refuse to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.

(i) Any portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners, including each owner of a unit or assigned limited common element that will not be rebuilt or repaired, vote to not rebuild. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss. The cost of repair or replacement in excess of the insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners as their interests may appear. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

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

Sec. 82.112. [not applicable]

Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS. (a) An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. In this section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.

(b) The association's lien for assessments has priority over any other lien except:

(1) a lien for real property taxes and other governmental assessments or charges against the unit, unless otherwise provided by Section 32.05, Tax Code;

(2) a lien or encumbrance recorded before the declaration is recorded;

(3) a first vendor's lien or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules; and

(4) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules.

(c) The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.

(d) By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.

(e) The association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting solely of fines. Costs of foreclosure may be added to the amount owed by the unit owner to the association. A unit owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.

(f) The association may bid for and purchase the unit at foreclosure sale as a common expense. The association may own, lease, encumber, exchange, sell, or convey a unit.

(g) The owner of a unit used for residential purposes and purchased by an association at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. To redeem the unit, the owner must pay to the association all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. On redemption, the association shall execute a deed to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the association or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all liens and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by the association from the date of foreclosure sale to the date of redemption belong to the association, but the rents and income shall be credited against the redemption amount. An association purchasing a unit at a sale foreclosing its lien may not transfer ownership of the unit during the redemption period to a person other than a redeeming owner.

(h) If a unit owner defaults in the owner's monetary obligations to the association, the association may notify other lienholders of the default and the association's intent to foreclose its lien. The association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.

(i) This section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

(j) At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the association.

(k) If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.

(l) Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amounts becoming due to the association after the date of foreclosure of the tax lien.

(m) If a unit owner is delinquent in payment of assessments to an association, at the request of the association a holder of a recorded lien against the unit may provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the association may furnish the lien holder with information about the condominium and the unit owner's obligations to the association.

Sec. 82.114. ASSOCIATION RECORDS. (a) The association shall keep:

(1) detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the association to prepare a resale certificate under Section 82.157;

(2) the plans and specifications used to construct the condominium except for buildings originally constructed before January 1, 1994;

(3) the condominium information statement prepared under Section 82.152 and any amendments;

- (4) the name and mailing address of each unit owner;
- (5) voting records, proxies, and correspondence relating to amendments to the declaration; and
- (6) minutes of meetings of the association and board.

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination by a unit owner and the owner's agents. An attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding.

(c) The association shall, as a common expense, annually obtain an independent audit of the records. Copies of the audit must be made available to the unit owners. An audit required by this subsection shall be performed by a certified public accountant if required by the bylaws or a vote of the board of directors or a majority vote of the members of the association voting at a meeting of the association.

(d) A declarant shall furnish copies to the association of the information required by Subsection (a) on the date the first unit is sold.

(e) Not later than the 30th day after the date of acquiring an interest in a unit, the unit owner shall provide the association with:

- (1) the unit owner's mailing address, telephone number, and driver's license number, if any;
- (2) the name and address of the holder of any lien against the unit, and any loan number;
- (3) the name and telephone number of any person occupying the unit other than the unit owner; and
- (4) the name, address, and telephone number of any person managing the unit as agent of the unit owner.

(f) A unit owner shall notify the association not later than the 30th day after the date the owner has notice of a change in any information required by Subsection (e), and shall provide the information on request by the association from time to time.

Sec. 82.115. [not applicable]

Sec. 82.116. MANAGEMENT CERTIFICATE. (a) An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

- (1) the name of the condominium;
- (2) the name of the association;
- (3) the location of the condominium;
- (4) the recording data for the declaration;
- (5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and
- (6) other information the association considers appropriate.

(b) The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

(c) The association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Sec. 82.117. [not applicable]

SUBCHAPTER D. PROTECTION OF PURCHASERS

Secs. 82.151 - 82.156. [not applicable]

Sec. 82.157. RESALE OF UNIT. (a) Except as provided by Subsection (c), if a unit owner other than a declarant intends to sell a unit, before executing a contract or conveying the unit, the unit owner must furnish to the purchaser a current copy of the declaration, bylaws, any association rules, and a resale certificate that must have been prepared not earlier than three months before the date it is delivered to the purchaser. The resale certificate must be issued by the association and must contain the current operating budget of the association and statements of:

- (1) any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit;
- (2) the amount of the periodic common expense assessment and the unpaid common expenses or special assessments currently due and payable from the selling unit owner;
- (3) other unpaid fees or amounts payable to the association by the selling unit owner;
- (4) capital expenditures, if any, approved by the association for the next 12 months;
- (5) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project;
- (6) any unsatisfied judgments against the association;
- (7) the nature of any pending suits against the association;
- (8) insurance coverage provided for the benefit of unit owners;
- (9) whether the board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to that unit violate the declaration, bylaws, or association rules;
- (10) whether the board has received notice from a governmental authority concerning violations of health or building codes with respect to the unit, the limited common elements assigned to that unit, or any other portion of the condominium;
- (11) the remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease; and
- (12) the name, mailing address, and telephone number of the association's managing agent, if any.

(b) Not later than the 10th day after the date of receiving a written request by a unit owner, an association shall furnish to the selling unit owner or the owner's agent a resale certificate signed and dated by an officer or authorized agent of the association containing the information required by Subsection (a). A selling unit owner or the owner's agent is not liable to the purchaser for erroneous information provided by the association in the certificate. If an association does not furnish a resale certificate or any information required in the certificate within the 10-day period, the unit owner may provide the purchaser with a sworn affidavit signed by the unit owner in lieu of the certificate. An affidavit must state that the unit owner requested information from the association concerning its financial condition, as required by this section, and that the association did not timely provide a resale certificate or the information required in the certificate. If a unit owner has furnished an affidavit to a purchaser, the unit owner and the purchaser may agree in writing to waive the requirement to furnish a resale certificate. The association is not liable to a selling unit owner for delay or failure to furnish a resale certificate, and an officer or agent of the association is not liable for a delay or failure to furnish a certificate unless the officer or agent wilfully refuses to furnish the certificate or is grossly negligent in not furnishing the resale certificate. Failure to provide a resale certificate does not void a deed to a purchaser.

(c) If a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling unit owner to the association, the purchaser is not liable for payment of additional delinquencies that are unpaid on the date the certificate is prepared and that exceed the total sum stated in the certificate. A unit owner or the owner's agent is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) A resale certificate does not affect:

- (1) an association's right to recover debts or claims that arise or become due after the date the certificate is prepared; or
- (2) an association's lien on a unit securing payment of future assessments.

(e) A purchaser, lender, or title insurer who relies on a resale certificate is not liable for any debt or claim that is not disclosed in the certificate. An association may not deny the validity of any statement in the certificate.

Secs. 82.158 - 82.160. [not applicable]

Sec. 82.161. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES. (a) If a declarant or any other person subject to this chapter violates this chapter, the declaration, or the bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief.

(b) The prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

Secs. 82.162 - 82.164. [not applicable]

FANNIE MAE SELLING GUIDE
PART VIII - PROJECT STANDARDS
(Chapters Pertinent to Condominiums)
Updated 11/30/93
Reproduced with Permission of FannieMae

INTRODUCTION & CHAPTER 1 - GENERAL PROJECT ELIGIBILITY
CHAPTER 2 - TYPES A & B CONDOMINIUMS
CHAPTER 3 - TYPE C CONDOMINIUMS
CHAPTER 6 - LEGAL REQUIREMENTS
CHAPTER 7 - INSURANCE REQUIREMENTS