

Part II REAL AND PERSONAL PROPERTY AND DOMESTIC
RELATIONS

Title I TITLE TO REAL PROPERTY

Chapter 183A CONDOMINIUMS

Section 10 CORPORATION, TRUST OR UNINCORPORATED ASSOCIATION;
OWNER'S INTEREST; POWERS AND DUTIES; MANAGEMENT

Section 10. (a) Each unit owner shall have the same percentage interest in the corporation, trust or unincorporated association provided for in the master deed for the management and regulation of the condominium as his proportionate interest in the common areas and facilities. Such interest shall not be separated from ownership in the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(b) Such corporation, trust or association shall have, among its other powers, the following rights and powers:—

(1) To lease, manage, and otherwise deal with such community and commercial facilities as may be provided for in the master deed as being common areas and facilities.

- (2) To own, convey, encumber, lease and otherwise deal with units conveyed to it or purchased by it as the result of enforcement of the lien for common expenses, any right of first refusal, or otherwise.
- (3) To obtain insurance on the common areas and facilities. Such insurance coverage shall be written in its name, and the provisions thereof shall be without prejudice to the right of each unit owner to insure his own unit for his own benefit.
- (4) To conduct litigation and to be subject to suit as to any course of action involving the common areas and facilities or arising out of the enforcement of the by-laws, administrative rules or restrictions in the master deed.
- (5) To impose charges or to charge interest for the late payment of common expense assessments or other charges, and to levy reasonable fines for violations of the master deed, trust, by-laws, restrictions, rules or regulations of the organization of unit owners.
- (6) To require or cause the installation of energy saving devices in all units, not already separately metered for water and utilities, and common areas in the condominium. Such devices shall include, but not be limited to, separate meters for each unit that will monitor the use of water and other utilities for the unit to which it is attached, low-flow toilets and showerheads, faucet aerators, windows and storm windows; provided, however, that such devices shall not be considered to be an improvement for purposes of section eighteen; and provided further, that the board of trustees of the organization of unit owners or if there is no board of trustees, the entity performing its duties receives the approval of the majority of unit owners in attendance at a meeting, for which notice was duly given and which was held for the purposes of voting on the

installation of such energy conservation devices. The cost of installation of such energy conservation devices shall be an expense of the organization of unit owners, which may be assessed to the individual unit owners as a special assessment, the amount of which, in an instance where such energy conservation device has been installed in each individual unit, or in substantially all of the units in the condominium, may be attributable to each unit owner in the amount of the cost of the item installed. The organization of unit owners may assess to each unit owner his proportionate share of the costs for water and other utilities, as measured by the meter attached to the unit. In the event of a conflict between this clause and the master deed, trust, or bylaws, and any amendment thereto, of any condominium submitted to the provisions of this chapter, the provisions of this clause shall control. Notwithstanding the aforesaid, nothing contained herein shall be construed to conflict with the provisions of the state sanitary code.

The expenses incurred in and proceeds accruing from the exercise of the aforesaid rights and powers shall be common expenses and common profits.

(c) The organization of unit owners may appoint a manager or managing agent or be self-managed by their elected trustees or managing board. The organization of unit owners shall keep a complete copy of the following items, except when the organization shall appoint a manager or managing agent who has responsibility for the collection of assessments, payment of common expenses, or the accounting or custody of common funds, in which case the manager or managing agent shall be responsible, without limitation, for keeping the records in item (4) below:

(1) a true and accurate copy of the master deed as recorded and amended;

- (2) the by-laws, including amendments thereto, as recorded;
- (3) the minute book, as maintained by the organization of unit owners, to the extent such minutes are kept which shall be made available to unit owners through electronic mail upon request; and
- (4) financial records, including the following:
 - (i) records of all receipts and expenditures, invoices and vouchers authorizing payments, receivables, and bank statements relating thereto;
 - (ii) records regarding the replacement reserve fund or any other funds of the organization of unit owners and bank statements relating thereto;
 - (iii) audits, reviews, accounting statements, and financial reports relating to the finances of the organization of unit owners;
 - (iv) contracts for work to be performed for or services to be provided to the organization of unit owners; and
 - (v) all current insurance policies of the organization of unit owners, or policies which name the organization as insured or obligee.

Such records shall be kept in an up-to-date manner within the commonwealth and shall be available for reasonable inspection by any unit owner or by any mortgagee holding a recorded first mortgage on a unit during regular business hours and at such other times as may be provided in the agreement between the manager or managing agent and the organization of unit owners. Access to said records shall include the right to photocopy said records at the expense of the person or entity making the request.

Such records, and all other records to be maintained by the manager or managing agent in accordance with any agreement between the organization of unit owners and said manager or managing agent, shall be

the property of the organization of unit owners. The organization shall be entitled, during regular business hours, to receive and review such records, upon request, at any time during the term of the agreement. The manager or managing agent shall give to the organization of unit owners all books, records, funds, and accounts in the possession of the manager or managing agent upon termination of the agreement. All records shall be retained for a period of at least seven years.

(d) The party responsible for keeping the records in clause (4) of subsection (c) shall be responsible for preparing a financial report to be completed within one hundred and twenty days of the end of the fiscal year, including without limitation a balance sheet, income and expense statement, and a statement of funds available in the various funds of the organization. A copy of such financial report shall be made available to all unit owners within thirty days of its completion, and shall be made available upon request to any mortgagee holding a recorded mortgage on a unit in the condominium.

An independent certified public accountant shall conduct according to the standards of the American Institute of Certified Public Accountants, a review of the financial report for any condominium comprising 50 or more units. Such review shall be conducted annually, or less frequently in accordance with subsection (m), but in no case less frequently than every two years. In any action brought to enforce the provisions of this paragraph, the prevailing party shall be entitled to reasonable attorneys' fees incurred in such action.

In the case of condominiums comprising fewer than fifty units, an independent certified public accountant shall conduct, according to the standards of the American Institute of Certified Public Accountants, a

review of the financial report, if so voted by a majority in beneficial interest of the unit owners at a meeting duly convened in accordance with the by-laws of the condominium, and the cost of said review shall be paid as a common expense of the organization.

A unit owner or mortgagee holding a recorded mortgage on a unit in the condominium shall be allowed to have a review or audit prepared at its own expense, such expense to include, but not be limited to, reasonable expenses incurred by the manager directly related to the preparation of the review or audit. The organization of unit owners and the manager or managing agent shall fully cooperate in providing the information needed to perform the review or audit.

A not-for-profit community development corporation, housing partnership, or other not-for-profit entity established for the purpose of creating or establishing affordable housing may request a copy of the financial report described earlier in this subsection by making such request in writing to the owner of a unit with whom said community development corporation, housing partnership, or other entity entered into a legally enforceable, good faith and bona fide offer to purchase said unit, which offer grants said community development corporation, housing partnership, or other entity the right to inspect said documentation as a condition to the purchase of said unit. In such case, said unit owner may obtain said documentation from the organization of unit owners, the manager, or managing agent of the condominium, and may transmit the documents to said community development corporation, housing partnership, or other entity.

(e) In any contract between a manager or managing agent and an organization of unit owners, the organization shall have a right to terminate the contract for cause with ten days' notice, during which time the manager or managing agent shall have an opportunity to cure. The organization shall in no case be required to provide more than ninety days' notice if the contract is terminated without cause.

(f) If the organization of unit owners appoints a manager or managing agent who has responsibility for the collection of assessments, payment of common expenses, or the accounting or custody of common funds, then the manager or managing agent shall be responsible for keeping the records listed in clause (4) of subsection (c), and shall:

(1) render at least monthly, or less frequently in accordance with subsection (m), but in no case less frequently than quarterly, a written report to the trustees or the managing board of the organization of unit owners detailing all receipts and expenditures on behalf of the organization, including beginning and ending balances and copies of all relevant bank statements and reconciliations for the replacement reserve fund and any other funds of the organization for which the manager or managing agent has responsibility; and

(2) maintain a separate and distinct account or accounts for each of the following: the replacement reserve fund and any other fund of the organization for which the manager or managing agent has responsibility. These funds shall not be commingled with the assets of the manager or managing agent or with the assets of any other person or any other entity. These funds shall not be subject to the claims of any creditor of the

manager or managing agent or its successor in interest including a secured creditor or trustee in bankruptcy, and shall not be subject to the claims of any creditor of any other person or any other entity.

(g) Any reserve account of the organization of unit owners shall require all checks to be signed by one member of the governing board or the organization in addition to the managing agent, if one exists, unless there is a written agreement to the contrary between the organization of unit owners and the managing agent. The governing board shall designate a member or members to be the approved signatories on such checks. The requirements of this subsection may be modified pursuant to subsection (m).

(h) The organization of unit owners in condominiums of more than ten units must secure and maintain, at its own cost and expense, blanket fidelity insurance coverage insuring against the dishonest acts of any person, trustee, manager, managing agent or employee, or the organization of unit owners who is responsible for handling organizational funds, in an amount equal to at least one-fourth of the annual assessments, excluding special assessments. Such fidelity insurance policy per its definition of employee must specifically include the manager or managing agent or provide for same by an endorsement to the fidelity policy. Such fidelity insurance must name the organization of unit owners as the insured and include a provision requiring ten days' written notice to the organization or manager, in the event of cancellation or substantial modification.

The manager or managing agent shall be the designated agent on the fidelity insurance policy, and the fidelity insurance policy shall be the property and for the sole benefit of the organization of unit owners.

The manager or managing agent must maintain, at its sole cost and expense, its own fidelity insurance with substantially the same form of coverage.

The requirements of this subsection may be modified pursuant to subsection (m) of this section.

(i) All condominiums shall be required to maintain an adequate replacement reserve fund, collected as part of the common expenses and deposited in an account or accounts separate and segregated from operating funds. The requirements of this subsection may be modified pursuant to subsection (m) of this section.

(j) The declarant shall not use any funds of the organization to fund expenses relating to the initial construction, development, and marketing of the project, to pay the declarant's share of common expenses, or to pay for any costs that are not directly related to the operation of the condominium.

(k) The organization of unit owners shall designate a person or entity who shall oversee the maintenance and repair of the common areas of the condominium. The organization of unit owners shall notify all unit owners in writing of the name and phone number of the person or entity designated to oversee maintenance and repair of the common areas, and shall notify all unit owners whenever there is a change in said person or entity.

In cases where a unit owner rents a unit to a tenant, the owner of said unit shall designate a person or entity who shall oversee the maintenance and repair of said unit. At the commencement of any tenancy, the unit owner shall notify the tenant and the organization of unit owners in writing of the name and phone number of said person or entity, and shall notify the

tenant in writing of the name and phone number of the person or entity designated to oversee maintenance and repair of the common areas. The unit owner shall notify the tenant and the organization of unit owners in writing whenever there is a change in the person or entity designated to oversee maintenance and repair of the unit, and shall notify the tenant in writing whenever the unit owner is notified of a change in the person or entity designated to oversee maintenance and repair of the common areas.

(l) The manager or managing agent, the president, the chairperson, or a majority of the governing board of the condominium may, when so empowered, act for the organization of unit owners and references herein to the organization of unit owners shall include such person or persons when so empowered.

(m) After control of the condominium has been transferred from the declarant to the organization of unit owners, the organization may by an annual vote of sixty-seven percent in beneficial interest or more of the unit owners modify any or all of the following provisions: the requirement regarding the review of financial records for condominiums comprising fifty or more units in the second paragraph of subsection (d), but such review shall be performed not less frequently than every two years as provided in said subsection (d); the frequency with which written reports must be prepared by the manager or management agent pursuant to clause (1) of subsection (f); the signature requirements in subsection (g); the requirement for fidelity insurance coverage in subsection (h); and the reserve fund requirement of subsection (i); provided, however, that any such modification may be rescinded at any time by the vote of a majority in beneficial interest of the unit owners.

(n) If the organization of unit owners is a trust or unincorporated association, an instrument signed by a majority of the trustees or of the managing board named in the master deed and duly attested as the act of such trust or association may be relied on as conclusively establishing that such instrument was the free act of the trust or association, and shall be binding upon such trust or association when recorded. No purchaser, mortgagee, lender, or other person dealing with the trustees or managing board of the association, as they appear of record, shall be bound to ascertain or inquire further as to the persons who are then trustees or members of the managing board nor be affected by any notice, implied or actual, relative thereto, other than a recorded certificate thereof, and such recorded certificate shall be conclusive evidence of the personnel of said trustees or members of the managing board and of any changes therein.