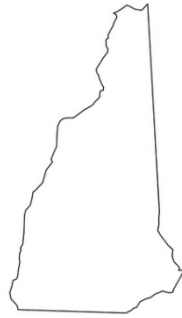


# THE NEW HAMPSHIRE CONDOMINIUM ACT



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# **THE NEW HAMPSHIRE CONDOMINIUM ACT**

**NEW HAMPSHIRE**

**REVISED STATUTES ANNOTATED**

**CHAPTER 356-B**

**CHAPTER 356-B  
CONDOMINIUM ACT**

**I. General Principles**

- 356-B:1 Short Title.
- 356-B:2 Application.
- 356-B:3 Definitions.
- 356-B:4 Separate Titles and Taxation.
- 356-B:5 Municipal Ordinances.
- 356-B:6 Eminent Domain.
- 356-B:6-a Applicability of Chapter

**II. Condominium Instruments**

- 356-B:7 Creation of Condominium.
- 356-B:8 Release of Liens.
- 356-B:9 Description of Condominium Units.
- 356-B:10 Execution of Condominium Instruments.
- 356-B:11 Recordation of Condominium Instruments.
- 356-B:12 Construction of Condominium Instruments.
- 356-B:13 Complementarity of Condominium Instruments.
- 356-B:14 Validity of Condominium Instruments.
- 356-B:15 Compliance with Condominium Instruments.
- 356-B:16 Contents of Declaration.
- 356-B:17 Allocation of Interests in the Common Areas.
- 356-B:18 Reallocation of Interests in the Common Areas.
- 356-B:19 Assignments of Limited Common Areas.
- 356-B:20 Contents of the Site Plans and Floor Plans.
- 356-B:21 Preliminary Recordation of Floor Plans.
- 356-B:22 Easement for Encroachments.
- 356-B:23 Conversion of Convertible Lands.
- 356-B:24 Conversion of Convertible Spaces.
- 356-B:25 Expansion of the Condominium.
- 356-B:26 Contraction of the Condominium.
- 356-B:27 Easement to Facilitate Conversion and Expansion.
- 356-B:28 Easement to Facilitate Sales.
- 356-B:29 Declarant's Obligation to Complete and Restore.
- 356-B:30 Alterations Within Units.
- 356-B:31 Relocation of Boundaries Between Units.
- 356-B:32 Subdivision of Units.
- 356-B:33 Termination of Condominium or Amendment of Instruments Before Conveyance of Unit.

356-B:34 Termination of Condominium or Amendment of Instruments After Conveyance of Unit.

356-B:34-a Division of Condominium.

### **III. Unit Owners' Associations**

356-B:35 Contents of the Bylaws.

356-B:36 Control by the Declarant.

356-B:37 Meetings.

356-B:37-a Notice to Unit Owners

356-B:37-b Meetings by Telephonic, Video, or Other Conferencing Process.

356-B:37-c Meetings of the Board of Directors and Committees of the Association

356-B:37-d Executive Session

356-B:37-e Disclosure of Financial Information and Meeting Minutes to Unit Owners

356-B:38 Quorums.

356-B:39 Voting.

356-B:39-a Voting Without a Meeting

356-B:40 Members of the Board of Directors and Officers.

356-B:40-a Managing Agent and Contractors; Disclosure of Fees; Qualifications

356-B:40-b Removal of Officers and Directors

356-B:40-c Adoption of Budgets and Special Assessments

356-B:41 Upkeep of the Condominium; Warranty Against Structural Defects.

356-B:42 Control of the Common Areas.

356-B:43 Insurance.

356-B:44 Rights to Common Profits.

356-B:45 Liabilities for Common Expenses.

356-B:46 Lien for Assessments.

356-B:46-a Rent Collection Upon Delinquency in Payment of Common Expenses

356-B:47 Restraints on Alienation.

356-B:47-a Flag Display

### **IV. Administration and Enforcement**

356-B:48 Administration; Enforcement.

356-B:49 Exemptions.

356-B:50 Limitations on Dispositions of Units.

356-B:51 Application for Registration; Fee.

356-B:52 Public Offering Statement.

356-B:53 Inquiry and Investigation.

356-B:54 Notice of Filing and Registration.

356-B:55 Annual Report by Declarant.

356-B:56 Conversion Condominium; Special Provisions.

356-B:57 Escrow of Deposits.

356-B:58 Resale by Purchaser.

- 356-B:59 General Powers and Duties of the Attorney General.
- 356-B:60 Investigations and Proceedings.
- 356-B:61 Cease and Desist Orders.
- 356-B:62 Revocation of Registration.
- 356-B:63 Judicial Review.
- 356-B:64 Penalties.
- 356-B:65 Civil Remedy.
- 356-B:66 Jurisdiction.
- 356-B:67 Interstate Rendition.
- 356-B:68 Service of Process.
- 356-B:69 Conflict of Interests.
- 356-B:70 Committee to Study the Laws Relating to Condominium and Homeowners' Associations



## I. General Principles

### 356-B:1. Short Title.

This chapter shall be known and may be cited as the "Condominium Act."

### 356-B:2. Application.

I. This chapter shall apply to all condominiums and to all condominium projects. This chapter shall be deemed to supersede RSA 479-A, the New Hampshire Unit Ownership of Real Property Act; and no condominium shall be established under the latter on or after September 10, 1977. This chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to September 10, 1977. Nor shall this chapter, except as set forth in paragraphs II and III, be deemed to apply to any real estate, or any interest therein, submitted to the provisions of RSA 479-A prior to September 10, 1977.

II. Notwithstanding the provisions of paragraph I, this subdivision, General Principles, and subdivision IV, Administration and Enforcement, shall apply to any offer or disposition on or after November 1, 1981, of time sharing interests in condominium units established under RSA 479-A, regardless of the date on which such condominium units were created.

III. Notwithstanding the provisions of paragraph I, if any condominium instrument recorded under RSA 479-A prior to September 10, 1977, shall be amended after September 10, 1977, for the purpose of creating 10 or more additional units in any such condominium project, this subdivision, General Principles, and subdivision IV, Administration and Enforcement, shall apply to said additional units. If said amendment creates 10 or more, but less than 26, additional units, the applicant shall be permitted to make an abbreviated registration pursuant to RSA 356-B:51, II, and shall not be required to prepare a public offering statement pursuant to RSA 356-B:52; provided, however, this sentence shall not apply if time sharing interests are offered with respect to such additional units.

### 356-B:3. Definitions. In this chapter:

I. "Board of directors" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

II. "Common area" or "common areas" means all portions of the condominium other than the units.

III. "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation



and/or maintenance of reserves pursuant to the provisions of the condominium instruments; "future common expenses" shall mean common expenses for which assessments are not yet due and payable.

IV. "Common profits" means all income collected or accrued by or on behalf of the unit owners' association, other than income derived from assessments pursuant to RSA 356-B:45.

V. "Condominium" means real property, and any interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common area are vested in the unit owners.

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

VII. "Condominium unit" means a unit together with the undivided interest in the common area appertaining to that unit.

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

IX. "Conversion condominium" means a condominium containing structures which before the recording of the declaration were wholly or partially occupied by someone other than the declarant or those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

X. "Convertible land" means a building site which is a portion of the common area, within which additional units and/or a limited common area may be created in accordance with this chapter.

XI. "Convertible space" means a portion of a structure within the condominium which portion may be converted into one or more units and/or common area, including but not



limited to limited common area, in accordance with this chapter.

XII. "Days" mean calendar days, unless modified by the word "business", in which case said term shall include all days except Saturdays, Sundays and legal holidays in the state of New Hampshire.

XIII. "Declarant" means all persons who execute or propose to execute the declaration or on whose behalf the declaration is executed or proposed to be executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this paragraph who come to stand in the same relation to the condominium as their predecessors did shall also come within this definition; provided, however, this definition shall not include any homeowners association which is not controlled by a declarant or any mortgage holder that forecloses on a declarant's interest in the condominium, provided that the foreclosing mortgagee refrains from exercising any of the rights reserved to the declarant by this chapter. A foreclosing mortgagee may transfer all such rights to a successor builder or developer without registration or exemption, provided that prior to such intended transfer, the mortgagee files an affidavit or with the attorney general identifying the intended transferee by name, address, and telephone number, and listing the number of units or interests remaining in the condominium, and the number of units or interests so transferred.

XIV. "Dispose" or "disposition" refers to any sale, contract, assignment, or any other voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt.

XV. "Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

XVI. "Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

XVI-a. "Improvements" means any addition to condominium land, facilities, or amenities other than condominium units.

XVII. "Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.





XVIII. "Interest in a unit" and "interest in a condominium unit", when not modified by the word "undivided," include without limitation any fee simple interest, leasehold interest for a term of more than 5 years, life estate and, for the purposes of this subdivision and subdivision IV, Administration and Enforcement, time sharing interest.

XIX. "Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which or on which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which or on which no units

are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter, nor shall a condominium be deemed to be a leasehold condominium solely because of the offering or disposition of time sharing interests therein.

XX. "Limited common area" means a portion of the common area reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

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

XXII. "Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt.

XXIII. "Officer" means any member of the board of directors or official of the unit owners' association.

XXIV. "Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

XXV. "Publicly held corporation," "subsidiary corporation," "closely held corporation," "hearing" and "broker" have the same meaning as set forth in the respective definitions of such terms in RSA 356-A:1; and "agent" and "blanket encumbrance" have the same meaning as set forth in the respective definitions of such terms in RSA 356-A:1, except that within such



definitions references to "developer" or "subdivider" shall mean "declarant," references to "lot" or "lots" shall mean "unit" or "units" and references to "subdivision" shall mean "condominium project."

XXVI. "Purchaser" means any person or persons who acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, except as security for a debt.

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

XXVIII. "Time sharing interest" means the exclusive right to occupy one or more units for less than 60 days each year for a period of more than 5 years from the date of execution of an instrument for the disposition of such right, regardless of whether such right is accompanied by a fee simple interest or a leasehold interest, or neither of them, in a condominium unit. Time sharing interest shall include "interval ownership interest," "vacation license" or any other similar term.

XXIX. "Unit" shall mean a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with RSA 356-B:24, IV.

XXX. "Unit owner" means one or more persons who owns a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms.

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



**356-B:4. Separate Titles and Taxation.**

Each condominium unit shall constitute for all purposes a separate parcel of real property, distinct from all other condominium units. If there is any unit or units owned by any person other than the declarant, each such unit or units shall be subject to separate assessment and taxation by each assessing authority and special district for all types of taxes authorized by law. Each unit in which time sharing interests, as defined in RSA 356-B:3, XXVIII, have been created shall be valued for purposes of real property taxation as if such unit were owned by a single taxpayer. Condominium units in which time sharing interests have been created shall be taxed as wholly owned condominium units. The total cumulative purchase price paid for time sharing interests in any such unit shall not be determinative of the unit's assessed value. No taxes shall be assessed against the individual owner of a time sharing interest but shall be assessed against the record owner of such unit, the owners' association, trustee, or managing agent, as appropriate.

**356-B:5. Municipal Ordinances.**

No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance in any city or town shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance is by its express terms made applicable thereto. Nevertheless, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof which do not conform to the zoning, land use and site plan regulations of the respective city or town in which the property is located shall secure a special use permit, a special exception, or variance, as the case may be, prior to becoming a conversion condominium. In the event of an approved conversion to condominiums, cities, towns, village districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

**356-B:6. Eminent Domain.**

I. If any portion of the common area is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common area; provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common area shall be allocated by the decree to the unit owner of the unit to which that limited common area was so assigned at the time of the taking. If that limited common area was permanently assigned to more than one unit at the



time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common area is a limited common area which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned. In the event of a taking or acquisition of a part or all of the common areas by a condemning authority, the statutory notices of hearing shall be served on the unit owners' association acting on behalf of all of the unit owners at least 30 days prior to such hearing, and the award or proceeds of settlement shall be payable to the unit owners' association for the use and benefit of the unit owners and their mortgagees as their interest may appear in accordance with this section. The unit owners' association shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authorities for acquisition of the common areas or any part thereof and the unit owners' association shall act as attorney-in-fact for each unit owner for the purposes of this section.

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

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

IV. If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common area appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to



their respective undivided interests in the common area, and the remaining portion of that unit shall thenceforth be common area. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for his entire undivided interest in the common area and for his entire unit.

V. Votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association has been reduced in proportion to their reduction in their undivided interests in the common area, and the decree of the court shall provide accordingly.

VI. The decree of the court shall require recordation thereof in the registry of deeds of the county in which the condominium is located.

#### **356-B:6-a Applicability of Chapter.**

I. In the event of a conflict between the declaration or bylaws, the provisions of RSA 356-B shall control.

II. A unit owners association may amend or revise the condominium documents to comply with the requirements of RSA 356-B without the need to obtain mortgagee approval if the changes do not affect the mortgagee's equity or security interest in the property.

## **II. Condominium Instruments**

#### **356-B:7. Creation of Condominium.**

No condominium shall come into existence except by the recordation of condominium instruments pursuant to this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on site plans and floor plans that comply with RSA 356-B:20, I and II. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, in and of itself, to terminate the condominium. Notwithstanding any provision of law to the contrary, if a rent increase is made in accordance with RSA 356-C:3, I(a)(12), application for condominium conversion shall not be made until 3 months after such increase.



**356-B:8. Release of Liens.**

I. At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any perfected mechanics' or materialmen's liens, or any other perfected lien, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. This paragraph shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this paragraph be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to RSA 356-B:36 has expired, and so long as the bylaws authorize the same.

II. Subsequent to recording the declaration as provided in this chapter, no lien or encumbrance shall thereafter arise against the condominium as a whole, but only against each unit and the percentage of undivided interest in the common areas appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien pursuant to the lien law against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas, if duly authorized by the association of unit owners or board of directors in accordance with this chapter, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the lien law against each of the units and shall be subject to the provisions of this section. In the event a lien against 2 or more units becomes effective, the unit owners of the separate units may remove their unit and the percentage of undivided interest in the common areas appurtenant to such unit from the lien by payment of the fractional or proportional amounts attributable to each of the units affected. Such individual payment shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge or other satisfaction, the unit and the percentage of undivided interest in the common areas appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the percentage of undivided interest in the common areas appurtenant thereto not so paid, satisfied or discharged. This paragraph shall not be construed to prohibit the declarant from mortgaging or causing a deed of trust to be placed on any portion of convertible lands for the purpose of financing construction thereon.



**356-B:9. Description of Condominium Units.**

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium, the name of the town or city and county wherein the condominium is situated, and the deed book and page number where the first page of the declaration is recorded. Any such description shall be deemed to include the undivided interest in the common area appertaining to such unit even if such interest is not defined or referred to therein.

**356-B:10. Execution of Condominium Instruments.**

The declaration and bylaws and any amendments to either made pursuant to RSA 356-B:33 shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in RSA 356-B:25 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or curtesy interest, any person having an equitable interest under any contract for the sale and/or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common area.

**356-B:11. Recordation of Condominium Instruments.**

All amendments and certifications of condominium instruments shall set forth the name of the condominium, the name of the town or city and county in which the condominium is located, and the deed book and page number where the first page of the declaration is recorded. All condominium instruments, and all amendments and certifications thereof, shall be recorded in the registry of deeds of every county wherein any portion of the condominium is located, and shall set forth the name and address of the condominium.

**356-B:12. Construction of Condominium Instruments.**

Except to the extent otherwise provided by the condominium instruments:

I. The terms defined in RSA 356-B:3 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires.

II. To the extent that walls, floors, and/or ceilings are designated as the boundaries of the units or of any particular units without further specification, all doors and windows therein, and all lath, wallboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a



part of such units, while all other portions of such walls, floors, and/or ceilings shall be deemed a part of the common area.

III. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lie partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common area shall be deemed a part of the common area.

IV. Subject to the provisions of paragraph III of this section, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

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

**356-B:13. Complementarily of Condominium Instruments.**

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction conformable with the statute shall in all cases control over any construction inconsistent therewith.

**356-B:14. Validity of Condominium Instruments.**

I. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be voided.

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

III. No restraint on alienation shall discriminate or be used to discriminate against any person in violation of RSA 354-A.

IV. Subject to the provisions of paragraph III of this section, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units.





**356-B:15. Compliance with Condominium Instruments.**

I. The declarant, the board of directors, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its board of directors or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action.

II. The prevailing party shall be entitled to all costs and attorneys' fees incurred in any proceeding under RSA 356-B:15, I.

**356 B:16. Contents of Declaration.**

- I. The declaration for every condominium shall contain the following:
- (a) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium";
  - (b) The name of the town or city and county in which the condominium is located;
  - (c) A legal description by metes and bounds of the land submitted to this chapter;
  - (d) A description or delineation of the boundaries of the units, including the horizontal boundaries, if any, as well as the vertical boundaries;
  - (e) A description or delineation of the limited common areas, if any, showing or designating the unit or units to which each is assigned;
  - (f) A description or delineation of all common areas not within the boundaries of any convertible lands which may subsequently be assigned as limited common areas, together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with RSA 356-B:19;
  - (g) The allocation to each unit of an undivided interest in the common areas in accordance with RSA 356-B:17;



(h) A statement of the purposes for which the condominium and each of the units are intended and restricted as to use;

(i) A description of the manner of determining appropriate action following damage to any portion of the condominium by fire or other casualty; and

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

I-a. All lands within the declaration of the condominium which are within the original bounds of the condominium shall be identified therein as individual units, common areas, limited common areas, convertible spaces, or convertible lands. All lands proposed for possible future expansion shall be identified as expandable lands.

II. If the condominium contains any convertible land, the declaration shall also contain the following:

(a) A legal description by metes and bounds of each convertible land within the condominium;

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

(c) A statement, with respect to each such convertible land, as to whether or not any portion of such convertible land will not be restricted to residential use, and, if not, the nature of the permitted uses, and the maximum percentage of the aggregate land and aggregate floor area of all units that may be created which will not be restricted exclusively to residential use;

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

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

(f) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail any differences in design, layout, size, quality or other significant characteristics of the units that may be created therein; and

(g) A description of the declarant's reserved right, if any, to create limited common areas within any convertible land, and/or to designate common areas therein which



may subsequently be assigned as limited common areas in terms of the types, sizes, and maximum number of such areas within each such convertible land.

Provided, that site plans and floor plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to subparagraphs II(a), (d), (e), (f) and (g), and that subparagraph II(c) need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

III. If the condominium is an expandable condominium, the declaration shall also contain the following:

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

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

(c) A time limit, not exceeding 7 years from the recording of the declaration, upon which the option to expand the condominium shall expire, provided, however, that the time limit contained in the declaration may be extended by not more than 7 years by an amendment to the declaration adopted pursuant to RSA 356-B:54, V, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(d) A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land";

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

(f) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be added to the condominium;

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



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

(i) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, as to whether or not any portion of such expandable land will not be restricted to residential use, and, if not, the nature of the permitted uses and the maximum percentage of the aggregate land and aggregate floor area of all units that may be created thereon which will not be restricted exclusively to residential use;

(j) A statement of the extent to which any structures created on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards;

(k) A description of all other improvements that will be made on any portion of the additional land added to the condominium or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard;

(l) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what differences in design, layout, size, quality or other significant characteristics of the units may be created thereon, or a statement that no assurances are made in that regard; and

(m) A description of the declarant's reserved right, if any, to create limited common areas within any portion of the additional land added to the condominium, and/or to designate common areas therein which may subsequently be assigned as limited common areas in terms of types, sizes, and maximum number of such areas within each such portion, or a statement that no assurances are made in those regards.

Provided, that site plans and floor plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to subparagraphs III(d), (e), (f), (g), (j), (k), (l) and (m), and that subparagraph III(i) need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.



IV. If the condominium is a contractible condominium, the declaration shall also contain the following:

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

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

(c) A time limit, not exceeding 7 years from the recording of the declaration, upon which the option to contract the condominium shall expire, provided, however, that the time limit contained in the declaration may be extended by not more than 7 years by an amendment to the declaration adopted pursuant to RSA 356-B:54, V, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(d) A legal description by metes and bounds of all land that may be withdrawn from the condominium, henceforth referred to as “withdrawable land”;

(e) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be withdrawn from the condominium; and

(f) A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend. Provided, that site plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to subparagraphs IV(d), (e) and (f), and that subparagraph IV(f) shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with RSA 356-B:33.

V. If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the county wherein the same are recorded and the deed book and page number where the first page of each such lease is recorded; and the declaration shall also contain the following:

(a) The date upon which each such lease is due to expire;

(b) A statement as to whether any land and/or improvements will be owned by the unit owners in fee simple, and, if so, either (a) a description of the same, including without



limitation a legal description by metes and bounds of any such land, or (b) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and

(c) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights.

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

VI. Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain the following:

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

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

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

VII. Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owner's estate therein. No such lands shall be shown on the same site plans showing other portions of the condominium, but shall be shown instead on separate site plans.



**356-B:17. Allocation of Interests in the Common Areas.**

I. The declaration may allocate to each unit depicted on site plans and floor plans that comply with RSA 356-B:20, I and II an undivided interest in the common areas proportionate to either the size or value of each unit.

II. Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common areas subject to the following exception: each convertible space so depicted shall be allocated an undivided interest in the common areas proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interests in the common areas shall be allocated equally to the other units so depicted.

III. The undivided interests in the common areas allocated in accordance with paragraph I or II shall add up to one if stated as fractions or 100 percentum if stated as percentages.

IV. If, in accordance with paragraph I or II, an equal undivided interest in the common areas is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

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

VI. Except to the extent otherwise expressly provided by this chapter, the amount of undivided interest in the common areas allocated to any unit shall not be altered, and any purported transfer, encumbrance or other disposition of that interest without the unit to which it appertains shall be void.

VII. The common areas shall not be subject to any suit for partition until and unless the condominium is terminated.

**356-B:18. Reallocation of Interests in the Common Areas.**

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



(a) Prohibits the creation of any units not substantially identical to the units depicted on the site plans and floor plans recorded pursuant to RSA 356-B:20, I and II; or

(b) Prohibits the creation of any units not described pursuant to RSA 356-B:16, II(f) (in the case of convertible lands) and RSA 356-B:16, III(I) (in the case of additional land), and contains from the outset a statement of the value that shall be assigned to every such unit that may be created.

II. Interests in the common areas shall not be allocated to any units to be created within any convertible land or within any additional land until site plans and floor plans depicting the same are recorded pursuant to RSA 356-B:20, III. But simultaneously with the recording of such site plans and floor plans the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common areas so that the units depicted on such site plans and floor plans shall be allocated undivided interests in the common areas on the same basis as the units depicted on the site plans and floor plans recorded simultaneously with the declaration pursuant to RSA 356-B:20, I and II.

III. If all of a convertible space is converted into common areas, including without limitation limited common areas, then the undivided interest in the common areas appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common areas. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

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

**356-B:19. Assignments of Limited Common Areas.**

I. All assignments and reassignments of limited common areas shall be reflected by the condominium instruments. No limited common area shall be assigned or reassigned except in accordance with this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common area without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except





to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common area.

II. Unless expressly prohibited by the condominium instruments, a limited common area may be reassigned upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common area involved. Such amendment shall be delivered forthwith to the unit owners of the units concerned upon payment by them of all reasonable costs for the preparation and acknowledgment thereof. Said amendment shall become effective when the unit owners of the units concerned have executed and recorded it.

III. A common area not previously assigned as a limited common area shall be so assigned only pursuant to RSA 356-B:16, I(f), except that limited common areas may be created or expanded pursuant to an amendment to the condominium instruments consented to by 2/3 of the votes in the unit owners association, or such higher percentage as the condominium instruments may provide, and then thereafter assigned as therein provided. The amendment to the declaration making such an assignment shall be prepared and executed by the principal officer of the unit owners' association, or by such other officer or officers as the condominium instruments may specify. Such amendment shall be delivered to the unit owner or owners of the unit or units concerned upon payment by them of all reasonable costs for the preparation and acknowledgment thereof. Said amendment shall become effective when the aforesaid unit owner or owners have executed and recorded it, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to RSA 356-B:16, I(f) was adhered to. The creation or expansion of limited common areas pursuant to this paragraph shall not alter the amount of undivided interest in the common areas allocated to any unit.

**356-B:20. Contents of the Site Plans and Floor Plans.**

I. There shall be recorded simultaneously with the declaration one or more site plans of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common areas. If the submitted land is not contiguous, then the site plans shall indicate the distance between the parcels constituting the submitted land. The site plans shall label every convertible land as a convertible land, and if there be more than one such land the site plans shall label each such land with one or more letters or numbers or both different from those designating any other convertible land and different also from the



identifying number of any unit. The site plans shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the site plans shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the site plans shall label each such land with one or more letters or numbers or both different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The site plans shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The site plans shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the site plans shall indicate which, if any, have not been begun by the use of the phrase “(NOT YET BEGUN)” and which, if any, have been begun but have not been substantially completed by the use of the phrase “(NOT YET COMPLETED).” In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which floor plans pursuant to paragraph II are simultaneously recorded, the site plans shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such floor plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each site plan shall be certified as to its accuracy and compliance with the provisions of this paragraph by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted on any portion of the submitted land other than within the boundaries of any convertible lands have been substantially completed. The specification within this paragraph of items that shall be shown on the site plans shall not be construed to mean that the site plans shall not also show all other items customarily shown or hereafter required for land title surveys.

II. There shall also be recorded, simultaneously with the declaration, floor plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The floor plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the floor plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground



with regard to any part of that unit lying outside of such structures. The floor plans shall be certified as to their accuracy and compliance with the provisions of this paragraph by a registered architect, registered engineer or licensed land surveyor, and such architect, engineer or land surveyor shall certify that all units or portions of units depicted on the floor plan as completed have been substantially completed.

III. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record new site plans of survey conforming to the requirements of paragraph I. (In any case where less than all of a convertible land is being converted, such site plans shall show the location and dimensions of the remaining portion or portions of such land in addition to otherwise conforming with the requirements of paragraph I.) At the same time, the declarant shall record, with regard to any structures on the land being converted, or added, either floor plans conforming to the requirements of paragraph II, or certifications, conforming to the certification requirements of said subsection, of floor plans previously recorded pursuant to RSA 356-B:21.

IV. When converting all or any portion of any convertible space into one or more units or limited common areas, or both, the declarant shall record, with regard to the structure or portion of such structure constituting that convertible space, floor plans showing the location and dimensions of the horizontal and vertical boundaries of each unit or limited common areas, or both, formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this paragraph by a registered architect, registered engineer or licensed land surveyor.

V. For the purposes of paragraphs I, II and III, all provisions and requirements relating to units shall be deemed equally applicable to limited common areas. The limited common areas shall be labeled as such, and each limited common area depicted on the site plans and floor plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of RSA 356-B:12, V, make such designations unnecessary.

#### **356-B:21. Preliminary Recordation of Floor Plans.**

Floor plans previously recorded pursuant to the provisions set forth in RSA 356-B:16, II and III may be used in lieu of new floor plans to satisfy in whole or in part the requirements of RSA 356-B:18, II, RSA 356-B:23, II and/or RSA 356-B:25 if certifications thereof are recorded by the declarant in accordance with RSA 356-B:20, II; and if such certifications are so recorded, the floor plans which they certify shall be deemed recorded pursuant to RSA 356-B:20, III, within the meaning of RSA 356-B:18, II, RSA 356-B:23, II and/or RSA 356-B:25.



**356-B:22. Easement for Encroachments.**

To the extent that any unit or common area encroaches on any other unit or common area, whether by reason of any deviation from the site plans and floor plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the site plans and floor plans.

**356-B:23. Conversion of Convertible Lands.**

I. The declarant may convert all or any portion of any convertible land into one or more units or limited common areas, or both, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to paragraph II and RSA 356-B:20, III.

II. Simultaneously with the recording of site plans and floor plans pursuant to RSA 356-B:20, III, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common areas in accordance with RSA 356-B:18, II. Such amendment shall describe or delineate the limited common areas formed out of the convertible land, showing or designating the unit or units to which each is assigned.

III. All convertible lands shall be deemed a part of the common areas except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes shall be assessed against the declarant rather than the unit owners as to both the convertible land and any improvements thereon. No such conversion shall occur after 5 years from the recordation of the declaration, or such shorter period of time period as the declaration may specify, provided, however, that the time limit contained in the declaration may be extended by not more than 5 years by an amendment to the declaration adopted pursuant to RSA 356-B:54, V.

**356-B:24. Conversion of Convertible Spaces.**

I. The declarant may convert all or any portion of any convertible space into one or more units or common areas, or both, including, without limitation, limited common areas, subject to any restrictions and limitations which the condominium instruments may specify.



Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to paragraph II and RSA 356-B:20, IV.

II. Simultaneously with the recording of site plans and floor plans pursuant to RSA 356-B:20, IV, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common areas appertaining to that space. Such amendment shall describe or delineate the limited common areas formed out of the convertible space, showing or designating the unit or units to which each is assigned.

III. If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with RSA 356-B:32, IV.

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

V. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes relative to convertible space shall be assessed against the declarant rather than the unit owners when such space is utilized only for the benefit of the declarant. No such conversion shall occur after 5 years from the recordation of the declaration, or such shorter period of time period as the declaration may specify, provided, however, that the time limit contained in the declaration may be extended by not more than 5 years by an amendment to the declaration adopted pursuant to RSA 356-B:54, V.

**356-B:25. Expansion of the Condominium.**

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of site plans and floor plans pursuant to RSA 356-B:20, III, together with an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium, and shall reallocate undivided interests in the common areas in accordance with



RSA 356-B:18, II. A merger of 2 condominiums the land of which abuts and which is merged by consent of all existing unit owners shall not be considered an "expansion".

**356-B:26. Contraction of the Condominium.**

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to RSA 356-B:16, IV(e), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

**356-B:27. Easement to Facilitate Conversion and Expansion.**

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

**356-B:28. Easement to Facilitate Sales.**

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

**356-B:29. Declarant's Obligation to Complete and Restore.**

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



or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done thereon or with regard thereto, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion thereof, this paragraph shall not be construed to nullify, limit, or otherwise affect any such obligation.

II. The declarant shall complete all improvements labeled “(NOT YET COMPLETED)” on site plans recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled “(NOT YET BEGUN)” on such site plans, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

III. To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by RSA 356-B:27 and 28, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

**356-B:30. Alterations Within Units.**

I. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

II. If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common area, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common area other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of RSA 356-B:31.

**356-B:31. Relocation of Boundaries Between Units.**

I. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (a) the provisions of this section and (b) any restrictions and limitations not



otherwise unlawful which the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

II. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to paragraphs III, IV and V.

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

IV. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses and rights to common profits as between those units.

V. Such site plans and floor plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such site plans and floor plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum and shall state which established datum is used. Such site plans and floor plans shall be certified as to their accuracy and compliance with the provisions of this paragraph by a licensed land surveyor in the case of any site plan and by a registered architect, licensed land surveyor or registered engineer in the case of any floor plan.

VI. When appropriate instruments in accordance with paragraphs III, IV and V have been prepared, executed, and acknowledged, they shall be delivered forthwith to the unit owners of the units involved upon payment by them of all reasonable costs for the preparation and acknowledgment thereof. Said instruments shall become effective when the unit owners of the units involved have executed and recorded them, and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to paragraphs III and IV were reasonable.





VII. Any relocation of boundaries between adjoining units shall be governed by this section and not by RSA 356-B:32. RSA 356-B:32 shall apply only to such subdivisions of units as are intended to result in the creation of 2 or more new units in place of the subdivided unit.

**356-B:32. Subdivision of Units.**

I. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (a) the provisions of this section and (b) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

II. If the unit owner of any unit which may be subdivided desires to subdivide a unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to paragraphs III, IV and V.

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

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

V. Such site plans and floor plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted on such plans shall bear their new identifying numbers. Such site plans and floor plans shall indicate the dimensions of the new units, and the horizontal boundaries of such units, if any, shall be identified on such plans with reference to established datum. Such site plans and floor plans shall be certified as to their accuracy and compliance with the provisions of this paragraph by a licensed land surveyor in the case of any site plan and by a registered architect, licensed land surveyor or registered engineer in the case of any floor plan.



VI. When appropriate instruments in accordance with paragraphs III, IV and V have been prepared, executed, and acknowledged, they shall be delivered forthwith to the subdivider upon payment by the subdivider of all reasonable costs for the preparation and acknowledgment thereof. Said instruments shall become effective when the subdivider has executed and recorded them, and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to paragraphs III and IV were reasonable.

VII. Notwithstanding the provisions of RSA 356-B:24, IV, this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

**356-B:33. Termination of Condominium or Amendment of Instruments Before Conveyance of Unit.**

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

**356-B:34. Termination of Condominium or Amendment of Instruments After Conveyance of Unit.**

I. If there is any unit owner other than the declarant, then the condominium shall be terminated only by the agreement of unit owners of units to which 4/5 of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify.

II. If there is any unit owner other than the declarant, then the condominium instruments shall be amended only by agreement of unit owners of units to which 2/3 of the votes in the unit owners' association appertain, or such larger majority as the condominium

instruments may specify, except in cases for which this chapter provides different methods of amendment. The procedures established in RSA 356-B:54, V shall be followed for amendments to extend the time limits for conversion, expansion, or contraction of a condominium.



II-a. Notwithstanding paragraph II, any amendment to the condominium instruments requiring approval of mortgagees on units may be satisfied by the recording of an affidavit by the president of the association that written request for such approval was sent to the last known address of any mortgagee and that the mortgagee failed to respond within 60 days.

III. If none of the units in the condominium is restricted exclusively to residential use, then the condominium instruments may specify majorities smaller than the minimums specified by paragraphs I and II.

IV. Agreement of the required majority of unit owners to termination of the condominium or to any amendment of the condominium instruments shall be evidenced by their execution of the termination agreement or amendment, or by execution of the president and treasurer of the association accompanied by certification of vote of the clerk or secretary, and the same shall become effective only when such agreement is so evidenced of record. For the purposes of this section and RSA 356-B:33, an instrument terminating a condominium shall be deemed a condominium instrument subject to the provisions of RSA 356-B:11, and for the purposes of this section, any ratification of such an amendment shall also be deemed such an instrument.

V. Except to the extent expressly permitted or expressly required by other provisions of this chapter, no amendment to the condominium instruments shall change the boundaries of any unit, the undivided interest in the common areas appertaining thereto, the liability for common expenses or rights to common profits appertaining thereto, or the number of votes in the unit owners' association appertaining thereto.

VI. Upon recordation of an instrument terminating a condominium, all of the property constituting the same shall be owned by the unit owners as tenants in common in proportion to their respective undivided interests in the common areas immediately prior to such recordation. But as long as such tenancy in common lasts, each unit owner or the heirs, successors, or assigns thereof shall have an exclusive right of occupancy of that portion of said property which formerly constituted his unit.

VII. Upon recordation of an instrument terminating a condominium, any rights the unit owners may have to the assets of the unit owners' association shall be in proportion to their respective undivided interests in the common areas immediately prior to such recordation, except that common profits shall be distributed in accordance with RSA 356-B:44.

VIII. No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.



**356-B:34-a Division of Condominium.**

Notwithstanding the provisions of RSA 356-B:34, a condominium shall be deemed to have been terminated if it is terminated in accordance with the following provisions:

I. A condominium containing 50 or more residential units may be terminated and divided into separate and smaller condominiums by amendment to the condominium instruments pursuant to a written agreement consented to by the unit owners to which 4/5 of the votes in the existing unit owners association and 4/5 of the votes in each resulting unit owners association appertain, as such votes are allocated in accordance with RSA 356-B:39 and the condominium instruments of the existing condominium, and with any consent of mortgagees holding interests in the condominium units as may be required under the condominium instruments of the existing condominium for any action of the unit owners association to terminate the condominium or to subdivide the common areas thereof.

II. Agreement of the required number of unit owners to divide the condominium shall be evidenced by their execution of an agreement or by execution by the president and treasurer of the existing unit owners association accompanied by a certification by the clerk or secretary of the association that the requisite number of unit owners has executed the agreement or has voted in favor thereof either at a meeting duly called for such purpose or by written consent in lieu of such a meeting and the same shall become effective only when such agreement and an effectuating amendment to the condominium instruments in accordance with paragraph III is placed on record at the registry of deeds.

III. An amendment to the condominium instruments adopted pursuant to this section shall establish a separate declaration of condominium with respect to each condominium resulting from the division and shall:

- (a) Conform to all applicable provisions of RSA 356-B.
- (b) Reallocate the interests in the common areas in accordance with the agreement of unit owners.
- (c) Establish easements or other rights of entry, access, egress, usage, or sharing of utilities or other common facilities in accordance with the agreement of unit owners.
- (d) Provide for the division of the assets and liabilities of the existing condominium in accordance with the agreement of the unit owners.
- (e) Describe any rights to common profits or liability for common expenses which may be shared among any condominiums resulting from the division.
- (f) Permit the election by unit owners whose units shall be within such resulting condominiums of representatives of the unit owners



associations resulting from the division who shall be authorized to execute condominium instruments for such resulting condominiums.

- (g) Contain any and all other provisions necessary or desirable for the equitable division of the condominium.
- (h) Be signed by the president and treasurer of the existing unit owners association.

IV. (a) An amendment to the condominium instruments adopted pursuant to this section shall be deemed a material change requiring submission to the consumer protection bureau, office of the attorney general, of an application for approval of the division by or on behalf of the unit owners association, executed by the president or treasurer of the existing unit owners association, which shall provide the following information on a form to be prescribed by the attorney general:

- (1) The required consent that was obtained.
- (2) The date upon which the required consent was obtained.
- (3) The number of units in the existing condominium.
- (4) The number of units that are substantially completed in the existing condominium.
- (5) The number of units in each resulting condominium specifying the number which are substantially complete or not.
- (6) A delineation of any expandable or withdrawable land in the existing or resulting condominiums.
- (7) The agreement of the unit owners executed in accordance with this section.
- (8) The amendment required by this section, including all necessary condominium instruments executed by the authorized representatives of the resulting unit owners associations.
- (9) A certification by the president or treasurer of the existing unit owners association that all required approvals or other actions, including municipal planning board or zoning board approvals, exceptions or variances, and all approvals required under this section, have been obtained.
- (10) A certification by the president or treasurer of the existing unit owners association that notice has been provided to the unit owners of the filing of the application for approval, and that any unit owner may submit comments to the attorney general regarding the application.
- (11) A certification by the president or treasurer of the existing unit owners association that mortgagees have consented to the division, if and to the extent required by this section.



- (b) A fee of \$1000 shall be submitted to the attorney general at the time of the filing of the application.

V. (a) The attorney general shall review the application for approval submitted pursuant to this section and shall approve the application upon determination that:

- (1) The amendment conforms to the requirements of this section.
- (2) The condominium instruments submitted with respect to each resulting condominium conform to the provisions of RSA 356-B.
- (3) There is a rational basis for the proposed division.
- (4) The proposed division is in furtherance of a lawful purpose.
- (5) The amendment and condominium instruments are not unfair or inequitable to unit owners.

(b) The attorney general may require submittal of such additional information as may be reasonably necessary to make such determinations.

(c) Within 120 days after receipt of the complete application and statutory fee submitted pursuant to this section, the attorney general shall notify the submitting party that the division of the condominium is approved or shall state in writing the reasons for objection. Any such non-approval shall not prevent the resubmission of the application. Failure by the attorney general to notify the applicant within this period shall be deemed approval, and the applicant may record a certificate so attesting.

(d) No amendment adopted pursuant to this section shall be placed on record until approved by the attorney general.

VI. Nothing in this section shall limit or derogate the statutory authority of any municipality over subdivisions, zoning, land use, or planning.

VII. Nothing in this section shall be construed to limit the ability of a unit owners association to adopt a provision in its condominium instruments expressly waiving the right to avail itself of the procedures set forth in this section to terminate the condominium and divide it into separate and smaller condominiums.

VIII. This section shall apply to all condominiums within the state declared after the effective date of this section.



### III. Unit Owners' Associations

#### 356-B:35. Contents of the Bylaws.

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

II. The bylaws shall provide the means by which the association shall elect a board of directors. The bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board, among other things, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its board may delegate to a managing agent. The board of directors shall have a fiduciary relationship to members of the unit owners' association.

III. The bylaws shall provide for election by the board of directors or, if the declaration requires, by the association members, of a president, treasurer, secretary, and any other officers of the association the bylaws specify.

IV. The bylaws shall specify the qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies.

IV-a. The bylaws may require an employee of a managing agent or condominium association to complete a background check prior to employment. The cost of the background check shall be borne by the managing agent or the association.

V. The bylaws shall specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association.

VI. The bylaws shall specify a method for the association members to amend the bylaws.

VII. The bylaws shall provide that the unit owners' association shall act on behalf of each unit owner in condemnation proceedings against the common areas of the condominium.

VIII. The bylaws shall contain any provision necessary to satisfy requirements of this chapter or the declaration concerning meetings, voting, quorums, and other activities of the association.



IX. The bylaws shall provide for any matter required by laws of this state other than this chapter to appear in the bylaws of organizations of the same type as the association.

X. Subject to the declaration and this chapter, the bylaws may provide for any other necessary or appropriate matters, including matters that may be adopted as rules.

XI. In any case where an amendment to the declaration is required by RSA 356-B:18, II, III, or IV, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on site plans and floor plans recorded pursuant to RSA 356-B:20, I and II, or shall abolish the votes appertaining to former units, as the case may be. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the said amendment.

**356-B:36. Control by the Declarant.**

I. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or its board of directors, or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the board of directors. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which  $\frac{3}{4}$  of the undivided interests in the common areas appertain have been conveyed, whichever occurs first. The time limit initially set by the condominium instruments shall not exceed 5 years in the case of an expandable condominium, 3 years in the case of a condominium containing any convertible land, or 2 years in the case of any other condominium.

II. If entered into during the period of control contemplated by paragraph I, no management contract, lease of recreational areas or facilities, or any other contract or lease executed by or on behalf of the unit owners' association, its board of directors, or the unit owners as a group, shall be binding after such period of control unless then renewed or ratified with the consent of unit owners of units to which a majority of the votes in the unit owners' association appertain.

III. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this





chapter requires action by the unit owners' association, its board of directors, or any officer or officers.

IV. This section shall be strictly construed to protect the rights of the unit owners.

**356 B:37. Meetings.**

I. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, provide to each unit owner notice of the time, place, and purpose or purposes of such meeting in conformity with RSA 356-B:37-a. The minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency. Purposes of the meeting shall include any budget changes or proposal to remove an officer or member of the board of directors. The secretary or other duly authorized officer of the unit owners' association, who shall also be a member of the board of directors of the unit owners' association, shall prepare an affidavit which shall be accompanied by a list of the addresses of all unit owners currently on file with the association and shall attest that notice of the association meeting was provided to all unit owners on that list in a manner conforming to RSA 356-B:37-a. A copy of the affidavit and unit owners list shall be available at the noticed meeting for inspection by all owners then in attendance and shall be retained with the minutes of that meeting. The affidavit required in this section shall be available for inspection by unit owners for at least 3 years after the date of the subject meeting.

II. An association shall hold a special meeting of unit owners to address any matter affecting the unit owners or the association if its president, a majority of the board of directors, or unit owners having at least 33 percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the special meeting, the purpose of which shall be to present the issue to fellow residents and unit owners and to vote on any proposal set forth in the meeting notice. Only matters described in the meeting notice required by RSA 356-B:37-a may be considered at a special meeting.

III. Except as otherwise provided in the bylaws, meetings of the association shall be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.



IV. Unit owners shall be given a reasonable opportunity at any meeting to comment regarding any matter affecting the association.

V. The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, as provided in RSA 356-B:37-b.

VI. ***The secretary or other designee duly authorized by the board of directors shall take minutes of all meetings held in accordance with this section and RSA 356-B:37-c.*** The board of directors shall make copies of the minutes of all meetings available to the unit owners within 60 days of the meeting or 15 days of the date such minutes are approved by the board, whichever occurs first. The association may opt to provide the minutes electronically or publish them on the association website, in which case the owners shall be informed of the web address. ***An electronic or paper copy of all meeting minutes shall be available to the unit owners for at least 3 years after the date of the meeting. The board shall respond to a unit owner's written request for the minutes within 15 days of receipt of the request.***

#### **356-B:37-a Notice to Unit Owners.**

An association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit owner designates. If the unit owner does not designate an address, the association shall deliver notices by hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit.

#### **356-B:37-b Meetings by Telephonic, Video, or Other Conferencing Process.**

When the declaration or bylaws provides, the association, committees thereof, and the board of directors may meet by telephonic, video, or other conferencing process, provided that the requirements of RSA 356-B:37-c are also met.

#### **356-B:37-c Meetings of the Board of Directors and Committees of the Association.**

The following requirements apply to meetings of the board of directors and committees of the association authorized to act for the association:

I. For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the board of directors. The board of directors and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

II. Not less than once each quarter, and at such additional times as may be specified in the condominium bylaws, the board of directors shall, subject to the provisions of



RSA 356-B:37-d, hold an open regular meeting during which unit owners shall be afforded a reasonable opportunity to comment on any matter affecting the association. At its discretion, the board of directors may meet in a meeting not open to unit owners provided the meeting is recorded and the recording is made available to unit owners for up to 30 days upon request.

III. Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each meeting of the board of directors to each board member and to the unit owners. The notice shall be given at least 10 days before the meeting and shall state the time, date, place, and agenda of the meeting.

IV. If any materials are distributed to the board of directors before the meeting, the board of directors at the same time shall make copies of those materials reasonably available to unit owners, except that the board of directors need not make available copies of unapproved minutes or matters that are to be considered in executive session.

V. In the case of self-managed community associations, meetings of the board of directors or committees expressly for purposes of implementation of decisions made in open meetings shall be exempt from the requirements of RSA 356-B:37, 356-B:37-a, and this section.

#### **356-B:37-d Executive Session.**

The board of directors and association committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

- I. Consult with the association's attorney.
- II. Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings.
- III. Discuss labor or personnel matters.
- IV. Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage or prevent public knowledge of the matter to be discussed if the board of directors or a committee determines that public knowledge would violate the privacy of any person.

#### **356-B:37-e Disclosure of Financial Information and Meeting Minutes to Unit Owners.**



I. Financial information shall be presented on a profit and loss statement and shall be available to the unit owners 30 days prior to the annual meeting. The format of the profit and loss statement shall remain constant from year to year. It shall include specification of all revenues received in the budget year less future revenue liabilities, and specification of all expenses by general type. When the annual meeting is held before the end of the fiscal year, year-to-date spending shall be provided in each category, and a final year-end accounting shall be sent to each unit owner within 90 days of the close of the fiscal year.

II. Each unit owner shall have access to all financial information within 15 days of the unit owner's request regarding any contracts, mortgages, loans, and the terms of such loans, and any outstanding debts and balances of all accounts held by the association. The individual accounts of unit owners shall not be included unless a lien for nonpayment of assessments or fees has been recorded, in which case, the account shall be disclosed pursuant to a request for financial information under this section.

III. Each unit owner shall have access to the names of all employees of the association and the salaries paid to employees with association funds, including any third party arrangements for services, except at time sharing condominiums where employees' salaries shall be confidential unless disclosure is consented to by the association board of directors and the condominium manager, if there is a manager. If an employee is related to a board member, or is a former officer of the association, the board shall disclose this fact to the unit owners at the next regular or annual meeting.

IV. A fee may be charged to unit owners for provision of information requested beyond the last 3 fiscal years.

V. The board of directors shall make copies of the minutes of all meetings available to the unit owners within 60 days of the meeting or 15 days of the date such minutes are approved by the board, whichever occurs first. The association may opt to provide the minutes electronically or publish them on the association website, in which case the owners shall be informed of the website address. A unit owner who submits a written request for access to the association's website shall be granted access within 15 days of the request, at no additional charge to the owner.

VI. The board of directors may approve the minutes through the use of electronic means such as email, video conferencing, fax machine, or PDF files transmitted over the Internet.



**356-B:38. Quorums.**

I. Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The bylaws may provide for a smaller percentage, not less than 25 percent, or for a larger percentage for associations having fewer than 25 units; provided, however, this paragraph shall not apply if the condominium is comprised of time sharing interests.

II. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the board of directors if persons entitled to cast more than 1/2 of the votes in that body are present at the beginning of such meeting.

III. If a quorum is not met for an annual meeting, the board shall reschedule the meeting within 60 days and provide proper notice and proxies.

**356-B:39. Voting.**

I. The bylaws may allocate to each unit depicted on site plans and floor plans that comply with RSA 356-B:20, I and II, a number of votes in the unit owners' association proportionate to the undivided interest in the common areas appertaining to each such unit.

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

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



#### IV.

(a) The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. A person may not cast undirected proxies representing more than 10 percent of the votes in the association for a condominium of more than 20 units. A person may not cast undirected proxies representing a majority of the votes in the association for a condominium of 20 units or fewer. The proxy or proxies shall list the name of the person who is to vote. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated or if it purports to be revocable without the required notice. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. The board of directors shall deliver to the unit owners, together with their notice of meeting and agenda, proxy forms bearing a control number which the board of directors shall correlate to the list of all unit owners then entitled to vote. At the noticed meeting, the board of directors shall recover all proxies and compare them to the control list maintained for that purpose. Any proxies which are on a form other than that provided by the board of directors or which do not correlate with the control list maintained by the board of directors shall be disregarded for purposes of determining whether a quorum was present at the meeting and for purposes of casting any vote at that meeting; provided, however, this paragraph shall not apply if the condominium is comprised of time sharing interests.

(b) The board of directors shall retain all proxies delivered to the board of directors and all independent written confirmation of any such proxies for inspection by the unit owners for a period of not less than 3 years from the date of the unit owners' association meeting.

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

VI. If more than 50 percent of the votes are acquired by a single person after developer control is terminated, a 2/3 majority shall be required to change bylaws, budgets, and any contracted property management. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first



meeting held on or after the date of that proxy. The board of directors of the unit owners' association shall devise procedures to assure that all proxies voted at any meeting are valid and were duly executed by association members having the right to vote. Those procedures shall include one of the following:

**356-B:39-a Voting Without a Meeting.**

Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

I. The association shall notify the unit owners, in the manner prescribed by RSA 356-B:37-a, that the vote will be taken by ballot and deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

II. The ballot shall:

- (a) Set forth each proposed action and provide an opportunity to vote for or against the action.
- (b) Indicate the number of responses needed to meet the quorum requirements.
- (c) State the percent of votes necessary to approve each matter other than election of directors.
- (d) Specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than 10 days after the date the association delivers the ballot.
- (e) Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

III. Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

IV. Approval by ballot pursuant to this section is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

V. All ballots cast in an association vote under this section shall be counted using a tally sheet for the vote. If more than one ballot item was voted on, the board may elect to keep a corresponding tally sheet for each ballot item. The ballots and tally sheets shall be made available for examination and recount, by request of any owner participating in the vote, immediately following announcement of the results of the vote taken. During any examination and recount one or more members of the board of directors and at least one additional owner



shall be present. The ballots shall be examined and tallied to verify that the count and announced result was correct.

**356-B:40. Members of the Board of Directors and Officers.**

I. Except as provided in the declaration, the bylaws, paragraph II, or other provisions of this chapter, the board of directors acts on behalf of the association. In the performance of their duties, officers and members of the board of directors appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the board of directors not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under RSA 292, and are subject to the conflict of interest rules governing directors and officers under RSA 292. The standards of care and loyalty described in this paragraph apply regardless of the form in which the association is organized.

II. The board of directors shall not:

- (a) Amend the declaration except as otherwise provided in this chapter.
- (b) Amend the bylaws.
- (c) Terminate the unit owners' association.
- (d) Elect members of the board of directors but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members.
- (e) Determine the qualifications, powers, and duties, or terms of office of members of the board of directors.

II-a. An officer shall not directly receive any salary or compensation from the association for the performance of duties as an officer or board member and shall not in any other way benefit financially from service to the association.

II-b. If annually approved by a 2/3 majority of the voting interests present at a properly called meeting of the association, the association may waive the requirements of paragraph II-a.

III. The board of directors shall adopt budgets as provided in RSA 356-B:40-c.

IV. Subject to the provisions of paragraph V, the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before the period ends. In that event, the declarant may require during the remainder of the period that specified actions of the association or board of directors, as





described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, and except as provided in RSA 356-B:36, a period of declarant control terminates no later than the earliest of:

- (a) Sixty days after conveyance of 60 percent of the units that may be created to unit owners other than a declarant;
- (b) Two years after all declarants have ceased to offer units for sale in the ordinary course of business;
- (c) Two years after any right to add new units was last exercised; or
- (d) The date the declarant, after giving notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

V. Not later than 60 days after conveyance of 1/4 of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the board of directors shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 1/2 of the units that may be created to unit owners other than a declarant, not less than 1/2 of the members of the board of directors shall be elected by unit owners other than the declarant.

VI. Not later than the termination of any period of declarant control, the unit owners shall elect a board of directors with at least 3 members, a majority of whom shall be unit owners. Unless the declaration provides for the election of officers by the unit owners, the board of directors shall elect the officers. The members of the board of directors and officers shall take office upon election or appointment.

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

VIII. If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of RSA 356-B:12, I, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he or she not director, officer, partner in, or trustee of such a person shall be deemed disqualified from continuing in office if the officer ceases to



have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under paragraph I were it a natural person holding such office.

IX. Any officer is a suitable person to receive service of process in any proceeding against the association.

X. For the purpose of receipt of notification by a municipality of a local land use board hearing, the officers shall be responsible for serving as agents of the unit owners' association.

**356-B:40-a Managing Agent and Contractors; Disclosure of Fees; Qualifications.**

I. If the unit owners' association or the board of directors has delegated certain powers and duties to a managing agent, the managing agent shall disclose any referral fees received from contract work performed on behalf of the association to the board of directors prior to the next regularly scheduled board meeting, unless the terms of any referral fees are disclosed in the managing agent's contract with the unit owners' association, in which case disclosure of fees actually received shall not be required.

II. The managing agent also shall disclose to the board of directors the amount and purpose of any fees, other than maintenance fees, received from a unit owner, unless the terms of any such fees are disclosed in the managing agent's contract with the unit owners' association, in which case disclosure of fees actually received shall not be required.

III. Any contractor licensed by the state of New Hampshire who performs work for a unit owner shall disclose on the bill any referral fee paid by the contractor.

**356-B:40-b Removal of Officers and Directors.**

I. Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person or by proxy at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, provided that:

- (a) A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control.
- (b) The unit owners may not consider whether to remove a member of the board of directors or an officer elected by the unit owners at a meeting of



the unit owners unless that subject was listed in the notice of the meeting.

II. At any meeting at which a vote to remove a member of the board of directors or an officer is to be taken, the member or officer being considered for removal shall have a reasonable opportunity to speak before the vote.

**356-B:40-c Adoption of Budgets and Special Assessments.**

I. The board of directors, at least annually, shall adopt a proposed budget for the unit owners' association for consideration by the unit owners. Not later than 30 days after adoption of a proposed budget, the board of directors shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting 2/3 of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget.

II. The board of directors, at any time, may propose a special assessment. Except as otherwise provided in paragraph III, the assessment is effective only if the board of directors follows the procedures for ratification of a budget described in paragraph I and the unit owners do not reject the proposed assessment.

III. If the board of directors determines by a 2/3 vote that a special assessment is necessary to respond to an emergency:

- (a) The special assessment becomes effective immediately in accordance with the terms of the vote.
- (b) Notice of the special assessment shall be provided promptly to all unit owners.
- (c) The board of directors may spend the funds paid on account of the special assessment only for the purposes described in the vote.

**III. For the purposes of this section, an "emergency" means a situation that requires immediate action by the board of directors where a danger to the structural integrity of the common areas is discovered or to the life and safety of property unit owners or as required by court order or to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.**



**356-B:41. Upkeep of the Condominium; Warranty Against Structural Defects.**

I. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (a) to the unit owners' association in the case of the common areas, and (b) to the individual unit owner in the case of any unit or any part thereof.

I-a. No unit owners' association, its agents, or its employees shall willfully enter into the unit of a unit owner without providing prior notice to the owner, other than for emergency purposes.

I-b. No unit owner, tenant, or other person occupying a condominium unit shall willfully refuse the unit owners' association, its agents, or its employees access through a condominium unit as is necessary to enable them to exercise and discharge their respective powers and responsibilities at a reasonable time after notice which is adequate under the circumstances. But to the extent that damage is inflicted on the common areas or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

II. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for one year from the date each is conveyed, and all of the common areas for one year. The one year referred to in the preceding sentence shall begin as to each of the common areas whenever the same has been completed or if later, (a) as to any common area within any additional land or portion thereof, at the time the first unit therein is conveyed, (b) as to any common area within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (c) as to any common area within any other portion of the condominium at the time the first unit therein is conveyed. For the purposes of this paragraph, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. For the purposes of this paragraph, structural defects shall be those defects in components constituting any unit or common area which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this paragraph shall be construed to make the declarant responsible for any items of maintenance relating to the units or common areas.

**356-B:42. Control of the Common Areas.**

I. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the unit owners' association shall have the power to:



- (a) Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the said association arising under RSA 356-B:41;
- (b) Make or cause to be made additional improvements on and as a part of the common areas;
- (c) Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval; and
- (d) Acquire, hold, convey and encumber title to real property, including but not limited to condominium units, whether or not the association is incorporated.

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

III. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its board of directors.

**356-B:43. Insurance.**

- I. The condominium instruments shall require the unit owners' association, or the board of directors or managing agent on behalf of such association, to obtain:
  - (a) A master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common areas;
  - (b) A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the board of directors, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium; and
  - (c) Such other policies as may be required by the condominium instruments, including, without limitation, workers' compensation insurance, liability insurance on motor



vehicles owned by the association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

II. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with RSA 356-B:37-a.

III. Unless the unit owners vote to terminate the condominium under RSA 356-B:34, the proceeds of the master casualty policy shall be used to repair, replace or restore the structure or common area damaged by casualty.

**356-B:44. Rights to Common Profits.**

The common profits shall be applied to the payment of common expenses, and rights in any surplus remaining shall accrue to the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit. Any such surplus shall be distributed accordingly to the unit owners, except to such extent as the condominium instruments may require the same to be added to reserves maintained pursuant to those instruments.

**356-B:45. Liabilities for Common Expenses.**

I. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common area shall be specially assessed against the condominium unit to which that limited common area was assigned at the time such expenses were made or incurred. This provision shall also apply to the expansion or creation of limited common areas pursuant to RSA 356-B:19, III. If the limited common area involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

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



III. The amount of all common expenses not specially assessed pursuant to paragraphs I and II, less the amount of all common profits, shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

**356-B:46. Lien for Assessments.**

I. (a) The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien, once perfected, shall be prior to all other liens and encumbrances except (1) real estate tax liens on that condominium unit, (2) liens and encumbrances recorded prior to the recordation of the declaration, and (3) sums unpaid on any first mortgages or first deeds of trust encumbering that condominium unit and securing institutional lenders.

(b) The provisions of this paragraph shall not affect the priority of mechanics' and materialmen's liens.

(c) Notwithstanding subparagraph (a), the lien for regular monthly common assessments unpaid with respect to a residential condominium unit during the 6-month period immediately preceding the filing of the memorandum specified in paragraph III, together with all costs of collection, including reasonable attorney's fees, shall be prior to the first mortgage; provided that the unit owners' association sends, within 70 days of the occurrence of any delinquency, the unit owner and the institutional lender holding the first mortgage written notice of the delinquency by certified mail and first class mail that the account is at least 60 days delinquent; and additionally, sends such lender notice by certified mail and first class mail, at least 30 days prior, of its intent to file said memorandum of lien. The lien shall not include any amounts attributable to special assessments, late charges, fines, penalties, or interest assessed by the unit owners' association, nor shall the lien apply to regular assessments or costs of collection coming due prior to the effective date of this section. In giving the foregoing notices, the unit owners' association may rely on the records of the applicable registry of deeds as to the address of the first institutional lender unless such lender has notified the unit owners' association by certified mail of a different address.

(d) The priority lien rights established under subparagraph (c) shall not entitle or permit the unit owners' association to assert more than one priority lien unless and until the existing priority lien is first discharged by the unit owners' association. The priority lien rights established under subparagraph (c) also shall not apply to any mortgage executed prior to the



effective date of this section.

(e) After notification to the first mortgage institutional lender of a delinquency, in addition to any previously agreed to or required escrow amounts, the institutional lender may also require a residential unit owner to place an amount equal to not more than 6 months of current regular assessments in escrow to cover the cost of any delinquency.

II. Notwithstanding any other provision of this section, or any other provision of law, all memoranda of liens arising under this section shall be recorded in the registry of deeds in each county in which any part of the condominium is located. Such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

III. The unit owners' association, in order to perfect the lien given by this section, shall file, before the expiration of 6 months from the time such assessment became due and payable in the registry of deeds in the county in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

- (a) A description of the condominium unit in accordance with RSA 356-B:9;
- (b) The name or names of the persons constituting the unit owners of that condominium unit;
- (c) The amount of unpaid assessments currently due or past due together with the date when each fell due; and
- (d) The date of issuance of the memorandum.

It shall be the duty of the register in whose office such memorandum shall be filed as hereinabove provided to record and index the same as provided in paragraph II, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

IV. No suit to enforce any lien perfected under paragraph III shall be brought after 6 years from the time when the memorandum of lien was recorded; provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section; and provided further that nothing herein shall extend the time within which any such lien may be perfected.





V. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees, together with interest at the maximum lawful rate for the sums secured by the lien from the time such sum became due and payable.

VI. When payment or satisfaction is made of a debt secured by the lien perfected by paragraph III, said lien shall be released in the same manner as required by RSA 479:7 for mortgages. For the purposes of this section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor and shall discharge said lien.

VII. Nothing in this section shall be construed to prohibit actions at law to recover sums for which paragraph I creates a lien, maintainable pursuant to RSA 356-B:15.

VIII. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 business days from the receipt of such request shall extinguish the lien created by paragraph I as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the board of directors, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

IX. Notwithstanding any law, rule, or provision of the condominium declaration, bylaws, or rules to the contrary, the unit owners' association may authorize, pursuant to RSA 356-B, its board of directors to, after 30 days' prior written notice to the unit owner and unit owner's first mortgagee of nonpayment of common assessments, terminate the delinquent unit's common privileges and cease supplying a delinquent unit with any and all services normally supplied or paid for by the unit owners' association. Any terminated services and privileges shall be restored upon payment of all assessments.

X. The unit owners' association may collect an amount of up to 6 months' common expense assessments in advance from unit owners and hold the amount so collected in escrow and, upon default by any unit owner in the payment of common expense assessments, apply the same to cure such default.

**356-B:46-a. Rent Collection Upon Delinquency in Payment of Common Expenses.**

I. If a unit owner fails to pay the common expenses assessed to the unit by the unit owners' association within 60 days of the date it was due, the unit owners association may, as a



separate and additional remedy, subject to the existing rights of a holder of a first mortgage of record as provided in this section, collect from any tenant renting the unit any rent then or thereafter due to the owner of such unit. The unit owners' association shall apply such rent collected against the amount owed to it by the unit owner. Prior to taking any action under this paragraph, the unit owners' association shall give to the delinquent unit owner written notice of its intent to collect the rent owed. Such notice shall be sent by both first class and certified mail, shall set forth the exact amount the unit owners' association claims is due and owing by the unit owner, and shall indicate the intent of the association to collect such amount from rent, along with any other amounts which become due within the current fiscal year and which remain unpaid. A copy of such notice shall be provided to any first mortgagee of record on such unit who has previously requested in writing that the unit owners' association notify it of any delinquency in the payment of amounts due to it by the owner of such unit.

II. The unit owner shall have 30 days from the date of mailing of such notice to pay the amounts due, including collection costs, or to provide proof of the prior payment of the assessments due. No unit owner shall be entitled to withhold payment of assessments due, offset against the same, or make any deduction therefrom without first obtaining a determination by a court of competent jurisdiction that the assessment was unlawful.

III. If the unit owner fails to timely file a response in compliance with paragraphs I and II, the unit owners' association may notify and direct each tenant renting such unit from such owner to pay all or a portion of the rent otherwise due by such owner to the association, such rent or portion of such rent to be in the amount of the association claimed is due on its notice to the unit owner or the full rent, whichever is less. The association shall have a continuing right to collect any rent otherwise payable by the tenant to such unit owner until such amount, plus any charges thereafter becoming due, are satisfied in full. Nothing in this section shall preclude the unit owner from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed. Nothing in this section shall prevent the unit owners' association from bringing an action under this chapter or to otherwise establish the amount owed to it by the unit owner or otherwise to seek and obtain an order requiring the tenant in such unit, or tenants in other units owned by the unit owner in the condominium, to pay to the association rent otherwise due to the unit owner otherwise limit the unit owner's association's rights at common law.

IV. In no event shall a unit owner take any retaliatory action against any tenant who pays rent, or any portion of rent, to the unit owners' association as provided in this section. Any tenant so paying rent shall not be deemed in default on the rent to the extent of the payment to the association. Any waiver of the provisions of this section in any lease or rental agreement shall be void and unenforceable as against public policy.



V. Notwithstanding any other provision of this chapter, a vote of a majority of those attending an annual meeting of the unit owner's association, in person or by proxy, shall be necessary to adopt the provisions of this section as a part of the association's declaration or bylaws or both.

**356-B:47. Restraints on Alienation.**

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints shall be void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, the board of directors, and every unit owner. Payment of a fee not exceeding \$25 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

**356-B:47-a Flag Display.**

Pursuant to the Freedom to Display the American Flag Act of 2005, Public Law 109-243, and notwithstanding any provision in the condominium instruments to the contrary, the unit owners' association shall not prohibit the outdoor display of the United States flag in a manner consistent with the United States flag code and RSA 3-E. The association may adopt reasonable rules regarding the size of the flag and the manner in which the flag is displayed. When a flag is flown from the unit owner's balcony or deck, from a bracket, the flag may extend over the vertical line of the unit owner's outboard deck line, which would put the flag into the common area, versus the unit owner's private space.

**IV. Administration and Enforcement**

**356-B:48. Administration; Enforcement.**

The provisions of this chapter shall be administered and enforced by the consumer protection and antitrust bureau, department of justice, established in RSA 21-M:9.



**356-B:49. Exemptions.**

I. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this subdivision do not apply to offers or dispositions of any interest in a condominium unit:

(a) If not more than 10 units are included in the condominium; provided, however, this exemption shall not apply to a condominium involving time sharing interests;

(b) If all of the units are restricted to commercial, industrial or other nonresidential use;

(c) Pursuant to court order; and

(d) By any government or government agency.

II. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of RSA 356-B:50-55; 56, I; 56, III, and 58 do not apply to offers by the declarant in connection with efforts to obtain nonbinding reservation agreements; provided, however, that any such declarant shall first have notified the attorney general in writing of its intention to conduct such efforts.

III. The attorney general may from time to time, in accordance with rules adopted by him pursuant to RSA 541-A, exempt from any one or more of the provisions of this chapter any condominium if he finds that the enforcement of this chapter with respect to such project is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the offering, or because such condominium has been registered and approved pursuant to the laws of any other state. Applications for exemption shall be filed in a form prescribed by the attorney general and shall be accompanied by an application fee of \$200.

**356-B:50. Limitations on Dispositions of Units.** Unless exempt by RSA 356-B:49:

I. No declarant may offer or dispose of any interest in a condominium unit located in this state, nor offer or dispose in this state of any interest in a condominium unit located without this state prior to the time the condominium including such unit is registered in accordance with this chapter;

II. No declarant, except as provided in RSA 356-B:52, IV, may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within 5 days after the contract date of the



disposition, or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice thereof hand-delivered or deposited in the United States mail, return receipt requested, within the 5 day period, to the declarant or to any agent of the declarant; provided, however, that if the purchaser elects to mail the notice of cancellation, he must also provide the declarant with telephonic notice of cancellation within the 5 day period. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be refunded in its entirety no later than 10 days after the receipt of such written notice of cancellation. "Contract date" shall not refer to the closing or settlement date, but shall refer to the creation of a binding obligation for consideration.

III. No person, other than the declarant or regular employee thereof, shall act in this state as an agent of said declarant for the sale or disposition of any interest in a condominium unit subject to the provisions of this chapter unless he is licensed pursuant to RSA 331-A.

IV. No person shall, in connection with the offer or disposition of any interest in a condominium unit located in this state or in connection with the offer or disposition in this state of any interest in a condominium unit located without this state, conduct or participate in any type of lottery or contest or offer prizes or gifts for the purpose of inducing or encouraging any person to visit a condominium, attend any meeting at which a condominium will be discussed, or acquire any interest in a condominium unit; provided, however, that this paragraph shall not prohibit the reimbursement of a prospective purchaser for reasonable travel expenses or the offering, in a manner not dependent upon or connected with chance, of tangible personal property which will be delivered to the offeree not later than the time of the offeree's visit to a condominium or attendance at a meeting at which a condominium will be discussed.

V. No unit owner, or owner of a time sharing interest as defined in RSA 356-B:3, XXVIII, shall convey his or her interest in a condominium unit to the condominium unit owners' association without the acceptance of the deed by the condominium board of directors or its managing agent prior to the recordation thereof in the county registry of deeds.

**7**

**356-B:51. Application for Registration; Fee.**

I. The application for registration of the condominium shall be filed in a form prescribed by the attorney general and shall contain the following documents and information:

(a) An irrevocable appointment of the attorney general to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the declarant or his personal representative;



- (b) Site and floor plans which comply with RSA 356-B:20, except that the certificates required with respect thereto need not be signed prior to approval of said application;
- (c) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;
- (d) The declarant's name, address, and the form, date, and jurisdiction of organization, and the address of each of its offices in this state;
- (e) The name, address, and principal occupation for the past 5 years of every officer of the declarant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the declarant or the condominium as of a specified date within 30 days of the filing of the application;
- (f) If the declarant is a closely held corporation, partnership, joint stock company, trust or sole proprietorship, the name, address, and principal occupation of each trustee, stockholder, partner, or person having any beneficial interest therein;
- (g) If the declarant is a publicly held corporation, the name, address and principal occupation of each stockholder owning more than 10 percent of the shares outstanding;
- (h) If the declarant is a subsidiary corporation, the name, address and principal occupation of each stockholder or person having a beneficial interest therein, and the name, address and principal occupation of each stockholder owning more than 10 percent of the shares outstanding in the corporation or corporations to which it is subsidiary;
- (i) A statement of the condition of the title to the condominium, including all easements, conditions, covenants, restrictions, liens and other encumbrances, if any, affecting the condominium property owned by the declarant, with appropriate recording data, as of a specified date within 30 days of the date of application, which statement shall be in the form of a title opinion of a licensed attorney, not under salary to the declarant, or other evidence of title acceptable to the attorney general;
- (j) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;



(k) Copies of the declaration and bylaws and of any management contracts or other contracts, including leases, affecting the use, maintenance or administration of, or access to, all or a part of the condominium;

(l) if there is a blanket encumbrance or lien affecting more than one unit, a statement of the consequences for a purchaser of failure to discharge the blanket encumbrance or lien and the steps, if any, taken to protect the purchaser in case of this eventuality;

(m) A statement of the zoning, subdivision, and other governmental approvals, if any, affecting the condominium, including building permits and their status, and also, if known, any existing tax and existing or proposed special taxes or assessments which affect the condominium;

(n) A statement of the existing provisions for access, sewage disposal, water, and other public utilities in the condominium; a statement of any improvements or amenities which may be constructed, an estimate of their cost and the schedule for their completion, provided, however, that if the declarant will give no assurances as to the construction or completion of said improvements or amenities, a statement that no assurance will be given must be included; and a statement of the plan for financing the construction of said improvements or amenities and the maintenance of the condominium;

(o) A description of the promotion plan for the disposition of the units in the condominium;

(p) The proposed public offering statement;

(q) If the declarant is a corporation, a copy of its articles of incorporation with all amendments thereto;

(r) If the declarant is a trust, a copy of all instruments by which the trust is created together with all amendments thereto;

(s) If the declarant is a partnership, unincorporated association, joint stock company, or any other form or organization, a copy of its articles of partnership or association and all other papers pertaining to its organization, including all amendments thereto;

(t) If the declarant is not the holder of legal title, copies of the appropriate documents required by subparagraphs l(q), (r) or (s) shall be submitted for the holder of legal title;

(u) Any other information including any current financial statement, which the attorney general by rules reasonably requires for the protection of purchasers. If the declarant



is a corporation, limited liability company, or other entity, personal financial statements from all principals holding more than a 25 percent ownership interest in the declarant, certified as true and complete by the individual principals, accompanied by federal income tax returns for the 2 most recent full calendar years, may be submitted in lieu of financial statements for the declarant. Financial information filed with the attorney general shall not be disclosed publicly except in connection with a hearing, civil action, or criminal action involving the party who submitted the information.

II. A declarant of a condominium of no more than 25 units may make an abbreviated registration, in lieu of these requirements, which shall contain only the documents and information required by RSA 356-B:51, I(a), (c)-(h), (k), (m), (n), (o) and (u); provided, however, that this section shall not apply to a condominium in which time sharing interests are offered.

III. A declarant of a condominium which has been registered under the federal Interstate Land Sales Full Disclosure Act may file, in lieu of the documents and information required by RSA 356-B:51, I(b)-(e) and (i)-(t) and RSA 356-B:52, I, a copy of an effective statement of record, a property report, and any exhibits requested by the agency, filed with the secretary of housing and urban development.

IV. The submission of documents and information required by RSA 356-B:51, I, may be satisfied by the documents and information contained in or attached to the public offering statement.

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

VI. At any time the attorney general has reasonable cause to believe that the declarant may be unable to complete the development of a condominium, or provide for its maintenance, if responsibility therefor is assumed by the declarant, as represented in its application for registration due to:

(a) Its failure to commence or complete the development of the condominium according to schedules set forth in the application;

(b) Its failure to commence or complete the development of any other condominium or subdivided lands, as defined in RSA 356-A:1, VI, according to representations authorized and made by the declarant or subdivider in connection with the offering or disposing of any interest therein;





(c) Its failure to set forth a reasonable plan to obtain adequate financing to commence or complete the development of the condominium or provide for its maintenance; or

(d) Its commission of any false, deceptive or misleading acts in connection with the offering or disposing of any interest in any condominium or subdivided lands, as defined above;

he may require the declarant to post a bond in favor of the state or to provide evidence of financial security in such amount as the attorney general determines to be necessary to provide reasonable assurance of the commencement and completion of the development of the condominium. Such bond shall not be accepted unless it is with a surety company authorized to do business in this state. Any person aggrieved by the failure of the declarant to complete the condominium as represented in the application may proceed on such bond against the declarant or surety or both to recover damages.

VII. Each application shall be accompanied by a fee in an amount equal to \$30 per unit, except that the initial application fee shall be not less than \$300 nor more than \$2,000, and the fee for any application for registration of additional units shall be not less than \$200 nor more than \$2,000.

**356-B:52. Public Offering Statement.**

I. A public offering statement shall be in a form prescribed by the attorney general and shall include the following:

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

(b) A general description of the nature of the condominium and of the plan of its development, including the total number of units, and interests in such units, in the offering; the total number of units, and interests in such units, planned to be sold and rented by the declarant; the total number of units, and interests in such units, that may be included in the condominium by reason of future expansion or merger of the project by the declarant; and the maximum period of time the declarant will control the unit owners' association of the condominium;

(c) Copies of the declaration and bylaws;

(d) Copies of any management contract or other contracts, including leases, affecting the use, maintenance, or administration of, or access to, all or any part of the condominium with a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), a statement of



whether any provisions have been made in the budget for capital expenditures or major maintenance reserves, and the relationship, if any, between the declarant and the managing agent or firm;

(e) A general description of any improvements or amenities which may be constructed, including a statement whether or not assurances are given as to their construction or completion, the status of construction, zoning requirements, and an itemization of all governmental approvals obtained by the declarant affecting the condominium;

(f) A list of any encumbrances, easements, liens and matters of title affecting the condominium, and a statement that a copy of the legal documents pertaining to the same will be available on request;

(g) A list of any express warranties provided by the declarant on the units and the common area, other than the warranty prescribed by RSA 356-B:41, II, and a statement that documents evidencing such warranties will be provided to the purchaser at the time of sale;

(h) A statement of the cancellation rights set forth in RSA 356-B:50, II; and

(i) Additional information required by rules adopted by the attorney general, pursuant to RSA 541-A, to assure full and fair disclosure to prospective purchasers.

II. The public offering statement shall not be used for any promotional purposes until it is approved by the attorney general. The attorney general may, in his discretion, authorize the use of such statement prior to its approval of the registration of the condominium under such conditions as he deems appropriate. No person may advertise or represent that the attorney general approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different type than the remainder of the statement unless the attorney general requires it, and no statement may be used unless in its entirety.

III. The attorney general may require the declarant at any time to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. A public offering statement is not current unless all amendments are incorporated.

IV. Any declarant permitted to make an abbreviated registration pursuant to RSA 356-B:51, II, and any declarant of a condominium which has been registered under the federal Interstate Land Sales Full Disclosure Act, is not required to prepare a public offering statement to be used in connection with the offer or disposition of any unit of the condominium.



**356-B:53. Inquiry and Investigation.**

I. Upon receipt of an application for registration in proper form, the attorney general shall forthwith initiate an investigation to determine:

(a) That the declarant can or can reasonably be expected to be able to convey or cause to be conveyed the interests in the units offered for disposition if the purchaser complies with the terms of the offer and when appropriate, the release clauses, conveyances in trust or other safeguards have been provided;

(b) That there is reasonable assurance that all uncompleted improvements and amenities will be completed as represented. Reasonable assurance includes, but is not limited to, institutional financing in the form of a revolving line of credit in an amount equal to one-fourth of the total cost of constructing the units being registered, so long as (i) the loan documents provide (a) that funds may be re-advanced during the term of the loan to construct the units, and (b) that the institutional lender shall notify the attorney general in the event that the revolving line of credit is cancelled and (ii) in addition to the funds allocated to unit construction, the applicant shall provide evidence of adequate funds to complete any infrastructure, such as roads and utilities, necessary to service the units being registered. This subparagraph shall not prohibit the attorney general from finding other forms of financing to provide reasonable assurance. If the attorney general determines that a revolving line of credit has been cancelled, or is no longer adequate to pay for the cost of constructing the units that have been registered, the attorney general may issue a temporary cease and desist order pursuant to RSA 356-B:61;

(c) That the promotional plan is not false or misleading and complies with the standards prescribed by the attorney general in his rules and affords full and fair disclosure;

(d) Whether the declarant has not, or, if a corporation, its officers, and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business or any other felony in this state, the United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(e) That the public offering statement requirements of this chapter have been satisfied.

II. All reasonable expenses incurred by the attorney general in carrying out the examination required by paragraph I shall be paid by the declarant, and no order registering the condominium shall be entered until such expenses have been fully paid..



**356-B:54. Notice of Filing and Registration.**

I. Upon receipt of the application for registration in proper form, the attorney general shall, within 10 business days, issue a notice of filing to the declarant. Within 60 days from the date of the notice of filing, the attorney general shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the declarant has consented in writing to a delay.

II. If the attorney general affirmatively determines, upon inquiry and examination, that the requirements of this subdivision have been met, he shall enter an order registering the condominium.

III. If the attorney general determines upon inquiry and examination that any of the requirements of this subdivision have not been met, the attorney general shall notify the declarant that the application for registration must be corrected in the particulars specified within 15 days. If the requirements are not met within the time allowed, the attorney general shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. During said 15 day period the declarant may petition for reconsideration and shall be entitled to a hearing within 15 days of receipt by the attorney general of said petition. The attorney general shall enter his findings on said petition within 10 days of said hearing. The attorney general shall not order a rejection of the registration until such time as the hearing, once requested, has taken place and the attorney general has entered his findings thereon, or such petition is withdrawn; provided, however, that if by the time that said findings are entered, all of the particulars specified in the attorney general's notice have been corrected or, as a result of the attorney general's reconsideration and hearing, have been met to the attorney general's satisfaction, the attorney general shall order registration of the condominium.

IV. The declarant shall not make any material change in the plan of disposition or development of the condominium contained in an application for registration without notifying the attorney general, obtaining his prior approval and making appropriate amendment of the public offering statement.

V. (a) Any extension of a time limit set forth in a declaration and relating to RSA 356-B:16, III(c), RSA 356-B:16, IV(c), or RSA 356-B:23, III shall be effective upon the recordation of an amendment reflecting the agreement of owners of substantially completed units to which 2/3 of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify and if the existing rights to expand or contract the condominium or to exercise convertible land rights have expired, such an amendment shall also require a 4/5 vote of all unit owners of substantially completed units who are present or voting by proxy at a duly called and noticed meeting of the unit owners' association. The amendment



shall be deemed a material change requiring submission to the agency of both a copy of the amendment and a certification to include the following information:

- (1) The necessary vote that was obtained.
- (2) The date that the declaration was originally recorded.
- (3) The date that the amendment under this section was recorded.
- (4) The number of units that are substantially completed.
- (5) The number of units that may be added to the condominium by reason of conversion or expansion.

(b) The certification shall be filed on a specific form made available by the attorney general upon request. Any amendment made pursuant to this section shall be clearly and conspicuously disclosed in any public offering statement that is required for the condominium. A copy of such disclosure shall be submitted to the attorney general, but does not require his approval. However, any defects or ambiguities noted therein by the attorney general and communicated to the submitting party shall be corrected prior to any further use or distribution of the statement.

VI. [Repealed.]

**356-B:55. Annual Report by Declarant.**

On April 1 of each year following the registration of the condominium, the declarant shall, until such time as all of the improvements in the condominium have been completed and all of the units have been disposed of by the declarant, file a report in the form prescribed by the attorney general. The report shall reflect any material changes in information contained in the original application for registration, including but not limited to any change in the ownership of interests in the corporation or organization as required by RSA 356-B:51, I(f), (g) and (h).

**356-B:56. Conversion Condominium; Special Provisions.**

I. Any declarant of a conversion condominium shall include in his public offering statement, in addition to the requirements of RSA 356-B:52, the following:

(a) A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement or closing of the purchase contract and the basis of such fee;

(b) Information on the actual expenditures made on all repairs, maintenance, operation or upkeep of the subject building or buildings within the last 3 years or for the period of the declarant's ownership, whichever, is less, set forth tabularly with the proposed budget of



the condominium, and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If information shall be set forth for the maximum time during said period such building or buildings have been occupied;

(c) A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

(d) A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, which statement shall include the approximate dates of construction, installation, and major repairs, if known, and the expected useful life of each such item, together with the estimated cost (in current dollars) of replacing each of the same.

## II. [Repealed.]

III. The declarant of a conversion condominium shall, in addition to the requirements of RSA 356-B:51, include with the application for registration a copy of the notices described in RSA 356-C:3, I or II, and a certified statement that the notices comply with the provisions of RSA 356-C:3, I or II, and have been or will be mailed to each of the tenants in the condominium for which registration is sought, in compliance with RSA 356-C:3, I or II.

### **356-B:57. Escrow of Deposits.**

Any deposit made in regard to any disposition of any interest in a unit shall either be held in escrow until settlement or closing or shall be delivered to the person providing construction financing, who shall either hold said deposit in escrow or shall apply said deposit to the construction of the condominium; provided, however, that any deposit made under a nonbinding reservation agreement shall be placed in escrow. Subject to the foregoing, such escrow funds shall be deposited in a separate account designated for this purpose; provided, however, if such funds are being held by a real estate broker or attorney licensed under the laws of this state, they may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

### **356-B:58. Resale by Purchaser.**

I. In the event of any resale of a condominium unit or any interest therein by any person other than the declarant, the prospective unit owner shall have the right to obtain from the owners' association, prior to the contract date of the disposition, the following:

- (a) Appropriate statements pursuant to RSA 356-B:46, VIII and, if applicable, RSA 356-B:47;



- (b) A statement of any capital expenditures and major maintenance expenditures anticipated by the unit owners' association within the current or succeeding 2 fiscal years;
- (c) A statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the board of directors;
- (d) A copy of the income statement and balance sheet of the unit owners' association for the last fiscal year for which such statement is available;
- (e) A statement of the status of any pending suits or judgments in which the unit owners' association is a party defendant;
- (f) A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and what additional insurance coverage would normally be secured by each individual unit owner; and
- (g) A statement that any improvements or alterations made to the unit, or the limited common areas assigned thereto, by the prior unit owner are not known to be in violation of the condominium instruments.
- (h) A copy of the condominium declaration, by-laws, and any formal rules of the association.
- (i) A statement of the amount of monthly and annual fees, and any special assessments made within the last 3 years.

II. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall furnish the statements prescribed by paragraph II upon the written request of any prospective unit owner within 10 days of the receipt of such request.

**356-B:59. General Powers and Duties of the Attorney General.**

I. [Repealed.]

II. If it appears that any person has engaged or is about to engage in any false, deceptive or misleading advertising to offer or dispose of any interest in a condominium unit, the attorney general may require by written notice the filing of advertising material relating to such condominium unit prior to its distribution.

III. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the attorney general, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver may be appointed pursuant to paragraph IV. The attorney general is



not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

IV. In connection with any action brought under paragraph III, the attorney general may also petition the court to appoint a receiver to take charge of the business of any person during the course of litigation when the attorney general has reason to believe that such an appointment is necessary to prevent such person from continuing to engage in any act or practice declared unlawful by this chapter and to preserve the assets of said person to restore to any other person any money or property acquired by any unlawful act or practice. The receiver shall have the authority to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, derived by means of any unlawful act or practice, and to sell, convey and assign the same and hold, dispose and distribute the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of any unlawful act or practice, and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent that he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required. In lieu of the foregoing procedure, the court may permit any person alleged to have violated this chapter to post a bond in a manner and in an amount to be fixed by the court. Said bond shall be made payable to the state and may be distributed by the court only after a decision on the merits and the process of appeals has been exhausted.

V. The attorney general may intervene in any suit involving the declarant. In any suit by or against a declarant involving a condominium, the declarant shall promptly furnish the attorney general notice of the suit and copies of all pleadings.

- VI. The attorney general may:
- (a) Accept registrations filed in other states or with the federal government;
  - (b) Contract with similar agencies in this state or other jurisdictions to perform investigative functions; and
  - (c) Accept grants in aid from any governmental source.





VII. The attorney general shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

**356-B:60. Investigations and Proceedings.**

I. The attorney general may make necessary public or private investigations in accordance with law within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. In aid of such investigations, the attorney general may require or permit any person to file a statement in writing, under oath and subject to penalties of perjury or otherwise as the attorney general determines, as to all the circumstances concerning matters under investigation.

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

III. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the attorney general may apply to the superior court for an order compelling compliance.

**356-B:61. Cease and Desist Orders.**

- I. If the attorney general determines after notice and hearing that a person has:
- (a) Violated any provision of this chapter;
  - (b) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of any interest in a unit;
  - (c) Made any material change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the attorney general, obtaining his approval and making appropriate amendment of the public offering statement;



(d) Disposed of any interest in a unit which has not been registered with the attorney general; or

(e) Violated any lawful order or rule of the attorney general; he may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the attorney general will carry out the purpose of this chapter.

II. If the attorney general determines that the public interest will be irreparably harmed by delay in issuing an order, he may, without hearing, issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the attorney general shall attempt to give telephonic or other notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include findings of fact in support of the attorney general's determination that the public interest will be irreparably harmed by delay in issuing the order and a provision that, upon request, a hearing will be held within 10 business days of the deposit in the United States mails or delivery in hand of said order, to determine whether or not it becomes permanent.

**356-B:62. Revocation of Registration.**

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

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

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

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

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

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

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



II. If the attorney general finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, he may issue a cease and desist order instead.

III. If the attorney general makes a determination that the public interest will be irreparably harmed by delay in issuing an order, he may, without hearing, issue a temporary cease and desist order subject to the requirements of RSA 356-B:61, II.

**356-B:63. Judicial Review.**

I. Any person aggrieved by a decision or action of the attorney general may, by petition, appeal from said decision or action to the superior court for review. The superior court may affirm, reverse, or modify the decision or action of the attorney general as justice may require.

II. The filing of the petition does not itself stay enforcement of the attorney general's decision. The attorney general may grant, or the superior court may order, a stay upon appropriate terms.

III. Within 30 days after the service of the petition, or within further time allowed by the court, the attorney general shall transmit to the superior court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

IV. If, before the date set for a court hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the attorney general, the court may order that the additional evidence be taken before the attorney general, upon conditions determined by the court. The attorney general may modify his findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the superior court.

**356-B:64. Penalties.**

Any person who willfully violates any provision of this subdivision IV or of a rule adopted under it or any person who willfully, in an application for registration, makes any untrue statement of a material fact or omits to state a material fact shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.



**356-B:65. Civil Remedy.**

I. Any declarant who disposes of any interest in a condominium unit in violation of this chapter, or who in disposing of any such interest makes an untrue statement of a material fact, or who in disposing of any such interest omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading, is liable to the purchaser of such interest, as set forth in paragraph II, unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the declarant did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

II. Any purchaser, who is eligible for relief under paragraph I, may bring an action to restrain by temporary or permanent injunction any act or practice declared unlawful by this subdivision IV and may recover the consideration, including all finance charges paid in connection with the purchase of the condominium unit together with interest at the rate of 6 percent per year from the date of all such payments, less the amount of any income received from the condominium unit, upon tender of deed reconveying title to the declarant which is as good and marketable as that which was conveyed to the purchaser by the declarant. In the discretion of the court, exemplary damages of up to \$5,000 may also be awarded. If the purchaser no longer owns the condominium unit, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the condominium unit when disposed of and less interest at the rate of 6 percent per year on that amount from the date of disposition. If the purchaser prevails in any such action, he may be awarded all reasonable costs and attorney's fees, as approved by the court.

III. Any person who materially participates in any disposition of any interest in a condominium unit in the manner specified in paragraph I and knew of the existence of the facts by reason of which the liability is alleged to exist shall also be liable jointly and severally with the declarant if and to the extent such liability may exist at common law or under other statutory provision. A right to contribution exists among persons so liable.

IV. Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the condominium and development plan in a material way, is liable only for false statements knowingly made.

V. At any time before the entry of an action under this section, and thereafter only with the approval of the court, a declarant or any other person may limit his exposure herein by tendering a written offer to reimburse the injured person for all mandatory damages set forth in paragraph II, including reasonable attorney's fees and court costs, if any, to the date of such tender upon reconveyance of title as set forth in paragraph II.



VI. A person may not recover under this section in any action commenced more than 2 years from the date the purchaser knew or should have known of the existence of his cause of action, but in any case not more than 6 years after his first payment of money to the declarant in the contested transaction.

VII. Any stipulation or provision purporting to bind any person acquiring any interest in a condominium unit to waive compliance with this chapter or any rule or order under it is void.

VIII. The owner, publisher, licensee or operator of any newspaper, magazine, visual or sound radio broadcasting station or network of stations or the agents or employees of any such owner, publisher, licensee or operator of such newspaper, magazine, station or network of stations shall not be liable under this chapter for any advertising of any condominium or any interest in a condominium unit carried in any such newspaper or magazine or by any such visual or sound radio broadcasting station or network of stations nor shall any of them be liable under this chapter for the contents of any such advertisement.

IX. Any broker or real estate salesman violating any provision of this chapter may, in addition to any other penalty imposed by this chapter, have his real estate broker's or salesman's license suspended or revoked by the real estate commission pursuant to RSA 331-A, for such time as in the circumstances it considers justified.

**356-B:66. Jurisdiction.**

Dispositions of any interest in condominium units are subject to this chapter, and the superior courts of this state have jurisdiction in claims or causes of action arising under this chapter if:

- I. The condominium units offered for disposition are located in this state; or
- II. The declarant's principal office is located in this state; or
- III. Any offer or disposition of any interest in condominium units is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

**356-B:67. Interstate Rendition.**

In the proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.



**356-B:68. Service of Process.**

I. Service may be made by delivering a copy of the process to the office of the attorney general, but it is not effective unless the plaintiff (which may be the attorney general in a proceeding instituted by him):

(a) Forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address, and

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the date specified by the court on the summons, or within such further time as the court allows.

II. If any person, including any nonresident of this state, engages in conduct prohibited by this chapter or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the attorney general to receive service of process in any noncriminal proceeding against him or his successor which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in paragraph I.

**356-B:69. Conflict of Interests.**

No member of the consumer protection and antitrust bureau, department of justice shall act as an officer, employee, agent, attorney or broker of a condominium or offer or dispose of any interest in a condominium unit required to be approved pursuant to RSA 356-B:51

**356-B:70 Committee to Study the Laws Relating to Condominium and Homeowners' Associations.**

I. There is established a committee to study laws relating to condominium and homeowners' associations.

II. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.



III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV. The committee shall:

(a) Study laws relevant to condominium and other homeowners' associations, and the rules and regulations adopted thereunder, to assess their scope and application and whether revision or amendment is necessary.

(b) Study the registration of subdivisions under the land sales full disclosure act, RSA 356-A, and condominiums under the condominium act, RSA 356-B, with the department of justice.

(c) Evaluate the need to distinguish smaller and larger associations in the statutes and to differentiate between condominium associations and homeowners' associations.

(d) Study model laws for possible improvement to New Hampshire laws.

(e) Recommend statutory changes.

(f) Solicit information and testimony from the Community Associations Institute and others with expertise or information relevant to the committee's study.

V. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

VI. The committee shall submit an annual report of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2010 and each November 1 thereafter.