

The Ward & Babb
Vermont Community Association
Guidebook to the 2012 Amendments* to
the Vermont Common Interest Ownership Act**

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** **Disclaimer:** This outline is designed as a primer for association executive boards to gain a working familiarity with the 2012 amendments to Vermont's Common Interest Ownership Act (effective January 1, 2012). It can be used as a reference source to get a general idea of what legal changes of importance to an association have been passed. There are exceptions listed in the statute that are not contained in the narrative. Do not rely on this outline without also reviewing the statute or consulting with competent counsel. This document contains references to the 2012 Amendments only and not to the entire Vermont Common Interest Ownership Act. The entire Act can be found without cost at <http://www.leg.state.vt.us/statutesMain.cfm>; under 27A V.S.A. §§ 1-101 - 4-120.



EXECUTIVE BOARD GUIDEBOOK

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the Vermont Common Interest Ownership Act
(“The Act” or “The 2012 VCIOA Amendments ”)

I NEW “2012” DEFINITIONS

- a. “Unit” means a physical portion of the common interest community designated for separate ownership or occupancy.
- b. “Unit owner” means a declarant or other person that owns a unit.
- c. “Assessment” means the sum attributable to each unit and due to the association pursuant to the budget adopted under section 3-123 of this title.
- d. “Rule” means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property. (Added 1997, No. 104 (Adj. Sess.), § 3, eff. Jan. 1, 1999; amended 2009, No. 155 (Adj. Sess.), § 1, eff. Jan. 1, 2012.). See 27A V.S.A. § 1-103(30)-(32) & (37).

II WHO IS BOUND BY THE “ACT”?

- a. **Residential Condos are Bound by the Entire Act.** The Vermont Common Interest Ownership Act statute **now** applies to **all residential condominiums** in the state **and** to **all other common interest communities** (foot prints, single family lots) that contain twelve (12) or more units that may be used for residential purposes **and** are created in Vermont **after January 1, 2012.**
- b. **Elimination of Original Law.** The Vermont Condominium Ownership Act (original law) 27 V.S.A., Chapter 15, Sub-chapter 1) shall **not apply** to Vermont condos created **after December 31, 1998.**
- c. **Bound by only the “2012” Amendments.** The Amendments to 27A apply to **all common interest communities** (foot prints, single family lots) that contain twelve (12) or more units that may be used for residential purposes and **are created after January 1, 2011.** See 27A V.S.A. § 1-201(a) As Amended.
- d. **Pre 1999 common interest communities bound by specific act provisions relative to events after January 1, 1999.** Generally the **provisions set forth below** shall apply to **all** Vermont Common Interest Communities (foot prints/single family lots, etc.) **created before January 1, 1999.**

Pre 1999 Common Interest Communities (footprints and single family lots) are statutorily bound by these provisions (but they **apply to post January 1, 1999** events and circumstances **only** and do not invalidate existing declarations, bylaws, plats or plans) See 27A V.S.A. § 1-203(b)(2) As Amended:

- i. § 1-103 Definitions.
- ii. § 1-105 Separate titles and taxation.
- iii. § 1-106 Local ordinances, regulations, and building codes.
- iv. § 1-107 Eminent domain.
- v. § 2-103 Construction and validity of declaration and bylaws.
- vi. § 2-104 Description of units.
- vii. § 3-102(a)(1)-(6) and (11)-(16) Powers of unit owners' association.
- viii. § 3-111 Tort and contract liability.
- ix. § 3-116 Lien for sums due associations; enforcement.
- x. § 3-118 Association records.
- xi. § 4-109 Resales of units.
- xii. § 4-117 Effect of violations on rights of action.

e. **Pre 1999 common interest communities bound relative to events after December 31, 2010.** The following provisions generally apply to a Vermont Common Interest Community (foot prints, single family lots, etc.) created before January 1, 1999 but only to events and circumstances after December 31, 2010 and do not invalidate declarations, bylaws, plats or plans. See 27A V.S.A. § 1-204 As Amended.

- i. § 1-206 Amendments to governing instruments.
- ii. § 2-102 Unit boundaries.
- iii. § 2-117(h) and (I) Amendment of declaration.
- iv. § 2-124 Termination following catastrophe.
- v. § 3-103 Executive board members and officers.
- vi. § 3-108 Meetings.
- vii. § 3-110 Voting; proxies; ballots.
- viii. § 3-124 Litigation involving declarant.

III AMENDING GOVERNING DOCUMENTS

- a. § 1-206(b) generally looks to governing documents to determine how to amend those documents. However, if there is no process therein, this provision provides a default provision on how to amend governing documents. See 27A V.S.A. § 1-206(b). Applicability to non-residential common interest communities are addressed at 27A § 1-207.

IV OTHER EXEMPT REAL ESTATE ARRANGEMENTS (i.e. not considered a Common Interest Community)

- a. 2 or more associations sharing common area and paying for it (e.g., pool or park).
- b. An association and a third party owner sharing costs of common area (e.g., access road).
- c. Assessments for association sharing must be budgeted and disclosed in Resale Certificates and public offering statements (i.e. common swimming pool). See generally 27A V.S.A § 1-210.

V SUBDIVISION OF UNITS

- a. If allowed by the Declaration, upon application, the association shall prepare, execute and record an amendment and plans. The amendment shall be executed by the subdividing owners and shall assign an identifying number to the new units and reallocate the allocated interest in the common area to the subdivided units. See 27A V.S.A. § 2-113.

VI DECLARANT AND UNIT OWNER EASEMENT RIGHTS

- a. This is an automatic provision providing a declarant rights to discharge its obligations or exercise special declarant rights to develop the project. The unit owners also have easements through the project for access to their units and use of the common elements as intended. See 27A V.S.A. § 2-116.

VII AMENDMENT OF DECLARATION

- a. **The Declaration controls if the method is stated; Default Provision:** Except as to Declarant amendments, specifically allowed association amendments and specific unit owner amendments (see subsection (a) for details), the declaration and plans may be amended by sixty-seven percent (67%) of the votes of the allocated interest in the association **unless the declaration states otherwise.**
- b. **Limitations on Amendments.** In general (with exceptions) no amendment may create or increase special Declarant rights, increase the number of units, change the boundaries of any unit or change the allocated interests of a unit or the uses to which any unit is restricted without the **unanimous consent of the unit owners.**

- c. **Mortgagee Consent**: If a provision requires the consent of a mortgage holder as a condition to the effectiveness of an amendment, consent is deemed granted if a refusal to consent is not received from lender within sixty (60) days of certified mail notice unless the amendment affects lender's right to foreclose.
- d. **If the declaration requires an eighty percent (80%) super majority**: In the event the declaration requires eighty percent (80%) or more of votes based on the allocated interest, the amendment is approved if:
 - i. eighty percent (80%) agree; no one votes against the proposal; notice is delivered to the unit owners, to those who have not voted or agreed, and they do not object in writing within sixty (60) days or;
 - ii. eighty percent (80%) of the votes allocated within the association support the proposal, one owner objects and the association files the matter in Superior Court against objecting owners and the Court finds the objecting owners do not have an interest different in kind from the other unit owners.
- e. **Declaration amendments prohibiting/restricting use**: An amendment to the declaration may prohibit or materially restrict the permitted uses of, or behavior in a unit, or the number of persons who may occupy units, or other qualifications only by vote or agreement to which at least eighty percent (80%) if the votes in the association are allocated unless the declaration requires a greater percentage. An amendment approved under this section must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted. See 27A V.S.A. § 2-117.

VIII ORGANIZATION OF UNIT OWNERS' ASSOCIATION

- a. No later than the date the first unit is conveyed, members are exclusively all unit owners, the association must have an executive board. The association may be organized as any organization permitted in this state. See 27A V.S.A. § 3-101.

IX POWERS OF THE ASSOCIATION

- a. An association shall adopt and may amend bylaws. Also may adopt and amend rules. See 27A V.S.A. § 3-102.
- b. An association shall adopt and may amend budgets, collect common expenses and invest association funds.
- c. An association may hire and discharge agents.
- d. An association may be involved in litigation, arbitration, mediation, and administrative proceedings.
- e. An association may contract and incur debt.
- f. An association may regulate the use, maintenance, repair, replacement and modification of the common elements.

- g. An association may make additional improvements to common elements.
- h. An association may acquire, hold, encumber and convey an right, title and interest in and/or to real or personal property.
- i. An association may grant easements, leases, licenses and concessions through or over the common elements.
- j. An association may impose and receive payments, fees or charges to use, rent or operate common elements and for services provided to unit owners.
- k. An association may impose charges for late payments of assessments and after notice and hearing, may impose reasonable fines for violations of provisions of the declarations, bylaws and/or rules.
- l. An association may impose reasonable charges for the preparation and recording of amendments, resale certificates or statements of unpaid assessments.
- m. An association may provide indemnification for its officers and executive board and maintain directors' and officers' liability insurance.
- n. Except to the extent limited by the declaration, an association may assign its right to future income including the right to receive assessments.
- o. An association may exercise powers provided by the declaration, bylaws or legally provided under entity law for that type of association.
- p. An association may require disputes between the executive board and unit owners or multiple unit owners be submitted to non-binding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding.
- q. An association may exercise all powers that may be exercised in this state by the same type of legal organization.
- r. An association may suspend any right or privilege of a unit owner that fails to pay an assessment provided the association may not deny unit access, suspend the right to vote, prevent an owner from running for office or withhold services if it would endanger the health, safety and property of any person.
 - i. The declaration may not limit the power of the association beyond 27 V.S.A. § 3-102(a)(18) in dealing with the declarant or instituting legal action against a person subject to the requirements set out in § 3-124 for a developer suit for construction defects and the board shall provide prompt notice of a suit to unit owners unless the action is for rules enforcement or unpaid assessments.
 - ii. Tenant Issues: in the event of a tenant violation of the declaration or bylaws or rules, the board must give a ten-day right to cure to the tenant and owner before exercising its rights under 27A V.S.A § 3-102(d)(3).

- iii. An association may enforce a lease to which it is not a party in the event of a violation of the declaration, bylaws or rules. See 27A V.S.A § 3-102(f).
- s. **Executive Board's Duty to Take Action**: the board may impose sanctions, commence suit, and/or compromise claims, but does not have a duty to take enforcement action if it determines:
 - i. the legal position does not justify it;
 - ii. the covenant, restriction or rule is or is likely to construed as inconsistent with law;
 - iii. it is not a material violation or does not justify expending association resources; and/or
 - iv. it is not in the association's best interest to pursue an enforcement action.

The board's decision as to whether to enforce based on the facts may be inconsistent, but it can not be arbitrary or capricious.

- t. **Executive Board's Duty to Establish Communications**: The Executive Board shall establish a reasonable method for unit owners to communicate among themselves and with the executive board on matters concerning the association.

X EXECUTIVE BOARD OFFICER DUTIES

- a. **Duties**: unless otherwise provided by law or the governing documents, the board acts on behalf of the association. Declarant appointees shall exercise the degree of care and loyalty of a Trustee. Board members and officers not appointed by the Declarant shall exercise the degree of care and loyalty to the association required of a director or officer of a corporation and are subject to the conflict of interest rules governing directors and officers under Title 11B.
- b. **Limitations**: the Executive Board shall not amend the declaration (except in accordance with § 2-117), amend the bylaws, terminate the community, elect the board (except vacancies) and shall not determine the qualifications, powers, duties or terms of office of the board and adopt budgets except in accordance with § 3-123. See 27A V.S.A. § 3-103.

XI THE PERIOD OF DECLARANT CONTROL

- a. This is generally set out in the Declaration. Declarant can give up control earlier by recording an instrument executed by the Declarant. Otherwise, Declarant control terminates on the earliest of:
 - i. Sixty (60) days after three-fourths (3/4) of the units are conveyed
 - ii. Two years after any development right is last exercised; or

- iii. the day Declarant, after giving notice in a record to unit owners, records an instrument surrendering all rights to control.

Unit Board Representation Formula: one fourth of units sold/one fourth of board must be owners within sixty (60) days. Before, three-fourths of units sold/ a majority of the board must be unit owners. See 27 V.S.A. § 3-104.

XII DECLARANT'S CONTRACTS

- a. Within two years after the Executive Board, elected by the unit owners, takes charge, the association may terminate without penalty upon ninety-days notice any of the following (see 27 V.S.A. § 3-105):
 - i. Any management, maintenance, operations, and/or employment contract or lease; or
 - ii. Any lease or contract with Declarant or its affiliate; or
 - iii. Any unconscionable agreement.

XIII BYLAWS

- a. The Ward & Babb "2012" *Bylaw Amendment* fully addresses the requirements of this provision. Reference is hereby made to that document for the 2012 VCIOA Bylaw Amendments. See 27A V.S.A. § 3-106.

XIV PROPERTY INSURANCE REQUIREMENTS

- a. By the date of first unit conveyance to the extent available and subject to reasonable deductibles, the Association shall maintain the following insurance coverage (see 27A V.S.A. § 3-113(a)-(b)):
 - i. **Property Insurance** on the common elements and in a planned community (foot prints, single family lots, deminimus PUDs) also on property which will be common elements to insure against risks of direct physical loss commonly insured against which insurance after deductibles shall be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased.
 - ii. **Commercial General Liability Insurance**, including medical payments coverage in an amount determined by the Executive Board, but no less than as set forth in the Declaration, covering all occurrences commonly insured against for bodily injury or property damage arising out of or in connection with the use, ownership and maintenance of the common areas.
 - iii. **Fidelity Insurance** (with no specific coverages set out, just purchase the coverage for reasonable amounts).
- b. Lastly, the new law makes it clear that the association shall insure common floors and common walls which may be part of the units, but need not include

improvements and betterments installed by unit owners. See 27A V.S.A. § 3-113(b).

- c. **Insurance Advice:** You should get your insurer a copy of 27A V.S.A. § 3-313 along with any insurance provisions contained in your bylaws or declaration to ensure your Executive Board complies with its obligation to properly insure the project. Instruct your agent in writing to meet the insurance requirements set forth in the Act and the governing documents and to contact the Board if there is an issue meeting the requirements as set forth.

XV SURPLUS FUNDS

- a. Unless otherwise provided in the Declaration, any surplus funds of the association remaining after payment of or provision for common expenses and prepayment of reserves, shall be paid annually to the unit owners in proportion to owner's common expense liability (allocation) or credited to them to reduce future common expense assessments.
- b. **Comment:** if there is a genuine operating expense surplus, the association may return it, prepay reserves or credit future common expense assessments. See 27A V.S.A. § 3-114 as amended.

XVI ASSESSMENTS FOR COMMON EXPENSES

- a. Generally expenses will be assessed based on the allocation set forth in the Declaration. Interest may be charged on any past due assessment or portion thereof at a rate established by the association, not to exceed the legal rate (12% per annum as of January 2011).
- b. However; if required by the Declaration and if a common expense is associated with the maintenance, repair or replacement of a limited common element, it shall be assessed against the units to which the limited common element is assigned. Any common expense benefitting fewer than all of the units or their owners may be assessed exclusively against the units or unit owners benefitted.
- c. If damage to a unit or common area is caused by, or if any other common expense is caused by the wilful misconduct or gross negligence of any unit owner, guest, or invitee; the association may, after notice and hearing, assess that expense against that owner's unit even if there is insurance coverage. See 27A V.S.A. § 3-115.

XVII LIENS FOR SUMS DUE ASSOCIATION

- a. **The association has a statutory lien** (automatic and need not be recorded to be enforceable) for any assessment attributable to that unit or finer imposed on unit owner. Unless the Declaration otherwise provides, reasonable attorney fees and costs, other fees, charges, late fees, fines and interest charged (pursuant to § 3-102(a)(10), (11) & (12)) and any other sums due to the association under the Declaration, the Act, arbitration, mediation or judicial decision are enforceable in the same manner as unpaid assessments.

- b. **If a lien is payable in installments**, the full amount of the assessment is a lien from the time the first installment comes due. You must disclose on resale certificates accordingly.
- c. **This lien is superior to prior mortgages** to the extent of common expense assessments based on the periodic budget adopted by the association (3-115(a)) which came due during the six months immediately preceding initiation of a foreclosure suit. This is referred to as the association “superlien” and it is limited in scope and benefit as indicated. See 27A V.S.A. § 3-116(c).
- d. **Unless the Declaration provides otherwise**, if two or more associations have a lien on a unit, they have equal priority. See 27A V.S.A. § 3-116(d).
- e. Recording the Declaration constitutes record notice and perfection of the lien. No further recording of a claim is required. See 27A V.S.A. § 3-116(e).
- f. **A lien is extinguished** unless proceedings to enforce the lien are brought within three years after the full amount of the assessment is due; however, the unit owner personal debt has a six year statute of limitations. See 27A V.S.A. § 3-116(f), (g).
- g. A Judgment or decree in any action brought for enforcement of a lien shall include an award of costs and attorneys fees to the prevailing party. See 27A V.S.A. § 3-116(h).
- h. The association, upon request made in a record, shall furnish to a unit owner, a statement of the unpaid assessments against that unit in recordable form. The statement shall be provided within ten (10) business days after receipt of the request. The statement is binding on the association, board and owners. See 27A V.S.A. § 3-116(i).
- i. **The association lien may be foreclosed** by giving notices required by statute. See 27A V.S.A. § 3-116(j).
- j. The court can appoint a receiver to collect sums (rents) due an owner. The court can order assessments be paid from the sums to the association. See 27A V.S.A. § 3-116(l) for particulars.
- k. **Prerequisite to foreclosure on a unit**. Three months of expenses based on periodic budget and the unit owner has failed to accept or comply with a payment plan offered by the association and the Executive Board votes to commence foreclosure against that unit. See 27A V.S.A. § 3-116(m).
- l. **Order of payment application**. Unless the parties otherwise agree (this is an opportunity to vary this provision when a payment plan is offered) delinquent payments shall be applied to (1) unpaid assessments, (2) late charges, (3) attorney fees and costs and costs of collection, and (4) all other unpaid fees, charges, fines, penalties, interest and late charges. See 27A V.S.A. § 3-116(n).
- m. **Procedural limitation to foreclosure on a unit**. Unless sums due the association include an unpaid assessment, a foreclosure action may not be commenced against

the unit unless the association has a judgment against a unit owner and it has been perfected as a judgment lien against the unit. See 27A V.S.A. § 3-116(o).

XVIII ASSOCIATION RECORDS

- a. The association must retain certain financial records, records of meetings, lists of owners, all governing documents and amendments, three years of tax records, lists of board members, copies of annual reports, active contracts, records of design or architectural denials or approvals from unit owners, and all voting records for one year; and have them available for owner examination.
- b. A comprehensive review of what must be kept, for how long it must be kept, is set out in the Ward & Babb 2012 mandatory bylaw amendments provided to your association. See 27A V.S.A. § 3-118.

XIX RULES

- a. **Association rule making.** Before taking any action regarding a rule, the Executive Board shall give all owners notice of its intention relative to that rule and provide a text of the rule or change; and provide owners a date when the board will act after consideration of comments from unit owners. Following Board action, the unit owners shall be notified of the action and provided with a copy of any new or revised rule.
- b. **Design review.** The association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. The association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of the association's failure to act. See 27A V.S.A. § 3-120(c).
- c. **Flags and Candidate sign rules.** A rule regulating display of the flag of the United States must be consistent with Federal law. See generally 4 U.S.C. §§ 1 et seq. including P.L. 109-243 commonly known as "The Freedom to Display the American Flag Act," as amended which requires no association prohibition to display the flag on residential property to which the member has a separate ownership interest. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit (note limited locations as in a condo, the outside of a unit is generally a common element) the flag of this state or signs regarding public office or association office or ballot questions. The association may adopt rules governing the time, place, size, number and manner of the those displays. See 27A V.S.A. § 3-120(d).
- d. **Rules regarding the right to assemble.** Unit owners may peacefully assemble in common elements to consider matters related to the common interest community. The association may adopt rules governing the time, place and manner of these assemblies. See 27A V.S.A. § 3-120(e).

- e. **Rules regarding restricting leasing of residential units.** The association may adopt rules that restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on units in common interest communities or regularly purchase those mortgages. See 27A V.S.A. § 3-120(e)(3).
- f. **Rules regarding use of units or behavior in units.** The association may adopt rules that affect the use of or behavior in units that may be used for residential purposes only to: implement a provision in a declaration, regulate a behavior or occupancy of a unit which violated the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners. See 27A V.S.A. § 3-120(f).
- g. **Reasonableness of association rules.** All rules adopted by the association must be reasonable. See 27A V.S.A. § 3-120(h).

XX PROVIDING PROPER NOTICE TO UNIT OWNERS

- a. The association shall deliver any notice required by law to be given by the association to any mailing or email address the owner designates. Otherwise the association may deliver notices by hand delivery to each unit owner, United States mail postage paid, a commercially reasonable delivery service to the mailing address of each unit, electronic means if the unit owner has given the association an electronic address or by any other method reasonably calculated to provide notice to the unit owners.
- b. **Failure to deliver notice.** The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting. See 27A V.S.A. § 3-121(b).

XXI REMOVAL OF OFFICERS AND DIRECTORS

- a. **Notwithstanding any provision of the declaration or bylaws to the contrary,** Vermont law allows unit owners present in person, by proxy, or by absentee ballot, at any meeting of the unit owners at which a quorum is present, may remove any member of the Executive Board and any officer elected by 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.
- b. **Intent to remove officer or director.** The unit owners may not consider whether to remove a member of the Executive Board or an officer elected by the unit owners at a meeting of unit owners unless that subject was listed in the notice of meeting. See 27A V.S.A. § 3-122(a)(3).

- c. **Right to speak before the removal vote.** At any meeting at which a vote to remove a member of the Executive Board is to be taken, the officer or member being considered for removal must have a reasonable opportunity to speak before the vote. See 27A V.S.A. § 3-122(b).

XXII BUDGETS

- a. **Adoption.** The Executive Board, at least annually, shall adopt a proposed budget for the association for consideration by the unit owners. Not later than thirty (30) days after an adoption of a proposed budget, the board shall provide a summary of the proposed budget to unit owners including resources and a statement of the basis on which reserves are calculated and funded. Simultaneously (best with the notice) the Board shall set a date, not less than ten (10) days nor more than sixty (60) days after providing the summary, for a meeting of the unit owners to consider the ratification of the budget. See 27A V.S.A. § 3-123(a).
- b. **Budget Acceptance.** Unless a majority of owners (or larger percentage if set out in the declaration) reject the budget, the budget is ratified whether or not a quorum is present. See 27A V.S.A. § 3-123(b).
- c. **Rejection of a proposed budget.** If a proposed budget is rejected by a majority of owners (or greater percentage if set forth in the declaration), the budget last ratified by the unit owners continues until owners ratify a subsequent budget.
- d. **Special assessments.** The Board, at any time, may propose a special assessment. The same process must be followed as for a budget proposal and the owners do not reject the proposed assessment. See 27A V.S.A. § 3-123(b).
- e. **Emergency special assessments.** If the Board determines by a two-thirds vote that a special assessment is necessary to respond to an emergency, the special assessment becomes effective immediately with the terms of the vote and prompt notice shall be sent to unit owners.
- f. **Spending limitations on emergency funds.** The Board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote. See 27A V.S.A. § 3-123(c)(3).

XXIII LITIGATION INVOLVING DECLARANT

- a. This provision applies to an association's authority (§ 3-102(a)(4)) to institute and maintain a proceeding alleging a construction defect with respect to the common interest community (litigation, arbitration, administratively) against a Declarant, employee, independent contractor, or other person directly or indirectly providing labor and materials to Declarant. The association must provide pre-suit notice in a record of its claims to Declarant and those persons that the association is to hold them liable. See 27A V.S.A. § 3-124.

- b. **Form of pre-suit notice.** The text of notice may be in any form reasonably calculated to give notice of the general nature of the claimed defects, including a list of defects.
- c. **Method of pre-suit notice delivery.** The notice may be delivered by any method of service and may be addressed to any person provided the method of service provides actual notice to the person named in the claim or would be sufficient notice to the person in connection with commencement of an action against that person.
- d. **Restriction from filing suit.** The association may not institute proceedings against a person until forty-five (45) days after the association sends notice of its claim to that person. See 27A V.S.A. § 3-124(b)
- e. **Remediation plan.** The Declarant, and any other person to which the association gave notice, may present to the association a plan to remedy or otherwise repay the construction defects. If the association does not receive a timely remediation plan from a person to whom it gave notice or if the association does not accept the terms of the plan submitted, the association may institute a proceeding.
- f. **Association's mandatory response to a remediation plan/offer.** If the association receives one or more timely mediation plans, the board shall promptly consider those plans and notify whom it directed notice whether the plan is acceptable as presented, acceptable with stated conditions, or not acceptable. See 27A V.S.A. § 3-124(a)(4).
- g. **Consequence of acceptance of remediation plan.** Once acceptance of a remediation plan is agreed, the parties shall agree to a time period for implementation of the plan. The association may not institute a proceeding during the time the plan is being diligently implemented. See 27A V.S.A. § 3-124(a)(5).
- h. **Tolling of the statute of limitations.** Any statute of limitations affecting the association's action against a Declarant or other persons is tolled during the period described in 27A V.S.A. § 3-124(a)(1)-(2) and during any extension of time because a person to whom notice was directed has commenced and is diligently pursuing a remediation plan. See 27A V.S.A. § 3-124(a)(6).
- i. **Association's freedom to commence an action.** After the time described in § 3-124(a)(2) above, is expired, a proceeding may be instituted by the association against a person to whom notice was directed, which fails to submit a timely remediation plan, the plan is not acceptable or who fails to pursue a diligent implementation of the plan or by a unit owner.
- j. **Association's right to mitigate damages.** The association may make repairs necessary to mitigate damages or to correct any defect that poses a significant and immediate health or safety risk. See 27A V.S.A. § 3-124(c).

- k. **Board's exclusive right to decide regarding proceedings.** The Board has the absolute right to decide whether to initiate proceedings. The declaration may not require a unit owner vote requiring a percentage of unit owners to approve commencement of proceedings. See 27A V.S.A. § 3-124(d).

XXIV PROVISIONS NOT GENERALLY OF INTEREST TO "OLDER" ASSOCIATIONS

- a. The following provision were amended on June 3, 2010 effective on January 1, 2012, but are generally not of interest to most currently existing owner associations so are not discussed herein.
- i. § 4-102 (a), (c). Liability for public offering statements.
 - ii. § 4-103(a)-(d). Public offering statements, general provision.
 - iii. § 4-113. Express warranties of quality.

XXV ASSOCIATION WARRANTY CLAIM AGAINST DECLARANT DURING PERIOD OF DECLARANT CONTROL

- a. **During the period of Declarant control,** the association may authorize an independent committee of the Board to evaluate and enforce by any lawful means, warranty claims involving the common elements and to compromise those claims. Only board members elected by unit owners, other than Declarant, may serve on the committee. Costs incurred by the committee are common expenses.
- b. **Statute of limitations on committee considered warranty claims.** The statute of limitations commences as to a warranty when the warranty claim is considered by the committee at its first meeting.
- c. **Rights of action.** A Declarant, association, unit owner, or any other person subject to the Vermont Common Interest Ownership Act, may bring an action to enforce a right granted or obligation imposed the Vermont Common Interest Ownership Act, the declaration, or the bylaws. The court may award reasonable attorney fees and costs. See 27A V.S.A. § 4-117
- d. **Alternative dispute resolution (ADR).** Parties to a dispute under the Vermont Common Interest Ownership Act, the declaration or the bylaws may agree to resolve the dispute by binding or non-binding alternative dispute resolution, but a Declarant may agree only after the period of Declarant control has expired unless the agreement is made with an independent committee of the board. § 4-116(d). There must be an agreement to submit to binding ADR must be in a record authenticated by the parties. See 27A V.S.A. § 4-117(b).

Vermont Common Interest Ownership Act Approval Date: June 3, 2010

Vermont Common Interest Ownership Act Amendment
Primary Effective Date: January 1, 2012