

FEB 27 2002
LOCAL GOVERNMENT

HOUSE FILE 2577
BY JOCHUM

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the council of co-owners of apartments in a
2 horizontal property regime.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2577

1 Section 1. Section 499B.2, subsection 4, Code 2001, is
2 amended to read as follows:

3 4. "Council of co-owners" or "council" means all the co-
4 owners of the building. The business and affairs of the
5 council of co-owners may be conducted by organizing a
6 corporation not for pecuniary profit of which the co-owners
7 are members.

8 Sec. 2. Section 499B.8, Code 2001, is amended by adding
9 the following new subsection:

10 NEW SUBSECTION. 3. If the instrument to remove property
11 from the provisions of this chapter provides that the property
12 is to be sold following removal, title to the property upon
13 removal vests in the council of co-owners as trustee for the
14 holders of all interest in the apartments. The council as
15 trustee thereafter has all powers necessary and appropriate to
16 effect the sale. Until the sale has been concluded and the
17 proceeds distributed, the council continues in existence with
18 all powers and responsibilities it had before termination
19 whether under the declaration or otherwise. Unless the
20 instrument for the removal of the property from the provisions
21 of this chapter otherwise provides, proceeds of the sale shall
22 be paid to the council as trustee and shall be distributed to
23 the co-owners and holders of an interest as security for an
24 obligation as their interests may appear and according to the
25 priority enjoyed prior to removal from the provisions of this
26 chapter in proportion to the respective interests of co-
27 owners. Any interest as security for an obligation formerly
28 affecting an apartment shall constitute a claim against the
29 proceeds in the amount existing at the time of removal from
30 the provisions of this chapter plus interest and other amounts
31 accrued until distribution. Except as otherwise specified in
32 the removal instrument, as long as the council as trustee
33 holds title to the real estate, each co-owner and successors
34 in interest have the right to use the real estate that
35 formerly constituted the common elements and have an exclusive

1 right to occupancy of the portion of the real estate that
2 formerly constituted the apartment and limited common
3 elements. During the period of such occupancy, each co-owner
4 and successors in interest remain liable for all assessments
5 and other obligations imposed on co-owners by this chapter,
6 the declaration, or the agreement to remove the property from
7 the provisions of this chapter.

8 Sec. 3. NEW SECTION. 499B.24 APPLICABILITY.

9 1. Sections 499B.25 through 499B.38 apply to all
10 horizontal property regimes created on or after July 1, 2002,
11 and are in lieu of sections 499B.14 through 499B.19.

12 2. Notwithstanding any provisions to the contrary, section
13 499B.26, subsection 1, paragraphs "a" through "i", and
14 sections 499B.32, 499B.33, 499B.36, and 499B.37 apply to
15 horizontal property regimes created prior to July 1, 2002.
16 However, these provisions apply only with respect to events
17 and circumstances occurring on or after July 1, 2002.

18 Sec. 4. NEW SECTION. 499B.25 ORGANIZATION OF CO-OWNERS
19 COUNCIL.

20 A council of co-owners shall be organized no later than the
21 date the horizontal property regime is created. The
22 membership of the council at all times shall consist
23 exclusively of all the co-owners or, following removal of the
24 property from the provisions of this chapter, of all former
25 co-owners entitled to distributions of proceeds under section
26 499B.8, subsection 3, or their heirs, successors, or assigns.
27 The council shall be organized as a profit or nonprofit
28 corporation.

29 Sec. 5. NEW SECTION. 499B.26 POWERS OF COUNCIL.

30 1. Unless limited by the provisions of the declaration,
31 the council may do all of the following:

32 a. Adopt and amend rules and regulations.

33 b. Adopt and amend budgets for revenues, expenditures, and
34 reserves and collect assessments for common expenses from co-
35 owners.

1 c. Hire and terminate managing agents and other employees,
2 agents, and independent contractors.

3 d. Institute, defend, or intervene in litigation or
4 administrative proceedings in its own name on behalf of itself
5 or two or more co-owners on matters affecting the horizontal
6 property regime.

7 e. Regulate the use, maintenance, repair, replacement, and
8 modification of common elements.

9 f. Impose reasonable charges including reasonable costs
10 and attorney fees, for the evaluation, preparation, and
11 recordation of amendments to the declaration or statements of
12 unpaid assessments.

13 g. Provide for the indemnification of its officers and
14 board and maintain directors' and officers' liability
15 insurance.

16 h. Impose charges for late payment of assessments and,
17 after notice and an opportunity to be heard, levy reasonable
18 fines for violations of the declaration, bylaws, and rules and
19 regulations of the council.

20 i. Exercise any other powers conferred by state law, the
21 declaration, or bylaws.

22 j. Cause improvements to be made as a part of the common
23 elements.

24 k. Grant leases, licenses, and concessions not to exceed
25 one year and utility easements through or over the common
26 elements. However, after conveyance to owners other than the
27 declarant or affiliate of a declarant of apartments to which
28 more than fifty percent of the voting power is allocated, the
29 council may by resolution of a meeting of the members duly
30 called grant leases, licenses, and concessions in excess of
31 one year and easements through or over the common elements.

32 l. 1. Impose and receive any payments, fees, or charges for
33 the use, rental, or operation of the general common elements.

34 2. Notwithstanding subsection 1, the declaration shall not
35 impose limitations on the power of the council to deal with

1 the declarant that are more restrictive than the limitations
2 imposed on the power of the council to deal with other
3 persons.

4 Sec. 6. NEW SECTION. 499B.27 BOARD OF DIRECTORS --
5 MEMBERS AND OFFICERS.

6 1. The declaration may provide for a period of declarant
7 control of the council, during which period a declarant, or
8 persons designated by the declarant, may elect the members of
9 the board of directors. Any period of declarant control
10 extends from the date of the first conveyance of an apartment
11 to a co-owner other than a declarant for a period not
12 exceeding three years. Regardless of the period provided in
13 the declaration, a period of declarant control terminates upon
14 surrender of control by the declarant or no later than sixty
15 days after conveyance of seventy-five percent of the
16 apartments to co-owners other than a declarant.

17 2. Not later than sixty days after conveyance of fifty
18 percent of the apartments to co-owners other than a declarant,
19 not less than one-third of all of the members of the board of
20 directors shall be elected by co-owners other than the
21 declarant.

22 3. Not later than the termination of the period of
23 declarant control, and thereafter, the co-owners shall elect a
24 board of directors of at least three members, at least a
25 majority of whom shall be co-owners or the individual nominees
26 of the co-owners other than individuals. The board of
27 directors shall elect the officers. The persons elected shall
28 take office upon election.

29 4. In determining whether the period of declarant control
30 has terminated under subsection 1, or whether co-owners other
31 than a declarant are entitled to elect members of the board of
32 directors under subsection 2, the percentage of the apartments
33 which has been conveyed is presumed to be that percentage
34 which would have been conveyed if all the apartments which the
35 declarant has built or reserved the right to build in the

1 declaration were included in the horizontal property regime.

2 Sec. 7. NEW SECTION. 499B.28 TRANSFER OF SPECIAL
3 DECLARANT RIGHTS.

4 1. For purposes of this section, "special declarant
5 rights" means rights reserved for the benefit of a declarant
6 to complete improvements indicated on the horizontal property
7 regime plat; to add additional real estate to a horizontal
8 property regime; to subdivide or convert an apartment; to
9 maintain sales offices, management offices, signs advertising
10 the horizontal property regime, and models; to use easements
11 through the common elements for the purpose of making
12 improvements within the horizontal property regime or any
13 additional real estate; or to appoint or remove any board
14 member during any period of declarant control as provided in
15 section 499B.27, subsection 1.

16 2. Special declarant rights created or reserved under this
17 chapter shall not be transferred except by an instrument
18 evidencing the transfer recorded in every county where any
19 portion of the horizontal property regime is located. The
20 instrument shall be recordable and is not effective unless
21 executed by the transferor and transferee. If additional real
22 estate is transferred by the declarant, the transferee shall
23 be deemed to receive all special declarant rights with respect
24 to the additional real estate and shall be subject to any
25 obligations imposed by the declaration respecting the
26 additional real estate. For purposes of this section, the
27 transferee shall also be considered a declarant.

28 3. Upon transfer of any special declarant right, the
29 liability of a transferor declarant involves all of the
30 following:

31 a. A transferor is not relieved of any obligation or
32 liability which arose before the transfer, and remains liable
33 for warranty obligations imposed by this chapter. Lack of
34 privity does not deprive any co-owner of standing to bring an
35 action to enforce any obligation of the transferor.

1 b. If a transferor retains any special declarant right, or
2 if a successor to any special declarant right is an affiliate
3 of a declarant, the transferor is subject to liability for all
4 obligations and liabilities imposed on a declarant by this
5 chapter or by the declaration arising after the transfer and
6 is jointly and severally liable with the successor for the
7 liabilities and obligations of the successor which relate to
8 the horizontal property regime.

9 c. A transferor who retains no special declarant right has
10 no liability for any act or omission or any breach of a
11 contractual or warranty obligation arising from the exercise
12 of a special declarant right by a successor declarant who is
13 not an affiliate of the transferor.

14 4. In case of foreclosure of a mortgage or cancellation of
15 a contract for deed or sale under the federal bankruptcy law
16 or receivership proceeding or the foreclosure of any other
17 lien against any apartment owned by a declarant in the
18 horizontal property regime, a person first acquiring title to
19 all the apartments being canceled, foreclosed, or sold,
20 succeeds to all then-existing special declarant rights except
21 the special declarant rights with respect to additional real
22 estate, unless the mortgage or other instrument or proceeding
23 also covers additional real estate.

24 5. The liabilities and obligations of persons who succeed
25 to special declarant rights are all of the following:

26 a. A successor to any special declarant right who is an
27 affiliate of a declarant is subject to all the obligations and
28 liabilities imposed on any declarant by this chapter or by the
29 declaration.

30 b. A successor to any special declarant right, other than
31 a successor described in paragraph "c" or "d", who is not an
32 affiliate of a declarant, is subject to all obligations and
33 liabilities imposed on a declarant by this chapter or the
34 declaration, except that the successor is not subject to
35 liability for misrepresentations or warranty obligations on

1 improvements made by any previous declarant, or made before
2 the horizontal property regime was created, or for a breach of
3 fiduciary obligation by any previous declarant.

4 c. A successor to only a right reserved in the declaration
5 to maintain models, sales offices, and signs, if the successor
6 is not an affiliate of a declarant, shall not exercise any
7 other special declarant right, and is not subject to any
8 liability or obligation as a declarant, except the obligation
9 to provide a disclosure statement and any liability arising as
10 a result of that obligation.

11 d. A successor to all special declarant rights, who is not
12 an affiliate of a declarant and who succeeded to those rights
13 pursuant to a deed in lieu of foreclosure or by reason of
14 subsection 4, may declare an intention in a recorded
15 instrument to hold those rights solely for transfer to another
16 person. Thereafter, until transferring all special declarant
17 rights to any person acquiring title to any apartment owned by
18 the successor, or until recording an instrument permitting
19 exercise of all those rights, that successor shall not
20 exercise any of those rights other than the right to control
21 the board of directors in accordance with the provisions of
22 section 499B.27 for the duration of any period of declarant
23 control, and any attempted exercise of those rights is void.
24 So long as any successor declarant is not entitled to exercise
25 special declarant rights under this subsection, the successor
26 declarant is not subject to any liability or obligation as a
27 declarant other than liability for acts and omissions under
28 section 499B.27.

29 6. This section does not subject any successor to a
30 special declarant right to any claims against or other
31 obligations of a transferor declarant, other than claims and
32 obligations arising under this chapter or the declaration.

33 Sec. 8. NEW SECTION. 499B.29 TERMINATION OF CONTRACTS
34 AND LEASES OF DECLARANT.

35 If entered into prior to expiration of the period of

1 declarant control pursuant to section 499B.27, any management
2 contract, employment contract, or lease of recreational or
3 parking areas or facilities; any other contract or lease
4 binding the council or any co-owner other than the declarant
5 or an affiliate of the declarant to which a declarant or an
6 affiliate of a declarant is a party; or any contract or lease
7 binding the council or any co-owner other than the declarant
8 or an affiliate of the declarant which is not bona fide or
9 which was unconscionable to the co-owners at the time entered
10 into under the circumstances then prevailing may be terminated
11 without penalty by the council at any time after the
12 expiration of declarant control upon not less than ninety
13 days' notice to the other party. This section does not apply
14 to any lease the termination of which would remove the
15 property from the provisions of this chapter.

16 Sec. 9. NEW SECTION. 499B.30 BYLAWS.

17 The bylaws and any amendments to the bylaws shall be
18 recorded to be effective and shall provide all of the
19 following:

20 1. The meeting of the members shall be held at least once
21 each year and shall specify an officer who shall, at least
22 twenty-one days in advance of any annual or regularly
23 scheduled meeting and at least seven days in advance of any
24 other meeting, send to each co-owner notice of the time,
25 place, and complete agenda of the meeting. The notice shall
26 be delivered in person or sent by United States mail to all
27 co-owners of record at the address of the respective
28 apartments and to other addresses as any of them may have
29 designated to the officer.

30 2. A vote in the council shall not inure to any apartment
31 during the time when the co-owner is the council.

32 3. For a mechanism to resolve disputes regarding voting
33 among more than one co-owner of an apartment in such a way
34 that the vote allocated to the apartment is not split or
35 otherwise cast separately by the several co-owners.

1 4. An annual report to be prepared by the council and a
2 copy of the report to be provided to each co-owner with the
3 report to contain a minimum of all of the following:

4 a. A statement of any capital expenditures in excess of
5 two percent of the current budget or five thousand dollars,
6 whichever is the greater, anticipated by the council during
7 the current year or succeeding two fiscal years.

8 b. A statement of the status and amount of any reserve or
9 replacement fund and portion of the fund designated for any
10 specified project by the board of directors.

11 c. A copy of the statement of financial condition for the
12 council for the last fiscal year.

13 d. A statement of the status of any pending suits or
14 judgments to which the council is a party.

15 e. A statement of the insurance coverage provided by the
16 council.

17 f. A statement of any unpaid assessments by the council on
18 individual apartments identifying the apartment number and the
19 amount of the unpaid assessment.

20 Sec. 10. NEW SECTION. 499B.31 UPKEEP OF THE PROPERTY.

21 Except to the extent otherwise provided by the declaration
22 or section 499B.33, subsection 4, the council is responsible
23 for maintenance, repair, and replacement of the common
24 elements and each co-owner is responsible for maintenance,
25 repair, and replacement of the co-owner's apartment. Each co-
26 owner shall afford to the council and the other co-owners, and
27 to their agents or employees, access through the apartment
28 reasonably necessary for those purposes.

29 If damage is inflicted on the common elements or any
30 apartment through which access is taken, the co-owner
31 responsible for the damage, or the council if the council is
32 responsible, is liable for the prompt repair of the damage.

33 Sec. 11. NEW SECTION. 499B.32 TORT AND CONTRACT
34 LIABILITY.

35 1. If a tort or breach of contract occurred during any

1 period of declarant control, the declarant shall indemnify the
2 council for all liability incurred by the council as a result
3 of that tort or breach of contract, including legal fees. Any
4 statute of limitation affecting the council's right of action
5 under this section is tolled until the period of declarant
6 control terminates.

7 2. A co-owner shall not have tort liability arising out of
8 ownership of the common elements provided that the council has
9 liability insurance coverage on the occurrence in an amount
10 not less than one million dollars.

11 Sec. 12. NEW SECTION. 499B.33 INSURANCE.

12 1. Commencing not later than the time of the first
13 conveyance of an apartment to a co-owner other than a
14 declarant, the council shall maintain, to the extent
15 reasonably available, all of the following:

16 a. Property insurance on the common elements and
17 apartments, exclusive of land, excavations, foundations, and
18 other items normally excluded from property policies, insuring
19 against all risks of direct physical loss. The total amount
20 of insurance after application of any deductibles shall be not
21 less than eighty percent of the full insurable replacement
22 cost of the insured property. The council or its authorized
23 agent may enter an apartment at reasonable times upon
24 reasonable notice for the purpose of making appraisals for
25 insurance purposes.

26 b. Comprehensive general liability insurance, in an amount
27 determined by the board of directors but not less than any
28 amount specified in the declaration, covering all occurrences
29 commonly insured against for death, bodily injury, and
30 property damage arising out of or in connection with the use,
31 ownership, or maintenance of the common elements.

32 2. If the insurance described in subsection 1 is not
33 maintained, the council shall immediately cause notice of that
34 fact to be sent postage prepaid by United States mail to all
35 co-owners at their respective apartments and other addresses

1 provided to the council. The declaration may require the
2 council to carry any other insurance, and the council in any
3 event may carry any other insurance it deems appropriate to
4 protect the council or the co-owners.

5 3. Insurance policies carried pursuant to subsection 1
6 shall provide all of the following:

7 a. Each co-owner and holder of a vendor's interest in a
8 contract for deed is an insured person under the policy with
9 respect to liability arising out of ownership of an undivided
10 interest in the common elements.

11 b. The insurer waives its right to subrogation under the
12 policy against any co-owner of the horizontal property regime
13 or members of the co-owner's household and against the council
14 and members of the board of directors.

15 c. An act or omission by any co-owner or holder of an
16 interest as security for an obligation, unless acting within
17 the scope of authority on behalf of the council, shall not
18 void the policy or be a condition to recovery under the
19 policy.

20 d. If, at the time of a loss under the policy, other
21 insurance is in force in the name of a co-owner covering the
22 same property covered by the policy, the policy is primary
23 insurance not contributing with the other insurance.

24 4. Any loss covered by the property policy under
25 subsection 1, paragraph "a", shall be adjusted with the
26 council, but the insurance proceeds for that loss shall be
27 payable to any insurance trustee designated for that purpose,
28 or otherwise to the council. The insurance trustee or the
29 council shall hold any insurance proceeds in trust for co-
30 owners and holders of an interest as security for an
31 obligation as their interests may appear. The proceeds shall
32 be disbursed first for the repair or restoration of the
33 damaged common elements and apartments, and co-owners and
34 holders of an interest as security for an obligation are not
35 entitled to receive payment of any portion of the proceeds

1 unless there is a surplus of proceeds after the common
2 elements and apartments have been completely repaired or
3 restored, or the property is removed from the provisions of
4 this chapter.

5 5. An insurance policy issued to the council does not
6 prevent an apartment owner from obtaining insurance for
7 personal benefit.

8 6. An insurer that has issued an insurance policy under
9 this section shall issue certificates or memoranda of
10 insurance, upon request, to any co-owner, or holder of an
11 interest as security for an obligation. The insurance shall
12 not be cancelled until thirty days after notice of the
13 proposed cancellation has been mailed to the council and to
14 each co-owner and holder of an interest as security for an
15 obligation to whom certificates of insurance have been issued.

16 7. Any portion of the horizontal property regime damaged
17 or destroyed shall be promptly repaired or replaced by the
18 council unless the property is removed from the provisions of
19 this chapter and the council votes not to repair or replace
20 all or part thereof; repair or replacement would be illegal
21 under any state or local health or safety statute or
22 ordinance; or eighty percent of the co-owners, including every
23 co-owner and first mortgagee of an apartment or assigned
24 limited common element which will not be rebuilt, vote not to
25 rebuild. The cost of repair or replacement of an apartment or
26 the common elements in excess of insurance proceeds and
27 reserves shall be a common expense. If less than the entire
28 horizontal property regime is repaired or replaced, all of the
29 following apply:

30 a. The insurance proceeds attributable to the damaged
31 common elements shall be used to restore the damaged common
32 elements to a condition compatible with the remainder of the
33 horizontal property regime.

34 b. The insurance proceeds attributable to apartments and
35 limited common elements which are not rebuilt shall be

1 distributed to the co-owners of those apartments, and the
2 holders of an interest as security for an obligation of those
3 apartments, and the owners and holders of an interest as
4 security for an obligation of the apartments to which those
5 limited common elements were assigned, as their interests may
6 appear.

7 c. The remainder of the proceeds shall be distributed to
8 all the co-owners and holders of an interest as security for
9 an obligation as their interests may appear in proportion to
10 their common element interest. If the co-owners vote not to
11 rebuild an apartment, that apartment's entire common element
12 interest, votes in the council, and common expense liability
13 are automatically reallocated upon the vote as if the
14 apartment has been condemned under eminent domain, and the
15 council shall promptly prepare, execute, and record an
16 amendment to the declaration reflecting the reallocations.
17 Notwithstanding the provisions of this subsection, if the
18 horizontal property regime is removed from the provisions of
19 this chapter, insurance proceeds not used for repair or
20 replacement shall be distributed in the same manner as sales
21 proceeds pursuant to section 499B.8, subsection 3.

22 8. The provisions of this section may be varied or waived
23 in the case of a horizontal property regime where all of the
24 apartments are restricted to nonresidential use.

25 Sec. 13. NEW SECTION. 499B.34 SURPLUS FUNDS.

26 Unless otherwise provided in the declaration, any surplus
27 funds of the council remaining after payment of or provision
28 for common expenses and any prepayment of reserves shall be
29 credited to the co-owners to reduce their future common
30 expense assessments.

31 Sec. 14. NEW SECTION. 499B.35 ASSESSMENTS FOR COMMON
32 EXPENSES.

33 1. Until the council levies a common expense assessment,
34 the declarant shall pay all accrued expenses of the horizontal
35 property regime. After any assessment has been levied by the

1 council, assessments shall be levied at least annually and
2 shall be based on a budget adopted at least annually by the
3 council.

4 2. Except for assessments under subsections 3 and 4,
5 common expenses shall be assessed against all the apartments
6 in accordance with the common expense liability allocated to
7 each apartment. Any past due assessment or installment of an
8 assessment shall bear interest at the rate established by the
9 council.

10 3. Except as provided by the declaration, any common
11 expense associated with the maintenance, repair, or
12 replacement of a limited common element shall be assessed
13 against the apartment, or in equal shares against the
14 apartments to which that limited common element was assigned
15 at the time the expense was incurred.

16 4. If the declaration so provides, the council may assess
17 any common expense benefiting less than all of the apartments
18 against the apartments benefited. In that case, the common
19 expense shall be allocated among apartments benefited in
20 proportion to their common expense liability.

21 Sec. 15. NEW SECTION. 499B.36 LIEN FOR ASSESSMENTS.

22 1. The council has a lien on an apartment for any
23 assessment levied against that apartment from the time the
24 assessment becomes payable. The council's lien may be
25 foreclosed as provided by the laws of this state as if it were
26 a lien under a mortgage containing a power of sale but the
27 council shall give reasonable notice of its action to all
28 lienholders of the apartment whose interest would be affected.
29 The rights of the parties shall be the same as those provided
30 by law except that the period of redemption for co-owners
31 shall be six months from the date of sale. Unless the
32 declaration otherwise provides, fees, charges, late charges,
33 and interest charges pursuant to section 499B.26, subsection
34 1, paragraphs "f", "h", and "l", are enforceable as
35 assessments under this section.

1 2. A lien under this section has priority over all other
2 liens and encumbrances on an apartment except liens and
3 encumbrances recorded before the recordation of the
4 declaration, any recorded mortgage on the apartment securing a
5 first mortgage holder, and liens for real estate taxes and
6 other governmental assessments or charges against the
7 apartment. This subsection does not affect the priority of
8 mechanic's or material supplier's liens.

9 3. Recording of the declaration constitutes record notice
10 and perfection of the lien, and no further recordation of any
11 claim of lien for assessment under this section is required.

12 4. Proceedings to enforce an assessment must be instituted
13 within three years after the last installment of the
14 assessment becomes payable.

15 5. Co-owners at the time an assessment is payable are
16 personally liable to the council for payment of the
17 assessment.

18 6. A foreclosure sale, judgment, or decree in any action,
19 proceeding, or suit brought under this section shall include
20 costs and reasonable attorney fees for the prevailing party.

21 7. The council shall furnish to a co-owner or the co-
22 owner's authorized agent upon written request of the co-owner
23 or the authorized agent a recordable statement setting forth
24 the amount of unpaid assessments currently levied against the
25 co-owner's apartment. The statement shall be furnished within
26 ten business days after receipt of the request and is binding
27 on the council and every co-owner.

28 Sec. 16. NEW SECTION. 499B.37 RESALE OF APARTMENTS --
29 COUNCIL RECORDS.

30 1. In the event of a resale of an apartment by a co-owner
31 other than a declarant, the co-owner shall furnish to a
32 purchaser before execution of any purchase agreement for an
33 apartment, or otherwise before conveyance, a copy of the
34 declaration, other than the horizontal property regime plat,
35 the bylaws, the rules and regulations of the council, and any

1 amendments thereto, and a certificate dated not more than
2 ninety days prior to the date of the purchase agreement or
3 otherwise before conveyance, containing all of the following:
4 a. A statement disclosing any right of first refusal or
5 other restraint on the free alienability of the apartment
6 contained in the declaration, bylaws, rules and regulations,
7 or any amendment thereof.
8 b. A statement setting forth the amount of periodic
9 installments of common expense assessments and special
10 assessments and any unpaid common expense or special
11 assessment currently payable.
12 c. A statement of any other fees payable by co-owners.
13 d. A statement of any capital expenditures approved by the
14 council for the current and next succeeding two fiscal years.
15 e. A statement that a copy of the horizontal property
16 regime plat and any amendments thereof are available in the
17 office of the council for inspection.
18 f. A statement of the amount of any reserves for capital
19 expenditures and of any portions of those reserves designated
20 by the council for any specified projects.
21 g. The most recent regularly prepared balance sheet and
22 income and expense statement, if any, of the council.
23 h. The current budget of the council.
24 i. A statement of any judgments against the council and
25 the status of any pending suits to which the council is a
26 party.
27 j. A statement describing any insurance coverage provided
28 for the benefit of co-owners.
29 2. The council shall, within seven days after a request by
30 a co-owner or the co-owner's authorized agent, furnish a
31 certificate containing the information necessary to enable the
32 co-owner to comply with this section. A co-owner without
33 actual knowledge providing a certificate pursuant to
34 subsection 1 shall have no liability to the purchaser for any
35 erroneous information provided by the council and included in

1 the certificate.

2 3. A purchaser is not liable for any unpaid assessment or
3 fee existing as of the date of the certificate greater than
4 the amount set forth in the certificate prepared by the
5 council. A co-owner is not responsible to a purchaser for the
6 failure or delay of the council to provide the certificate in
7 a timely manner.

8 4. The council shall keep financial records sufficiently
9 detailed to enable the council to comply with this section.
10 All financial records shall be made reasonably available for
11 examination by any co-owner and the co-owner's authorized
12 agents.

13 Sec. 17. NEW SECTION. 499B.38 COUNCIL AS TRUSTEE.

14 With respect to a third person dealing with the council in
15 the council's capacity as a trustee, the existence of trust
16 powers and their proper exercise by the council may be assumed
17 without inquiry. A third person is not bound to inquire
18 whether the council has power to act as trustee or is properly
19 exercising trust powers and a third person, without actual
20 knowledge that the council is exceeding its trust powers or
21 improperly exercising its trust powers, is fully protected in
22 dealing with the council as if the council possessed and
23 properly exercised the trust powers the council purports to
24 exercise. A third person is not bound to ensure the proper
25 application of trust assets paid or delivered to the council
26 in its capacity as trustee.

27 EXPLANATION

28 This bill deals with the council of co-owners (owners
29 association) of horizontal property regimes (condominiums).
30 The bill is applicable to condominiums created on or after
31 July 1, 2002, although a number of provisions apply to
32 existing condominiums but only with respect to events and
33 circumstances that occur on or after July 1, 2002.

34 The bill provides the following:

35 That if the owners elect to remove the property from the

1 status of being condominiums with sale to occur following such
2 removal, the council of co-owners shall take title of the
3 property in trust for the co-owners who may continue using the
4 property until the sale. This provision applies to existing
5 as well as newly created condominium complexes.

6 That the council of co-owners shall be organized no later
7 than the date the condominium complex is created and shall
8 consist exclusively of all co-owners. The council is to be
9 organized as a corporation. The corporation is run by a board
10 of directors. The powers of the council are broad in nature
11 unless restricted by the declaration creating the condominium
12 complex. The powers include adopting and amending budgets for
13 revenues, expenditures, and reserves; collection of
14 assessments for common expenses; regulation of use, repair,
15 placement, and modification of common elements; imposition of
16 reasonable charges; and granting leases, licenses,
17 concessions, and utility easements through common elements.

18 That the person who creates the condominium complex
19 (declarant) has the right to elect the members of the board of
20 directors until such time as 75 percent of the condominium
21 apartments are owned by others other than the declarant.
22 After 50 percent of the apartments are owned by others, the
23 co-owners other than the declarant may elect one-third of the
24 members of the board.

25 That the transfer of special declarant rights must be
26 recorded and the transferee is treated as the original
27 declarant in regard to rights, liabilities, and obligations
28 that the original declarant had in regard to the condominium
29 complex and the co-owners, except for the misrepresentations
30 and warranty obligations on improvements. "Special declarant
31 rights" are the rights reserved to the declarant to complete
32 improvements at the complex; to add additional property to the
33 complex; to subdivide or convert an apartment; to maintain
34 sales offices and models; to use easements through common
35 elements; and to appoint board members. The transferor

1 declarant who retains any interest in a special declarant
2 right or is affiliated with the transferee is not relieved of
3 liability or obligations related to that right.

4 That any contract or lease of a declarant which was entered
5 into while the declarant has control of the board of directors
6 and which is not bona fide or was unconscionable to the other
7 co-owners when entered into may be terminated without penalty
8 by the council of owners after expiration of declarant control
9 of the complex.

10 That bylaws be recorded in order to be effective and shall
11 provide for: individual notice before each meeting which must
12 be at least once a year; mechanism to resolve disputes
13 regarding co-owners of an apartment; and an annual report
14 which contains expenditures for capital projects, status of
15 reserve and replacement funds, statement of financial
16 condition, listing of insurance coverage, and listing of
17 unpaid assessments.

18 That the council is responsible for maintenance, repair,
19 and replacement of the common elements and each co-owner is
20 responsible for maintenance, repair, and replacement of the
21 co-owner's apartment.

22 That the declarant shall indemnify the council for all
23 liability incurred by the council as a result of a tort or
24 breach of contract which occurred during the period of
25 declarant control. A co-owner does not have tort liability
26 arising out of ownership of the common elements if the council
27 has insurance coverage of at least \$1 million.

28 That insurance on common elements and apartments of at
29 least 80 percent of the replacement cost of the property be
30 maintained. In addition, general liability insurance in the
31 amount determined by the board is to be in force to cover all
32 damages arising out of or in connection with the use,
33 maintenance, and ownership of the common elements. Upon
34 receipt of insurance proceeds, the damaged area is to be
35 immediately repaired except where the council or owners vote

1 not to rebuild. If the proceeds and reserve funds do not
2 cover the cost of the total damage of the apartments and
3 common elements which were damaged, the excess costs shall be
4 a common expense. If the proceeds are not to be used to
5 rebuild, the proceeds are distributed to the co-owners who
6 have an interest in the property damaged.

7 That assessments for common expenses be levied on all
8 apartments based upon the budget adopted at least annually by
9 the council. A lien on an apartment for the payment of the
10 assessment attaches at the time the assessment becomes
11 payable.

12 That upon resale of an apartment the co-owner other than a
13 declarant must provide the purchaser with a copy of the
14 declaration, bylaws, rules of the council, and a certificate
15 that contains the following: a statement disclosing any right
16 of first refusal or other restraint on free alienability of
17 the apartment, the amount of assessments, capital expenditures
18 for the current and next fiscal years, amount of reserves for
19 capital expenditures, most recent balance sheet, the current
20 budget of the council, and the insurance coverage provided for
21 the benefit of the co-owners.

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