

NYS Real Property Law

Article 9-B: Condominium Act

Preface

The New York State Legislature enacted the New York Condominium Act in 1964, (Laws of 1964, chapter 82, effective March 2, 1964). This has been amended several times since then. All condominiums are controlled by and subject to this statute.

The Condominium Act has been incorporated into the consolidated laws of New York, and has been designated as Article 9-B of the Real Property Law (abbreviated by lawyers as RPL). The covers a large number of topics other than condominium issues.

The Condominium Act starts with RPL section 339-d, then 339-e, and runs continuously to 339-z, then continues with 339-aa, then 339-bb, through 339-kk. It has a total of 34 sections.

Since all New York State courts and attorneys agree with this numbering or citation system, and use it, it is used here for convenience of reference.

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§ 339-d: Short Title

This article shall be known and may be cited as the "condominium act."

§ 339-e: Definitions

As used in this article, unless the context otherwise requires:

1. **"Building"** means a multi-unit building or buildings, or a group of buildings whether or not attached to each other, comprising a part of the property.
2. **"Common Charges"** means each unit's proportionate share of the common expenses in accordance with its common interest.
3. **"Common Elements,"** unless otherwise provided in the declaration, means and includes:
 - (a) The land on which the building is located;
 - (b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;
 - (c) The basements, cellars, yards, gardens, recreational or community facilities, parking areas and storage spaces;
 - (d) The premises for the lodging or use of janitors and other persons employed for the operation of the property;
 - (e) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
 - (f) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
 - (g) Such facilities as may be designated as common elements in the declaration; and
 - (h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
4. **"Common Expenses"** means and includes:
 - (a) Expenses of operation of the property, and
 - (b) All sums designated common expenses by or pursuant to the provisions of this article, the declaration or the by-laws.
5. **"Common Interest"** means the
 - (i) proportionate, undivided interest in fee simple absolute, or
 - (ii) proportionate undivided leasehold interest in the common elements appertaining to each unit, as expressed in the declaration.
6. **"Common Profits"** means the excess of all receipts of the rents, profits and revenues from the common elements remaining after the deduction of the common expenses.

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7. **"Declaration"** means the instrument by which the property is submitted to the provisions of this article, as hereinafter provided, and such instrument as from time to time amended, consistent with the provisions of this article and of the by-laws.
8. **"Majority" of Unit Owners** means either
 - (i) more than fifty per cent in common interest in the aggregate, or
 - (ii) more than fifty per cent in number of units in the aggregate, or
 - (iii) more than fifty per cent in the aggregate in both common interest and in number of units, as may be specified herein or in the declaration or the by-laws with respect to any matter or matters.

Any specified percentage of unit owners means

 - (i) such percentage in common interest in the aggregate, or
 - (ii) such percentage in number of units in the aggregate, or
 - (iii) such percentage in common interest and such percentage in number of units, as may be specified herein or in the declaration or the by-laws with respect to any matter or matters, provided, however, that different percentages in interest and in number of units may be so specified.
9. **"Operation of the Property"** means and includes the administration and operation of the property and the maintenance, repair and replacement of, and the making of any additions and improvements to, the common elements.
10. **"Person"** means a natural person, corporation, partnership, association, trustee or other legal entity.
11. **"Property"** means and includes the land, the building and all other improvements thereon,
 - (i) owned in fee simple absolute, or
 - (ii) in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or sublease, or separate unit leases or subleases, the unexpired term or terms of which on the date of recording of the declaration shall not be less than thirty years, or
 - (iii) in the case of a qualified leasehold condominium, held under a lease or sublease, or separate unit leases or subleases, the unexpired term or terms of which on the date of recording of the declaration shall not be less than fifty years, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this article.
12. **"Qualified Leasehold Condominium"** means any leasehold interest in real property intended to be used for either residential purposes, commercial purposes, industrial purposes or any combination of such purposes, together with any fee simple absolute or leasehold interest in the buildings and all other improvements which have been or at any time hereafter may be erected upon such real property, which has been or is intended to be submitted to the provisions of this article, provided that, on the date of the recording of the declaration:
 - (i) the Battery Park City Authority or the Roosevelt Island Operating Corporation is the holder of the tenant's interest in such leasehold interest or
 - (ii) the Queens West Development Corporation is the holder of the landlord's interest in such leasehold interest or

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(iii) the Brooklyn Bridge Park Development Corporation is the holder of the landlord's interest in such leasehold interest.

13. **"Recording Officer"** and **"Recording"** or **"Recorded"** shall have the meanings stated in section two hundred ninety (§ 290) of this chapter.
14. **"Unit"** means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace and patio, but in no event may utility facilities such as those for water or sewage treatment or power generation appear as single units.
15. **"Unit Designation"** means the number, letter or combination thereof or other official designations conforming to the tax lot number, if any, designating the unit in the declaration and on the floor plans.
16. **"Unit Owner"** means the person or persons owning a unit in fee simple absolute or, in the case either
 - (i) of a condominium devoted exclusively to non-residential purposes, or
 - (ii) a qualified leasehold condominium, owning a unit held under a lease or sublease.

§ 339-f: Application of Article

1. This article shall be applicable only to property the sole owner or all the owners of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided.
2. **Article 12-B, § 239-n of the General Municipal Law:** Such property shall be submitted and subject to the authority of and review by the county planning agency as set forth in section two hundred thirty-nine-n (§ 239-n) of article twelve-B (12-B) of the General Municipal Law, irrespective of and notwithstanding the distance requirement of the second unnumbered paragraph of such section, and as though the property were a subdivision plat subject to such section. This subdivision shall not be applicable to:
 - (i) property which has received local planning board approval prior to December twenty-first, nineteen hundred seventy-eight (December 21, 1978); or
 - (ii) property submitted to the provisions of this article on which any building or buildings or any portion thereof has been rented to any tenant or tenants.

§ 339-g: Status of Units

Each unit, together with its common interest, shall for all purposes constitute real property.

§ 339-h: Ownership of Units

Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

§ 339-i: Common Elements

1. Each unit shall have appurtenant thereto a common interest as expressed in the declaration. Such interest shall be
 - (i) **Percent of Market Value:** in the approximate proportion that the fair value of the unit at the date of the declaration bears to the then aggregate fair value of all the units or

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- (ii) **Percent of Gross Building Area:** in the approximate proportion that the floor area of the unit at the date of the declaration bears to the then aggregate floor area of all the units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all units in a part or parts of the common elements or
 - (iii) **Equal Percentage:** the interest of each of the units shall be in equal percentages, one for each unit as of the date of filing the declaration, or in equal percentages within separate classifications of units as of the date of filing the declaration, or
 - (iv) **Other Factors:** upon floor space, subject to the location of such space and the additional factors of relative value to other space in the condominium, the uniqueness of the unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular unit.
2. **Reapportionment of the Schedule of Common Interest:** The common interest appurtenant to each unit as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all unit owners affected, expressed in an amended declaration. However, the declaration may contain provisions relating to the appropriation, taking or condemnation by eminent domain by a federal, state or local government, or instrumentality thereof, including, but not limited to, reapportionment or other change of the common interest appurtenant to each unit, or portion thereof, remaining after a partial appropriation, taking or condemnation. The common interest shall not be separated from the unit to which it appertains. Nothing contained in this article shall prohibit the division of any unit and common interest appurtenant thereto in a non-residential unit in the manner permitted by the declaration and bylaws, including changes in the number of rooms; in no case may such division result in a greater percentage of common interest for the total of the new units than existed for the original unit before division. Where authorized by the declaration and bylaws, an appropriate amendment to the declaration may be filed by the new unit owners under the same file number and under procedure set forth in section three hundred thirty-nine-p (§ 339-p) hereof, and the local tax authorities shall provide and certify upon the proposed amendment a conforming tax lot number upon completion of the new units.
3. **Division and Partition Prohibited:** The common elements shall remain undivided and no right shall exist to partition or divide any thereof, except as otherwise provided in this article. Any provision to the contrary shall be null and void. Nothing in this subdivision shall be deemed to prevent ownership of a unit by the entireties, jointly or in common.
4. **Encroachments:** Each unit owner may use the common elements in accordance with the purpose for which they are intended, without hindering the exercise of or encroaching upon the rights of the other unit owners, but this subsection shall not be deemed to prevent some unit or units from enjoying substantially exclusive advantages in a part or parts of the common elements as expressed in the declaration or by-laws.
5. **Right of Access:** The unit owners shall have the irrevocable right, to be exercised by the board of managers, to have access to each unit from time to time during reasonable hours to the extent necessary for the operation of the property, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units, and the by-laws may contain reasonable rules and regulations for the administration of this provision as the privacy of the units and the protection of them and their contents from burglary, theft or larceny requires.

§ 339-j: Compliance with By-Laws and Rules and Regulations

Surety: Each unit owner shall comply strictly with the by-laws and with rules, regulations, resolutions and decisions adopted pursuant thereto. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the board of managers on behalf of the unit owners or, in a proper case, by an aggrieved unit owner. In any case of flagrant or repeated violation by a unit owner, he may be required by the board of managers to give sufficient surety or sureties for his future compliance with the by-laws, rules, regulations, resolutions and decisions. Notwithstanding the foregoing provisions of this section, no action or

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proceeding for any relief may be maintained due to the display of a flag of the United States measuring not more than four feet by six feet.

§ 339-k: Certain Work Prohibited

No unit owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament, nor may any unit owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of all the unit owners affected being first obtained.

§ 339-l. Liens Against Common Elements; Liens Against Units; Liens for Labor Performed or Materials Furnished.

1. **Liens Against Common Elements and Liens Against Units:** Subsequent to recording the declaration and while the property remains subject to this article, no lien of any nature shall thereafter arise or be created against the common elements except with the unanimous consent of the unit owners. During such period, liens may arise or be created only against the several units and their respective common interests.
2. **Mechanic Liens and Trust Funds:** Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to article two of the lien law against the unit of any unit owner not expressly consenting to or requesting the same, except in the case of emergency repairs. No labor performed on or materials furnished to the common elements shall be the basis for a lien thereon, but all common charges received and to be received by the board of managers, and the right to receive such funds, shall constitute trust funds for the purpose of paying the cost of such labor or materials performed or furnished at the express request or with the consent of the manager, managing agent or board of managers, and the same shall be expended first for such purpose before expending any part of the same for any other purpose.

§ 339-m: Common Profits and Expenses

Common Profits and Expenses – Allocation and Apportionment: The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to their respective common interests, provided however, that expenses of insurance may be charged as provided in section three hundred thirty-nine-bb (§ 339-bb). Notwithstanding any provision of this article, profits and expenses may be specially allocated and apportioned by the board of managers in a manner different from common profits and expenses, to one or more non-residential units where so authorized by the declaration and bylaws. In the case of units in any building, residential or non-residential, or a combination thereof, profits and expenses may be specially allocated and apportioned based on special or exclusive use or availability or exclusive control of particular units or common areas by particular unit owners, if so authorized by the declaration and bylaws, in a manner different from common profits and expenses.

Rent-Stabilized Tenants: Notwithstanding any provision of this article, common expenses may be charged to the owners of units that are subject to a regulatory agreement with a governmental entity or instrumentality limiting the household income of the residents of such units upon initial occupancy, where so authorized by the declaration and bylaws, in a manner that

- (i) is not proportional to the respective common interests of such owners,
- (ii) limits the amount charged to such owners, or
- (iii) limits the rate at which the amount charged to such owners may increase.

The existence of such special allocation of common expenses and its financial impact upon all units shall be disclosed as a special risk in any offering plan.

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§ 339-n: Contents of Declaration

The declaration shall contain the following particulars:

1. **Statement of Intention:** A statement of intention to submit the property to the provisions of this article.
2. **Land Description:** Description of the land on which the building and improvements are or are to be located.
3. **Building Description:** Description of the building, including the location of the building by reference to fixed monuments or tax map parcel data, stating the number of stories, basements and cellars, the number of units and the principal materials of which it is or is to be constructed.
4. **Unit Description:** The unit designation of each unit, and a statement of its location, approximate area, number of rooms in residential areas, and common element to which it has immediate access, and any other data necessary for its proper identification.
5. **Common Elements and Common Interest:** Description of the common elements and a statement of the common interest of each unit owner.
6. **Uses of the Building and Units:** Statement of the uses for which the building and each of the units are intended.
7. **Service of Process – Secretary of State:** A designation of the secretary of state as agent of the corporation or board of managers upon whom process against it may be served. Service of process on the secretary of state as agent of such corporation or board of managers shall be made personally delivering to and leaving with him or her or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the Office of the Department of State in the City of Albany, duplicate copies of such process together with the statutory fee, which shall be a taxable disbursement. Service of process on such corporation or board of managers shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation or board of managers, at the post office address, on file in the Department of State, specified for such purpose. Nothing in this subdivision shall affect the right to serve process in any other manner permitted by law. The corporation or board of managers shall also file with the Secretary of State the name and post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon the Secretary of State and shall update the filing as necessary.
8. **Executor:** Any further details in connection with the property which the person or persons executing the declaration may deem desirable to set forth.
9. **Amendments:** The method by which the declaration may be amended, consistent with the provisions of this article.

§ 339-o: Contents of Deeds and Leases of Units

Deeds and leases of units shall include the following particulars:

1. **Land Description and Recording of Declaration:** Description of the land as provided in subsection two (2) of section three hundred thirty-nine-n (§ 339-n) and the liber, page and date of recording of the declaration or solely by naming the city, village or town and the county in which the unit is located and referring to the liber, page and date of recording of the declaration.
2. **Unit Designation:** The unit designation of the unit in the declaration and any other data necessary for its proper identification.

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3. **Use of Unit:** Statement of the use for which the unit is intended.
4. **Common Interest:** The common interest appertaining to the unit.
5. **Other Details:** Any further details which the grantor and grantee may deem desirable to set forth.

§ 339-p: Copy of Floor Plans to be Filed

Condominium No. 148: Simultaneously with the recording of the declaration there shall be filed in the office of the recording officer a set of the floor plans of the building showing the layout, locations, and approximate dimensions of the units, stating the declarants' names, and bearing the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. If such floor plans do not contain unit designations certified by the appropriate local tax authorities as conforming to the official tax lot number, there shall be filed in the office of the recording officer prior to the first conveyance of a unit a floor plan containing a unit designation certified by the appropriate local tax authority as conforming to the official tax lot number. It shall be the duty of the appropriate local tax authority to provide such number for each unit upon completion of such unit. If such plans do not include a verified statement by such architect or engineer that such plans fully and fairly depict the layout, location, unit designations and approximate dimensions of any particular unit or units as built, there shall be recorded prior to each first conveyance of such particular unit or units an amendment to the declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and fairly depict the layout, location, unit designations and approximate dimensions of the particular unit or units as built. Such plans shall be designated "condominium", assigned a file number and kept on file by the recording officer. Such plans shall be indexed under the names of the declarants and in the block index if any. The record of the declaration shall contain a reference to the file number of the floor plans of the building affected thereby.

§ 339-q: Filing with Board

Floor Plans and Governing Documents: Public Review: True copies of the floor plans, the declaration, the by-laws and any rules and regulations shall be kept on file in the office of the board of managers and shall be available for inspection at convenient hours of weekdays by persons having an interest.

§ 339-r: Blanket Mortgages and Other Blanket Liens Affecting a Unit at Time of First Conveyance

Blanket Mortgages and Blanket Liens: At the time of the first conveyance of each unit, every mortgage and other lien affecting such unit and any other unit shall be paid and satisfied of record, or the unit being conveyed and its common interest shall be released therefrom by partial release duly recorded.

§ 339-s: Recording

1. **Recording with the City Register:** The declaration, any amendment or amendments thereof, and every instrument affecting the property or any unit included within the meaning of "conveyance" as used in article nine (9) of this chapter, shall be entitled to be indexed and recorded pursuant to and with the same effect as provided in said article nine (9). The recording officer shall not accept such an instrument constituting a condominium map unless it has endorsed thereon or attached thereto a certificate of the county director of real property tax services that the fee authorized by section five hundred three (§ 503) of the real property tax law, if any, has been paid. Neither the declaration nor any amendment thereof shall be valid unless duly recorded.
2. **Recording with the Department of State:** Each such declaration, and any amendment or amendments thereof shall be filed with the Department of State.

§ 339-t: Withdrawal from Provisions of This Article

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Action for Partition: If withdrawal of the property from this article is authorized by at least eighty per cent (80%) in number and in common interest of the units, or by at least such larger percentage either in number or in common interest, or in both number and common interest, as may be specified in the by-laws, then the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the unit owners in proportion to their respective common interests, provided, however, that no payment shall be made to a unit owner until there has first been paid off out of his share of such net proceeds all liens on his unit. Such withdrawal of the property from this article shall not bar its subsequent submission to the provisions of this article in accordance with the terms of this article.

§ 339-u: By-Laws

By-Laws: The operation of the property shall be governed by by-laws, a true copy of which shall be annexed to the declaration. No modification of or amendment to the by-laws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

§ 339-v: Contents of By-Laws

1. The by-laws shall provide for at least the following:

- (a) **Board of Managers:** The nomination and election of a board of managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent or both, and specifying which of the powers and duties granted to the board by this article or otherwise may be delegated by the board to either or both of them. Nothing contained herein shall bar the incorporation of the board of managers under applicable statutes of this state; such incorporation must be consistent with the other provisions of this article and the nature of the condominium purpose.
- (b) **Meetings of Unit Owners:** Method of calling meetings of the unit owners; what percentage of the unit owners, if other than a majority, shall constitute a quorum; and what percentage shall, consistent with the provisions of this act, be necessary to adopt decisions binding on all unit owners.
- (c) **President:** Election of a president from among the board of managers who shall preside over the meetings of such board and of the unit owners.
- (d) **Secretary:** Election of a secretary who shall keep a record wherein actions of such board and of meetings of the unit owners shall be recorded.
- (e) **Treasurer:** Election of a treasurer who shall keep the financial records and books of account.
- (f) **Common Expenses and Common Charges:** Operation of the property, payment of the common expenses and determination and collection of the common charges.
- (g) **Staff Employees:** The manner of designation and removal of persons employed for the operation of the property.
- (h) **Rules and Regulations:** Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.
- (i) **Use of Units and Common Elements:** Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

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(j) **Amendments by Super Majority:** The percentage of the unit owners, but not less than sixty-six and two-thirds per cent (66- $\frac{2}{3}$ %) in number and common interest except in the case where all units are non-residential, which may at any time modify or amend the by-laws.

2. The by-laws may also provide for the following:

(a) **Discrimination:** Provisions governing the alienation, conveyance, sale, leasing, purchase, ownership and occupancy of units, provided, however, that the by-laws shall contain no provision restricting the alienation, conveyance, sale, leasing, purchase, ownership and occupancy of units because of race, creed, color or national origin.

(b) **Use of Funds:** Provisions governing the payment, collection and disbursement of funds, including reserves, to provide for major and minor maintenance, repairs, additions, improvements, replacements, working capital, bad debts and unpaid common expenses, depreciation, obsolescence and similar purposes.

(c) **Holding of Unit, Lease and Mortgage:** The form by which the board of managers, acting on behalf of the unit owners, where authorized by this statute or the declaration, may acquire and hold any unit and lease, mortgage and convey the same.

(d) **Other Provisions:** Any other provisions, not inconsistent with the provisions of this article, relating to the operation of the property.

§ 339-w: Books of Receipts and Expenditures; Availability for Examination

Book of Accounts and Annual Financial Statements: The manager or board of managers, as the case may be, shall keep detailed, accurate records, in chronological order, of the receipts and expenditures arising from the operation of the property. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of weekdays. A written report summarizing such receipts and expenditures shall be rendered by the board of managers to all unit owners at least once annually.

§ 339-x: Waiver of Use of Common Elements; Abandonment of Unit; Conveyance to Board of Managers

Waiver of Use of Common Elements, Abandonment of Unit and Conveying Unit to Board of Managers: No unit owner may exempt himself from liability for his common charges by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit. Subject to such terms and conditions as may be specified in the by-laws, any unit owner may, by conveying his unit and his common interest to the board of managers on behalf of all other unit owners, exempt himself from common charges thereafter accruing.

§ 339-y: Separate Taxation

1.

(a) **Unit Tax Lot Designation:** With respect to all property submitted to the provisions of this article other than property which is the subject of a qualified leasehold condominium, each unit and its common interest, not including any personal property, shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit, school district, special district, county or other taxing unit, for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments, except that the foregoing shall not apply to a unit held under lease or sublease unless the declaration requires the unit owner to pay all taxes attributable to his unit. Neither the building, the property nor any of the common elements shall be deemed to be a parcel.

(b) **Total Assessment:** In no event shall the aggregate of the assessment of the units plus their common interests exceed the total valuation of the property were the property assessed as a parcel.

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- (c) **Tax Assessment Terms:** For the purposes of this and the next succeeding section the terms "assessing unit", "assessment", "parcel", "special ad valorem levy", "special assessment", "special district", "taxation" and "taxes" shall have the meanings specified in section one hundred two (§ 102) of the real property tax law.
- (d) **Paragraph (b) Exclusions:** The provisions of paragraph (b) of this subdivision shall not apply to such real property classified within:
 - (i) on and after January first, nineteen hundred eighty-six (January 1, 1986) class one of section one thousand eight hundred two (§ 1802) of the real property tax law; or
 - (ii) on and after January first, nineteen hundred eighty-four (January 1, 1984), the homestead class of an approved assessing unit which has adopted the provisions of section one thousand nine hundred three (§ 1903) of the real property tax law, or the homestead class of the portion outside an approved assessing unit of an eligible split school district which has adopted the provisions of section nineteen hundred three-a (§ 1903-a) of the real property tax law; provided, however, that, in an approved assessing unit which adopted the provisions of section one thousand nine hundred three (§ 1903) of the real property tax law prior to the effective date of this subdivision, paragraph (b) of this subdivision shall apply to all such real property
 - (i) which is classified within the homestead class pursuant to paragraph one of subdivision (e) of section one thousand nine hundred one (§ 1901) of the real property tax law and
 - (ii) which, regardless of classification, was on the assessment roll prior to the effective date of this subdivision unless the governing body of such approved assessing unit provides by local law adopted after a public hearing, prior to the taxable status date of such assessing unit next occurring after December thirty-first, nineteen hundred eighty-three (December 31, 1983), that such paragraph (b) shall not apply to such real property to which this clause applies. Provided further, however, real property subject to the provisions of this subparagraph shall be assessed pursuant to subdivision two (2) of section five hundred eighty-one (§ 581) of the real property tax law.
- (e) **Tax Assessment Rolls:** On the first assessment roll with a taxable status date on or after the effective date of a declaration filed with the recording officer and on every assessment roll thereafter, the assessor shall enter each unit as a parcel, as provided in paragraph (a) of this subdivision, based upon the condition and ownership of each such unit on the appropriate valuation and taxable status dates. Units owned by a developer may be entered as a single parcel with a parcel description corresponding to the entire development, including the land under such development, and excluding those units appearing separately. Upon the first assessment roll where each unit is separately assessed, only an individual unit and its common interest shall constitute a parcel.
- (f) **Converted Condominium Unit Exclusion:** The provisions of paragraph (b) of this subdivision shall not apply to a converted condominium unit in a municipal corporation other than a special assessing unit, which has adopted, prior to the taxable status date of the assessment roll upon which its taxes will be levied, a local law or, for a school district, a resolution providing that the provisions of paragraph (b) of this subdivision shall not apply to a converted condominium unit within that municipal corporation. A converted condominium unit for purposes of this paragraph shall mean a dwelling unit held in condominium form of ownership that has previously been on an assessment roll as a dwelling unit in other than condominium form of ownership, and has not been previously subject to the provisions of paragraph (b) of this subdivision.

2. With respect only to qualified leasehold condominiums:

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- (a) **Real Property Taxation:** Each unit, its common interest, not including any personal property, and the proportionate undivided part of the real property which is the subject of a qualified leasehold condominium and is allocated to such unit (as expressed in the declaration), shall be deemed to be a parcel, shall be subject to separate assessment to the unit owner and shall be subject to taxation by each assessing unit, school district, special district, county or other taxing unit for all types of taxes authorized by law including, but not limited to, special ad valorem levies and special assessments. Neither the real property which is the subject of a qualified leasehold condominium, the building, the property nor any of the common elements shall be deemed to be a parcel. In no event shall the aggregate of the assessment of the units plus their common interests plus their proportionate undivided parts (as expressed in the declaration) of said real property exceed the total valuation of the property and said real property assessed as a single parcel owned in fee. No provision of this paragraph shall be deemed to subject to taxation any parcel or part thereof which, pursuant to applicable law, is either exempt from taxation or with respect to which no taxes are payable.
 - (b) **Owner of the Parcel:** For the purposes of section five hundred two (§ 502) of the real property tax law, both the unit owner and the owner of the real property which is the subject of a qualified leasehold condominium shall be deemed to be the owner of the parcel in which such unit is included; provided, however, that for the purposes of section nine hundred twenty-six (§ 926) of the real property tax law, only the unit owner shall be deemed the owner of the parcel in which such unit is included and only the unit owner shall be personally liable for the payment of any taxes assessed against such parcel. Only the fee owner of the land which is the subject of a qualified leasehold condominium, however, shall be deemed to be the owner of the parcel in which a unit is included for the purposes of determining whether such parcel is subject to or exempt from taxation or whether no taxes are payable with respect thereto.
 - (c) **Taxes Unique to Each Unit:** The taxes assessed against each unit, its common interest and the proportionate undivided part of the real property which is the subject of a qualified leasehold condominium allocated to such unit (as expressed in the declaration), shall constitute a lien solely on that unit, its common interest and the proportionate undivided part of said real property allocated to such unit (as expressed in the declaration), and such taxes shall not constitute a lien on any other unit or the common interest of any other unit or the proportionate undivided part of said real property allocated to any other unit (as expressed in the declaration).
 - (d) **Qualified Leasehold Condominium or Not:** At such time as the real property which is the subject of a qualified leasehold condominium is submitted to the provisions of this article, the assessing unit shall make provision so that the real property which
 - (i) is not the subject of a qualified leasehold condominium and
 - (ii) immediately prior to such submission was included in a parcel in which there also was included all or any part of the real property which is (immediately subsequent to such submission) the subject of a qualified leasehold condominium, is established as a single parcel on the assessment roll and tax map of such assessing unit, separate and apart from any real property which is the subject of a qualified leasehold condominium.
3. **Tax Deed:** All provisions of a declaration relating to a unit, its common interest and the proportionate undivided part of the real property which is the subject of a qualified leasehold condominium allocated to such unit (as expressed in the declaration), which has been sold for taxes shall survive and shall be enforceable after the issuance of a tax deed for such unit to the same extent that such provisions would be enforceable against a voluntary grantee of such unit immediately prior to the delivery of such tax deed.
4. **Property Tax Protest and Appeal:** The board of managers may act as an agent of each unit owner who has given his written authorization to seek administrative and judicial review of an assessment made in accordance with subdivision one of this section, pursuant to title one-A (1-A) of article five (5) and title one (1) of article seven (7) of the real property tax law. The board of managers may retain legal counsel on

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behalf of all unit owners for which it is acting as agent and to charge all such unit owners a pro rata share of expenses, disbursements and legal fees for which charges the board of managers shall have a lien pursuant to section three hundred thirty-nine-z (§ 339-z).

5. **Real Property Tax Abatement and Exemption:** Notwithstanding the provisions of any general, special or local law to the contrary, in a city having a population of one million or more, the board of managers shall be authorized to act as the sole agent on behalf of all unit owners, without authorization of each unit owner, for the limited purpose of determining whether or not to waive prospectively the benefit of real property tax abatement and exemption for the property in order to qualify for a partial abatement of real property taxes pursuant to section four hundred sixty-seven-a (§ 467-a) of the real property tax law.

§ 339-z. Lien for Common Charges; Priority; Exoneration of Grantor and Grantee

Priority of Lien: The board of managers, on behalf of the unit owners, shall have a lien on each unit for the unpaid common charges thereof, together with interest thereon, prior to all other liens except only

- (i) **Property Taxes:** liens for taxes on the unit in favor of any assessing unit, school district, special district, county or other taxing unit,
- (ii) **First Mortgage:** all sums unpaid on a first mortgage of record, and
- (iii) **Governmental Agencies:** all sums unpaid on a subordinate mortgage of record held by the New York Job Development Authority, the New York State Urban Development Corporation, the Division of Housing and Community Renewal, the Housing Trust Fund Corporation, the New York City Housing Development Corporation, or in a city having a population of one million or more, the Department of Housing, Preservation and Development.

Sale of Unit: Upon the sale or conveyance of a unit, such unpaid common charges shall be paid out of the sale proceeds or by the grantee. Any grantor or grantee of a unit shall be entitled to a statement from the manager or board of managers, setting forth the amount of the unpaid common charges accrued against the unit, and neither such grantor nor grantee shall be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid common charges against such unit accrued prior to such conveyance in excess of the amount therein set forth. Notwithstanding the above, the declaration of an exclusive non-residential condominium may provide that the lien for common charges will be superior to any mortgage liens of record.

§ 339-aa: Lien for Common Charges; Duration; Foreclosure

Lien of Common Charges: The lien provided for in the immediately preceding section shall be effective from and after the filing in the office of the recording officer in which the declaration is filed a verified notice of lien stating the name (if any) and address of the property, the liber and page of record of the declaration, the name of the record owner of the unit, the unit designation, the amount and purpose for which due, and the date when due; and shall continue in effect until all sums secured thereby, with the interest thereon, shall have been fully paid or until expiration six years from the date of filing, whichever occurs sooner. In the event that unpaid common charges are due, any member of the board of managers may file a notice of lien as described herein if no notice of lien has been filed within sixty days after the unpaid charges are due. Upon such payment the unit owner shall be entitled to an instrument duly executed and acknowledged certifying to the fact of payment.

Foreclosure: Such lien may be foreclosed by suit authorized by and brought in the name of the board of managers, acting on behalf of the unit owners, in like manner as a mortgage of real property, without the necessity, however, of naming as a party defendant any person solely by reason of his owning a common interest with respect to the property. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit for any period prior to sale pursuant to judgment of foreclosure and sale, if so provided in the by-laws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The board of managers, acting on behalf of the unit owners, shall have power, unless prohibited by the by-laws, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

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Money Judgment: Suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be maintainable notwithstanding the pendency of suit to recover a money judgment.

NYC Property Tax Foreclosure: Notwithstanding any other provision of this article, if a municipal corporation acquires title to a unit as a result of tax enforcement proceedings, such municipal corporation shall not be liable for and shall not be subject to suit for recovery of the common charges applicable to such unit during the period while title to such unit is held by the municipal corporation or for the payment of any rental for the unit under the provisions of this section, except to the extent of any rent arising from such unit received by such municipal corporation during such period.

Except as herein specifically provided, nothing contained herein shall affect or impair or release the unit from the lien for such common charges or impair or diminish the rights of the manager or the board of managers on behalf of the unit owners under this section and section three hundred thirty-nine-z (§ 339-z).

§ 339-bb: Insurance

Commercial Insurance: The board of managers shall, if required by the declaration, the by-laws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, and shall give written notice of such insurance and of any change therein or termination thereof to each unit owner. In the case of a qualified leasehold condominium, such insurance shall be required in any event, and shall be in an amount equal to full replacement cost of the building. The policy or policies of such insurance shall be updated annually to maintain such insurance in such amount. Nothing herein shall prejudice the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building shall be deemed common expenses, provided, however, that in charging the same to the unit owners consideration may be given to the higher premium rates on some units than on others.

§ 339-cc: Repair or Reconstruction

1. **Action for Partition:** Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and reconstructed by the board of managers, using the proceeds of insurance, if any, on the building for that purpose, and any deficiency shall constitute common expenses; provided, however, that if three-fourths ($\frac{3}{4}$) or more of the building is destroyed or substantially damaged and seventy-five per cent (75%) or more of the unit owners do not duly and promptly resolve to proceed with repair or restoration, then and in that event the property or so much thereof as shall remain, shall be subject to an action for partition at the suit of any unit owner or lienor as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective common interests, provided, however, that no payment shall be made to a unit owner until there has first been paid off out of his share of such fund all liens on his unit.
2. **Qualified Leasehold Condominium:** Notwithstanding the provisions of subdivision one (1) hereof, in the case of a qualified leasehold condominium, any damage to or destruction of the building shall be promptly repaired and reconstructed by the board of managers, and the proceeds of the insurance policy or policies required for qualified leasehold condominiums pursuant to the provisions of section three hundred thirty-nine-bb (§ 339-bb) of this chapter shall first be applied to such repair and reconstruction.

§ 339-dd: Actions

Legal Actions: Actions may be brought or proceedings instituted by the board of managers in its discretion, on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one unit. Service of process on the unit owners in any action relating to the common elements or more than one unit may be made on the person designated in the declaration to receive service of process.

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§ 339-ee: Effect of Other Laws

1. **Other Applicable Laws:** All units of a property which shall be submitted to the provisions of this article shall be deemed to be cooperative interests in realty within the meaning of section three hundred fifty-two-e (§ 352-e) of the General Business Law. Article nine-A (9-A) of this chapter shall not apply to the property or any unit. Article eleven (11) of the tax law shall not apply to declarations or any lien for common charges provided for in this article. Any provision of the multiple dwelling law, the multiple residence law, or any state building construction code as to multiple residences pursuant to the provisions of article eighteen (18) of the Executive Law, requiring registration by the owner or other person having control of a multiple dwelling shall be deemed satisfied in the case of a property submitted to the provisions of this article by registration of the board of managers, such registration to include the name of each unit owner and the designation of his or her unit; each unit owner shall be deemed the person in control of the unit owned by him or her, and the board of managers shall be deemed the person in control of the common elements, for purposes of enforcement of any such law or code, provided, however, that all other provisions of the multiple dwelling law or multiple residence law, otherwise applicable, shall be in full force and effect, and provided further that in a city with a population of one million or more persons registration required by a housing maintenance code of such city shall be deemed satisfied in the case of a property submitted to the provisions of this article by registration of the board of managers which need not include the name of each unit owner and the designation of his or her unit.

2. **Credit on Mortgage Recording Tax:** In the event the proceeds of a construction mortgage were applied to construction of a unit of a condominium submitted to the provisions of this article, or in the event that a unit submitted to the provisions of this act was subject to a blanket mortgage whose proceeds were applied exclusively to payment of the construction mortgage or to capital expenditures or expenses for the development or operation of the condominium, or to purchase of land or buildings for the condominium provided that such purchase was no more than two years prior to the recording of the declaration of condominium, and a mortgage recording tax was duly paid on such construction or blanket mortgage in accordance with article eleven (11) of the tax law, then, as each unit is first conveyed, there shall be allowed a credit against the mortgage recording taxes (except the special additional mortgage recording tax imposed by subdivision one-a (1-a) of section two hundred fifty-three (§ 253) of the tax law) that would otherwise be payable on a purchase money mortgage, said credit to be in the amount resulting from the product of the purchaser's pro rata percentage of interest in the common elements and the mortgage tax already paid on the construction or blanket mortgage. No credit shall be allowed under this subdivision
 - (a) on account of the special additional mortgage recording tax imposed by subdivision one-a (1-a) of section two hundred fifty-three (§ 253) of the tax law or
 - (b) where the first condominium unit is sold more than two years after the construction or blanket mortgage was recorded.

3. **Other Enabling Jurisdictions:** Unless specifically exempted by a provision of this article, all property subject to the provisions of this article shall continue to be subject to all laws, rules and resolutions adopted by any county, city, town or village for the health, safety and welfare of its inhabitants or for regulation of the use of real property. Every county, city, town and village shall continue to have all enforcement powers created by such laws, rules or resolutions or the enabling acts of such laws, rules and resolutions and may exercise those enforcement powers against any violation involving property subject to the provisions of this article.

4. **Property Tax Exclusions:** Any estimate of tax liability required by any rule adopted pursuant to this article shall not be binding upon any municipality or public official and any document containing such an estimate shall contain a notice to that effect.

§ 339-ff: Mortgage Investments on Units by State Agencies, Insurers, Banking Organizations and Fiduciaries; Limitation to First Mortgages.

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- (a) The following persons:
- (1) public officers, bodies of the state, municipalities, and municipal subdivisions,
 - 2) persons doing an insurance business (as defined by section one thousand one hundred one (§ 1101) of the insurance law),
 - (3) banking organizations (as defined by section two (§ 2) of the banking law), and
 - (4) executors, administrators, trustees, guardians and other fiduciaries, are authorized to invest in bonds, notes and evidences of indebtedness which are secured by first mortgages or deeds of trust upon units and the appurtenant common interests, wherever such persons may invest, and subject to all of the rules and limitations applicable to such investment, in bonds, notes and evidences of indebtedness which are secured by first mortgages or deeds of trust upon real estate. Where the applicable limitations are dependent upon the type of use of the real estate, only the type of use of the particular unit or units which constitute the security for such investment shall be taken into consideration for the purpose of such limitations. The existence of any prior lien for taxes, assessments or other similar charges not yet delinquent shall be disregarded in determining whether a mortgage or deed of trust is a first mortgage or deed of trust.
- (b) **Exclusions:** No person enumerated in subdivision (a) of this section may invest in bonds, notes or evidences of indebtedness secured by mortgages or deeds of trust upon units and the appurtenant common interests, which are other than first mortgages or deeds of trust thereupon, notwithstanding any other provision of law (including section three hundred thirty-nine-g (§ 339-g) of this chapter).
- (c) **Banks:** Notwithstanding subdivisions (a) and (b), banking organizations are authorized, subject to the rules and limitations applicable thereto contained in subdivision four-a (4-a) of section one hundred three (§ 103), subdivision six-a (6-a) of section two hundred thirty-five (§ 235), subdivision four-a (4-a) of section three hundred eighty (§ 380) and subdivision eight (8) of section four hundred fifty-six (§ 456) of the Banking Law, and the New York Job Development Authority is authorized to invest in bonds, notes and evidences of indebtedness which are secured by mortgages other than first mortgages upon units and the appurtenant common interests, provided such mortgages are in compliance with title eight (8) of article eight (8) of the Public Authorities Law.
- (d) **NYS Urban Development Corporation:** Notwithstanding subdivisions (a) and (b) of this section, the New York State Urban Development Corporation is authorized to invest in bonds, notes and evidences of indebtedness which are secured by mortgages other than first mortgages upon units and the appurtenant common interests, provided that
- (i) such units are owned or are to be acquired by a corporation as defined in subparagraph five (5) of paragraph (a) of section one hundred two (§ 102) of the Not-for-Profit Corporation Law and are to be used for commercial purposes, and such corporation has executed a loan authorization agreement with the New York State Urban Development Corporation on or before June thirtieth, nineteen hundred eighty-eight (June 30, 1986) or
 - (ii) such units are developed as a part of a project of the New York State Urban Development Corporation that received specific authorization in chapter eight hundred thirty-nine (839) of the laws of nineteen hundred eighty-seven (1987); and further provided that such investments and subordinate mortgages are in compliance with chapter one hundred seventy-four (174) of the laws of nineteen hundred sixty-eight (1968), as subsequently amended.
- (e) **NYC Housing Development Corporation:** Notwithstanding subdivisions (a) and (b) of this section, the New York City Housing Development Corporation and a city having a population of one million or more are authorized to invest in bonds, notes, and evidences of indebtedness which are secured by

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mortgages other than first mortgages upon dwelling units and the appurtenant common interests provided that such investment is made in connection with a project undertaken pursuant to the Private Housing Finance Law or the General Municipal Law.

- (f) **Division of Housing and Community Renewal and the Housing Trust Fund Corporation:** Notwithstanding subdivisions (a) and (b) of this section, the Division of Housing and Community Renewal and the Housing Trust Fund Corporation, their successors and assigns, are authorized to invest in bonds, notes, and evidences of indebtedness which are secured by mortgages other than first mortgages upon dwelling units and the appurtenant common interests provided that such investment is made in connection with a project undertaken pursuant to the Private Housing Finance Law.

§ 339-gg: Severability

Severability: If any provision of this article or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the article and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

§ 339-hh: Reservation of Power

The legislature reserves the right to alter, amend, suspend or repeal in whole or in part this article. Any such change in this article shall be effective notwithstanding any provisions of any declaration or by-laws.

§ 339-ii: Construction

This article shall be liberally construed to affect the purposes thereof.

§ 339-jj: Borrowing by Board of Managers

1. To the extent authorized by the declaration or the by-laws, the board of managers, on behalf of the unit owners, may incur debt. In addition, subject to any limitations set forth in the declaration or the by-laws, the board of managers, on behalf of the unit owners, may incur debt for any of the purposes enumerated in paragraph (b) of subdivision two (2) of section three hundred thirty-nine-v (§ 339-v) of this article, provided that
 - (a) **5 Years After the First Sale:** such debt is incurred no earlier than the fifth anniversary of the first conveyance of a unit and
 - (b) **Majority of the Unit Owners:** the incurrence of such debt shall require the consent of a majority in common interest of the unit owners.
2. In connection with a debt incurred by it, the board of managers, on behalf of the unit owners, may
 - (a) **Pledging Future Income:** assign the rights in and to receive future income and common charges,
 - (b) **Pledging Real and Personal Property:** create a security interest in, assign, pledge, mortgage or otherwise encumber funds or other real or personal property that it holds,
 - (c) **Trust Funds:** agree that, to the extent of any amounts due under any of the provisions of the agreements under which the debt was incurred and subject to the provisions of subdivision two (2) of section three hundred thirty-nine- (§ 339-) of this article, all common charges received and to be received by it, and the right to receive such funds, shall constitute trust funds for the purpose of paying such debt and the same shall be expended for such purpose before expending any part of the same for any other purpose, and

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- (d) **Mortgage Lien of Default:** agree that at the lender's direction it will increase common charges to the extent necessary to pay any amount when due under any of the provisions of the agreements under which the debt was incurred. The preceding sentence shall not be construed to authorize the board of managers to create a lien on the common elements. Any such assignment may provide that, in the event of a default, the lender shall have the right of the board of managers to file liens in the lender's name on units for unpaid common charges pursuant to sections three hundred thirty-nine-z (§ 339-z) and three hundred thirty-nine-aa (§ 339-aa) of this article and the right to foreclose such liens pursuant to section three hundred thirty-nine-aa (§ 339-aa) of this article.
3. Nothing in this section shall impair rights under any loan or other agreement existing prior to the effective date of this section or limit any right or power that a board of managers would otherwise have.

§ 339-kk: Rents

- (a) **Non-Occupying Owner:** For the purposes of this section, "non-occupying owner" shall mean a unit owner in a condominium association who does not occupy the dwelling unit.
- (b) **Right of Rental Garnishment:** If a non-occupying owner rents any dwelling unit to a rental tenant and then fails to make payments due for common charges, assessments or late fees for such unit within sixty (60) days of the expiration of any grace period after they are due, upon notice in accordance with subdivision (c) of this section, all rental payments from the tenant shall be directly payable to the condominium association.
- (c) **Notice of Rental Garnishment:** If the common charges, assessments or late fees due for any unit have not been paid in full, within sixty (60) days after the expiration of any grace period of the earliest due date, the board of managers shall provide written notice to the tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for common charges, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the condominium association at the address listed on the notice. Where a majority of the board of managers has been elected by and from among the unit owners who are in occupancy, the board may elect not to require that rental payments be made payable to the condominium association. At such time as payments for common charges, assessments and late fees from the non-occupying owner are once again current, notice of such fact shall be given within three (3) business days to the rental tenant and non-occupying owner. Thereafter all rental payments shall be made payable to the non-occupying owner or a designated agent. A non-occupying owner who disputes the association's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the board of managers, which must be held within thirty (30) days of the date that such board receives notice that such owner seeks to dispute such claim.
- (d) Nothing in this section shall limit any rights of unit owners or of the board of managers existing under any other law or agreement.
- (e) **Non-Rental Payment Proceeding:** Payment by a rental tenant to the condominium association made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

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