

## **Section 9. Sharing of expenses - Lien for nonpayment.**

**(a)** All common expenses incurred or accrued prior to the first conveyance of a unit shall be paid by the developer, and during this period no common expense assessment shall be payable to the association. It shall be the duty of each unit owner including the developer to pay his proportionate share of the common expenses commencing with the first conveyance. The proportionate share shall be in the same ratio as his percentage of ownership in the common elements set forth in the declaration.

**(b)** The condominium instruments may provide that common expenses for insurance premiums be assessed on a basis reflecting increased charges for coverage on certain units.

### **(c) Budget and Reserves.**

**(1)** The board of managers shall prepare and distribute to all unit owners a detailed proposed annual budget, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The initial budget and common expense assessment based thereon shall be adopted prior to the conveyance of any unit. The budget shall also set forth each unit owner's proposed common expense assessment.

**(2)** All budgets adopted by a board of managers on or after July 1, 1990 shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements. To determine the amount of reserves appropriate for an association, the board of managers shall take into consideration the following:

**(i)** the repair and replacement cost, and the estimated useful life, of the property which the association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the buildings and common elements, and energy systems and equipment;

**(ii)** the current and anticipated return on investment of association funds;

**(iii)** any independent professional reserve study which the association may obtain;

**(iv)** the financial impact on unit owners, and the market value of the condominium units, of any assessment increase needed to fund reserves; and

**(v)** the ability of the association to obtain financing or refinancing.

**(3)** Notwithstanding the provisions of this subsection (c), an association without a reserve requirement in its condominium instruments may elect to waive in whole or in part the reserve requirements of this Section by a vote of 2/3 of the total votes of the association. Any association having

elected under this paragraph (3) to waive the provisions of subsection (c) may by a vote of 2./3 of the total votes of the association elect to again be governed by the requirements of subsection (c).

**(4)** In the event that an association elects to waive all or part of the reserve requirements of this Section, that fact must be disclosed after the meeting at which the waiver occurs by the association in the financial statements of the association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under Section 22.1; and no member of the board of managers or the managing agent of the association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of reserve funds in the association budget.

**(d) DELETED**

**(e)** The condominium instruments may provide for the assessment, in connection with expenditures for the limited common elements, of only those units to which the limited common elements are assigned.

**(f)** Payment of any assessment shall be in amounts and at times determined by the board of managers.

**(g) Lien.**

**(1)** If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and costs of collections shall constitute a lien on the interest of the unit owner in the property prior to all other liens and encumbrances, recorded or unrecorded, except only

**(a)** taxes, special assessments, and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or federal taxes which by law are a lien on the interest of the unit owner prior to the preexisting recorded encumbrances thereon and

**(b)** encumbrances on the interest of the unit owner recorded prior to the date of such failure or refusal which by law would be a lien thereon prior to subsequently recorded encumbrances. Any action brought to extinguish the lien of the association shall include the association as party.

**(2)** With respect to encumbrances executed prior to August 30, 1984 or encumbrances executed subsequent to August 30, 1984 which are neither bonafide first mortgages nor trust deeds and which encumbrances contain a statement of mailing address in the State of Illinois where notice may be

mailed to the encumbrancer thereunder, if and whenever and as often as the manager or board of managers shall send, by United States certified or registered mail, return receipt requested, to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of the unpaid common expenses with respect to the encumbered unit, then, unless otherwise provided in the declaration or bylaws, the prior recorded encumbrance shall be subject to the lien of all unpaid common expenses with respect to the unit which become due and payable within a period of 90 days after the date of mailing of each such notice.

**(3)** The purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law, shall have the duty to pay the unit's proportionate share of the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order. Such payment confirms the extinguishment of any lien created pursuant to paragraph (1) or (2) of this subsection (g) by virtue of the failure or refusal of a prior unit owner to make payment of common expenses, where the judicial foreclosure sale has been confirmed by order of the court, a deed in lieu thereof has been accepted by the lender, or a consent judgment has been entered by the court.

**(h)** A lien for common expenses shall be in favor of the members of the board of managers and their successors in office and shall be for the benefit of all other unit owners. Notice of the lien may be recorded by the board of managers, or if the developer is the manager or has majority of seats on the board of managers and the manager or board of managers fails to do so, any unit owner may record notice of the lien. Upon the recording of such notice the lien may be foreclosed by an action brought in the name of the board of managers in the same manner as a mortgage of real property.

**(i)** Unless otherwise provided in the declaration, the members of the board of managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid on the interest so foreclosed at the foreclosure sale, and to acquire and hold, lease, mortgage and convey it.

**(j)** Any encumbrancer may from time to time request in writing a written statement from the manager or board of managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance. Unless the request is complied with within 20 days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of the encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to the unit, and upon

payment the encumbrancer shall have a lien on the unit for the amounts paid at the same rank as the lien of his encumbrance.

(k) Nothing in Public Act 83-1271 (Amendatory Act of 1984) is intended to change the lien priorities of any encumbrance created prior to August 30, 1984.

**(Source: P.A. 87-692; 87-746; 87-895; 88-417)**

### **Section 9.1**

**(a) Other Liens; Attachment and Satisfaction.** Subsequent to the recording of the declaration, no liens of any nature shall be created or arise against any portion of the property except against an individual unit or units. No labor performed or materials furnished with the consent or at the request of a particular unit owner shall be the basis for the filing of a mechanics' lien claim against any other unit. If the performance of the labor or furnishing of the materials is expressly authorized by the board of managers, each unit owner shall be deemed to have expressly authorized it and consented thereto, and shall be liable for the payment of his unit's proportionate share of any due and payable indebtedness as set forth in this Section.

Each mortgage and other lien, including mechanics liens, securing a debt incurred in the development of the land submitted to the provisions of this Act for the sale of units shall be subject to the provisions of this Act, subsequent to the conveyance of a unit to the purchaser.

In the event any lien exists against 2 or more units and the indebtedness secured by such lien is due and payable, the unit owner of any such unit so affected may remove such unit and the undivided interest in the common elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such unit. In the event such lien exists against the units or against the property, the amount of such proportional payment shall be computed on the basis of the percentages set forth in the declaration. Upon payment as herein provided, it is the duty of the encumbrancer to execute and deliver to the unit owner a release of such unit and the undivided interest in the common elements appertaining thereto from such lien, except that such proportional payment and release shall not prevent the encumbrancer from proceeding to enforce his rights against any unit or interest with respect to which such lien has not been so paid or released.

The owner of a unit shall not be liable for any claims, damages, or judgments, including but not limited to State or local government fees or fines, entered as a result of any action or inaction of the board of managers of the association other than for mechanics' liens as set forth in this Section. Unit owners other than the developer, members of the board of managers other than the developer or developer representatives, and the association of unit owners shall not be liable for any claims, damages, or judgments, including but not limited to State or local government fees or fines, entered as result of any action or inaction of the developer other than for mechanics' liens as set forth in this Section. Each unit