

TITLE 2: NATURAL RESOURCES
DIVISION 6: UNIFORM CONDOMINIUM ACT

§ 6304. Transfer of Special Declarant Rights.

(a) No special declarant rights (2 CMC § 6103(u)) created or reserved under this division may be transferred except by an instrument evidencing the transfer recorded in every district in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor or by this division. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(2) If a transferor retains any special declarant rights, or if a successor to any special declarant right is an affiliate of a declarant (2 CMC § 6103(b)), the transferor is subject to liability for all obligations and liabilities imposed on a declarant by this division or by the declaration arising after the transfer and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the condominium.

(3) A transferor who retains no special declarant right has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, or sale under Bankruptcy Act [11 U.S.C. § 101 et seq.] or receivership proceedings, of all units owned by a declarant in the condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights, or only to any rights reserved in the declaration pursuant to 2 CMC § 6217 to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, sale by a trustee under a deed of trust, or sale under Bankruptcy Act or receivership proceedings, of all units in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights, and

(2) The period of declarant control (2 CMC § 6303(c)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on any declarant by this division or by the declaration.

(2) A successor to any special declarant right, other than a successor described in subsections (3) or (4) of this section, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed upon a declarant

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by this division or the declaration, but he or she is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous declarant or made before the condominium was created, or for a breach of fiduciary obligation by any previous declarant.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (2 CMC § 6217), if he or she is not an affiliate of a declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement.

(4) A successor to all special declarant rights who is not an affiliate of a declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) of this section, may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right to control the executive board in accordance with the provisions of 2 CMC § 6303(c) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under 2 CMC § 6303(c).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this division or the declaration.

Source: PL 3-86, § 3-104.