

2010 -- S 2683

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PROPERTY -- CONDOMINIUM LAW

Introduced By: Senator Michael J. Pinga

Date Introduced: March 10, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-36.1-1.0.2, 34-36.1-1.0.3, 34-36.1-2.0.5 and 34-36.1-2.0.8 of
2 the General Laws in Chapter 34-36.1 entitled "Condominium Law" are hereby amended to read
3 as follows:
4 **34-36.1-1.02. Applicability.** -- (a) (1) This chapter applies to all condominiums created
5 within this state after July 1, 1982, except that any condominium created within this state prior to
6 July 1, 1982, may voluntarily accept the provisions of this chapter in lieu of the provisions under
7 which it was originally organized. Acceptance shall be evidenced by an agreement in writing
8 executed by and in behalf of the condominium association and by all of the owners of all of the
9 individual condominium units within the condominium, in which agreement it is clearly stated
10 that they all accept the provisions of this chapter in lieu of those in the statute under which the
11 condominium was organized and wish to be governed in the future by the provisions of this
12 chapter. The agreement shall be recorded in the land evidence records of each and every town or
13 city where all or any part of the land in the condominium concerned may be located and shall
14 become effective when first so recorded. The acceptance shall only apply to the governance of the
15 condominium concerned as to all matters which are prospective or executory in nature; and
16 nothing herein shall be deemed to abrogate, amend, limit, effect, or impair the continued
17 effectiveness, legality, or validity of all actions lawfully taken by or in behalf of the condominium
18 prior to the effective date of the acceptance, including, but without limitation, the condominium
19 declaration and all amendments thereto, the by-laws of the condominium and/or of its association,

1 all deeds, mortgages, leases and any further documents affecting the titles or rights of unit
2 owners, or of the condominium or the prior lawful acts or deeds of any kind, of the condominium
3 association, its officers, directors, or members.

4 (2) Sections 34-36.1-1.05 (separate titles and taxation), 34-36.1-1.06 (applicability of
5 local ordinances, regulations, and building codes), 34-36.1-1.07 (eminent domain), 34-36.1-2.03
6 (construction and validity of declaration and bylaws), 34-36.1-2.04 (description of units), [34-](#)
7 [36.1-2.08 \(limited common elements\)](#), 34-36.1-3.02(a)(1) -- (6) and (11) -- (17) (powers of unit
8 owners' association), 34-36.1-3.11 (tort and contract liability), 34-36.1-3.16 (lien for
9 assessments), 34-36.1-3.18 (association records), 34-36.1-4.09 (resale of units), and 34-36.1-4.17
10 (effect of violation on rights of action; attorney's fees), section 34-36.1-3.20 (enforcement of
11 declaration, bylaws and rules), and 34-36.1-1.03 (definitions), to the extent necessary in
12 construing any of those sections, apply to all condominiums created in this state before July 1,
13 1982; but those sections apply only with respect to events and circumstances occurring after July
14 1, 1982 and do not invalidate existing provisions of the declaration, bylaws, plats, or plans of
15 those condominiums.

16 (3) A condominium created as an additional phase by amendment of a condominium
17 created prior to July 1, 1982, if the original declaration contemplated the amendment, shall be
18 deemed to be a condominium created prior to July 1, 1982; provided, however, the provisions of
19 subdivision (a)(2) shall apply as defined therein.

20 (4) Section 34-36.1-3.21 (foreclosure of condominium lien) applies, with respect to all
21 condominiums created in this state prior to June 19, 1991, only with respect to events and
22 circumstances occurring after June 18, 1991, does not invalidate existing provisions of the
23 declarations, bylaws, plats, or plans of those condominiums, and applies in all respects to all
24 condominiums created in this state after June 18, 1991.

25 (b) The provisions of the Condominium Ownership Act, chapter 36 of this title, do not
26 apply to condominiums created after July 1, 1982 and do not invalidate any amendment to the
27 declaration, bylaws, plats, and plans of any condominium created before July 1, 1982 if the
28 amendment would be permitted by this chapter. The amendment must be adopted in conformity
29 with the procedures and requirements specified by those instruments and by chapter 36 of this
30 title. If the amendment grants to any person any rights, powers, or privileges permitted by this
31 chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that
32 person.

33 (c) This chapter does not apply to condominiums or units located outside this state, but
34 the public offering statement provisions (sections 34-36.1-4.02 -- 34-36.1-4.07) apply to all

1 contracts for the disposition thereof signed in this state by any party unless exempt under section
2 34-36.1-4.01(b).

3 **34-36.1-1.03. Definitions.** -- In the declaration and bylaws, unless specifically provided
4 otherwise or the context otherwise requires, and in this chapter:

5 (1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under
6 common control with a declarant.

7 (i) A person "controls" a declarant if the person:

8 (A) Is a general partner, officer, director, or employer of the declarant,

9 (B) Directly or indirectly or acting in concert with one or more other persons, or through
10 one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing,
11 more than twenty percent (20%) of the voting interest in the declarant,

12 (C) Controls in any manner the election of a majority of the directors of the declarant, or

13 (D) Has contributed more than twenty percent (20%) of the capital of the declarant.

14 (ii) A person "is controlled by" a declarant if the declarant:

15 (A) Is a general partner, officer, director, or employer of the person,

16 (B) Directly or indirectly or acting in concert with one or more other persons, or through
17 one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing,
18 more than twenty percent (20%) of the voting interest in the person,

19 (C) Controls in any manner the election of a majority of the directors of the person, or

20 (D) Has contributed more than twenty percent (20%) of the capital of the person.

21 (iii) Control does not exist if the powers described in this subdivision are held solely as
22 security for an obligation and are not exercised.

23 (2) "Allocated interests" means the undivided interest in the common elements, the
24 common expense liability, and votes in the association allocated to each unit.

25 (3) "Association" or "unit owners' association" means the unit owners' association
26 organized under section 34-36.1-3.01.

27 (4) "Common elements" means all portions of a condominium other than the units.

28 (5) "Common expenses" means expenditures made by or financial liabilities of the
29 association, together with any allocations to reserves.

30 (6) "Common expense liability" means the liability for common expenses allocated to
31 each unit pursuant to section 34-36.1-2.07.

32 (7) (i) "Condominium" means real estate, portions of which are designated for separate
33 ownership and the remainder of which is designated for common ownership solely by the owners
34 of those portions. Real estate is not a condominium unless the undivided interests in the common

1 elements are vested in the unit owners.

2 (ii) Provided that each unit owner has a vested, undivided interest in the common
3 elements greater than 0.0 percent, no minimum percentage interest in the common elements is
4 otherwise required by this chapter.

5 (8) "Conversion building" means a building that at any time before creation of the
6 condominium was occupied wholly or partially by persons other than purchasers and persons who
7 occupy with the consent of purchasers.

8 (9) "Declarant" means any person or group of persons acting in concert who:

9 (i) As part of a common promotional plan, offers to dispose of his, her or its interest in a
10 unit not previously disposed of; or

11 (ii) Reserves or succeeds to any special declarant right.

12 (10) "Declaration" means any instruments, however denominated, that create a
13 condominium, and any amendments to those instruments.

14 (11) "Development rights" means any right or combination of rights reserved by a
15 declarant in the declaration to:

16 (A) Add real estate to a condominium,

17 (B) Create units, common elements, or limited common elements within a condominium,

18 (C) Subdivide units or convert units into common elements, or

19 (D) Withdraw real estate from a condominium.

20 (12) "Person with a disability" means any person who is unable to engage in any
21 substantial gainful activity by reason of any medically determinable physical or mental
22 impairment which can be expected to result in death or has lasted or can be expected to last for a
23 continuous period of not less than twelve (12) months or any person having an impairment of
24 mobility or vision which is expected to be of at least twelve (12) months duration, and is a
25 substantial impediment to his or her ability to live independently.

26 (13) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or
27 equitable interest in a unit, but does not include the transfer or release of a security interest.

28 (14) "Executive board" means the body, regardless of name, designated in the
29 declaration to act on behalf of the association.

30 (15) [Deleted by P.L. 1999, ch. 83, section 80, and P.L. 1999, ch. 130, section 80 which
31 enacted identical amendments to this section.]

32 (16) "Identifying number" means a symbol or address that identifies only one unit in a
33 condominium.

34 (17) "Land only units" shall mean units designated as land only units on the plats and

1 plans which units may be comprised entirely or partially of unimproved real property and the air
2 space above the real property. The boundaries of a land only unit are to be described pursuant to
3 section 34-36.1-2.05(a)(5). Land only units may, but need not, contain a physical structure. The
4 declaration may provide for the conversion of land only units to other types of units and/or
5 common elements provided the conversion shall be effective only upon the recording of an
6 amendment to the declaration which amendment will include new plats and plans identifying any
7 portion of the land only unit converted to another type of unit and/or common element.

8 (18) "Leasehold condominium" means a condominium in which all or a portion of the
9 real estate is subject to a lease the expiration or termination of which will terminate the
10 condominium or reduce its size.

11 (19) "Limited common element" means a portion of the common elements ~~allocated~~
12 either: (i) Allocated by the declaration, ~~or~~ (ii) Allocated by operation of section 34-36.1-2.02(2)
13 or (4), or (iii) Granted or assigned in accordance with the provisions of this chapter by the
14 governing body of the organization of unit owners for the exclusive use of one or more but fewer
15 than all of the units.

16 (20) "Master association" means an organization described in section 34-36.1-2.20,
17 whether or not it is also an association described in section 34-36.1-3.01.

18 (21) "Offering" means any advertisement, inducement, solicitation, or attempt to
19 encourage any person to acquire any interest in a unit, other than as security for an obligation. An
20 advertisement in a newspaper or other periodical of general circulation, or in any broadcast
21 medium to the general public, of a condominium not located in this state, is not an offering if the
22 advertisement states that an offering may be made only in compliance with the law of the
23 jurisdiction in which the condominium is located.

24 (22) "Person" means a natural person, corporation, business trust, estate, trust,
25 partnership, association, joint venture, government, governmental subdivision or agency, or other
26 legal or commercial entity. (In the case of a land trust, however, "person" means the beneficiary
27 of the trust rather than the trust or the trustee.)

28 (23) "Purchaser" means any person, other than a declarant or a person in the business of
29 selling real estate for his or her own account, who by means of a voluntary transfer acquires a
30 legal or equitable interest in a unit other than:

- 31 (i) A leasehold interest including renewal options of less than twenty (20) years, or
32 (ii) As security for an obligation.

33 (24) "Real estate" means any leasehold or other estate or interest in, over, or under land,
34 including structures, fixtures, and other improvements and interests which by custom, usage, or

1 law pass with a conveyance of land though not described in the contract of sale or instrument of
2 conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces
3 that may be filled with air or water.

4 (25) "Residential purposes" means use for dwelling or recreational purposes, or both.

5 (26) "Special declarant rights" means rights reserved for the benefit of a declarant to:

6 (i) Complete improvements indicated on plats and plans filed with the declaration,
7 (section 34-36.1-2.09),

8 (ii) To exercise any development right, (section 34-36.1-2.10),

9 (iii) To maintain sales offices, management offices, signs advertising the condominium,
10 and models, (section 34-36.1-2.15),

11 (iv) To use easements through the common elements for the purpose of making
12 improvements within the condominium or within real estate which may be added to the
13 condominium, (section 34-36.1-2.16),

14 (v) To make the condominium part of a larger condominium or a planned community,
15 (section 34-36.1-2.21),

16 (vi) To make the condominium subject to a master association, (section 34-36.1-2.20),

17 (vii) Or to appoint or remove any officer of the association or any master association or
18 any executive board member during any period of declarant control, (section 34-36.1-3.03(d)).

19 (27) "Time share" means a right to occupy a unit or any of several units during five (5)
20 or more separated time periods over a period of at least five (5) years, including renewal options,
21 whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

22 (28) "Unit" means a physical portion of the condominium designated for separate
23 ownership or occupancy, the boundaries of which are described pursuant to section 34-36.1-
24 2.05(a)(5).

25 (29) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a
26 unit in a leasehold condominium whose lease expires simultaneously with any lease, the
27 expiration or termination of which will remove the unit from the condominium, but does not
28 include a person having an interest in a unit solely as security for an obligation.

29 **34-36.1-2.05. Contents of declaration.** -- (a) The declaration for a condominium must
30 contain:

31 (1) The name of the condominium, which must include the word "condominium" or be
32 followed by the words "a condominium," and the association;

33 (2) The name of every municipality in which any part of the condominium is situated;

34 (3) A legally sufficient description of the real estate included in the condominium;

1 (4) A statement of the maximum number of units which the declarant reserves the right
2 to create;

3 (5) A description of the boundaries of each unit created by the declaration, including the
4 unit's identifying number;

5 (6) A description of any limited common elements, other than those specified in section
6 34-36.1-2.02(2) and (4), or as provided in section 34-36.1-2.09(b)(10);

7 (7) ~~A description of any real estate (except real estate subject to development rights)~~
8 ~~which may be allocated subsequently as limited common elements, other than limited common~~
9 ~~elements specified in section 34-36.1-2.02(2) and (4), together with a statement that they may be~~
10 ~~so allocated;~~

11 (8) A description of any development rights and other special declarant rights (section
12 34-36.1-1.03(26)) reserved by the declarant, together with a legally sufficient description of the
13 real estate to which each of those rights applies, and a time limit within which each of those rights
14 must be exercised;

15 (9) If any development right may be exercised with respect to different parcels of real
16 estate at different times, a statement to that effect together with:

17 (i) Either a statement fixing the boundaries of those portions and regulating the order in
18 which those portions may be subjected to the exercise of each development right, or a statement
19 that no assurances are made in those regards, and

20 (ii) A statement as to whether, if any development right is exercised in any portion of the
21 real estate subject to that development right, that development right must be exercised in all or in
22 any other portion of the remainder of that real estate;

23 (10) Any other conditions or limitations under which the rights described in subdivision
24 (8) of this section may be exercised or will lapse;

25 (11) An allocation to each unit of the allocated interests in the manner described in
26 section 34-36.1-2.07;

27 (12) Any restrictions on use, occupancy, and alienation of the units, including any
28 housing restrictions as set forth in section 34-39.1-3;

29 (13) The recording data for recorded easements and licenses appurtenant to or included
30 in the condominium or to which any portion of the condominium is or may become subject by
31 virtue of a reservation in the declaration; and

32 (14) All matters required by sections 34-36.1-2.06, 34-36.1-2.07, 34-36.1-2.08, 34-36.1-
33 2.09, 34-36.1-2.15, 34-36.1-2.16, and 34-36.1-3.03(d).

34 (b) The declaration may contain any other matters the declarant deems appropriate.

1 **34-36.1-2.08. Limited common elements.** -- (a) Except for the limited common
2 elements described in section 34-36.1-2.02(2) and (4), the declaration shall specify to which unit
3 or units each limited common element is allocated. That allocation may not be altered without the
4 consent of the unit owners whose units are affected.

5 (b) Except as the declaration otherwise provides, a limited common element may be
6 reallocated by an amendment to the declaration executed by the unit owners between or among
7 whose units the reallocation is made. The persons executing the amendment shall provide a copy
8 thereof to the association, which shall record it. The amendment shall be recorded in the names of
9 the parties and the condominium.

10 (c) A common element not previously allocated as a limited common element may ~~not~~
11 be ~~so~~ allocated ~~except pursuant to provisions in the declaration made in accordance with section~~
12 ~~34-36.1-2.05(a)(7). The~~ to a unit by the executive board of a condominium, whether or not
13 provided for in the declaration, upon such terms and conditions as deemed appropriate by the
14 executive board; provided, however, that consent has been obtained from all unit owners shown
15 on the recorded condominium plats and plans as immediately adjoining the limited common area
16 or facility so designated, if any limited common element allocations made pursuant to subsection
17 (c) herein shall be made by amendments to the declaration executed by the executive board, the
18 recipients of the limited common element and the immediately adjoining consenting unit owners,
19 if any, and without any further consent, agreement or signature of any other unit owner being
20 necessary.

21 (d) In the case of a master condominium, the executive board of any subassociation
22 created thereunder may allocate limited common elements to a unit in the same manner provided
23 in subsection (c) above, provided that the limited common elements so allocated, have previously
24 been allocated as common elements or master limited common elements to and/or for the use
25 and/or benefit of the particular subassociation. In that case, the allocation shall be made by
26 amendment to the declaration of the subassociation executed by the executive board of the sub
27 association, the recipients of the limited common element and the immediately adjoining
28 consenting unit owners, if any, within the subassociation and without the need of any further
29 consent of any other party.

30 (e) Nothing herein shall be construed to require the consent of one hundred percent
31 (100%) of the beneficial interest of unit owners of a condominium (whether contained within a
32 master or a traditional condominium structure) for the allocation of limited common element
33 made pursuant to subsection 34-26.1-2.08(c) or (d). The allocation of a limited common element
34 made pursuant to subsection 34-26.1-2.08 (c) or (d) shall not be considered to constitute a change

1 or alteration to the boundaries of a unit or the allocated interests of a unit. The provisions hereof
2 may not be varied or conditioned by agreement or by amendment to the declaration or the by-
3 laws and the rights conferred herein may not be waived. In the event of a conflict between this
4 section and the declaration or by-laws of any condominium submitted to the provisions of this
5 chapter, the language hereof shall control. Any covenant or provision to the contrary shall be null
6 and void.

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- CONDOMINIUM LAW

- 1 This act would amend certain provisions of condominium law relative to the allocation of
- 2 limited common elements and the manner provided.
- 3 This act would take effect upon passage.

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