

2024 -- S 2637

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO PROPERTY -- CONDOMINIUM LAW

Introduced By: Senators Valverde, Lauria, Gu, McKenney, Sosnowski, DiMario, and  
Euer

Date Introduced: March 01, 2024

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-36.1-1.03 of the General Laws in Chapter 34-36.1 entitled

2 "Condominium Law" is hereby amended to read as follows:

3 **34-36.1-1.03. Definitions.**

4 In the declaration and bylaws, unless specifically provided otherwise or the context  
5 otherwise requires, and in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (3) "Association" or "unit owners' association" means the unit owners' association  
8 organized under § 34-36.1-3.01.

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

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

12 (6) "Common expense liability" means the liability for common expenses allocated to each  
13 unit pursuant to § 34-36.1-2.07.

14 (7)(i) "Condominium" means real estate, portions of which are designated for separate  
15 ownership and the remainder of which is designated for common ownership solely by the owners  
16 of those portions. Real estate is not a condominium unless the undivided interests in the common  
17 elements are vested in the unit owners.

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

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

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

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

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

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

30 (11) "Deed-restricted unit" means any unit that qualifies as low- and moderate-income  
31 housing as set forth in § 45-53-3.

32 ~~(11)~~(12) "Development rights" means any right or combination of rights reserved by a  
33 declarant in the declaration to:

34 (A) Add real estate to a condominium,

- 1 (B) Create units, common elements, or limited common elements within a condominium,  
2 (C) Subdivide units or convert units into common elements, or  
3 (D) Withdraw real estate from a condominium.

4 ~~(12)~~(13) “Person with a disability” means any person who is unable to engage in any  
5 substantial gainful activity by reason of any medically determinable physical or mental impairment  
6 which can be expected to result in death or has lasted or can be expected to last for a continuous  
7 period of not less than twelve (12) months or any person having an impairment of mobility or vision  
8 which is expected to be of at least twelve (12) months duration, and is a substantial impediment to  
9 his or her ability to live independently.

10 ~~(13)~~(14) “Dispose” or “disposition” means a voluntary transfer to a purchaser of any legal  
11 or equitable interest in a unit, but does not include the transfer or release of a security interest.

12 ~~(14)~~(15) “Executive board” means the body, regardless of name, designated in the  
13 declaration to act on behalf of the association.

14 ~~(15)~~(16) [Deleted by P.L. 1999, ch. 83, § 80, and P.L. 1999, ch. 130, § 80 which enacted  
15 identical amendments to this section.]

16 ~~(16)~~(17) “Identifying number” means a symbol or address that identifies only one unit in a  
17 condominium.

18 ~~(17)~~(18) “Land only units” shall mean units designated as land only units on the plats and  
19 plans which units may be comprised entirely or partially of unimproved real property and the air  
20 space above the real property. The boundaries of a land only unit are to be described pursuant to §  
21 34-36.1-2.05(a)(5). Land only units may, but need not, contain a physical structure. The declaration  
22 may provide for the conversion of land only units to other types of units and/or common elements  
23 provided the conversion shall be effective only upon the recording of an amendment to the  
24 declaration which amendment will include new plats and plans identifying any portion of the land  
25 only unit converted to another type of unit and/or common element.

26 ~~(18)~~(19) “Leasehold condominium” means a condominium in which all or a portion of the  
27 real estate is subject to a lease the expiration or termination of which will terminate the  
28 condominium or reduce its size.

29 ~~(19)~~(20) “Limited common element” means a portion of the common elements allocated  
30 by the declaration or by operation of § 34-36.1-2.02(2) or (4) for the exclusive use of one or more  
31 but fewer than all of the units.

32 ~~(20)~~(21) “Master association” means an organization described in § 34-36.1-2.20, whether  
33 or not it is also an association described in § 34-36.1-3.01.

34 ~~(21)~~(22) “Offering” means any advertisement, inducement, solicitation, or attempt to

1 encourage any person to acquire any interest in a unit, other than as security for an obligation. An  
2 advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium  
3 to the general public, of a condominium not located in this state, is not an offering if the  
4 advertisement states that an offering may be made only in compliance with the law of the  
5 jurisdiction in which the condominium is located.

6 ~~(22)~~(23) “Person” means a natural person, corporation, business trust, estate, trust,  
7 partnership, association, joint venture, government, governmental subdivision or agency, or other  
8 legal or commercial entity. (In the case of a land trust, however, “person” means the beneficiary of  
9 the trust rather than the trust or the trustee.)

10 ~~(23)~~(24) “Purchaser” means any person, other than a declarant or a person in the business  
11 of selling real estate for his or her own account, who by means of a voluntary transfer acquires a  
12 legal or equitable interest in a unit other than:

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

15 ~~(24)~~(25) “Real estate” means any leasehold or other estate or interest in, over, or under  
16 land, including structures, fixtures, and other improvements and interests which by custom, usage,  
17 or law pass with a conveyance of land though not described in the contract of sale or instrument of  
18 conveyance. “Real estate” includes parcels with or without upper or lower boundaries, and spaces  
19 that may be filled with air or water.

20 ~~(25)~~(26) “Residential purposes” means use for dwelling or recreational purposes, or both.

21 ~~(26)~~(27) “Special declarant rights” means rights reserved for the benefit of a declarant to:

- 22 (i) Complete improvements indicated on plats and plans filed with the declaration, (§ 34-  
23 36.1-2.09),
- 24 (ii) To exercise any development right, (§ 34-36.1-2.10),
- 25 (iii) To maintain sales offices, management offices, signs advertising the condominium,  
26 and models, (§ 34-36.1-2.15),
- 27 (iv) To use easements through the common elements for the purpose of making  
28 improvements within the condominium or within real estate which may be added to the  
29 condominium, (§ 34-36.1-2.16),
- 30 (v) To make the condominium part of a larger condominium or a planned community, (§  
31 34-36.1-2.21),
- 32 (vi) To make the condominium subject to a master association, (§ 34-36.1-2.20),
- 33 (vii) Or to appoint or remove any officer of the association or any master association or  
34 any executive board member during any period of declarant control, (§ 34-36.1-3.03(d)).

1           ~~(27)~~(28) “Time share” means a right to occupy a unit or any of several units during five (5)  
2 or more separated time periods over a period of at least five (5) years, including renewal options,  
3 whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

4           ~~(28)~~(29) “Unit” means a physical portion of the condominium designated for separate  
5 ownership or occupancy, the boundaries of which are described pursuant to § 34-36.1-2.05(a)(5).

6           ~~(29)~~(30) “Unit owner” means a declarant or other person who owns a unit, or a lessee of a  
7 unit in a leasehold condominium whose lease expires simultaneously with any lease, the expiration  
8 or termination of which will remove the unit from the condominium, but does not include a person  
9 having an interest in a unit solely as security for an obligation.

10           SECTION 2. Section 34-36.1-2.07 of the General Laws in Chapter 34-36.1 entitled  
11 "Condominium Law" is hereby amended to read as follows:

12           **34-36.1-2.07. Allocation of common element interest, votes, and common expense**  
13 **liabilities.**

14           (a) The declaration shall allocate a fraction or percentage of undivided interests in the  
15 common elements and in the common expenses of the association, and a portion of the votes in the  
16 association, to each unit including land only units and state the formulas used to establish those  
17 allocations. Those allocations may not discriminate in favor of units owned by the declarant, but  
18 may discriminate in favor of units subject to a housing restriction as set forth in § 34-39.1-3. Except  
19 as set forth in § 34-36.1-1.03(7), no minimum percentage interest in the common elements is  
20 otherwise required.

21           (1) Notwithstanding subsection (a) of this section, in associations where the minority, less  
22 than fifty (50%) percent, of the units are deed restricted units, increases in monthly common  
23 expenses may not exceed five (5%) percent of the previous year’s monthly common expenses.

24           (2) In associations where the minority, less than fifty (50%) percent, of the units are deed  
25 restricted units and an association must impose a special assessment to cover unforeseen costs not  
26 included in the association’s approved annual budget for common expenses, the special assessment  
27 attributed to deed-restricted units is limited to fifty (50%) percent of the full assessment. The fifty  
28 (50%) percent limitation is calculated based on what the per unit share would have had the cost  
29 been equally distributed across units in the association. Associations must allow owners of deed-  
30 restricted units the option to enter into a monthly payment plan, at no additional charge, where the  
31 payment is not in excess of one-twelfth (1/12) of the special assessment.

32           (b) If units may be added to or withdrawn from the condominium, the declaration must  
33 state the formulas to be used to reallocate the allocated interests among all units included in the  
34 condominium after the addition or withdrawal.

1 (c) The declaration may provide: (i) That different allocations of votes shall be made to the  
2 units on particular matters specified in the declaration; (ii) For cumulative voting only for the  
3 purpose of electing members of the executive board; and (iii) For the class voting on specified  
4 issues affecting the class if necessary to protect valid interests of the class. A declarant may not  
5 utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants  
6 by this chapter, nor may units constitute a class because they are owned by a declarant.

7 (d) Except for minor variations due to rounding, the sum of the undivided interests in the  
8 common elements and common expense liabilities allocated at any time to all the units must each  
9 equal one if stated as fractions or one hundred percent (100%) if stated as percentages. In the event  
10 of discrepancy between an allocated interest and the results derived from application of the  
11 pertinent formula, the allocated interest prevails.

12 (e) The common elements are not subject to partition, and any purported conveyance,  
13 encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in  
14 the common elements made without the unit to which that interest is allocated, is void.

15 (f) Subject to the provisions of the declaration and other provisions of law, and except as  
16 provided in § 34-36.1-2.12 which provides for the relocation of boundaries between adjoining units,  
17 the owners of any two (2) or more units may apply for a reallocation of their respective allocated  
18 interests to the executive board; but their application shall not attempt to alter common element  
19 interests except as they relate to the proposed reallocation of unit interests. Unless the executive  
20 board determines within thirty (30) days, that the reallocations are unreasonable, the association  
21 shall prepare an amendment that identifies the units involved, states the reallocations, is executed  
22 by those unit owners, contains words of conveyance between them, and upon recordation, is  
23 indexed in the name of the grantor and the grantee.

24 SECTION 3. Section 34-36.1-3.03 of the General Laws in Chapter 34-36.1 entitled  
25 "Condominium Law" is hereby amended to read as follows:

26 **34-36.1-3.03. Executive board members and officers.**

27 (a) Except as provided in the declaration, the bylaws, subsection (b), or in other provisions  
28 of this chapter, the executive board may act in all instances on behalf of the association. In the  
29 performance of their duties, the officers and members of the executive board are required to  
30 exercise:

- 31 (1) If appointed by the declarant, the care required of fiduciaries of the unit owners; and  
32 (2) If elected by the unit owners, ordinary and reasonable care.

33 (b) The executive board may not act on behalf of the association to amend the declaration  
34 (§ 34-36.1-2.17), to terminate the condominium, or to elect members of the executive board or

1 determine the qualifications, powers and duties, or terms of office of executive board members, but  
2 the executive board may fill vacancies in its membership for the unexpired portion of any term.

3 (c)(1) Within thirty (30) days after adoption of any proposed budget for the condominium,  
4 the executive board shall provide a summary of the budget to all the unit owners, and shall set a  
5 date for a meeting of the unit owners to consider ratification of the budget not less than fourteen  
6 (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority  
7 of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is  
8 ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the  
9 periodic budget last ratified by the unit owners shall be continued until such time as the unit owners  
10 ratify a subsequent budget proposed by the executive board.

11 (2) Any provision in any declaration or bylaws which requires unit owner approval for any  
12 increase of the total amount of an association annual assessment, or any portions thereof, as  
13 proposed by the executive board pursuant to subsection (c)(1) of this section, above the total  
14 amount of the association annual assessment formulated for a deed restricted unit as set forth in §  
15 34-36.1-2.07, or any portions thereof, for the previous association fiscal year, shall be void.

16 (d)(1) Subject to subsection (e), the declaration may provide for a period of declarant  
17 control of the association, during which period a declarant, or persons designated by him, may  
18 appoint and remove the officers and members of the executive board. Regardless of the period  
19 provided in the declaration, a period of declarant control terminates no later than the earlier of:

20 (i) Sixty (60) days after conveyance of eighty percent (80%) of the units which may be  
21 created to unit owners other than a declarant;

22 (ii) Two (2) years after all declarants have ceased to offer units for sale in the ordinary  
23 course of business; or

24 (iii) Two (2) years after any development right to add new units was last exercised.

25 (2) A declarant may voluntarily surrender the right to appoint and remove officers and  
26 members of the executive board before terminations of that period, but in that event he or she may  
27 require, for the duration of the period of declarant control, that specified actions of the association  
28 or executive board, as described in a recorded instrument executed by the declarant, be approved  
29 by the declarant before they become effective.

30 (e) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units  
31 which may be created to unit owners other than a declarant, at least one member and not less than  
32 twenty-five percent (25%) of the members of the executive board must be elected by unit owners  
33 other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of  
34 the units which may be created to unit owners other than a declarant, not less than one-third ( $\frac{1}{3}$ ) of

1 the members of the executive board must be elected by unit owners other than the declarant.

2 (f) Not later than the termination of any period of declarant control, the unit owners shall  
3 elect an executive board of at least three (3) members, at least a majority of whom must be unit  
4 owners. The executive board shall elect the officers. The executive board members and officers  
5 shall take office upon election.

6 (g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit  
7 owners, by a two-thirds ( $\frac{2}{3}$ ) vote of all persons present and entitled to vote at any meeting of the  
8 unit owners at which a quorum is present, may remove any member of the executive board with or  
9 without cause, other than a member appointed by the declarant.

10 SECTION 4. Section 44-5-12 of the General Laws in Chapter 44-5 entitled "Levy and  
11 Assessment of Local Taxes" is hereby amended to read as follows:

12 **44-5-12. Assessment at full and fair cash value.**

13 (a) All real property subject to taxation shall be assessed at its full and fair cash value, as  
14 of December 31 in the year of the last update or revaluation, or at a uniform percentage thereof, not  
15 to exceed one hundred percent (100%), to be determined by the assessors in each town or city;  
16 provided, that:

17 (1) Any residential property encumbered by a covenant recorded in the land records in  
18 favor of a governmental unit or the Rhode Island housing and mortgage finance corporation  
19 restricting either or both the rents that may be charged or the incomes of the occupants shall be  
20 assessed and taxed in accordance with § 44-5-13.11;

21 (2) In assessing real estate that is classified as farmland, forest, or open space land in  
22 accordance with chapter 27 of this title, the assessors shall consider no factors in determining the  
23 full and fair cash value of the real estate other than those that relate to that use without regard to  
24 neighborhood land use of a more intensive nature;

25 (3) Warwick. The city council of the city of Warwick is authorized to provide, by  
26 ordinance, that the owner of any dwelling of one to three (3) family units in the city of Warwick  
27 who makes any improvements or additions on his or her principal place of residence in the amount  
28 up to fifteen thousand dollars (\$15,000), as may be determined by the tax assessor of the city of  
29 Warwick, is exempt from reassessment of property taxes on the improvement or addition until the  
30 next general citywide reevaluation of property values by the tax assessor. For the purposes of this  
31 section, "residence" is defined as voting address. This exemption does not apply to any commercial  
32 structure. The property owner shall supply all necessary plans to the building official for the  
33 improvements or addition and shall pay all requisite building and other permitting fees as now are  
34 required by law; and



1 (4) Central Falls. The city council of the city of Central Falls is authorized to provide, by  
2 ordinance, that the owner of any dwelling of one to eight (8) units who makes any improvements  
3 or additions to his or her residential or rental property in an amount not to exceed twenty-five  
4 thousand dollars (\$25,000), as determined by the tax assessor of the city of Central Falls, is exempt  
5 from reassessment of property taxes on the improvement or addition until the next general citywide  
6 reevaluation of property values by the tax assessor. The property owner shall supply all necessary  
7 plans to the building official for the improvements or additions and shall pay all requisite building  
8 and other permitting fees as are now required by law.

9 (5) Tangible property shall be assessed according to the asset classification table as defined  
10 in § 44-5-12.1. Renewable energy resources shall only be taxed as tangible property under § 44-5-  
11 3(c) and the real property on which they are located shall not be reclassified, revalued, or reassessed  
12 due to the presence of renewable energy resources, excepting only reclassification of farmland as  
13 addressed in § 44-27-10.1. Subject to the aforementioned exception for farmland, all assessments  
14 of real property with renewable energy resources thereon shall revert to the last assessed value  
15 immediately prior to the renewable developer's purchasing, leasing, securing an option to purchase  
16 or lease, or otherwise acquiring any interest in the real property. However, notwithstanding the  
17 above, but without any limitation on taxpayer rights under § 44-5-26, no municipality shall be liable  
18 or otherwise responsible for any rebates, refunds, or any other reimbursements for taxes previously  
19 collected for real property with renewable energy resources thereupon.

20 (6) Provided, however, that, for taxes levied after December 31, 2015, new construction on  
21 development property is exempt from the assessment of taxes under this chapter at the full and fair  
22 cash value of the improvements, as long as:

23 (i) An owner of development property files an affidavit claiming the exemption with the  
24 local tax assessor by December 31 each year; and

25 (ii) The assessor shall then determine if the real property on which new construction is  
26 located is development property. If the real property is development property, the assessor shall  
27 exempt the new construction located on that development property from the collection of taxes on  
28 improvements, until such time as the real property no longer qualifies as development property, as  
29 defined herein.

30 For the purposes of this section, "development property" means: (A) Real property on  
31 which a single-family residential dwelling or residential condominium is situated and said single-  
32 family residential dwelling or residential condominium unit is not occupied, has never been  
33 occupied, is not under contract, and is on the market for sale; or (B) Improvements and/or  
34 rehabilitation of single-family residential dwellings or residential condominiums that the owner of

1 such development property purchased out of a foreclosure sale, auction, or from a bank, and which  
2 property is not occupied. Such property described in subsection (a)(6)(ii) of this section shall  
3 continue to be taxed at the assessed value at the time of purchase until such time as such property  
4 is sold or occupied and no longer qualifies as development property. As to residential  
5 condominiums, this exemption shall not affect taxes on the common areas and facilities as set forth  
6 in § 34-36-27. In no circumstance shall such designation as development property extend beyond  
7 two (2) tax years and a qualification as a development property shall only apply to property that  
8 applies for, or receives, construction permits after July 1, 2015. Further, the exemptions set forth  
9 in this section shall not apply to land.

10 (7) In assessing real estate that is classified as a deed restricted unit as defined in § 34-36.1-  
11 1.03, the assessors shall use the last current sales price of the property, within the last five (5) years,  
12 as the assessed value. Any property that has not been sold within the last five (5) years may be  
13 assessed based upon the newly calculated maximum sales price, as determined by the property's  
14 monitoring agent as defined in § 45-53-3, which shall constitute the new assessed value for the next  
15 five (5) years, or until the next resale, whichever occurs first.

16 (b) Municipalities shall make available to every land owner whose property is taxed under  
17 the provisions of this section a document that may be signed before a notary public containing  
18 language to the effect that they are aware of the additional taxes imposed by the provisions of § 44-  
19 5-39 in the event that they use land classified as farm, forest, or open space land for another purpose.

20 (c) Pursuant to the provisions of § 44-3-29.1, all wholesale and retail inventory subject to  
21 taxation is assessed at its full and fair cash value, or at a uniform percentage of its value, not to  
22 exceed one hundred percent (100%), for fiscal year 1999, by the assessors in each town and city.  
23 Once the fiscal year 1999 value of the inventory has been assessed, this value shall not increase.  
24 The phase-out rate schedule established in § 44-3-29.1(d) applies to this fixed value in each year  
25 of the phase out.

26 SECTION 5. 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

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- 1           This act would restrict increases in monthly common expenses and limit special
- 2 assessments to cover unforeseen costs not included in the association's approved annual budget for
- 3 common expenses in associations where the minority of the units are deed restricted units.
- 4           This act would take effect upon passage.

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