

LC01482

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2006**

**A N A C T**

**RELATING TO REAL PROPERTY -- RESTRICTIONS**

Introduced By: Representatives Kennedy, Slater, Lewiss, E Coderre, and San Bento

Date Introduced: February 15, 2006

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 34-4-19, 34-4-20, 34-4-21, 34-4-22, 34-4-23 and 34-4-26 of the  
2   General Laws in Chapter 34-4 entitled "Estates in Real Property" are hereby amended to read as  
3   follows:

4           **34-4-19. Limitation of possibilities of reverter and rights of entry.** -- If a possibility of  
5   reverter or right of entry for condition broken in land is reserved in a deed executed after May 11,  
6   1953, or in a will of a testator who dies after May 11, 1953, and the possibility of reverter does  
7   not become a possessory interest or the right of entry is not exercised within twenty (20) years  
8   from the date of the execution of the deed or the death of the testator, then the possibility of  
9   reverter or right of entry shall become void, [except a housing restriction as set forth in section 34-](#)  
10 [39.1-3.](#)

11           **34-4-20. Possibilities of reverter and rights of entry exempt from limitation.** --  
12   Section 34-4-19 shall not apply to a possibility of reverter or right of entry for condition broken  
13   in:

- 14           (1) Lease for a term of years;
- 15           (2) Grant, gift or devise to the state and Providence Plantations;
- 16           (3) Grant, gift or devise for public, charitable, or religious purposes;
- 17           (4) Deed to a railroad or public utility corporation;

18           (5) [Housing restriction as set forth in section 34-39.1-3.](#)

19           **34-4-21. Limitation of restrictive covenants.** -- If a covenant or restriction concerning

1 the use of land, [other than housing restrictions as set forth in section 34-39.1-3, and conservation](#)  
2 [restrictions and preservation restrictions as set forth in sections 34-39.1-1, 34-39.1-2, 34-39.1-3,](#)  
3 [34-39.1-4 and 34-39.1-5](#), is created by any instrument taking effect after May 11, 1953, the  
4 covenant or restriction, if unlimited in time in the instrument, shall cease to be valid and operative  
5 thirty (30) years after the execution of the instrument creating it.

6 **34-4-22. Expiration of recorded options affecting real estate.** -- When a recorded  
7 instrument has created, or shall create, an option to purchase or lease real estate, [other than](#)  
8 [housing restrictions as set forth in section 34-39.1-3, and conservation restrictions and](#)  
9 [preservation restrictions as set forth in sections 34-39.1-1, 34-39.1-2, 34-39.1-3, 34-39.1-4 and](#)  
10 [34-39.1-5](#), which, according to its terms, or by operation of law, has expired, and one year has  
11 elapsed since the time of expiration, and no conveyance, contract, lease, or other instrument has  
12 been recorded showing that the option has been exercised or extended, then the instrument  
13 creating the option shall cease to be notice to any person or to put any person on inquiry, with  
14 respect to the existence, exercise, or extension of the option or of any contract, conveyance, lease,  
15 or other writing which may have been executed pursuant to the option. The one year period  
16 provided for in this section shall not be extended by any disability, absence from the state,  
17 acknowledgment, or new promise not of record, payment after maturity, or for any other cause.

18 **34-4-23. Expiration of recorded instruments affecting real estate.** -- Any recorded  
19 contract or other instrument, [other than housing restrictions as set forth in section 34-39.1-3, and](#)  
20 [conservation restrictions and preservation restrictions as set forth in sections 34-39.1-1, 34-39.1-](#)  
21 [2, 34-39.1-3, 34-39.1-4 and 34-39.1-5](#), which has created or shall create a right or obligation  
22 (other than an option) to purchase or sell real estate shall cease to be notice to any person or to put  
23 any person on inquiry with respect thereto unless, within ninety (90) days after the date therein  
24 provided for the delivery of the deed, or if no date is therein provided, then within ninety (90)  
25 days after the date therein provided for the payment of the final payment or installment of the  
26 purchase price, or if no delivery date or payment date is therein provided, then within ninety (90)  
27 days after the date of the recording of the contract or other instrument, an action or proceeding  
28 shall have been commenced to enforce the contract or other instrument and a notice of the  
29 pendency of the action, containing a reference to the contract or other instrument and the book  
30 and page of the recording thereof and a description of the real estate sufficient to identify it, shall  
31 have been duly recorded. The ninety (90) day period provided for in this section shall not be  
32 extended by any disability, absence from the state, acknowledgement, or new promise not of  
33 record, payment after maturity, or for any other cause with the exception that the ninety (90) day  
34 period may be extended by agreement of all the parties to the contract or other instrument at the

1 time of the execution of the contract or other instrument.

2 **34-4-26. Expiration of recorded rights affecting real estate.** -- (a) Any recorded  
3 contract, deed or other instrument entered into which creates a preemptive right, right to  
4 repurchase, or a right of first refusal to purchase real estate, other than housing restrictions as set  
5 forth in section 34-39.1-3, and conservation restrictions and preservation restrictions as set forth  
6 in sections 34-39.1-1, 34-39.1-2, 34-39.1-3, 34-39.1-4 and 34-39.1-5, which by its own terms,  
7 does not provide for a specific expiration date, shall expire ten (10) years after the date of  
8 execution, or ten (10) years after recording, if no date of execution is contained in the instrument.  
9 If these rights are created under a lease, then the rights shall expire on the termination or  
10 expiration of the lease.

11 (b) Any rights created prior to the passage of this act may be extended for a period of ten  
12 (10) years by refileing a Notice of Intention to extend said rights in the Land Evidence Records  
13 prior to July 1, 1991.

14 SECTION 2. Sections 34-36.1-2.03, 34-36.1-2.05, 34-36.1-2.06, 34-36.1-2.07 and 34-  
15 36.1-2.17 of the General Laws in Chapter 34-36.1 entitled "Condominium Law" are hereby  
16 amended to read as follows:

17 **34-36.1-2.03. Construction and validity of declaration and bylaws.** -- (a) All  
18 provisions of the declaration and bylaws are severable, except a housing restriction as set forth in  
19 section 34-39.1-3, may not be severed from the declaration and bylaws.

20 (b) The rule against perpetuities may not be applied to defeat any provision of the  
21 declaration, bylaws, rules, or regulations adopted pursuant to section 34-36.1-3.02(a)(1).

22 (c) In the event of a conflict between the provisions of the declaration and the bylaws,  
23 the declaration prevails except to the extent the declaration is inconsistent with this chapter.

24 (d) Title to a unit and common elements is not rendered unmarketable or otherwise  
25 affected by reason of an insubstantial failure of the declaration to comply with this chapter.  
26 Whether a substantial failure impairs marketability is not affected by this chapter.

27 **34-36.1-2.05. Contents of declaration.** -- (a) The declaration for a condominium must  
28 contain:

- 29 (1) The name of the condominium, which must include the word "condominium" or be  
30 followed by the words "a condominium," and the association;
- 31 (2) The name of every municipality in which any part of the condominium is situated;
- 32 (3) A legally sufficient description of the real estate included in the condominium;
- 33 (4) A statement of the maximum number of units which the declarant reserves the right  
34 to create;

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

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

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

9 (8) A description of any development rights and other special declarant rights (section  
10 34-36.1-1.03(26)) reserved by the declarant, together with a legally sufficient description of the  
11 real estate to which each of those rights applies, and a time limit within which each of those rights  
12 must be exercised;

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

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

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

21 (10) Any other conditions or limitations under which the rights described in subdivision  
22 (8) may be exercised or will lapse;

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

25 (12) Any restrictions on use, occupancy, and alienation of the units, [including any](#)  
26 [housing restrictions as set forth in section 34-39.1-3](#);

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

30 (14) All matters required by sections 34-36.1-2.06, 34-36.1-2.07, 34-36.1-2.08, 34-36.1-  
31 2.09, 34-36.1-2.15, 34-36.1-2.16, and 34-36.1-3.03(d).

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

33 **34-36.1-2.06. Leasehold condominiums.** -- (a) Any lease the expiration or termination  
34 of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be

1 recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

2 (1) The recording data for the lease (or a statement of where the complete lease may be  
3 inspected);

4 (2) The date on which the lease is scheduled to expire;

5 (3) A legally sufficient description of the real estate subject to the lease;

6 (4) Any right of the unit owners to redeem the reversion and the manner whereby those  
7 rights may be exercised, or a statement that they do not have those rights;

8 (5) Any right of the unit owners to remove any improvements within a reasonable time  
9 after the expiration or termination of the lease, or a statement that they do not have those rights;

10 ~~and~~

11 (6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or  
12 a statement that they do not have those rights; ~~and~~

13 (7) Any housing restriction as set forth in section 34-39.1-3, and the details thereof.

14 (b) After the declaration for a leasehold condominium is recorded, neither the lessor nor  
15 his or her successor in interest may terminate the leasehold interest of a unit owner who makes  
16 timely payment of his or her share of the rent and otherwise complies with all covenants which, if  
17 violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not  
18 affected by failure of any other person to pay rent or fulfill any other covenant.

19 (c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion  
20 or remainder does not merge the leasehold and fee simple interests unless the leasehold interests  
21 of all unit owners subject to that reversion or remainder are acquired.

22 (d) If the expiration or termination of a lease decreases the number of units in a  
23 condominium, the allocated interests shall be reallocated in accordance with section 34-36-7(a) as  
24 though those units had been taken by eminent domain. Reallocations shall be confirmed by an  
25 amendment to the declaration prepared, executed, and recorded by the association.

26 **34-36.1-2.07. Allocation of common element interest, votes, and common expense**

27 **liabilities.** – (a) The declaration shall allocate a fraction or percentage of undivided interests in  
28 the common elements and in the common expenses of the association, and a portion of the votes  
29 in the association, to each unit including land only units and state the formulas used to establish  
30 those allocations. Those allocations may not discriminate in favor of units owned by the  
31 declarant, but may discriminate in favor of units subject to a housing restriction as set forth in  
32 section 34-39.1-3. Except as set forth in section 34-36.1-1.03(7), no minimum percentage interest  
33 in the common elements is otherwise required.

34 (b) If units may be added to or withdrawn from the condominium, the declaration must

1 state the formulas to be used to reallocate the allocated interests among all units included in the  
2 condominium after the addition or withdrawal.

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

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

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

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

26 **34-36.1-2.17. Amendment of declaration.** -- (a) Except in cases of amendments that  
27 may be executed by a declarant under section 34-36.1-2.09(f) or 34-36.1-2.10; the association  
28 under section 34-36.1-1.07, 34-36.1-2.06(d), 34-36.1-2.07(f), 34-36.1-2.08(c), 34-36.1-2.12(a), or  
29 34-36.1-2.13; or certain unit owners under section 34-36.1-2.07(f), 34-36.1-2.08(b), 34-36.1-2.12,  
30 34-36.1-2.13(b), or 34-36.1-2.18(b), and except as limited by subsection (d) of this section, the  
31 declaration, including the plats and plans, may be amended only by vote or agreement of unit  
32 owners of units to which at least sixty-seven percent (67%) of the votes in the association are  
33 allocated, or any larger majority the declaration specifies. The declaration may specify a smaller  
34 number only if all the units are restricted exclusively to nonresidential use.

1 (b) No action to challenge the validity of an amendment adopted by the association  
2 pursuant to this section may be brought more than one year after the amendment is recorded.

3 (c) Every amendment to the declaration must be recorded in every municipality in which  
4 any portion of the condominium is located, and is effective only upon recordation. An  
5 amendment shall be indexed in the grantee's index in the name of the condominium and the  
6 association and in the grantor's index in the name of the parties executing the amendment.

7 (d) Except to the extent expressly permitted or required by other provisions of this  
8 chapter, no amendment may create or increase special declarant rights, increase the number of  
9 units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any  
10 unit is restricted, in the absence of unanimous consent of the unit owners.

11 (e) Amendments to the declaration required by this chapter to be recorded by the  
12 association shall be prepared, executed, recorded, and certified on behalf of the association by  
13 any officer of the association designated for that purpose or, in the absence of designation, by the  
14 president of the association.

15 [\(f\) A declaration and bylaws may require that amendments to any sections dealing with](#)  
16 [housing restrictions as set forth in section 34-39.1-3, may also require notice to and/or consent of](#)  
17 [the restriction holder before such amendments shall take effect.](#)

18 SECTION 3. Sections 34-39.1-3 and 34-39.1-4 of the General Laws in Chapter 34-39.1  
19 entitled "The Holders of Low and Moderate Income Housing Restrictions Act" are hereby  
20 amended to read as follows:

21 **34-39.1-3. Definitions.** -- For purposes of this chapter:

22 (1) "Housing restriction" means any obligation or requirement to maintain real estate  
23 affordable for rental to or purchase [by low and moderate income](#) citizens of the state or any  
24 limitation on the future use or transfer of the real estate, whether stated in the form of a charge,  
25 encumbrance, [financing instrument](#), easement, covenant, or condition in any deed, agreement, or  
26 other instrument executed by or on behalf of the owner of the real estate.

27 (2) "Restriction holder" means any nonprofit corporation, partnership, association,  
28 cooperative, or trust established for the primary purpose of owning, operating, leasing,  
29 preserving, or maintaining housing affordable to persons and families of low and moderate  
30 income, and entities that provide financing, land, or other benefits related to the development and  
31 preservation of affordable housing including, but not limited to, state agencies, municipalities,  
32 foundations, Rhode Island housing and mortgage finance corporation, and public housing  
33 authorities.

34 **34-39.1-4. Housing restrictions enforceable.** -- (a) No housing restriction, whether

1 presently existing or hereafter created, that is held by a restriction holder shall be unenforceable  
2 against an owner or assignee of any real estate subject to the housing restriction because of lack  
3 of privity of estate or contract, or lack of benefit to particular land, or on account of any other  
4 common law doctrine of property law which might cause the termination of the housing  
5 restriction.

6 (b) This section shall not be construed to imply that restriction, charge, encumbrance,  
7 easement, covenant, or condition which is not covered hereunder shall, on account of any  
8 provisions hereof, be unenforceable.

9 (c) A housing restriction as defined in section 34-39.1-3(a) shall not be subject to the  
10 thirty (30) year limitation on restricted covenants provided for in section 34-4-21.

11 (d) A housing restriction as defined in subsection 34-39.1-3(a) shall not be subject to any  
12 of the limitations on possibilities of reverter and rights of entry or expirations or invalidity of  
13 restrictive covenants provided for in section 34-4-19, 34-4-20, 34-4-22, 34-4-23 or 34-4-26.

14 SECTION 4. Chapter 34-39.1 of the General Laws entitled "The Holders of Low and  
15 Moderate Income Housing Restrictions Act" is hereby amended by adding thereto the following  
16 section:

17 **34-39.1-6. Invalidity of certain restrictive covenants.** – Since decent, safe and sanitary  
18 housing units available and affordable to persons and families of low and moderate income must  
19 by their nature be situated in residential areas, including exclusively residential areas and also  
20 mixed use areas, any restrictive covenant or other private legal impediment which directly or  
21 indirectly prevents or restricts the establishment of housing subject to a housing restriction as  
22 defined in this chapter, excluding conservation restrictions and preservation restrictions as  
23 defined in section 34-39-2, shall be void and unenforceable.

24 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 REAL PROPERTY -- RESTRICTIONS

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- 1           This act would amend the real property condominium and low-income housing laws
- 2   concerning housing, conservation and preservation restrictions.
- 3           This act would take effect upon passage.

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