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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: Representatives Speakman, Carson, Cotter, McGaw, Giraldo, and Potter

Date Introduced: February 23, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 34-36.1-1.03, 34-36.1-2.07 and 34-36.1-3.03 of the General Laws  
2 in Chapter 34-36.1 entitled "Condominium Law" are 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) "Development rights" means any right or combination of rights reserved by a declarant  
31 in the declaration to:

32 (A) Add real estate to a condominium,

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

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

1 (D) Withdraw real estate from a condominium.

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

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

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

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

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

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

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

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

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

32 (21) "Offering" means any advertisement, inducement, solicitation, or attempt to  
33 encourage any person to acquire any interest in a unit, other than as security for an obligation. An  
34 advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium

1 to the general public, of a condominium not located in this state, is not an offering if the  
2 advertisement states that an offering may be made only in compliance with the law of the  
3 jurisdiction in which the condominium is located.

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

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

11 (i) A leasehold interest including renewal options of less than twenty (20) years, or

12 (ii) As security for an obligation.

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

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

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

20 (i) Complete improvements indicated on plats and plans filed with the declaration, (§ 34-  
21 36.1-2.09),

22 (ii) To exercise any development right, (§ 34-36.1-2.10),

23 (iii) To maintain sales offices, management offices, signs advertising the condominium,  
24 and models, (§ 34-36.1-2.15),

25 (iv) To use easements through the common elements for the purpose of making  
26 improvements within the condominium or within real estate which may be added to the  
27 condominium, (§ 34-36.1-2.16),

28 (v) To make the condominium part of a larger condominium or a planned community, (§  
29 34-36.1-2.21),

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

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

33 (27) "Time share" means a right to occupy a unit or any of several units during five (5) or  
34 more separated time periods over a period of at least five (5) years, including renewal options,

1 whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

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

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

8 [\(30\) "Deed restricted unit" means any unit that qualifies as low- and moderate-income  
9 housing as set forth in § 45-53-3.](#)

10 **34-36.1-2.07. Allocation of common element interest, votes, and common expense**  
11 **liabilities.**

12 (a) The declaration shall allocate a fraction or percentage of undivided interests in the  
13 common elements and in the common expenses of the association, and a portion of the votes in the  
14 association, to each unit including land only units and state the formulas used to establish those  
15 allocations. Those allocations may not discriminate in favor of units owned by the declarant, but  
16 may discriminate in favor of units subject to a housing restriction as set forth in § 34-39.1-3. Except  
17 as set forth in § 34-36.1-1.03(7), no minimum percentage interest in the common elements is  
18 otherwise required. [Notwithstanding the above, in associations where the minority, fifty-one  
19 percent \(51%\) or less, of the units are deed restricted units, increases in monthly common expenses  
20 may not exceed five percent \(5%\) of the proceeding year's monthly common expenses.](#)

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

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

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

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

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

13 **34-36.1-3.03. Executive board members and officers.**

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

18 (1) If appointed by the declarant, the care required of fiduciaries of the unit owners; and

19 (2) If elected by the unit owners, ordinary and reasonable care.

20 (b) The executive board may not act on behalf of the association to amend the declaration  
21 (§ 34-36.1-2.17), to terminate the condominium, or to elect members of the executive board or  
22 determine the qualifications, powers and duties, or terms of office of executive board members, but  
23 the executive board may fill vacancies in its membership for the unexpired portion of any term.

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

32 (2) Any provision in any declaration or bylaws which requires unit owner approval for any  
33 increase of the total amount of an association annual assessment, or any portions thereof, as  
34 proposed by the executive board pursuant to subsection (c)(1) of this section, above the total

1 [amount of the association annual assessment formulated for a deed restricted unit as set forth in §](#)  
2 [34-36.1-2.07, or any portions thereof, for the previous association fiscal year, shall be void.](#)

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

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

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

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

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

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

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

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

31 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

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1           This act would define deed restricted unit. This act would further limit the increase in  
2 annual condominium fees for a deed restricted unit to five percent (5%) of the proceeding year's  
3 monthly common expenses.

4           This act would take effect upon passage.

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