

**381.9185 Conveyance or encumbrance of common elements.**

- (1) Portions of the common elements may be conveyed or subjected to a lien or security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; however, all the owners of units to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a lien or security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.
- (2) An agreement to convey common elements or subject them to a lien or security interest shall be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof shall be recorded in every county in which a portion of the condominium is situated, and shall be effective only upon recordation.
- (3) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a lien or security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- (4) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, shall be void.
- (5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.
- (6) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.

**Effective:** January 1, 2011

**History:** Created 2010 Ky. Acts ch. 97, sec. 43, effective January 1, 2011.