

CHAPTER 47-04.1

CONDOMINIUM OWNERSHIP OF REAL PROPERTY

47-04.1-01. Definitions.

In this chapter, unless context otherwise requires:

1. "Common areas" means the entire project excepting all units therein granted or reserved.
2. "Condominium" is an estate in real property consisting of an undivided interest or interests in common in a portion of a parcel of real property together with a separate interest or interests in space in a structure, on such real property.
3. "Interest" means the fractional or percentage interest or interests ascribed to each unit by the declaration provided for in section 47-04.1-03.
4. "Limited common areas" means those elements designed for use by the owners of one or more but less than all of the units included in the project.
5. "Project" means the entire parcel of real property divided, or to be divided into condominiums, including all structures thereon.
6. "To divide" real property means to divide the ownership thereof by conveying one or more condominiums therein but less than the whole thereof.
7. "Unit" means the elements of a condominium which are not owned in common with the owners of other condominiums in the project.

47-04.1-02. Recording of declaration to submit property to a project.

When the sole owner or all the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property to a project established by this chapter, a declaration to that effect shall be executed and acknowledged by the sole owner or lessee or all of such owners or lessees and shall be recorded in the office of the recorder of the county in which such property lies.

47-04.1-03. Contents of declaration.

The declaration provided for in section 47-04.1-02 shall contain:

1. A description or survey map of the surface of the land included within the project.
2. Diagrammatic floor plans of the structures built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions.
3. A description of the common elements.
4. A description of the limited common elements.
5. The fractional or percentage interest which each unit bears to the entire project. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

47-04.1-04. Declaration of restrictions.

The owner of a project, shall, prior to the conveyance of any condominium therein, record a declaration of restrictions relating to such project, which restrictions shall be enforceable equitable servitudes where reasonable, and shall inure to and bind all owners of condominiums in the project. Such servitudes, unless otherwise provided, may be enforced by any legal or equitable owner of a condominium in the project.

47-04.1-05. Reference to declaration for description of unit and common elements.

All subsequent deeds, mortgages, or other instruments may describe the individual units, the common elements, the land, or limited common elements by reference to appropriate numbers or letters as they appear on the declaration provided for in section 47-04.1-03 without repeating in detail the description of the units, common elements other than the land, or limited common elements. The reference must include the book and page of the recorded declaration.

47-04.1-06. Incidents of a condominium grant.

Unless otherwise expressly provided for in the deeds, declaration of restrictions or plan, the incidents of a condominium grant are as follows:

1. The boundaries of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the units include both the portions of the building so described and the air-space so encompassed. The following except as provided above are not part of the unit: bearing walls, columns, floors, roofs, foundations, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, whenever located, except the outlets thereof when located within the unit. In interpreting deeds and plans the existing physical boundaries of the unit or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.
2. The common areas are owned by the owners of the units as tenants in common in proportion to each unit's interest.
3. A nonexclusive easement for ingress, egress, and support through the common area is appurtenant to and inseparable from each unit and the common areas are subject to such easements.
4. Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding that owner's own unit.
5. Except as provided in section 47-04.1-09, the common areas shall remain undivided, and there shall be no judicial partition thereof.

47-04.1-07. Administration - Bylaws - Rules and regulations.

1. The unit owners of each project shall provide for the administration of each project. The unit owners or administrative body established by the unit owners shall provide by bylaws for the maintenance of common elements, limited common elements where applicable, assessment of expenses, payment of losses, division of profits, disposition of hazard insurance proceeds, and similar matters. A true copy of such bylaws must be annexed to the declaration set forth in section 47-04.1-02 when adopted, and made a part thereof and filed in the office of the recorder. No modification of or amendment to the bylaws is valid unless set forth in an amendment to the declaration and unless the amendment is duly recorded in the office of the recorder.
2. The following provisions may not be included in the bylaws:
 - a. Provisions that base assessment of common charges on the basis of whether the occupant of a unit is an owner, a tenant, or other person.
 - b. Provisions that make payment of losses, division of profits, disposition of hazard proceeds, or any other topic that is within the scope of the bylaws, based on whether the occupant of a unit is an owner, a tenant, or other person.
3. All bylaws, rules, and regulations as adopted by the unit owners or administrative body of the project must be reduced to writing and made available to every owner of any interest in the project.
4. The unit owners shall also cause to be recorded in the office of the recorder the name of the person or persons who are responsible for the administrative duties and who may be designated as agent or agents for all owners for the service of legal process and possess such power and authority as may be provided in the bylaws.

47-04.1-08. Compliance with covenants, bylaws, and administrative provisions.

Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declarations or in the deed to that owner's unit. Failure to comply with such provisions shall be grounds for an action

to recover sums due for damages, injunctive relief or such other relief as a court of proper jurisdiction may provide by the administrative body or in a proper case, by an aggrieved unit owner.

47-04.1-09. Partition not available - Exceptions.

The provisions of chapter 32-16 relating to partition of real property shall not be available to any owner of any interest in real property included within a project established under this chapter as against any other owner or owners of any interest or interests in the same project, so as to terminate the project.

An action may be brought by one or more unit owners in a project for partition thereof by sale of the entire project, as if the owners of all of the condominiums in such project were tenants-in-common in the entire project in the same proportion as their interest in the common areas, provided, however, that a partition by sale shall be made only upon the showing that:

1. Three years after damage or destruction to the project which renders a material part thereof unfit for its prior intended use, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction;
2. All or a substantial and material portion of the project has been destroyed or substantially damaged, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restoration of the project; or
3. The project is obsolete and uneconomic, and that condominium owners holding in aggregate more than a fifty percent interest in the common areas are opposed to repair or restoration of the project.

47-04.1-10. Withdrawal of property from project - Recording - Subsequent project.

Any property so constituted as a condominium project may be removed therefrom at any time, provided the sole owner or all of the owners execute, acknowledge, and record a declaration evidencing such withdrawal. If at such time there are any encumbrances or liens against any of the units, such declaration will be effective only when the creditors holding such encumbrances or liens also execute and acknowledge such declaration, or their encumbrances or liens are satisfied, or expire by operation of law.

No withdrawal of any property from a condominium project shall be a bar to any subsequent commitment to a condominium project.

47-04.1-11. Liens against units for common expenses - Removal from lien - Effect of part payment.

A reasonable assessment for common expenses made by the administrative body upon any condominium and made in accordance with the recorded declaration and bylaws shall be a debt of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs, and penalties, as such may be provided for in the declarations and bylaws, shall be and become a lien upon the condominium assessed when the administrative body causes such assessment to be recorded in the office of the recorder for the county in which such condominium is located. The notice of assessment shall state the amount of such assessment and other charges and the name of the record owner thereof. Such notice shall be signed by an authorized representative of the administrative body or as otherwise provided in the declarations and bylaws. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the administrative body shall cause a notice to be recorded stating the satisfaction and the release of the lien thereof.

47-04.1-12. Other liens - Removal from - Part payment.

Subsequent to recording the declaration provided for in section 47-04.1-02 and while the property remains enrolled as a condominium project, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against the individual units and general common elements and limited common elements where

applicable, appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

In the event a lien against two or more units becomes effective, the owners of the separate units may remove their unit and the general common elements and limited common elements, where applicable, appurtenant to such unit from the lien by payment of the fractional or proportional amounts attributable to each of the units affected. Such individual payments shall be computed by reference to the fractions or percentages appearing on the declaration provided for in section 47-04.1-02 and bylaws annexed thereto. Subsequent to any such payment, discharge, or other satisfaction the individual unit and the general common elements and limited common elements applicable appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce the lienor's rights against any unit and the general common elements and limited common elements, where applicable, appurtenant thereto not so paid, satisfied, or discharged.

47-04.1-13. Real property tax and special assessments - Levy on each unit.

All real property taxes and special assessments shall be levied on each unit and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as such units and appurtenances are separately owned, and not on the entire project.

Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

47-04.1-14. Covenant, declaration, bylaw, or other rule may not prohibit display of political signs.

Notwithstanding any provision in a covenant, declaration, bylaw, or other rule of a project, an owner or resident may not be prohibited from displaying a political yard sign on the owner's property within sixty days before any primary, general, or special election. A covenant, declaration, bylaw, or rule may include reasonable restrictions regarding the placement and manner of display of political signs.

47-04.1-15. Approval by lender of amendment.

Notwithstanding any requirement in the condominium declaration or bylaws requiring a lender's approval of any amendment of the declaration or bylaws, after being given a thirty-day written notice beginning with the date of mailing, any lender contacted at the last-known address that does not refuse or approve of the proposed amendment is deemed to have approved the amendment. This section does not apply to any proposed amendment that affects a lender's right to enforce the terms of the mortgage.