

TITLE 34

Property

CHAPTER 34-36.1

Condominium Law

ARTICLE 34-36.1-1.01

General Provisions

SECTION 34-36.1-1.03

§ 34-36.1-1.03 Definitions. – In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Add real estate to a condominium,

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

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

(D) Withdraw real estate from a condominium.

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

(13) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a

unit, but does not include the transfer or release of a security interest.

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

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

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

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

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

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

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

(21) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

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

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

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

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

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

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

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

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

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

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