

IC 32-25-4

Chapter 4. Ownership Interest in Condominiums

IC 32-25-4-1

Fee simple title; conveyance and encumbrance of condominiums

Sec. 1. (a) If property is submitted to the condominium, each condominium unit owner is seized of:

- (1) the fee simple title to;
- (2) the exclusive ownership of; and
- (3) the exclusive possession of;

the owner's condominium unit and undivided interest in the common areas and facilities.

(b) A condominium unit may be:

- (1) individually conveyed;
- (2) individually encumbered; and
- (3) the subject of:

- (A) ownership;
- (B) possession;
- (C) sale; and

(D) all types of juridic acts inter vivos or causa mortis;

as if the condominium unit were sole and entirely independent of the other condominium units in the building of which the condominium unit forms a part.

(c) Individual titles and interests with respect to condominium units are recordable.

As added by P.L.2-2002, SEC.10.

IC 32-25-4-2

Multiple ownership of condominiums

Sec. 2. A condominium unit may be held and owned by two (2) or more persons:

- (1) as joint tenants;
- (2) as tenants in common;
- (3) as tenants by the entirety; or
- (4) in any other real property tenancy relationship recognized under the law of the state.

As added by P.L.2-2002, SEC.10.

IC 32-25-4-3

Common areas and facilities; undivided interest; repairs

Sec. 3. (a) Each condominium unit owner is entitled to an undivided interest in the common areas and facilities as designated in the declaration. Except as provided in subsection (b), the undivided interest must be expressed as a percentage interest based on:

- (1) the size of the unit in relation to the size of all units in the condominium;
- (2) the value of each condominium unit in relation to the value of all condominium units in the condominium; or
- (3) the assignment of an equal percentage undivided interest to

each condominium unit.

An undivided interest allocated to each condominium unit in accordance with this subsection must be indicated in a schedule of undivided interests in the declaration. However, if the declaration does not specify the method of allocating the percentage undivided interests, an equal percentage undivided interest applies to each condominium unit. The total undivided interests allocated in accordance with subdivision (1) or (2) must equal one hundred percent (100%).

(b) With respect to an expandable condominium, the declaration may allocate undivided interests in the common area on the basis of value if:

(1) the declaration prohibits the creation of any condominium units not substantially identical to the condominium units depicted on the recorded plans of the declaration; or

(2) the declaration:

(A) prohibits the creation of any condominium units not described in the initial declaration; and

(B) contains a statement on the value to be assigned to each condominium unit created after the date of the declaration.

(c) Interests in the common areas may not be allocated to any condominium units to be created within any additional land until the plats and plans and supplemental declaration depicting the condominium units to be created are recorded. Simultaneously with the recording of the plats and plans for the condominium units to be created, the declarant must execute and record an amendment to the initial declaration reallocating undivided interests in the common areas so that the future condominium units depicted on the plats and plans will be allocated undivided interests in the common areas on the same basis as the condominium units depicted in the prior recorded plats and plans.

(d) Except as provided in section 3.5 of this chapter and in IC 32-25-8-3, the undivided interest of the owner of the condominium unit in the common areas and facilities, as expressed in the declaration, is permanent and may not be altered without the consent of the co-owners. A consent to alteration must be stated in an amended declaration, and the amended declaration must be recorded. The undivided interest may not be transferred, encumbered, disposed of, or separated from the condominium unit to which it appertains, and any purported transfer, encumbrance, or other disposition is void. The undivided interest is considered to be conveyed or encumbered with the condominium unit to which it appertains even though the undivided interest is not expressly mentioned or described in the conveyance or other instrument.

(e) The common areas and facilities shall remain undivided. A condominium unit owner or any other person may bring an action for partition or division of any part of the common areas and facilities if the property has been removed from this chapter as provided in IC 32-25-8-12 and IC 32-25-8-16. Any covenant to the contrary is void.

- (f) Each condominium unit owner:
 - (1) may use the common areas and facilities in accordance with the purpose for which the common areas and facilities were intended; and
 - (2) may not, in the owner's use of the common areas and facilities, hinder or encroach upon the lawful rights of the other co-owners.

- (g) The:
 - (1) necessary work of:
 - (A) maintenance;
 - (B) repair; and
 - (C) replacement;of the common areas and facilities; and
 - (2) making of any additions or improvements to the common areas and facilities;

may be carried out only as provided in this chapter and in the bylaws.

(h) The association of condominium unit owners has the irrevocable right, to be exercised by the manager or board of directors, to have access to each condominium unit from time to time during reasonable hours as is necessary for:

- (1) the maintenance, repair, or replacement of any of the common areas and facilities:
 - (A) in the condominium unit; or
 - (B) accessible from the condominium unit; or
- (2) making emergency repairs in the condominium unit necessary to prevent damage to:
 - (A) the common areas and facilities; or
 - (B) another condominium unit.

As added by P.L.2-2002, SEC.10. Amended by P.L.1-2003, SEC.84; P.L.181-2007, SEC.1.

IC 32-25-4-3.5

Conveyance or encumbrance of common areas and facilities

Sec. 3.5. (a) This section applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900).

- (b) Except as otherwise provided in a statement described in:
 - (1) IC 32-25-7-1(a)(10) and included in:
 - (A) the declaration; or
 - (B) an amendment to the declaration, if the amendment is approved by at least ninety-five percent (95%) of co-owners; or
 - (2) IC 32-25-8-2(12) and included in:
 - (A) the bylaws; or
 - (B) an amendment to the bylaws, if the amendment is approved by the percentage of votes set forth in the bylaws under IC 32-25-8-2(11);

part or all of the common areas and facilities of a condominium may be conveyed or subjected to a security interest by the association of co-owners if at least ninety-five percent (95%) of the co-owners, including at least ninety-five percent (95%) of the co-owners of condominium units not owned by the declarant, agree to the action. However, if the common areas and facilities proposed to be conveyed or encumbered under this section include any limited common areas and facilities, all the owners of the limited common areas and facilities to be conveyed or encumbered must agree to the conveyance or encumbrance.

(c) An agreement to convey or encumber common areas and facilities under this section must be evidenced by an agreement:

(1) executed in the same manner as a deed or any other instrument recognized by the state for the conveyance or transfer of interests in title; and

(2) signed by:

(A) at least ninety-five percent (95%) of the co-owners, as required by this section; or

(B) another percentage of the co-owners specified in a statement described in subsection (b)(1) or (b)(2).

An agreement under this subsection is effective upon being recorded.

(d) Proceeds from the conveyance or encumbrance of common areas and facilities under this section shall be distributed to co-owners as common profits under IC 32-25-8-6. However, if the common areas and facilities conveyed or encumbered under this section include limited common areas and facilities, proceeds from the conveyance or encumbrance of the limited common areas and facilities shall be distributed to the owners of the limited common areas and facilities according to the percentage of the owners' undivided interest in the limited common areas and facilities.

(e) A conveyance or encumbrance of common areas and facilities not made in accordance with:

(1) this section; or

(2) a statement described in subsection (b)(1) or (b)(2);

is void.

As added by P.L.181-2007, SEC.2.

IC 32-25-4-4

Contributions for expenses

Sec. 4. (a) Except as provided in subsection (d) or (e), the co-owners are bound to contribute pro rata, in the percentages computed under section 3 of this chapter, toward:

(1) the expenses of administration and of maintenance and repair of the general common areas and facilities and, in the proper case, of the limited common areas and facilities of the building; and

(2) any other expense lawfully agreed upon.

(b) A co-owner may not exempt the co-owner from contributing toward the expenses referred to in subsection (a) by:

(1) waiver of the use or enjoyment of the common areas and

facilities; or

(2) abandonment of the condominium unit belonging to the co-owner.

(c) All sums assessed by the association of co-owners shall be established by using generally accepted accounting principles applied on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund. The replacement reserve fund may be used for capital expenditures and replacement and repair of the common areas and facilities and may not be used for usual and ordinary repair expenses of the common areas and facilities. The fund shall be:

(1) maintained in a separate interest bearing account with a bank or savings association authorized to conduct business in the county in which the condominium is established; or

(2) invested in the same manner and in the same types of investments in which the funds of a political subdivision may be invested:

(A) under IC 5-13-9; or

(B) as otherwise provided by law.

Assessments collected for contributions to the fund are not subject to adjusted gross income tax.

(d) If permitted by the declaration, the declarant or a developer (or a successor in interest of either) that is a co-owner of unoccupied condominium units offered for the first time for sale is excused from contributing toward the expenses referred to in subsection (a) for those units for a period that:

(1) is stated in the declaration;

(2) begins on the day that the declaration is recorded; and

(3) terminates no later than the first day of the twenty-fourth calendar month following the month in which the closing of the sale of the first condominium unit occurs.

However, if the expenses referred to in subsection (a) incurred by the declarant, developer, or successor during the period referred to in this subsection exceed the amount assessed against the other co-owners, the declarant, developer, or successor shall pay the amount by which the expenses incurred by the declarant, developer, or successor exceed the expenses assessed against the other co-owners.

(e) If the declaration does not contain the provisions referred to in subsection (d), the declarant or a developer (or a successor in interest of either) that is a co-owner of unoccupied condominium units offered for the first time for sale is excused from contributing toward the expenses referred to in subsection (a) for those units for a stated period if the declarant, developer, or successor:

(1) has guaranteed to each purchaser in the purchase contract, the declaration, or the prospectus, or by an agreement with a majority of the other co-owners that the assessment for those expenses will not increase over a stated amount during the stated period; and

(2) has obligated itself to pay the amount by which those

expenses incurred during the stated period exceed the assessments at the guaranteed level under subdivision (1) receivable during the stated period from the other co-owners.
As added by P.L.2-2002, SEC.10. Amended by P.L.192-2002(ss), SEC.172.