

LEGISLATIVE BILL 478

Approved by the Governor May 4, 1993

Introduced by Day, 19; Landis, 46

AN ACT relating to condominiums; to amend sections 76-802, 76-804, 76-807, 76-809, 76-811, 76-816, 76-817, 76-819, 76-820, 76-823, 76-824.01, 76-825, 76-826, 76-854, and 76-883, Reissue Revised Statutes of Nebraska, 1943; to provide for enforceability of contracts; to change requirements for amendments to a declaration; to provide for class actions, equitable relief, and the award of costs and attorney's fees; to change provisions relating to public-offering statements; to eliminate provisions relating to an action for damages; to harmonize provisions; to repeal the original sections, and also section 76-891, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 76-802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-802. ~~As used in sections 76-801 to 76-823~~ For purposes of the Condominium Property Act, unless the context otherwise requires:

- (1) Condominium property regime shall mean a project whereby four or more apartments are separately offered or proposed to be offered for sale;
- (2) Apartment shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of whether it ~~be~~ is designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, ~~provided if~~ it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;
- (3) Co-owner shall mean a person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, who owns an apartment within the building;
- (4) Association of co-owners shall mean all the co-owners as defined in subdivision (3) of this section; but a majority, as defined in subdivision (8) of this section, shall, except as otherwise provided in ~~sections 76-801 to 76-823~~ the act, constitute a quorum for the adoption of decisions;
- (5) Board of administrators shall mean the governing board of the regime, consisting of not less than three members selected by and from the co-owners;
- (6) General common elements shall mean and include:
 - (a) The land or leasehold interest in land on which the

building stands;

(b) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exit or communication ways;

(c) The basements, roofs, yards, and gardens, except as otherwise provided or stipulated;

(d) The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(e) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(f) The elevators, garbage incinerators, and, in general, all devices or installations existing for common use; and

(g) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety;

(7) Limited common elements shall mean and include those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(8) Majority of co-owners shall mean more than fifty percent of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of section 76-806;

(9) Master deed shall mean the deed establishing the condominium property regime;

(10) Person shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity; or any combination thereof;

(11) Property shall mean and include the land, leasehold interests in land, any building, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto or any of them alone;

(12) To record shall mean to record in accordance with the provisions of sections 76-237 to 76-257; or other applicable recording statutes;

(13) Common expense shall mean and include:

(a) All sums lawfully assessed against the apartment owner;

(b) Expense of administration, maintenance, repair, or replacement of common elements; and

(c) Expenses agreed upon as common expenses by the association of co-owners; and

(14) All pronouns used in ~~sections 76-801 to 76-823~~ the Condominium Property Act shall include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

For condominiums created in this state before January 1, 1984, the definitions in section 76-827 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840,

76-841, 76-869, 76-874, 76-876, and 76-884, section 17 of this act, ~~and 76-891~~ and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 2. That section 76-804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-804. Once the property is submitted to the condominium property regime, an apartment in any building may be individually conveyed and encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa, as if it were solely and entirely independent of the other apartments in the regime of which it forms a part, and the corresponding individual titles and interests shall be recordable as provided in section 76-211, except ; ~~PROVIDED~~; that the use and enjoyment of each apartment shall be subject to the following rules:

(1) Each apartment shall be devoted solely to the use assigned to it in the deed to which section 76-803 refers;

(2) No tenant of an apartment may make any noise or cause any annoyance or do any act that may disturb the peace of the other co-owners or tenants;

(3) The apartments shall not be used for purposes contrary to law, morals, or normal behavior;

(4) Each co-owner shall carry out at his or her sole expense any works of modification, repair, cleaning, safety, and improvement of his or her apartment, without disturbing the legal use and enjoyment of the rights of the other co-owners, or changing the exterior form of the facades, or painting the exterior walls, doors, or windows in colors or hues different from those of the whole, and without jeopardizing the soundness or safety of the property, reduce its value, or impair any easement or access to or use of common elements; and

(5) Every co-owner or tenant shall strictly comply with the administration provisions set forth in the deed or in the bylaws referred to in section 76-815. Violations of these rules shall be grounds for an action for damages or grounds for an action for injunctive relief by the co-owner or tenant aggrieved.

For condominiums created in this state before January 1, 1984, the provisions on resale of apartments or units, violations which effect a right of action, and separate titles for each apartment or unit in sections 76-829; and 76-884; and 76-891 section 17 of this act shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 3. That section 76-807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-807. The common elements, both general and limited, shall remain undivided and shall not be the object of an action for

partition or division of the co-ownership. Any covenant to the contrary shall be void. The rules of property known as the rule against perpetuities and the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of ~~sections 76-801 to 76-823; the~~ Condominium Property Act or the bylaws of the association of co-owners adopted pursuant to the provisions of such ~~sections~~ act. The common elements, both general and limited, shall not, in whole or in part, be separately conveyed, mortgaged, or foreclosed nor may liens of any description be applicable to such elements, or parts of such elements, alone. A valid lien for authorized labor and materials shall lie against the apartment of any co-owner affected but not against the common elements. For condominiums created in this state before January 1, 1984, the construction and validity of the master deed and bylaws provided in section 76-840 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and ~~76-891~~ section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 4. That section 76-809, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-809. The master deed creating and establishing the condominium property regime shall be executed by the owner or owners of the property making up the regime and shall be recorded in the office of the register of deeds in the county where such property is located. The master deed shall express the following particulars:

(1) The description of the land or leasehold interest in land and any building, expressing their respective areas;

(2) The general description and number of each apartment, expressing its area; and location and any other data necessary for its identification;

(3) The description of the general common elements of the building, and, in proper cases, of the limited common elements restricted to a given number of apartments, expressing which are those apartments;

(4) Value of the property and of each apartment; and, according to these basic values, the percentage appertaining to the co-owners in the expenses, including taxes, of and rights in the elements held in common; and

(5) The covenants, conditions, and restrictions relating to the regime, which shall run with the property and bind all co-owners, tenants of such owners, employees, and any other persons who use the property, including the persons who acquire the interest of any co-owner through foreclosure, enforcement of any lien, or otherwise. The master deed creating and establishing or amending the condominium property regime shall not be construed as constituting the subdivision of real estate as defined by law, resolution, or ordinance. For condominiums created in this state before January 1, 1984, the applicability of local ordinances, regulations, and building codes provided in section 76-830 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829

to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 5. That section 76-811, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-811. Each apartment in a building shall be designated, on the plans referred to in section 76-810, by letter or number or other appropriate designation, and any conveyance; or other instrument affecting title to ~~said the~~ apartment; which describes the apartment by using ~~said the~~ letter or number followed by the words in Condominium Property Regime shall be deemed to contain a good and sufficient description for all purposes. Any conveyance of an individual apartment shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, appertaining to ~~said the~~ apartment without specifically or particularly referring to same. For condominiums created in this state before January 1, 1984, the provisions on the description of the apartments or units in section 76-841 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 6. That section 76-816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-816. The board of administrators, or other form of administration specified in the bylaws, shall keep or cause to be kept a book with a detailed account, in chronological order, of the receipts and expenditures affecting the condominium property regime and its administration and specifying the maintenance and repair expenses of the common elements and all other expenses incurred. Both ~~said the~~ book and the vouchers accrediting the entries made thereupon shall be available for examination by any co-owner or any prospective purchaser at convenient hours on working days that shall be set and announced for general knowledge. Any prospective purchaser must be designated as such by a co-owner in writing. For condominiums created in this state before January 1, 1984, the provision on the records of the administrative body or association in section 76-876 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 7. That section 76-817, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-817. The co-owners of the apartments are bound to pay pro rata, in the percentages computed according to section 76-806, toward the expenses of administration and of maintenance and repair of the

general common elements; and, in the proper case, of the limited common elements, of the building, and toward any other expense lawfully agreed upon.

If any co-owner ~~shall fail or refuse~~ fails or refuses to make any payment of such common expenses when due, the amount thereof shall constitute a lien on the interest of the co-owner in the property and, upon the recording thereof, shall be a lien in preference over all other liens and encumbrances except assessments, liens, and charges for taxes past due and unpaid on the apartment and duly recorded mortgage and lien instruments.

No co-owner may exempt himself or herself from paying toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him or her. For condominiums created in this state before January 1, 1984, the provisions on the liens for assessments in section 76-874 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and ~~76-891~~ section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 8. That section 76-819, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-819. The purchaser of an apartment shall be jointly and severally liable with the seller for the amounts owing by the latter under section 76-817 up to the time of the conveyance, without prejudice to the purchaser's right to recover from the other party the amounts paid by him or her as such joint debtor. Co-owners shall not be individually liable for damages arising from the use of common elements. Any tort liability arising from the use of common elements shall be a common expense and shall be borne by all co-owners in proportion to the basic values referred to in sections 76-806 and 76-809. For condominiums created in this state before January 1, 1984, the provisions on tort and contract liability in section 76-869 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and ~~76-891~~ section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 9. That section 76-820, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-820. The association of co-owners shall insure the property and the association against risk, including tort liability, without prejudice to the right of each co-owner to insure himself or herself or his or her apartment or the contents thereof, on his or her own account and for his or her own benefit. Any policy shall be issued in the name of the board of administrators or as provided in the bylaws, in trust for the benefit of each co-owner in accordance with the percentage interest of each as stated in the master deed. The limits of coverage shall be

established by resolution of the board of administrators. Premiums for such insurance shall be included in the common expenses. Any deficiency in insurance coverage shall be borne by all co-owners in proportion to the basic values referred to in sections 76-806 and 76-809, except as provided in section 76-820.01. For condominiums created in this state before January 1, 1984, the powers of the association or administrative body provided in subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 shall apply, to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 10. That section 76-823, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-823. Taxes, assessments, and other charges of this state, ~~or~~ of any political subdivision, ~~or~~ of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or buildings or property as a whole. No forfeiture or sale of the building or buildings or property as a whole for delinquent taxes, assessments, or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessments, and charges on ~~said~~ the individual apartment are currently paid. The common elements, both general and limited, shall not be separately taxed or foreclosed for tax purposes. The value of the common elements shall be determined by the assessor and apportioned for taxes against the several apartments in proportion to the basic values referred to in sections 76-806 and 76-809. Restrictions on alienation of the common elements shall be given weight by the assessor in determining valuations. For condominiums created in this state before January 1, 1984, the provisions on the separate taxation of each apartment in section 76-829 shall apply; to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 11. That section 76-824.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-824.01. For condominiums created in this state before January 1, 1984, sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-891 section 17 of this act, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 shall apply to the extent necessary in construing the provisions of such sections which apply to events and circumstances which occur after January 1, 1984, notwithstanding any provisions to the contrary in sections 76-801 to 76-824.

Sec. 12. That section 76-825, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

76-825. Sections 76-825 to 76-894 and sections 14 and 17 of this act shall be known and may be cited as the Nebraska Condominium Act.

Sec. 13. That section 76-826, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-826. (a) ~~Sections 76-825 to 76-894~~ The Nebraska Condominium Act shall apply to all condominiums created within this state after January 1, 1984. Sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, and 76-884, and 76-894 ~~section 17 of this act~~, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860, to the extent necessary in construing any of those sections, apply to all condominiums created in this state before January 1, 1984; but those sections apply only with respect to events and circumstances occurring after January 1, 1984, and do not invalidate existing provisions of the master deed, bylaws, or plans of those condominiums.

(b) The provisions of sections 76-801 to 76-824 do not apply to condominiums created after January 1, 1984, and do not invalidate any amendment to the master deed, bylaws, and plans of any condominium created before January 1, 1984, if the amendment would be permitted by ~~sections 76-825 to 76-894~~ the Nebraska Condominium Act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by sections 76-801 to 76-824. If the amendment grants to any person any rights, powers, or privileges permitted by ~~sections 76-825 to 76-894~~ the Nebraska Condominium Act, all correlative obligations, liabilities, and restrictions in ~~sections 76-825 to 76-894~~ the act also apply to that person.

(c) ~~Sections 76-825 to 76-894 do~~ The Nebraska Condominium Act shall not apply to condominiums or units located outside this state, but the public-offering statement provisions contained in sections 76-879 to 76-883 apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection (b) of section 76-878.

Sec. 14. (a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) The commercial setting of the negotiations;
 (2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(3) The effect and purpose of the contract or clause; and

(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

Sec. 15. That section 76-854, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-854. (a) Except in cases of amendments that may be executed by (1) a declarant under subsection (f) of section 76-846 or under section 76-847, (2) ; the association under section 76-831 or 76-850, subsection (d) of section 76-843, subsection (c) of section 76-845, or subsection (a) of section 76-849, ; or (3) certain unit owners under subsection (b) of section 76-845, subsection (a) of section 76-849, subsection (b) of section 76-850, or subsection (b) of section 76-855, and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of ~~sections 76-825 to 76-894~~ the Nebraska Condominium Act, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted in the absence of the unanimous consent ~~of sixty-seven percent~~ of the unit owners.

(e) Amendments to the declaration required by ~~sections 76-825 to 76-894~~ the act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 16. That section 76-883, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-883. (a) A person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 shall provide a purchaser of a unit with a copy of the public-offering statement and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the public-offering statement more than fifteen days before execution of a

contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public-offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, he or she may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by mail postage prepaid to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(c) If a person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 fails to provide a purchaser to whom a unit is conveyed with that public-offering statement and all amendments thereto as required by subsection (a) of this section, the purchaser is entitled to receive damages and other relief from that person. If a declarant fails to provide a public-offering statement to a purchaser before conveying a unit, such purchaser may recover from the declarant any actual damages:

Sec. 17. If a declarant or any other person subject to the Nebraska Condominium Act fails to comply with any provision of the act or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award costs and reasonable attorney's fees.

Sec. 18. That original sections 76-802, 76-804, 76-807, 76-809, 76-811, 76-816, 76-817, 76-819, 76-820, 76-823, 76-824.01, 76-825, 76-826, 76-854, and 76-883, Reissue Revised Statutes of Nebraska, 1943, and also section 76-891, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 19. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.