

LEGISLATIVE BILL 730

Approved by the Governor March 1, 1974

Introduced by F. Carstens, 30

AN ACT to amend sections 76-802, 76-803, 76-804, 76-806, 76-807, 76-809, 76-810, 76-816, 76-819, 76-820, and 76-823, Reissue Revised Statutes of Nebraska, 1943, relating to the Condominium Property Act; to redefine terms; to change provisions relating to the use and enjoyment of apartments; to add provisions relating to the common elements as prescribed; to expand upon how property shall be insured or altered; to provide for partition; and to repeal the original sections, and also sections 76-821 and 76-822, Reissue Revised Statutes of Nebraska, 1943.

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, 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 designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

(3) Coowner 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 coowners shall mean all the coowners 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, 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 coowners;

(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 coowners 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 coowners shall mean more than fifty per cent 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, the 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 coowners; and

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

Sec. 2. That section 76-803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-803. Whenever a sole owner or the coowners of a ~~building~~ property expressly declare, through the recordation of a master deed, which shall set forth the particulars enumerated in section 76-809, their desire to submit their property to the regime established by sections 76-801 to 76-823, there shall thereby be established a condominium property regime.

Sec. 3. 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 ~~the~~ 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 building regime of which it forms a part, and the corresponding individual titles and interests shall be recordable as provided in section 76-211; 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 coowners or tenants;

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

(4) Each coowner shall carry out at his sole expense any works of modification, repair, cleaning, safety, and improvement of his apartment, without disturbing the legal use and enjoyment of the rights of the other coowners, 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 coowner or tenant shall strictly comply with the administration provisions set forth in the deed or in the by-laws 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 coowner or tenant aggrieved.

Sec. 4. That section 76-806, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-806. An apartment owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other coowners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole.

Such percentage shall be expressed at the time the condominium property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the coowners representing all the apartments of the building regime, except as provided in section 8 of this act.

The said basic value, which shall be fixed for the sole purpose of sections 76-801 to 76-823 and irrespectively of the actual value, shall not prevent

each coowner from fixing a different circumstantial value to his apartment in all types of acts and contracts.

Sec. 5. 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 coownership. 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, or the by-laws of the association of coowners adopted pursuant to the provisions of such sections. 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 coowner affected but not against the common elements.

Sec. 6. 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 ~~real~~ 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 ~~the any~~ building, expressing their respective areas;

(2) The general description and number of each apartment, expressing its area, 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 coowners 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 land property and bind all coowners, tenants of such owners, employees and any other persons who use the property, including the persons who acquire the interest of any coowner 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.

Sec. 7. That section 76-810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-810. (1) There shall be attached to the master deed, at the time it is filed for record, a full and exact copy of the plans of the any building, which copy of plans shall be entered of record along with the master deed. Said plans shall show graphically all particulars of the any building including, but not limited to, the dimensions, area and location of each apartment therein and the dimensions, area and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible and shall be described in detail in words and figures. Said plans shall be certified to by an engineer or architect authorized and licensed to practice his profession in this state.

(2) In interpreting the plans or other instruments affecting the property or apartment, the boundaries of the property or apartment constructed or reconstructed in substantial accordance with the plans shall be conclusively presumed to be the actual boundaries rather than the description expressed in the plans, regardless of the settling or lateral movement of the property.

Sec. 8. Unless otherwise provided in the master deed or by-laws, land, buildings, apartments, improvements, structures, easements, rights or obligations, in whole or in part, may be divided, added to or deleted from a condominium property regime by approval of at least three-fourths of the coowners. Upon approval of such divisions, additions or deletions in writing, an amended and revised master deed and attached plans shall be filed for record and the basic values referred to in sections 76-806 and 76-809 shall be

recomputed and filed for record as required.

Sec. 9. 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 by-laws, shall keep or cause to be kept a book with a detailed account, in chronological order, of the receipts and expenditures affecting the building condominium property regime and its administration and specifying the maintenance and repair expenses of the common elements and all other expenses incurred. Both said book and the vouchers accrediting the entries made thereupon shall be available for examination by all-the-coowners any coowner 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 coowner in writing.

Sec. 10. 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 as such joint debtor. Coowners 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 coowners in proportion to the basic values referred to in sections 76-806 and 76-809.

Sec. 11. That section 76-820, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-820. The association of coowners shall, upon resolution of a majority, or if required by the master deed or by laws, insure the property and the association against risk, including tort liability, without prejudice to the right of each coowner to insure himself or his apartment or the contents thereof, on his own account and for his own benefit. If the property is insured by the coowners, the any policy shall be issued in the name of the board of administrators or as provided in the by-laws, in trust for the benefit of each coowner 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 coowners in proportion to the basic values referred to in sections 76-806 and 76-809, except as provided in section 12 of this act.

Sec. 12. Unless otherwise provided in the master deed or by-laws, if the insurance proceeds are insufficient to reconstruct the building or buildings, or other property, damage to or destruction of the building or buildings or other property caused by fire or other disaster shall be promptly repaired and restored by the board of administrators, using proceeds of insurance for that purpose, and the coowners directly affected by the damage shall be liable for assessment for any deficiency. Such deficiency shall be borne by such coowners in proportion to the value of their respective apartments as reflected by the basic values referred to in sections 76-806 and 76-809, except that if three-fourths or more of the building or buildings constituting the entire condominium property regime are destroyed or substantially damaged and if the coowners, by a vote of at least three-fourths of such coowners, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the board of administrators shall record, with the register of deeds, a notice setting forth such facts, and upon the recording of such notice:

(1) The property shall be deemed to be owned in common by the coowners;

(2) The undivided interest in the property owned in common which shall appertain to each coowner shall be the percentage of undivided interest previously owned by such owner in the common elements;

(3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and

(4) The property shall be subject to an action for partition at the suit of any coowner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, shall be considered as one fund and shall be divided among all the coowners in a percentage equal to the percentages and basic values of each coowner in the property as referred to in sections 76-806 and 76-809, after first paying out of the respective shares of the coowners, to the extent sufficient for such purpose, all liens on the undivided



interest in the property owned by each coowner.

Sec. 13. 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 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.

Sec. 14. Existing condominium property regimes, by approval of the coowners, may choose to adopt, in whole or in part, amendments to the Condominium Property Act when effective or may choose to continue in existence pursuant to the terms of the act in effect on the date of filing of the master deed.

Sec. 15. That original sections 76-802, 76-803, 76-804, 76-806, 76-807, 76-809, 76-810, 76-816, 76-819, 76-820, and 76-823, Reissue Revised Statutes of Nebraska, 1943, and also sections 76-821 and 76-822, Reissue Revised Statutes of Nebraska, 1943, are repealed.