IN THE ARIZONA SUPREME COURT
STATE OF ARIZONA

JIE CAO, et al., Petitioners/Appellants/ Cross-Respondents v. PFP DORSEY INVESTMENTS, LLC., DORSEY PLACE CONDOMINIUM ASSOCIATION Respondents/Appellee/ Cross-Petitioners	Arizona Supreme Court Case No: CV-22-0228-PR Court of Appeals Div. 1 No: 1CA-CV-21-0275 Maricopa County Superior Court No: CV2019-055353

SUPPLEMENTAL BRIEF OF AMICUS CURIAE COMMUNITY ASSOCIATIONS INSTITUTE IN SUPPORT OF APPELLEE

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INTEREST OF CAI AS AMICUS CURIAE

As noted in its previously-filed Amicus Brief, Community Associations Institute's (CAI) is an international organization dedicated to providing information, education, resources and advocacy for community association leaders, members, and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI's more than 43,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations. CAI is the largest organization of its kind, serving more than 74.1 million homeowners who live in more than 355,000 community associations in the United States. Approximately 9,900 community associations are located in Arizona serving 2,264,000 homeowners. Of that number, approximately one-third, 755,000, live in a condominium.[1] CAI is representing not only itself, but also its tens of thousands of members on this important issue. CAI submits this brief to address the updated questions presented in this Court's August 23, 2023 Order.

INTRODUCTION

Appellants present the taking issue as though condominiums are creatures of common law and must be administered using common law real estate principles.

[1] https://foundation.caionline.org/publications/factbook/statistical-review/

But the condominium is a unique form of real property ownership and present-day condominiums throughout the United States, Arizona included, are created and governed by specific statutory schemes that deal with ownership, administration, transfer, and termination of commonly held property interests. More fundamentally, it is that statutory scheme, not the common law, that frames the issues in this controversy. And it is that statutory scheme that, in turn, reveals why no taking occurred in the termination and payment of the property interest involved in this proceeding.

ARGUMENT

I. The History of Condominium Law in the United States

Although condominiums have existed since Greek and Roman times, modern condominium law is derived from civil law. Because condominiums combine the horizontal division of land with the inseparable combination of fee simple ownership of a unit as well as common ownership of "common elements" as tenants in common, condominiums cannot legally be formed under the common law in the absence of statutory authority.

In fact, it was not possible to finance or obtain title insurance for a condominium unit—and arguably create a valid condominium—until a state passed an **enabling** statute in the 1960s. At that point, the Federal Housing Administration (FHA) agreed to finance condominium units if—and only if—a state enacted a

statute enabling condominium ownership. By 1965, almost every state had enacted a short and simple statute—a "Horizontal Property Act" or "Unit Property Act" or "Condominium Act"—authorizing the creation of condominiums based on the FHA Model Act which was taken from the Puerto Rican statute. Arizona was no exception, passing its Horizontal Property Act in 1962. *See* Appendix APP019

These statutes, Arizona included, provide for termination of the condominium by a vote of a super-majority (typically at least 80%) of the condominium unit owners.[2] The reason for that again follows directly from the modern condominium being a creature of statute. Specifically, under common law, as applied in the United States, there could *not* be a valid condominium without a state enabling statute. As a result, accepting the statutory provision for termination and sale is a precondition to allowing the formation of a condominium in the first place. That termination provision likewise is implicitly incorporated into the condominium formation documents—none of which would be valid under state law in the absence of the statute.

Developments after the mid-1960s revealed that the original enabling acts lacked needed flexibility and requisite consumer protection. The National Conference of Commissioners on Uniform State Laws (now the Uniform Laws

[2] Arizona's 1962 Horizontal Property Act originally required 100% consent. See A.R.S. § 33-556 attached.

Commission) accordingly created a drafting committee in 1977 to modernize condominium law in the U.S. The revisions ultimately adopted were modeled on a second generation state statute enacted by Virginia in 1974. The Uniform Condominium Act, approved in 1980, added development flexibility, disclosure and other consumer protection provisions, and, as relevant here, a modified termination provision. The Uniform Act provision based distributions on termination on the relative fair market value of the units, rather than the percentage interest assigned at the creation of the condominium (*see* Unif. Condominium Act 1980 § 2-118 and comments) (*see* Uniform Condominium Act in Appellees' Supplemental Brief as APP 023 – APP 189).

Arizona's codification of the Uniform Condominium Act (referred to hereafter as the "Act") became effective in Arizona on January 1, 1986 (*see* A.R.S. § 33-1201 *et seq.*). Section 33-1203 of the Act, as codified, specifically states that "the provisions of this chapter shall not be varied by agreement and rights conferred by this chapter shall not be waived." This includes the right of 80% of the unit owners to terminate the condominium in accordance with § 33-1228 of the Act.

In short, from the initial state enabling statutes, through the drafting of the Act, and the revised statutes that followed, condominiums have been governed by specific state law addressed to their unique features. Those unique features include the manner in which interests are owned and, concomitantly, by which they can be

terminated. The manner of termination of condominium interests, moreover, aligns with the manner in which condominiums are owned. Without a specific termination provision, the administration and management of condominium associations would be unworkable.

Ignoring the historical background in which condominium law developed, Appellants obfuscate the reality of what happens in a transaction involving the termination of a condominium. It is not the state or a private party that is taking anyone's property. The statute merely facilitates the disposition of the property of a unit owner by the other unit owners. Thus, if Arizona were to find that statutory termination of a condominium is an unconstitutional taking, it would be alone among the states in disallowing the organized disposition of condominium property in accordance with the statutory process that state legislatures across the country have enacted and which courts and condominium associations must follow.

II. Proper Analysis Of Condominium Law Principles Shows That A Statutory Termination is Not a Taking

Appellants have it exactly backwards in claiming that the statutorily-authorized termination here is unprecedented, draconian, and an unconstitutional taking. Under controlling law and well-established condominium law principles, it is none of those things. It is a private payment of fair market value for a private interest pursuant to a private agreement. That transfer is not a confiscation; it is a contractual transfer of ownership for value.

Even beyond the condominium context, the statutorily-authorized transfer of ownership here is no aberration or outlier. It is analogous to the division of interest by partition of real property or in transfers in bankruptcy. These legislative regimes underscore that in appropriate contexts the legislature and the law can authorize transfers of ownership by statute without implicating constitutional taking principles. The statutorily-authorized transfer in this instance is no different.

Partition. A.R.S. § 12-1211 specifically provides that owners may compel partition of real property in the absence of a voluntary contract and against the will of the minority owners. If termination of a condominium violates the Arizona Constitution, then so does partition under § 12-1211. Because of the lack of case law to support their position, Appellants argue simply that because this case involves private property that ends up in the "hands of a private company," that concludes the analysis, and Article 2, § 17 of the Arizona Constitution is violated. Appellants' Supplemental Brief at 6.

But this analysis breaks down quickly because Appellants agree that courts can order partition and the forced sale of property without violating the Arizona Constitution. *Id*. at 6. Partition involves private property that ends up in the hands of a private party, so if the Appellants' terse assertion were correct, partitions of property should also be unconstitutional under the Arizona Constitution. To distinguish the statutory partition of property by a court from an agreement by a

supermajority of condominium owners to terminate property interests by statute, the Appellants cite U.S. constitutional law relating to longstanding governmental rights to access private property under the common law. *See* Appellants' Supplemental Brief at 6 (citing *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021)). But this case has nothing to do with the government having access over private property and Appellants' arguments fail under their own analysis.

Appellants also make the unsubstantiated assertion that because partition has long been recognized as an appropriate action by a court, it does not violate the Arizona Constitution. *See* Appellant's Supplemental Brief at 6. In support of this argument, Appellants cite to The Institutes of Justinian, citing to "partition, which is available to co-heirs in order to divide an estate." *See* Appellant's Response to Cross-Petitions for Review at 11. Appellants neglect to mention that just a few paragraphs later The Institutes of Justinian identifies causes of action that include "the partition of an inheritance, **and of the division of any particular thing or things, which belong in common to diverse persons**." *See* 4 Justinian, *Institutes*, tit. 6, § 28 (ca. 533) (emphasis added).

That passage reflects that courts in equity have had the power to sell property in common ownership structures. As one court noted:

> The right of partition is incident to all real estate holden in common, whether corporeal or incorporeal, and especially whenever it can not be otherwise enjoyed. The right of beneficial enjoyment of property is as essential as the right of ownership. And, indeed, by the principles of

> the common law…this right of partition enters into the very nature of the title of estates holden in common, and is inseparable from them. The only question is, how can it best be made?

Richardson v. Monson, 23 Conn. 94, 97 (Conn. 1854).

Condominium interests, too, are held in common. The ownership of a unit in a condominium is inextricably intertwined with the common undivided interest each unit owner has in the common elements of the community. Condominium statutes, including § 33-1217E of the Arizona statute, explicitly prohibit the separation of the fee simple interest in the unit from the tenancy in common interest in the common elements. That is why Arizona's Legislature has put into place a procedure by which owners in a condominium form of ownership can dispose of the property by the agreement of a supermajority of owners. This is consistent with traditional principles of property law and the State's Legislature has simply answered the question for Arizona on "how can it best be made." *See Richardson*, 23 Conn. at 97 (Conn. 1854).

Finally, describing the transfer as a "forced sale" does not aid Appellants' "taking" label either. Arizona law already provides for judicial partition and forced sale of co-tenancy property. A.R.S. §12-1211. There generally are no defenses that ultimately block a partition action from resulting in a property sale unless the property owners can agree on an alternative solution. As a result, partition actions often result in a forced sale of the property and the distribution of the sale proceeds

according to the percentage of ownership interests that each owner has in the real estate. Here, the Act provides more protections for owners than would exist in a typical partition process.

Bankruptcy. The extinguishment of joint co-ownership interests under bankruptcy law provides another example of when private property ends up in the hands of a private party but is not considered a private taking. As Amicus Curiae Goldwater Institute notes in their Supplemental Brief, in the extinguishment of joint co-ownership interests under bankruptcy law, as in this case, the government is not appropriating anything. *See* Supplemental Brief of Goldwater Institute at 5.

The Goldwater Institute cites to an outlier case from the United States Bankruptcy Court in the Eastern District of New York that found (incorrectly) that such a case involved a private taking. Subsequent decisions explain why that reasoning cannot be followed:

> Apparently, the trustee was too exhausted to take an appeal from this interesting, if questionable, decision, so the Second Circuit never opined on Judge Holland's analysis.
>
> Judge Holland's decision is rarely cited and never, to the best of this Court's knowledge, followed for the proposition that property owned by the entireties is not subject to sale by a trustee under Section 363(h) of the Bankruptcy Code. On the other hand, numerous cases decided in this Circuit and elsewhere since *Persky II* have continued to apply Section 363(h) to authorize the sale of property owned as tenants by the entireties. *See, e.g., In re Kahan*, 28 F.3d 79 (9th Cir.1994); *In re Garner*, 952 F.2d 232 (8th Cir.1991); *655 *In re Rivera*, 214 B.R. 50 (D.P.R.1997); *In re Grabowski*, 137 B.R. 1 (S.D.N.Y.1992); *In re Pielli*, No. 91–4364(CSF), 1991 WL 274225 (D.N.J. Dec. 16, 1991).

Sapir v. Sartorius, 230 B.R. 650, 654–55 (S.D.N.Y. 1999).

Of course, the fact that the specific section of the United States Bankruptcy Code, 11 USCA § 363(h), allows for the sale of property, including "the interest of any co-owner in property," and is being applied by Bankruptcy Courts across the nation is good evidence that such sales are not a private taking. The Bankruptcy Code provisions, like the partition statutes, simply provide for a means of transferring property that aligns with the context in which the property rights are adjudicated. The transfer in the context of condominium statutes stands on the same footing.

III. The Condominium Termination Process Provided by the Arizona Legislature is Not a Taking.

The language of Sec. 17 of the Arizona Constitution is clear: "No private property shall be taken or damaged for public or private use without just compensation having first been made, paid into court for the owner, secured by bond as may be fixed by the court, or paid into the state treasury for the owner on such terms and conditions as the legislature may provide,…" The obvious intent of this taking protection is that private property cannot be taken without just compensation. *City of Scottsdale v. Cgp-Aberdeen, LLC*, 177 P.3d 1198, 1200, 217 Ariz. 626, ¶8 (Ariz. App. 2008); *Calmat of Arizona, v. State ex rel. Miller*; 859 P.2d 1323, 1325, 176 Ariz. 190, 192 (Ariz. 1993).

The disposition of condominium property by termination under A.R.S. § 33-1228 is not a taking under this Article. Rather, in perfect harmony with that constitutional principle, A.R.S. § 33-1228 provides for and enumerates how compensation will be paid. First, the private property is not taken. Instead, the property interest is sold after a decision by the unit owners to sell the common elements held as tenants in common. The condominium concept (and § 33-1217) precludes selling those interests separately from the units so they must be sold together. Second, the statute's termination provision provides for compensation at fair market value.

Such a sale thus is not a taking by a third party but rather a decision to sell by a supermajority of the unit owners with a corresponding payment of just compensation.

In that regard, Section 33-1228 requires notice to all unit owners and the vote of at least 80% of the unit owners (or a higher percentage, or a lower percentage in a nonresidential condominium, if the declaration so provides). The unit owners are protected by the requirement that their share of any distribution is based on the relative fair market value of their units. The law grants each owner "the fair market value of their units, limited common elements and common element interest immediately before the termination, their pro-rata share of any monies in the association's reserve fund and the operating account and an additional five percent

of that total amount for relocation costs." A.R.S. § 33-1228(I)(1). Furthermore, the law contains an appraisal process that allows for two independent appraisals, along with an arbitration process, if there is a disagreement on the value. *Id.* None of these protections exist in the common law.

In sum, as structured under § 33-1228, this transfer has none of the attributes of a taking. It is a consensual disposition of the condominium property by a supermajority of the property owners in full accordance with the law governing condominiums and to which all unit owners were subject when they decided to purchase a condominium unit. Likewise, termination is not a taking without compensation; every unit owner receives full value for their fee simple unit and their tenancy in common interest in the common elements.

In contrast to termination, in a taking by a public or private party, there is nothing consensual about it and no private agreement is involved. Declaring the termination and disposition here to be an unlawful taking not only would contravene existing law, but it would also produce unworkable and undesirable results. As noted, Arizona would stand alone in rejecting this aspect of what is otherwise uniform statutory law nationwide. But more fundamentally, as the nationwide consensus across state condominium statutes reflects, divergence from these well-established principles would make condominium ownership unworkable. If termination without a contract consented to by all unit owners were an unlawful

taking, then it would become almost impossible to dispose of an obsolete or destroyed condominium. Requiring unanimous agreement would only encourage extortion of the majority by a dissident minority holding out for a disproportionate and unfair share of the proceeds. The Arizona Legislature obviously agreed when it reduced the 100% requirement in § 33-556 to 80% in § 33-1228.

For all these reasons, this Court should reject the taking argument and instead declare that a change of ownership that follows from the unit owners' agreement in accordance with the requirements of the statute is lawful.

IV. Statutory Amendments are Incorporated into a Condominium Declaration by Operation of Law.

All parties agree that statutory amendments are incorporated into a condominium declaration. As Appellants state in their supplemental brief, "subsequent statutory amendments apply by operation of law, subject to ordinary constitutional limits." Appellants' Supplemental Brief at 25. Appellees also state that "Yes," statutory amendments are incorporated, "to the extent such statutory amendments do not impair express vested rights under the condominium declaration." Appellees' Supplemental Brief at 17.

Indeed "[i]t has long been the rule in Arizona that a valid statute is automatically part of any contract affected by it, even if the statute is not specifically mentioned in the contract." *Qwest Corp. v. City of Chandler*, 217 P.3d 424, 435, 222 Ariz. 474, ¶37 (Ariz. App. 2009) citing *Banner Health v. Medical Sav. Ins. Co.*,

163 P.3d 1096, 1100, 216 Ariz. 146, 150, ¶15 (Ariz. App. 2007). Moreover, "contractual language must be interpreted in light of existing law, the provisions of which are regarded as implied terms of the contract, regardless of whether the agreement refers to the governing law." *Qwest*, 217 P.3d 424, 435, 222 Ariz. 474, ¶37 (citation omitted).

The question of whether a declaration incorporates a subsequent statutory amendment was analyzed and answered in the affirmative by the Court of Appeals in *Hawk v. PC Village Association, Inc.*, 233 Ariz. 94, 309 P.3d 918 (Ariz. App. 2013). The court in *Hawk* was presented with an argument that A.R.S. § 33-441, enacted years after the Association's declaration was recorded, did not govern the declaration, which specifically prohibited certain signs except for "signs…the prohibition of which is precluded by law." *Id*. at ¶3, ¶9-10.

The court noted that, to be successful in a challenge of a statute as violating the federal and state contract clauses, a party must first show that the statute substantially impairs the contractual relationship. *Id*. at ¶ 15 (citation omitted). "To determine whether an impairment is substantial, we must consider the parties' reasonable expectations. The absence of contractual language contemplating permanency, or the presence of language affirmatively contemplating change, may also be relevant." *Id*. at ¶ 16 (citation omitted).

The language in the declaration anticipating applicable statutory law provided just that. As the court explained:

> Though the [condominium documents] generally prohibit nearly all signs, and specifically prohibit "for sale" signs, they exempt from the ban those signs "the prohibition of which is precluded by law." This exception is flexible—it contemplates that there will be types of signs that the law will protect, and it is not limited to legal protections in effect at the time of recordation. Because the parties anticipated that the [condominium documents] would yield to laws concerning signs, we conclude that A.R.S. § 33–441 does not significantly impinge on the parties' reasonable expectations.

Id.

Because the statute did not significantly impinge on the parties' reasonable expectations, the Court of Appeals held that the statute did not violate the constitutional contract clauses and held that the statute was properly applied to invalidate a restriction recorded before the statute was enacted. *Id*. at ¶ 17-18.

This same analysis should be applied in this case. Considering that statutes are automatically made part of the declaration and the declaration is subject to the Condominium Act, "as amended from time to time," the amendment to A.R.S. § 33-1228, which did not create anew the ability of a condominium to be terminated, "does not significantly impinge on the parties' reasonable expectations." Accordingly, amendments to a statute that is already incorporated as a term of the declaration must be incorporated into the agreement allowing the language of the declaration to be interpreted in light of "existing law."

As CAI explained previously (*see* Amicus Curiae Brief of Community Associations Institute in Support of Cross-Petition for Review, p. 5-9), *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532 (2022) did not and was not intended to apply to statutory—as opposed to contractual—amendments, especially when a declaration incorporates by reference the Condominium Act, as amended from time to time. To conclude that a homeowner's reasonable expectation does not include an amendment to an applicable statute implemented after the homeowner purchases a unit would serve to create uncertainty and non-uniformity and an unworkable set of rules for all associations in the state. *See* Amicus Curiae Brief of Community Associations Institute in Support of Cross-Petition for Review, p. 5. It is undisputed in this case that all unit owners in the association were on notice that they were subject to the Condominium Act and that the statute could be amended in the future. The 2018 changes to A.R.S. § 33-1228 fell "within the [unit owners'] 'reasonable expectations based on the declaration in effect at the time of the purchase.'" (Opinion ¶ 20 (citing *Kalway*, at 544, ¶ 15).

CONCLUSION

For the reasons noted, this Court should reject the argument that a termination of a condominium interest constitutes a taking and should find that statutory amendments in this context are incorporated into a condominium declaration.

RESPECTFULLY SUBMITTED this 26th day of September, 2023.

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APPENDIX

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CHAPTER 4.1

HORIZONTAL PROPERTY REGIMES

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ARTICLE 1. IN GENERAL

Chapter 4.1, article 1, consisting of sections 33–551 to 33–561, was added by Laws 1962, Ch. 89, § 1, effective March 22, 1962.

§ 33–551. Definitions

In this article, unless the context otherwise requires:

1. "Apartment" means one or more rooms occupying all or a part of a floor or floors in a building of one or more floors or stories, but not the entire building, and notwithstanding whether the apartment be intended for use or used as a residence, office, for the operation of any industry or business or for any other use not prohibited by law.

2. "Building" includes the principal structure erected or to be erected upon the land described in the declaration provided for in § 33–552 which determines the use to be made of the improved land whether or not such improvement is composed of one or more separate buildings of one or more floors or stories.

3. "Co-owner" means a person, corporation, partnership or other legal entity capable of holding or owning any interest in real property who owns all or an interest in an apartment within the building.

4. "Co-owner's interest" means the fractional or percentage interest ascribed to each apartment by the declaration provided for in § 33–552.

5. "Council of co-owners" means all of the co-owners of the building.

6. "General common elements" includes:

(a) The land on which the building is erected.

(b) The foundations, basements, floors, exterior walls of each apartment and of the building, ceilings and roofs, halls, lobbies, stairways, and entrance and exit or communication ways, except as may be specifically otherwise provided in the declaration provided for in § 33–552.

(c) The compartments or installations of central services for public utilities, common heating and refrigeration units, reservoirs, water tanks and pumps servicing other than one apartment.

(d) Premises for lodging of service personnel engaged in performing services other than services within a single apartment.

(e) All devices and premises designed for common use or enjoyment by more than the owner or owners of a single apartment.

7. "Limited common elements" includes those elements designed for use by the owners of more than one but less than all of the apartments included in the building.

8. "Majority of co-owners" or "per cent of co-owners" means the owners of more than one-half or owners of that per cent of interest in the building irrespective of the total number of co-owners.

9. "Property" includes the land whether committed to the horizontal property regime in fee or as a leasehold interest, the building, all other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1. C.J.S. Estates § 1 et seq.

§ 33-552. Recording of declaration to submit property to regime

When the sole owner or all of the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property upon which is located a building to the horizontal property regime 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 county recorder of the county in which such property lies.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1. C.J.S. Estates § 1 et seq.

§ 33-553. Contents of declaration

The declaration provided for in § 33–552 shall contain:

1. A description of the land.

2. A description of the cubic content space of the building with reference to its location on the land.

3. A description of the cubic content space of each apartment located within the building, and a description of the cubic content space of each carport or garage or any other area to be subject to individual ownership and exclusive control.

4. A description of the common elements which may be the description provided for in paragraph 2 less the descriptions provided for in paragraph 3 and less the descriptions provided in paragraph 5, if applicable.

5. A description of the cubic content space of the limited common elements, if any.

6. The fractional or percentage interest which each apartment bears to the entire horizontal property regime. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1. C.J.S. Estates § 1 et seq.

§ 33-554. Reference to declaration for description of apartment and common elements

All subsequent deeds, mortgages, or other instruments shall describe the land, but may describe the individual apartments, the common elements, other than the land, or limited common elements by reference to appropriate numbers or letters if such appear on the declaration provided for in § 33–552 without repeating in detail the descriptions of such apartments, common elements other than the land, or limited common elements. Such reference shall include the docket and page of the recorded declaration.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1. C.J.S. Estates § 1 et seq.

§ 33-555. Interest in common elements; reference to them in instrument

A. The fractional or percentage interest in the general common elements and the fractional or percentage interest in the limited common elements where such exist are hereby declared to be appurtenant to each of the separate apartments.

B. Any conveyance, encumbrance, lien, alienation or devise of an apartment under a horizontal property regime by any instrument which describes the land and apartment as set forth in § 33–552 shall also convey, encumber, alienate, devise or be a lien upon the fractional or percentage interest appurtenant to each such apartment under § 33–553, paragraph 6, to the general common elements, and the respective share or percentage interest to limited common elements where applicable, whether such general common elements or limited common elements are described as in § 33–553, paragraphs 4 or 5, by general reference only, or not at all.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1. C.J.S. Estates § 1 et seq.

§ 33-556. Withdrawal of property from regime; recording; subsequent regime

A. Any property so constituted as a horizontal property regime 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 apartments, 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 other than by foreclosure against the apartment, or expire by operation of law.

B. No withdrawal of any property from a horizontal property regime shall be a bar to any subsequent commitment to a horizontal property regime.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⚿1. C.J.S. Estates § 1 et seq.

§ 33-557. Individual apartments and interest in common elements are alienable

When real property containing a building is committed to a horizontal property regime, each individual apartment located therein and the interests in the general common elements and limited common elements if any, appurtenant thereto, shall be vested as, and shall be as completely and freely alienable as any separate parcel of real property is or may be under the laws of this state, except as limited by the provisions of this chapter.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⚿1. C.J.S. Estates § 1 et seq.

Notes of Decisions

1. Condominiums

If a condominium consists of five or more units, it constitutes a subdivision and is subject to prior approval of state real estate commissioner before an offering is made to the public. Op.Atty. Gen.No.63-26.

§ 33-558. Real property tax and special assessments; levy on each apartment

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

B. 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.

Added Laws 1962, Ch. 89, § 1.

Library References

Taxation ⇐62. C.J.S. Taxation § 67.

§ 33-559. Liens against apartments; removal from lien; effect of part payment

A. Subsequent to recording the declaration provided for in § 33-552, and while the property remains enrolled in a horizontal property regime, 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 apartment and the general common elements and limited common elements where applicable, appurtenant to such apartment, 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.

B. In the event a lien against two or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the general common elements and limited common elements where applicable appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the fractions or percentages appearing on the declaration provided for in § 33-553, paragraph 6. Subsequent to any such payment, discharge or other satisfaction the individual apartment 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 his rights against any apartment and the general common elements, limited common elements where applicable appurtenant thereto not so paid, satisfied or discharged.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1. C.J.S. Estates § 1 et seq.

§ 33-560. Limitation upon availability of partition; exception as to limitation of partition by joint ownership

A. The provisions of title 12, chapter 8, article 7, relating to partition of real property shall not be available to any owner of any interest in real property included within a regime established under

this chapter as against any other owner or owners of any interest or interests in the same regime, so as to terminate the regime.

B. Nothing contained in this chapter shall be construed as a limitation on partition by joint owners of one or more apartments in a regime as to individual ownership of such apartment or apartments without terminating the regime, or as to ownership of such apartment or apartments and lands outside the limits of the regime.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⚖3. C.J.S. Estates § 2 et seq.

§ 33-561. Management by council of co-owners; rules and regulations

A. The council of co-owners shall be required to make provisions for 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 and shall be required to adopt bylaws, rules and regulations.

B. The bylaws, rules and regulations as amended shall be reduced to writing and available to every owner of any interest in the horizontal property regime.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⚖1. C.J.S. Estates § 1 et seq.