

TITLE XXXI

TRADE AND COMMERCE

pages 1-5 only
attached!

See

CHAPTER 356-B

CONDOMINIUM ACT

RSA 356-B:5
(ps, attached)

I. General Principles

Section 356-B:1

356-B:1 Short Title. – This chapter shall be known and may be cited as the "Condominium Act".

Source. 1977, 468:1, eff. Sept. 10, 1977.

Section 356-B:2

356-B:2 Application. –

I. This chapter shall apply to all condominiums and to all condominium projects. This chapter shall be deemed to supersede RSA 479-A, the New Hampshire Unit Ownership of Real Property Act; and no condominium shall be established under the latter on or after September 10, 1977. This chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to September 10, 1977. Nor shall this chapter, except as set forth in paragraphs II and III, be deemed to apply to any real estate, or any interest therein, submitted to the provisions of RSA 479-A prior to September 10, 1977.

II. Notwithstanding the provisions of paragraph I, this subdivision, General Principles, and subdivision IV, Administration and Enforcement, shall apply to any offer or disposition on or after November 1, 1981, of time sharing interests in condominium units established under RSA 479-A, regardless of the date on which such condominium units were created.

III. Notwithstanding the provisions of paragraph I, if any condominium instrument recorded under RSA 479-A prior to September 10, 1977, shall be amended after September 10, 1977, for the purpose of creating 10 or more additional units in any such condominium project, this subdivision, General Principles, and subdivision IV, Administration and Enforcement, shall apply to said additional units. If said amendment creates 10 or more, but less than 26, additional units, the applicant shall be permitted to make an abbreviated registration pursuant to RSA 356-B:51, II, and shall not be required to prepare a public offering statement pursuant to RSA 356-B:52; provided, however, this sentence shall not apply if time sharing interests are offered with respect to such additional units.

Source. 1977, 468:1. 1981, 255:1, eff. Nov. 1, 1981.

Section 356-B:3

356-B:3 Definitions. – In this chapter:

I. "Board of directors" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

II. "Common area" or "common areas" means all portions of the condominium other than the units.

III. "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments; "future common expenses" shall mean common expenses for which assessments are not yet due and payable.

IV. "Common profits" means all income collected or accrued by or on behalf of the unit owners' association, other than income derived from assessments pursuant to RSA 356-B:45.

V. "Condominium" means real property, and any interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common area are vested in the unit owners.

VI. "Condominium instruments" is a collective term referring to the declaration, bylaws, and site plans and floor plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

VII. "Condominium unit" means a unit together with the undivided interest in the common area appertaining to that unit.

VIII. "Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

IX. "Conversion condominium" means a condominium containing structures which before the recording of the declaration were wholly or partially occupied by someone other than the declarant or those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

X. "Convertible land" means a building site which is a portion of the common area, within which additional units and/or a limited common area may be created in accordance with this chapter.

XI. "Convertible space" means a portion of a structure within the condominium which portion may be converted into one or more units and/or common area, including but not limited to limited common area, in accordance with this chapter.

XII. "Days" mean calendar days, unless modified by the word "business", in which case said term shall include all days except Saturdays, Sundays and legal holidays in the state of New Hampshire.

XIII. "Declarant" means all persons who execute or propose to execute the declaration or on

whose behalf the declaration is executed or proposed to be executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this paragraph who come to stand in the same relation to the condominium as their predecessors did shall also come within this definition; provided, however, this definition shall not include any homeowners association which is not controlled by a declarant or any mortgage holder that forecloses on a declarant's interest in the condominium, provided that the foreclosing mortgagee refrains from exercising any of the rights reserved to the declarant by this chapter. A foreclosing mortgagee may transfer all such rights to a successor builder or developer without registration or exemption, provided that prior to such intended transfer, the mortgagee files an affidavit or with the attorney general identifying the intended transferee by name, address, and telephone number, and listing the number of units or interests remaining in the condominium, and the number of units or interests so transferred.

XIV. "Dispose" or "disposition" refers to any sale, contract, assignment, or any other voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt.

XV. "Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

XVI. "Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

XVII. "Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

XVIII. "Interest in a unit" and "interest in a condominium unit", when not modified by the word "undivided," include without limitation any fee simple interest, leasehold interest for a term of more than 5 years, life estate and, for the purposes of this subdivision and subdivision IV, Administration and Enforcement, time sharing interest.

XIX. "Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which or on which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which or on which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter, nor shall a condominium be deemed to be a leasehold condominium solely because of the offering or disposition of time sharing interests therein.

XX. "Limited common area" means a portion of the common area reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

XXI. "Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be cancelled without penalty at the sole discretion of the prospective purchaser by written notice, hand delivered or sent by United States mail, return receipt requested, to the declarant or to any agent of the declarant at any time prior to the formation of a contract for the sale or lease of any interest in a condominium unit. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this paragraph, nor shall any such provision be a part of any ancillary agreement.

XXII. "Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt.

XXIII. "Officer" means any member of the board of directors or official of the unit owners' association.

XXIV. "Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

XXV. "Publicly held corporation," "subsidiary corporation," "closely held corporation," "hearing" and "broker" have the same meaning as set forth in the respective definitions of such terms in RSA 356-A:1; and "agent" and "blanket encumbrance" have the same meaning as set forth in the respective definitions of such terms in RSA 356-A:1, except that within such definitions references to "developer" or "subdivider" shall mean "declarant," references to "lot" or "lots" shall mean "unit" or "units" and references to "subdivision" shall mean "condominium project."

XXVI. "Purchaser" means any person or persons who acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, except as security for a debt.

XXVII. "Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the floor plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may but need not be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

XXVIII. "Time sharing interest" means the exclusive right to occupy one or more units for less than 60 days each year for a period of more than 5 years from the date of execution of an instrument for the disposition of such right, regardless of whether such right is accompanied by a fee simple interest or a leasehold interest, or neither of them, in a condominium unit. Time sharing interest shall include "interval ownership interest," "vacation license" or any other similar term.

XXIX. "Unit" shall mean a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with RSA 356-B:24, IV.

XXX. "Unit owner" means one or more persons who owns a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms.

XXXI. "Value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this paragraph. If value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the value of any unit, or any undivided interest in the common area, voting rights in the unit owners' association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

Source. 1977, 468:1. 1992, 278:5, eff. July 17, 1992. 2011, 156:1, eff. Aug. 7, 2011.

Section 356-B:4

356-B:4 Separate Titles and Taxation. – Each condominium unit shall constitute for all purposes a separate parcel of real property, distinct from all other condominium units. If there is any unit or units owned by any person other than the declarant, each such unit or units shall be subject to separate assessment and taxation by each assessing authority and special district for all types of taxes authorized by law. Each unit in which time sharing interests, as defined in RSA 356-B:3, XXVIII, have been created shall be valued for purposes of real property taxation as if such unit were owned by a single taxpayer. Condominium units in which time sharing interests have been created shall be taxed as wholly owned condominium units. The total cumulative purchase price paid for time sharing interests in any such unit shall not be determinative of the unit's assessed value. No taxes shall be assessed against the individual owner of a time sharing interest but shall be assessed against the record owner of such unit, the owners' association, trustee, or managing agent, as appropriate.

Source. 1977, 468:1. 1985, 107:2. 1989, 128:2, eff. May 15, 1989.

Section 356-B:5

356-B:5 Municipal Ordinances. – No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance in any city or town shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance is by its express terms made applicable thereto. Nevertheless, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof which do not conform to the zoning, land use and site plan regulations of the respective city or town in which the property is located shall secure a special use permit, a special exception, or variance, as the case may be, prior to becoming a conversion condominium. In the event of an approved conversion to condominiums, cities, towns, village districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

Source. 1977, 468:1, eff. Sept. 10, 1977.

Section 356-B:6

356-B:6 Eminent Domain. –

I. If any portion of the common area is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common area; provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common area shall be allocated by the decree to the unit owner of the unit to which that limited common area was so assigned at the time of the taking. If that limited common area was permanently assigned to more than one unit at the time of the taking, then the portion of the award