

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 766

S. P. 194

In Senate, January 27, 1965

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

Presented by Senator Stern of Penobscot.

EDWIN H. PERT, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT to Create the Unit Ownership Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 33, c. 10, additional. Title 33 of the Revised Statutes is amended by adding a new chapter 10 to read as follows:

‘CHAPTER 10
UNIT OWNERSHIP

Sec. 560. Short title. This chapter shall be known as the “Unit Ownership Act.”

Sec. 561. Definitions. As used in this chapter, unless the context otherwise requires:

1. **Association of unit owners.** “Association of unit owners” means all of the unit owners acting as a group in accordance with the bylaws and declaration.

2. **Building.** “Building” means a building or buildings containing 2 or more units and comprising a part of the property, and designated with a name.

3. **Common areas and facilities.** “Common areas and facilities”, unless otherwise provided in the declaration, means and includes:

A. The land on which the building is located;

B. The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;

C. The basements, yards, gardens, parking areas and storage spaces;

- D. The premises for the lodging of janitors or persons in charge of the property;
 - E. Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
 - F. The elevators, tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus and installations existing for common use;
 - G. Such community and commercial facilities as may be provided for in the declaration; and
 - H. All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
4. Common expenses. "Common expenses" means and includes:
- A. Expenses of administration, maintenance, repair or replacement of the common areas and facilities;
 - B. Expenses declared common expenses by provisions of this chapter, or by the declaration or the bylaws;
 - C. Expenses agreed upon as common expenses by the association of unit owners and lawfully assessed against the unit owners in accordance with the bylaws.
5. Common profits. "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.
6. Declaration. "Declaration" means the instrument by which the property is recorded, in the manner provided for the recording of deeds.
7. Limited common areas and facilities. "Limited common areas and facilities" means and includes those common areas and facilities designated in the declaration as reserved for use of a certain unit or certain units to the exclusion of the other units.
8. Majority or majority of unit owners. "Majority or majority of unit owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities as specified in the declaration. Any specified percentage of unit owners means such percentage in the aggregate of such undivided ownership, and for all voting purposes, as provided, each unit owner shall have a vote equal to such percentage.
9. Person. "Person" means individual, corporation, partnership, association, trustee or other legal entity.
10. Property. "Property" means and includes the land, the building, all improvements and structures thereon, all owned in fee simple absolute, or leased as provided in section 579 and all easements, rights and appurtenances belonging thereto, which have been or are intended to be submitted to the provisions of this chapter.

11. Unit. "Unit" means a part of the property including one or more rooms or enclosed spaces located on one or more floors or a part or parts thereof in a building, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area leading to such street or highway.

12. Unit number. "Unit number" means the number, letter, or combination thereof, designating the unit in the declaration.

13. Unit owner. "Unit owner" means the person or persons owning a unit in fee simple absolute, or leasing a unit as provided, and an undivided interest in the fee simple, or leased estate, of the common areas and facilities in the percentage specified and established in the declaration.

Sec. 562. Application. This chapter shall be applicable only to property, the sole owner or all of the owners of which submit the same to the provisions herein by duly executing and recording a declaration as provided.

Sec. 563. Status of units. Each unit, together with its undivided interest in the common areas and facilities, shall for all purposes constitute real property.

Sec. 564. Ownership of units. Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

Sec. 565. Common elements.

1. Percentage of ownership. Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the fair value of the unit at the date of the declaration in relation to the fair value of all the units having an interest in the common areas and facilities.

2. Permanent character. The percentage of the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

3. Undivided. The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter. Any covenant to the contrary shall be null and void.

4. Use. Each unit owner may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other unit owners.

5. Repairs. The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided and in the declaration and in the bylaws.

6. Access for repairs. The association of unit owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another unit or units.

Sec. 566. Compliance with bylaws and rules and regulations. Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit. Failure to so comply shall be ground for an action to recover damages or for injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of unit owners or, in a proper case, by an aggrieved unit owner.

Sec. 567. Certain work prohibited. No unit owner shall do any work which may jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement, right, appurtenance or other hereditament constituting a common area and facility without the unanimous consent of all the other unit owners.

Sec. 568. Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to the unit owners according to the percentage of the undivided interest in the common areas and facilities.

Sec. 569. Contents of declaration. The declaration shall contain the following information:

1. Description of land. Description of the land on which the buildings and improvements are, or are to be, located together with the title of and reference to a survey of such land prepared and certified substantially correct by a licensed surveyor or engineer and recorded simultaneously with such declaration and attached to the floor plans as provided.

2. Description of building. Description of the building, stating the number of stories and basements, the number of units and the principal materials of which it is, or is to be, constructed.

3. Identification number of units. The identification number of each unit, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access, and any other data necessary for its proper identification.

4. Description of areas. Description of the common areas and facilities.

5. Description of limited areas. Description of the limited common areas and facilities, if any, stating to which unit or units their use is reserved.

6. Percentage of ownership. Indication of the percentage of undivided interest in the common areas and facilities appertaining to each unit and its owner. The total percentage of the undivided interests of all of the units shall equal one hundred.

7. **Purposes.** Statement of the purposes for which the building and each of the units are intended, including restrictions, if any, as to use.

8. **Who to receive service of process.** The name of a person to receive service of process in the cases provided.

9. **Bylaws.** A copy of the bylaws.

10. **Further details.** Any further details in connection with the property which the persons executing the declaration may deem desirable to set forth consistent with this chapter.

11. **Method of amending declaration.** The method by which the declaration may be amended, consistent with this chapter.

12. **Name.** The name of the building.

Sec. 570. Contents of deeds of units. Deeds of units shall include the following particulars:

1. **Description of land.** Description of the land as provided in section 569, or date, title of and reference to the survey describing such land.

2. **Date and record of declaration.** The date of the most recent declaration and the volume and page of the land records where recorded.

3. **Identification number.** The identification number of the unit in the declaration and title of and reference to the floor plans describing any other data necessary for its proper identification.

4. **Percentage of interest.** The percentage of undivided interest appertaining to the unit in the common areas and facilities.

5. **Further details.** Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter.

Sec. 571. Recording.

1. **Recording.** The declaration, any amendment or amendments thereto, any subsequent declaration, the bylaws, any amendment or amendments thereto and any instrument by which the provisions of this chapter may be waived, shall be acknowledged and recorded and shall not be of legal effect until duly recorded in the registry of deeds of the county in which the units lie. Such instruments shall be indexed in the grantor volume under the name of the building and shall contain a reference to the file number of the floor plans of the building affected thereby.

2. **Revised declaration.** After the original declaration or a subsequent declaration of the bylaws contained therein has been modified or amended a total of 5 times, the board of directors shall prepare a new revised declaration with revised bylaws attached thereto, incorporating all modifications and amendments to date, which instrument shall be recorded forthwith.

3. **Floor plans.** Simultaneously with the recording of the original declaration there shall be filed in the registry of deeds of the county in which the units lie a

set of the floor plans of the building showing the layout, location, unit numbers and dimensions of the units, stating the name of the building, containing a reference to the original declaration, the date thereof and volume and page of recording and bearing the verified statement of a registered architect or licensed professional engineer certifying that the floor plans are an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. Attached to the floor plans shall be a survey of the land upon which the buildings and improvements are located. Such plans shall be kept by the register of deeds in a separate file for each building, numbered serially in the order of receipt and designated "unit ownership." In the event the floor plans are modified, new floor plans shall be prepared and recorded, containing all the identifications and references of the original floor plans, numbered identically as the original floor plans, filed therewith and designated "unit ownership—floor plans modified (indicate date)."

4. Conveyance of any legal interest. Each conveyance of any legal interest in a unit shall be recorded and indexed similarly to the conveyance of any interest in real property. No instrument conveying or purporting to convey such an interest shall be effectual against any other person but the grantor and his heirs until duly recorded on the land records of the municipality in which the unit lies.

Sec. 572. Mortgage and liens affecting a unit at time of first conveyance. At the time of the first conveyance of each unit, every mortgage and other lien affecting such unit, including the percentage of undivided interest of the unit in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded.

Sec. 573. Withdrawal. The unit owners may remove a property from the provisions of this chapter by an instrument to that effect, duly recorded, containing the signatures of 90% of the unit owners, provided the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to an undivided interest in the property. Upon removal of the property from this chapter, the unit owners shall be deemed to own the property as tenants in common with undivided interests in the percentage of undivided interests previously owned by such owner in the common areas and facilities.

Sec. 574. Subsequent resubmission. The removal provided for in section 573 shall not bar the subsequent resubmission of the property to the provisions of this chapter.

Sec. 575. Bylaws. The administration of every property shall be governed by bylaws, a copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws shall be of legal effect until set forth in an amendment to the declaration and such amendment is duly recorded.

Sec. 576. Contents of bylaws.

The bylaws shall provide for the following:

1. Board of directors. The election from among the unit owners of a board of directors, the number of persons constituting and the term of office of such board; a provision that the terms of at least $\frac{1}{3}$ of such board shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from such board; powers of the board in engaging the services of a manager or managing agent.

2. Meetings. Method of calling meetings of the unit owners; what percentage, if other than a majority, of unit owners shall constitute a quorum.

3. President. Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of unit owners.

4. Secretary. Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.

5. Treasurer. Election of a treasurer who shall keep the financial records and books of account.

6. Repairs. Maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.

7. Expenses. Manner of collecting from the unit owners their share of the common expenses.

8. Personnel. Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

9. Rules and regulations. Method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

10. Restrictions. Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities not set forth in the declaration as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners.

11. Amend bylaws. A provision that 75% of the unit owners may at any time modify or amend the bylaws, but that no amendment shall be contrary to the requirements of this section.

12. Other provisions. Other provisions deemed necessary for the administration of the property consistent with this chapter.

Sec. 577. Books of receipts and expenditures; availability for examination. The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of weekdays.

Sec. 578. Waiver of use of common elements; abandonment of unit. No unit owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

Sec. 579. Separate taxation. Taxes, assessments, including special assessments, and other charges of this State or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual unit, 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 property as a whole. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel, but each unit shall be deemed to have an undivided interest therein and assessments against any such unit shall include such proportionate undivided interest. In the event the land or the building, including common areas and facilities, is separately owned, and leased to the unit owner for a period of not less than 50 years, and such lease, duly recorded, provides that the lessee shall pay all such taxes, such unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be separately assessed and taxed as aforesaid.

Sec. 580. Lien for common changes.

1. **Liens.** Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, liens or encumbrances shall arise or be created only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit, 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, provided no labor performed or materials furnished with the consent or at the request of a unit owner or his agent shall be the basis for the filing of a mechanics lien against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of unit owners, the manager or board of directors, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a mechanics lien against each of the units and shall be subject to subsection 2.

2. **Individual payments.** If a lien against 2 or more units becomes effective, the owner of any such unit may remove his unit and his percentage of undivided interest in the common areas and facilities appurtenant to his unit from the lien by payment of the fractional or proportional amount attributable to his unit. Such individual payment shall be computed by reference to the percentages appearing in the declaration. Subsequent to any such payment, discharge or other satisfaction, such unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any

unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

Sec. 581. Foreclosure. All sums assessed by the association of unit owners, but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on such unit prior to all other liens, except only tax liens on the unit in favor of any assessing unit and special district, including any state and federal tax liens, and all sums unpaid on mortgages of record. Such lien may be claimed 60 days after the due date of the assessment. It shall be signed by the manager or one of the members of the board of directors and shall be perfected by filing it on the land records of the municipality in which the unit lies, and by leaving a true and attested copy thereof with the unit owner against whom such lien is claimed or at his usual place of abode, or, if such unit owner resides outside the municipality in which the unit lies, by mailing such copy to him at the place where he resides. Such lien shall be limited and discharged in accordance with the general statutes. Such lien may be foreclosed by action by the manager or board of directors, acting on behalf of the unit owners, in like manner as a mortgage of real property including reimbursement for costs and reasonable attorneys fees. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Where a mortgagee or a purchaser at a foreclosure sale obtains title to a unit, such acquirer of title, his heirs, successors and assigns, shall not be liable for the entire unpaid share of the common expenses or assessments by the association of unit owners chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer, but such expenses or assessments shall become common expenses collectible from all of the unit owners including such acquirer, his heirs, successors and assigns.

Sec. 582. Voluntary conveyance. In a voluntary conveyance the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, setting forth the amount of such unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

Sec. 583. Insurance. The manager or board of directors shall, to the extent required by the declaration, bylaws or direction of a majority of the unit owners, insure the building against loss or damage by fire and other hazards, without prejudice to the right of each unit owner to insure his own unit for his own benefit. Such insurance coverage shall be written on the property in the name of such manager or the board of directors of the association of unit owners, as trustee

for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses.

Sec. 584. Repair and reconstruction. Except as otherwise provided, damage to or destruction of the building shall be promptly repaired and restored by the manager or board of directors, using the proceeds of insurance, if any, on the building for that purpose and the unit owners shall be liable for assessment for any deficiency, provided if there is substantially total destruction of the property and $3/4$ of the unit owners vote not to proceed with repair or restoration, the property remaining shall be deemed to be owned in common by the unit owners, and each unit owner shall own that percentage of the undivided interest in common as he previously owned in the common areas and facilities. Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the unit owner in the property; and the property shall be subject to an action for partition at the action of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in accordance with their interests therein, after first paying all liens out of each of the respective interests.

Sec. 585. Actions. Without limiting the rights of any unit owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of 2 or more of the unit owners, with respect to any cause of action relating to the common areas and facilities, or more than one unit. Service of process on 2 or more unit owners in any action relating to the common areas and facilities, or more than one unit, may be made on the person designated in the declaration to receive service of process.

Sec. 586. Users subject to land. All unit owners, tenants of such owners, employees of owners and tenants, or any other persons who may in any manner use property or any part thereof submitted to the provisions of this chapter shall be subject to this chapter and to the declaration and bylaws of the association of unit owners.

All agreements, decisions and determinations lawfully made by the association of unit owners in accordance with the voting percentages established in this chapter, declaration or bylaws, shall be binding on all unit owners.

Sec. 587. Loans. A savings bank may make loans to individuals or corporations to be secured by a first mortgage of a unit together with its undivided interest in the common areas and facilities, owned under the provisions of this chapter, upon the same conditions and within the same limitations as provided in Title 9, section 551, for mortgage loans on real estate.'