

Public Offering, Declaration, Amendments; Enforcement authority Department of Real Estate

32-2184. Change of subdivision plan after approval by commissioner; notice

A. It is unlawful for any subdivider, after submitting to the commissioner the plan under which a subdivision is to be offered for sale or lease, and securing ~~his~~ THE COMMISSIONER'S approval, to change the plan materially or to continue to offer lots or parcels within the subdivision for sale or lease after a change has occurred that materially affects the plan without first notifying the commissioner in writing of the intended change. Material changes covered by this section shall be prescribed in the rules of the commissioner. ~~Upon~~ ON receipt of any notice of a material change, the commissioner may require the amendment of the public report and, if ~~he~~THE COMMISSIONER determines such action to be necessary for the protection of purchasers, suspend ~~his~~ approval of THE sale or lease pending amendment of the public report in accordance with section 32-2157.

B. If there has been a material change to the plan under which a subdivision is offered for sale or lease and an amendment to the public report is required, a purchaser or lessee who has executed a real estate sales contract or lease before the occurrence of the material change but has not yet completed performance under the real estate sales contract or has not taken possession under the lease may cancel the real estate sales contract or lease within ten days after receiving written notice from the subdivider of the material change if the material change adversely impacts the purchaser or lessee and was caused by the subdivider or an entity controlled by the subdivider or if the subdivider had actual knowledge of the material change at the time the real estate sales contract or lease was executed by the purchaser or lessee. Notwithstanding that the subdivider was not aware of the material change and did not cause the change to come about, the purchaser or lessee may cancel the sales contract or lease as provided by this subsection if the material change would involve an occupant's health, safety or ability to make designated use of the lot. This subsection does not create any cause of action, for rescission or otherwise, in favor of a purchaser who has not been impacted adversely by the material change.

C. IF THERE HAS BEEN A MATERIAL CHANGE TO THE PLAN UNDER WHICH A SUBDIVISION IS OFFERED FOR SALE OR LEASE AND AN AMENDMENT TO THE PUBLIC REPORT IS REQUIRED, AFTER UNITS, LOTS OR PARCELS HAVE BEEN SOLD TO ANYONE OTHER THAN THE SUBDIVIDER OR ITS SUBSIDIARIES, THE SUBDIVIDER MUST OBTAIN WRITTEN CONCURRENCE TO THE PROPOSED AMMENDMENT TO THE PUBLIC REPORT FROM ALL CURRENT OWNERS PRIOR TO SUBMISSION TO THE COMMISSIONER OF REAL ESTATE FOR REVIEW AND APPROVAL IF ALL OF THE FOLLOWING CONDITIONS EXIST:

1. THE MATERIAL CHANGE ADVERSELY IMPACTS THE REASONABLE EXPECTATIONS OF THE CURRENT OWNERS BASED ON THE ORIGINAL PUBLIC REPORT FOR THE USE AND OCCUPANCY OF THE UNITS, LOTS OR PARCELS AND THE SUBDIVISION AS A WHOLE. THIS WOULD INCLUDE BUT IS NOT LIMITED TO, THE ELIMINATION OF IMPROVEMENT OR AMENITIES IDENTIFIED IN THE ORIGINAL PUBLIC REPORT.

2. THE CHANGE WAS CAUSED BY OR DETERMINED BY THE SUBDIVIDER OR AN ENTITY CONTROLLED BY THE SUBDIVIDER.

3. THE CHANGE DOES NOT INVOLVE THE SCHEDULE FOR THE DELIVERY OR PROJECTED COST OF ANY OF THE IMPROVEMENTS, AMENITIES OR FEATURES OF THE SUBDIVISION PROVIDED IN THE ORIGINAL PUBLIC REPORT.

DC. A filing fee of one-half of the amount that was charged for the initial public report pursuant to section 32-2182, but no less than \$250 ~~two hundred fifty dollars~~, shall accompany an application for an amended public report. If inspection of a subdivision site is necessary, the department shall assess an inspection fee pursuant to section 32-2182, subsection A.

33-1227. Amendment of declaration

A. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION TO THE CONTRARY THE FOLLOWING CONDITION APPLY TO ANY AMENDMENT TO THE DECLARATION ONCE THE FIRST UNIT WAS CONVEYED TO ANY OWNER OR ANY ENTITY OTHER THAN THE DECLARANT. Except in cases of amendments that may be executed by a declarant under section 33-1220, by the association under section 33-1206 or section 33-1216, subsection D, or by certain unit owners under section 33-1218, subsection B, section

33-1222, section 33-1223 or section 33-1228, subsection B, and except to the extent permitted or required by other provisions of this chapter, the declaration, including the plat, may be amended only by a vote of the unit owners to which at least sixty-seven per cent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use. The declaration may also provide that the consent of the declarant is required to an amendment during any period of declarant control pursuant to section 33-1243. Within thirty days after the adoption of any amendment pursuant to this subsection, the association shall prepare, execute and record a written instrument setting forth the amendment.

B. AN AMENDMENT TO A DECLARATION MAY APPLY TO FEWER THAN ALL OF THE UNITS OR LESS THAN ALL OF THE PROPERTY THAT IS BOUND BY THE DECLARATION AND AN AMENDMENT IS DEEMED TO CONFORM TO THE GENERAL DESIGN AND PLAN OF THE COMMUNITY, IF BOTH OF THE FOLLOWING APPLY:

(1) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF THE NUMBER OF UNIT OWNERS OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION OR THIS SECTION WHICHEVER IS LARGER, INCLUDING THE ASSENT OF ANY INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION.

(2) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF ALL OF THE OWNERS OF THE UNITS TO WHICH THE AMENDMENT APPLIES.

CB. An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than ~~FOUR~~ ~~one~~ yearS after the amendment is recorded, UNLESS THE SUBJECT MATTER OF THE AMENDMENT INVOLVES THE CREATION OR COLLECTION OF A DEBT PURSUANT TO SECTION 12-548.

DC. An amendment to the declaration shall be recorded in each county in which any portion of the condominium is located and is effective only on recordation in the same manner as required for the declaration under section 33-1211.

ED. Except to the extent expressly permitted or required by other provisions of this chapter, an amendment shall not create or increase special declarant rights, ~~increase the number of units or change the boundaries of any unit, the allocated interests of a unit~~ OR CHANGE THE BASIS FOR ALLOCATING VOTING RIGHTS OR ASSESSMENTS AMONG UNIT OWNERS, or the uses, OCCUPANCY OR BEHAVIORS WITHIN, to which any unit is restricted, OTHER THAN TO PROHIBIT OR MATERIALLY RESTRICT USES OF INDIVIDUALLY OWNED UNITS THAT THREATEN TO HARM OR UNREASONABLY INTERFERE WITH THE REASONABLE USE AND ENJOYMENT OF OTHER PROPERTY IN THE COMMUNITY, in the absence of unanimous consent of the unit owners.

FE. An amendment shall not terminate or decrease any unexpired development right, special declarant right or period of declarant control unless the declarant approves.

G. ANY AMENDMENT TO THE DECLARATION MUST INCLUDE ANY REQUIRED UPDATE OR REVISION TO THE DECLARATION TO MAKE THE PROVISIONS OF THE DECLARATION CONSISTENT WITH THIS CHAPTER AS PART OF THE AMENDMENT.

HF. Amendments to the declaration required by this chapter to be executed by the association shall be executed on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association WITHIN THIRTY DAYS AFTER ADOPTION OF THE AMENDMENT IN ACCORDANCE WITH THIS SECTION.

33-1270. Department of real estate; enforcement

A. Nothing in this chapter shall be construed to increase or decrease or otherwise affect any rights or powers granted to the commissioner of the department of real estate under title 32, chapter 20 with respect to the issuance of public reports. The commissioner of the department of real estate shall require compliance with section 33-1215 and section 33-1219 in connection with the administration of the subdivision laws of this state under title 32, chapter 20, article 4. The commissioner shall HAVE THE AUTHORITY ~~not be required to administer or enforce any other~~ provisions of this chapter, THRU THE ADMINISTRATION OF THE DISPUTE RESOLUTION PROCESS AUTHORIZED IN TITLE 32, CHAPTER 20 ARTICLE 11.

33-1817. Declaration amendment; design, architectural committees; review

A. ~~Except during the period of declarant control, or if during the period of declarant control with the written consent of the declarant in each instance, the following apply to an~~

~~amendment to a declaration~~ NOTWITHSTANDING ANY PROVISION IN THE DECLARATION TO THE CONTRARY THE FOLLOWING CONDITION APPLY TO ANY AMENDMENT TO THE DECLARATION ONCE THE FIRST LOT WAS CONVEYED TO ANY OWNER OR ANY ENTITY OTHER THAN THE DECLARANT:

1. The declaration may be amended by the association, if any, or, if there is no association or board, the owners of the property that is subject to the declaration,

(A) ~~b~~By an affirmative vote ~~or written consent~~ of A MINIMUM OF SIXTY-SEVEN PERCENT OF the number of owners or eligible voters OR ANY HIGHER PERCENTAGE specified in the declaration, including the assent of any individuals or entities that are specified in the declaration. EXCEPT AS PROVIDED IS SUBSECTION A.2 OF THIS SECTION.

(B) WHILE UNDER THE PERIOD OF DECLARANT CONTROL THE VOTING POWERS SPECIFIED IN THE DECLARATION WILL BE MAINTAINED AND NO AMENDMENT MAY BE PROPOSED WITHOUT THE WRITTEN CONSENT OF THE DECLARANT.

2. EXCEPT TO THE EXTENT EXPRESSLY PERMITTED OR REQUIRED BY OTHER PROVISIONS OF THIS CHAPTER, AN AMENDMENT SHALL NOT CREATE OR INCREASE SPECIAL DECLARANT RIGHTS, CHANGE THE BASIS FOR ALLOCATING VOTING RIGHTS OR ASSESSMENTS AMONG COMMUNITY MEMBERS, PROHIBIT OR RESTRICT THE USE, OCCUPANCY OR BEHAVIOR WITHIN TO WHICH ANY PROPERTY IS RESTRICTED, OTHER THAN TO PROHIBIT OR MATERIALLY RESTRICT USES OF INDIVIDUALLY OWNED PROPERTIES THAT THREATEN TO HARM OR UNREASONABLY INTERFERE WITH THE REASONABLE USE AND ENJOYMENT OF OTHER PROPERTY IN THE COMMUNITY, IN THE ABSENCE OF UNANIMOUS CONSENT OF THE MEMBERS.

3. AN AMENDMENT SHALL NOT TERMINATE OR DECREASE ANY UNEXPIRED DEVELOPMENT RIGHT, SPECIAL DECLARANT RIGHT OR PERIOD OF DECLARANT CONTROL UNLESS THE DECLARANT APPROVES.

4. ANY AMENDMENT TO THE DECLARATION MUST INCLUDE ANY REQUIRED UPDATE OR REVISION TO THE DECLARATION TO MAKE THE PROVISIONS OF THE DECLARATION CONSISTENT WITH THE CURRENT REQUIREMENTS OF THIS CHAPTER AS PART OF THE AMENDMENT.

5. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property that is bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if both of the following apply:

(a) The amendment receives the affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, OR IN THIS SECTION WHICHEVER IS LARGER, including the assent of any individuals or entities that are specified in the declaration.

(b) The amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.

6. Within thirty days after the adoption of any amendment pursuant to this section, the association or, if there is no association or board, an owner that is authorized by the affirmative vote on ~~or the written consent to~~ the amendment shall prepare, execute and record a written instrument setting forth the amendment.

7. Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located.

8. AN ACTION TO CHALLENGE THE VALIDITY OF AN AMENDMENT ADOPTED BY THE ASSOCIATION PURSUANT TO THIS SECTION SHALL NOT BE BROUGHT MORE THAN FOUR YEARS AFTER THE AMENDMENT IS RECORDED, UNLESS THE SUBJECT MATTER OF THE AMENDMENT INVOLVES THE CREATION OR COLLECTION OF A DEBT PURSUANT TO SECTION 12-548.

B. Notwithstanding any provision in the community documents:

1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, and if the association documents permit the association to charge the member a security deposit and the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:

(a) The deposit shall be placed in a trust account with the following instructions:

(i) The cost of the trust account shall be shared equally between the association and the member.

(ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.

(iii) Any interest earned on the refundable security deposit shall become part of the security deposit.

(b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

(c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association.

(d) Within thirty business days after the second formal review, the association shall provide to the member a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

3. Approval of a construction project's architectural designs, plans and amendments shall not unreasonably be withheld.

33-1819. Department of real estate; enforcement

A. NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO INCREASE OR DECREASE OR OTHERWISE AFFECT ANY RIGHTS OR POWERS GRANTED TO THE COMMISSIONER OF THE DEPARTMENT OF REAL ESTATE UNDER TITLE 32, CHAPTER 20 ARTICLE 4 WITH RESPECT TO THE ISSUANCE OF PUBLIC REPORTS.

B. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO ENFORCE ANY PROVISIONS OF THIS CHAPTER THRU THE DISPUTE RESOLUTION PROCESS DEFINED UNDER TITLE 32 CHAPTER 20, ARTICLE 11.