

Article - Real Property

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§11–125.

(a) The existing physical boundaries of any unit or common element constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement, or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

(b) If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element or any other unit, as a result of the duly authorized construction or repair of a building, a valid easement for the encroachment and for the maintenance of the encroachment exists so long as the building stands.

(c) An easement for mutual support shall exist in the units and common elements.

(d) The grant or other disposition of a condominium unit shall include and grant, and be subject to, any easement arising under the provisions of this section without specific or particular reference to the easement.

(e) (1) The council of unit owners or its authorized designee shall have an irrevocable right and an easement to enter units to investigate damage or make repairs when the investigation or repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium.

(2) Except in cases involving manifest danger to public safety or property, the council of unit owners shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of investigation or repair.

(3) If damage is inflicted on the common elements or any unit through which access is taken, the council of unit owners is liable for the prompt repair.

(4) An entry by the council of unit owners for the purposes specified in this subsection may not be considered a trespass.

(f) (1) The declaration or bylaws may give the council of unit owners authority to grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium if the grant is approved by the affirmative vote of unit owners having 66 2/3 percent or more of the votes, and with the express written consent of the mortgagees holding an interest in those units as to which unit owners vote affirmatively. Any easement, right-of-way, license, or similar interest granted by the council of unit owners under this subsection shall state that the grant was approved by unit owners having at least 66 2/3 percent of the votes, and by the corresponding mortgagees.

(2) The board of directors may, by majority vote, grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests for the provision of utility services or communication systems for the exclusive benefit of units within the condominium regime. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 30-days' notice to all unit owners and mortgagees of record with the condominium;

(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest;

(iii) The easement, right-of-way, license, lease, or similar interest shall contain the following provisions:

1. The service or system shall be installed or affixed to the premises at no cost to the individual unit owners or the council of unit owners other than charges normally paid for like services by residents of similar or comparable dwelling units within the same area;

2. The unit owners and council of unit owners shall be indemnified for any damage arising out of the installation of the service or system; and

3. The board of directors shall be provided the right to approve of the design for installation of the service or system in order to insure that the installation conforms to any conditions which are reasonable to protect the safety, functioning, and appearance of the premises.

(3) By majority vote, the board of directors may grant to the State perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for bulkhead

construction, dune construction or restoration, beach replenishment, or periodic maintenance and replacement construction, on Maryland's ocean beaches, including rights in the State to restrict access to dune areas. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 30-days' notice to all unit owners and mortgagees of record with the condominium; and

(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest.

(4) By majority vote, the board of directors may settle an eminent domain proceeding or grant to the State or any county, municipality, or agency or instrumentality thereof with condemnation authority, perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for road, highway, sidewalk, bikeway, storm drain, sewer, water, utility, and similar public purposes. These actions by the board of directors are subject to the following requirements:

(i) The action shall be taken at a meeting of the board held after at least 60-days' notice to all unit owners and all first mortgagees listed with the condominium;

(ii) The notice shall include information provided by the condemnation authority that describes the purpose and the extent of the property being acquired for public use; and

(iii) At the meeting, the board may not act until all unit owners and mortgagees in attendance have been afforded a reasonable opportunity to present their views on the proposed easement, right-of-way, license, lease, or similar interest.

(5) The action of the board of directors granting any easement, right-of-way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this subsection shall not be final until the following have occurred:

(i) Within 15 days after the vote by the board to grant an easement, right-of-way, license, lease, or similar interest, a petition may be filed with the board of directors signed by the unit owners having at least 15 percent of the votes calling for a special meeting of unit owners to vote on the question of a disapproval of the action of the board of directors granting such easement, right-of-

way, license, lease, or similar interest. If no such petition is received within 15 days, the decision of the board shall be final;

(ii) If a qualifying petition is filed, a special meeting shall be held no less than 15 days or more than 30 days from receipt of the petition. At the special meeting, if a quorum is not present, the decision of the board of directors shall be final;

(iii) 1. If a special meeting is held and 50 percent of the unit owners present and voting disapprove the grant, and the unit owners voting to disapprove the grant are more than 33 percent of the total votes in the condominium, then the grant shall be void; or

2. If the vote of the unit owners is not more than 33 percent of the total votes in the condominium, the decision of the board or council to make the grant shall be final;

(iv) Mortgagees shall receive notice of and be entitled to attend and speak at such special meeting; and

(v) Any easement, right-of-way, license, lease, or similar interest granted by the board of directors under the provisions of this subsection shall state that the grant was approved in accordance with the provisions of this subsection.

(6) The provisions of this subsection are applicable to all condominiums, regardless of the date they were established.

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