

Title 6. Property and Land - Chapter 604
CONDOMINIUM ORDINANCE
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604.1. Purpose and Policy

604.1-1. Purpose. The purpose of this ordinance is to provide a condominium form of use and ownership for multi-unit residential buildings and improvements located on tribal land.

604.1-2. Policy.

(a) The provisions of this ordinance shall extend to all Multi-Unit residential buildings on tribal land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, and on such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.

(b) The sale of Tribal land is specifically prohibited under this ordinance.

(c) It is intended that this Ordinance be enacted in harmony with Oneida Tribe's Real Property Law.

604.2. Adoption, Amendment, Repeal

604.2-1. This law is adopted by the Oneida Business Committee by Resolution # BC-7-30-97-A and amended by resolution BC-02-25-15-C.

604.2-2. This law may be amended pursuant to procedures set out in the Oneida Administrative Procedures Act, by the Oneida Business Committee or the Oneida General Tribal Council.

604.2-3. Should a provision of this law or its application be held invalid, such invalidity shall not affect other provisions which are considered to have legal force without the invalid portions.

604.2-4. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

604.3. Definitions

604.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Allocated interests" means the undivided percentage interest and liability in the common elements, and the number of votes at meetings of the association that belong to each unit.

- (b) “Association” means all of the condominium’s unit owners acting as a group in accordance with its bylaws, the declaration and this regulation.
- (c) “Common elements” mean all of the condominium except the units.
- (d) “Common expenses and common surpluses” mean the expenses and surpluses of the association.
- (e) “Condominium” means any residential property that the Tribe has classified as such. Condominiums are multi-units residential facilities separately owned by two or more unit owners.
- (f) “Condominium instrument” mean the declaration, plats, and plans of a condominium together with any attached exhibits or schedules.
- (g) “Declarant” is the person who subjects his or her property to a condominium declaration established under this law.
- (h) “Declaration” means the instrument by which the property becomes subject to this chapter.
- (i) “Expandable condominium” means a condominium to which additional property or units or both may be added in accordance with the provision of the association’s bylaws, the declaration and this law.
- (j) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (k) “Limited common elements” mean those elements that are reserved for the exclusive use of one or more but less than all the unit owners.
- (l) “Mortgagee” means the holder of any recorded mortgage encumbering one or more units or a land contract vendor.
- (m) “Oneida agency” means the Tribal entity that acts as declarant for the purposes of this law.
- (n) “Overrule contract” is the contract between the Oneida Division of Land Management and the unit owner concerning covenants and restrictions. This contract has the power to overrule any provisions in the condominium declaration and the condominium bylaws. The purpose of this contract is to allow the Tribe to manage its housing policy, in the interest of Tribal members and the maintenance and creation of good living conditions for the future.
- (o) “Person” means an individual, corporation, partnership, association, trustee or other legal entity.
- (p) “Real Property” means unimproved land, land together with improvements on it or improvements without underlying land. Property may consist of noncontiguous parcels or improvements.
- (q) “Small Condominium” means a condominium with two to four units.
- (r) “Tribe” means the Oneida Tribe of Indians of Wisconsin, also called the Sovereign Oneida Nation of Wisconsin.
- (s) “Unit” means a part of a condominium intended for independent use, including one or more cubicles of air at one or more levels of space or one or more floors in a building. A unit may include two or more noncontiguous areas.
- (t) “Unit owner” means a tribal member or surviving spouse who holds legal title to and occupies a condominium unit.

604.4. General Application of this Law

604.4-1. This law shall apply to all properties and improvements that the Tribe has classified as condominium as a result of their submission to the provisions of this law.

604.4-2. *Status of Units.* A unit together with its undivided interest in the common element, for all purposes constitutes real property.

604.4-3. A unit owner is entitled to the exclusive ownership and possession of his or her unit.

604.4-4. Except as otherwise provided by this law, no unit owner may do any alterations which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

604.4-5. If any unit owner fails to comply with this law, the declaration, bylaws or overrule contract, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner.

604.5. Rules of Construction

604.5-1. *Certain rules of law not applicable.* Neither the rule of law known as the rule against perpetuities nor the rule of law known as the rule restricting unreasonable restraints on alienation may be applied to defeat or invalidate any provision of this law or of any condominium instruments, bylaws or other instrument made pursuant to this regulation.

604.5-2. *Substantial conformity of condominium instruments and bylaws sufficient.* The provisions of any condominium instruments and bylaws filed under this law shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this law, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unit owner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

604.5-3. *Provisions of condominium instruments and bylaws severable.* All provisions of condominium instruments and bylaws are severable and the invalidity of one provision does not affect the validity of any other provision.

604.5-4. *Conflicts in provisions.* If there is any conflict between any provisions of a declaration and provisions of a condominium plat or any provisions of the bylaws, the provisions of the declaration shall control. If there is any conflict between any provisions of any condominium instruments and any provisions of any bylaws, the provisions of the condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any bylaws and any provisions of the overrule contract, the overrule contract shall control. If there is any conflict between the abovementioned documents and this law, the provisions of this law shall control.

604.5-5. *Instruments construed together.* Condominium instruments shall be construed together and are determined to incorporate one another to the extent that any requirement of this law applying to one instrument is satisfied if the deficiency can be corrected by reference to any of the others.

604.6. Association of Unit Owners

604.6-1. *Legal Entity.* The affairs of every condominium shall be governed by an association which is a legal entity for all purposes.

604.6-2. *Organization.*

(a) *Establishment.* The Oneida Business Committee shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. After it is organized the association shall consist at all times

exclusively of all the unit owners. Thirty days after the conveyance of 75% of the common element interest to purchasers, the Division of Land Management or other Oneida agency shall release itself from control over the condominium association.

(b) *Meeting to elect directors.* Once 50% of the units have been conveyed, the unit owners and the Division of Land Management shall meet to elect the directors and officers of the executive board of the association. The directors and officers shall take office upon election.

(c) *Calculation of percentage.* The common element interest conveyed to purchasers in pars. a. and b. shall be based on the percentage of undivided interest belonging to each unit which has been conveyed assuming that all the units to be completed are included in the condominium.

604.6-3. *Power of the Association.*

(a) *Powers.* An association has powers to:

- (1) Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;
- (2) Employ and dismiss employees and agents;
- (3) Sue on behalf of all unit owners; and
- (4) Exercise any other power conferred by the bylaws, the declaration and by the overrule contract.
- (5) Negotiate with the Division of Land Management or other Oneida agency for the exemption from covenants and restrictions established in the overrule contract.

(b) *Conditional Powers.* Subject to any restrictions and limitations specified by the bylaws, the declaration and/or by the overrule contract, an association may:

- (1) Make contracts and incur liabilities;
- (2) Regulate and impose charges for the use of common elements;
- (3) Cause additional improvements to be made as a part of the common elements;
- (4) Acquire, hold, encumber and convey any right, title or interest in or to real property;
- (5) Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements; and
- (6) Grant or withhold approval of any action by a unit owner or other person which would change the exterior appearance of the unit or of any other portion of the condominium.

604.6-4. *Termination of Contracts and Leases.* If entered into before the officers elected by the unit owners under section six take office, any management contract, employment contract, lease of recreational or parking areas or facilities, any contract or lease to which a declarant or any person affiliated with the declarant is a party and any contract or lease which is not bona fide or which was not commercially reasonable to unit owners when entered into under the circumstances then prevailing, may be terminated by the association or its executive board at any time without penalty upon not less than 90 days' notice to the other party thereto. This section does not apply to any lease the termination of which would terminate the condominium.

604.6-5. *Roster of unit owners; Meetings of the Association.*

(a) An association shall maintain a current roster of the names and addresses all the unit owners to whom notice of meetings shall be sent.

(b) Every unit owner shall furnish the association with his or her name and current mailing address. No unit owner will be able to vote at an association meeting until he or she has furnished this information.

(c) At least 10 days written notice must be given, delivered or mailed to every unit owner's address as shown on the roster, before a regular or special meeting of the association may be held.

(d) Every unit owner is entitled to full participation at meetings of the association.

(e) Unless otherwise provided in this law and subject to the provisions in the laws, the declaration and/or the overrule contract, decisions of an association shall be made by consensus of the unit owners present.

604.6-6. *Unit owner's interest in Association's property.* A unit owner only has rights, title or interest in any property owned by the association as a holder of a percentage interest in common elements.

604.7. Bylaws

604.7-1. *Bylaws to govern administration.* A condominium's administration shall be governed by bylaws. Every unit owner shall comply with the bylaws and the rules adopted under the bylaws and the covenants, restrictions and conditions set forth in the overrule contract between the Division of Land Management or other Oneida agency and the unit owners. Failure to comply with any of the bylaws, rules, covenants, conditions or restrictions is grounds for action to recover sums due, for damages and injunctive relief. Such action shall follow the judicial procedures established in the Oneida Administrative Procedures Act, and may be brought by the association, by the Division of Land Management, or other Oneida agency, or in a proper case, by an aggrieved unit owner.

604.7-2. *Required particulars.* The bylaws shall express at least the following particulars:

(a) The form of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager, or otherwise, and specifying the powers, manner of selection and removal of them.

(b) The mailing address of the association.

(c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting; who presides at the meetings of the association, who keeps the minute book for recording the resolutions of the association and who counts votes at meetings of the association.

(d) The election by the unit owners of a board of directors of whom not more than one is a non-unit owner, the number of persons constituting the same and that the terms of at least 1/3 of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors and whether or not the board may engage the services of a manager or managing agent.

(e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(f) The manner of borrowing money and acquiring and conveying common property.

604.7-3. *Prohibiting participation of certain unit owners.* The bylaws may contain a provision prohibiting any unit owner from participation at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting.

604.7-4. *Amendment.* The bylaws may be amended by consensus of all unit owners. Each particular set forth in sec. 7-2 shall be expressed in the bylaws as amended.

604.7-5. *Title to condominium units unaffected by bylaws.* Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this regulation.

604.8. Declaration

604.8-1. A declaration shall contain:

- (a) A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted. Fixtures designed to serve a single unit, located contiguous to the unit's boundaries, are deemed limited common elements belonging to that unit exclusively and need not be described in the declaration.
- (b) The percentage interest that belongs to each unit.
- (c) Statement for purpose for which the building and each of the units are intended and restricted as to use.
- (d) The name of the person to receive service of process in the cases provided in this law, together with the address of the person and the method by which the association may designate a successor to the person.
- (e) The name and address of the condominium and the name shall include the word "condominium" or be followed by the words "a condominium."
- (f) A description of the land on which the condominium is, or is to be, located.
- (g) A general description of each unit including its perimeters, location and any other data sufficient to identify it with reasonable certainty.

604.8-2. The condominium declaration shall be submitted by the declarant to the Division of Land Management. The Division of Land Management may require alterations made to the declaration, in order for it to satisfy the Tribe's policy requirements. These policy requirements are based on the protection of the long term interests of Tribal members.

604.8-3. A condominium declaration may be amended with the written consent of all the unit owners. Such amendments shall not have the effect of canceling any of the covenants or restrictions set forth in the overrule contract. All amendments to the declaration shall be submitted for approval to the Division of Land Management.

604.8-4. Actions taken pursuant to this section may be contested in the manner described in section twenty-six.

604.9. Establishment of a Condominium.

604.9-1. A declarant shall record a condominium instrument with the Division of Land Management.

604.9-2. All instruments affecting title to the units shall be recorded and assessed as in other real property transactions at the Division of Land Management.

604.9-3. Within 60 days of submission of the declaration to the Division of Land Management, the Division of Land Management will deliver a draft of the overrule contract to the declarant. The declarant will have 60 days to propose changes to the overrule contract. The declarant may withdraw its proposal to submit its property to this regulation if an agreement is not reached within the time prescribed as to the provisions of the overrule contract, or may appeal in accordance with 604.26.

604.9-4. Residential real property may only be converted to a condominium if the owner gives 120 days written notice prior to end of tenant's lease of the conversion of the building(s) to a condominium. A tribal member who is a tenant has the exclusive option to purchase the property for period of 60 days following the delivery of the notice.

604.10. Condominium Plat

604.10-1. A Condominium Plat is to be filed for record at the Oneida Register of Deeds. When any condominium instruments are recorded, the declarant shall file for record a condominium plat in a separate plat book maintained for condominium plats.

604.10-2. A condominium plat may consist of one or more sheets and shall contain at least the following particulars:

(a) The name of the condominium and the original allotment number(s) in which the property is located on each sheet of the plat. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(b) A survey of the property described in the declaration complying with the minimum standards for property surveys outline in section 601.7-4 of the Real Property Law, and showing the location of any unit or building located or to be located on the property.

(c) Diagrammatic floor plans of each building located or to be located on the property which show the approximate dimensions, floor area and location of each unit in it. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for filing shall be legibly prepared with a binding margin of 1.5 inches on the left side and one-inch margin on all other sides on durable white paper 14 inches in length and 22 inches in width with nonfading black image or reproduced with photographic silver haloid image on double matte polyester film of not less than 4 millimeter thickness and 14 inches long by 22 inches wide. The maps and plans shall be drawn to a convenient scale.

(e) *Designation of units.* Every unit shall be designated on the condominium plat by the unit number or other appropriate designation.

(f) *Surveyor's certificate.* A condominium plat is sufficient for the purposes of this law in there is attached to or included in it a certificate of a licensed land surveyor, certified to practice that profession by the Tribe that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can be determined from the plat. Provided that, until such time as regulations are developed regarding the certification of licensed land surveyors, certification under this section shall be verification of a valid state license, permit, or other approval of qualifications.

604.10-3. A description in any instrument affecting title to any unit which makes reference to the letter or number or other appropriate designation on the condominium plat together with a reference to the condominium instruments shall be a good and sufficient description for all purposes.

604.11. Percentage Interests.

604.11-1. *Undivided percentage interest in common elements.* Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this regulation, all common elements shall remain undivided. Except as provided in this regulation, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

604.11-2. *Rights to common surpluses.* Common surpluses shall be disbursed as provided under 604.16.

604.11-3. *Liability for common surpluses.* Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under 604.13.

604.11-4. *Change in percentage interest.* The percentage interests shall have a permanent character and, except as specifically provided by this law, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration and recorded among the appropriate land records. The percentage interests may not be separated from the unit to which they belong. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

604.11-5. *Alterations within units:*

(a) A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

604.11-6. *Relocation of boundaries.*

(a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment to a declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof. The amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(e) Plats and plans showing the altered boundaries and the dimensions thereof between adjoining units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy in compliance with this subsection by a civil engineer, architect or licensed land surveyor certified by the Tribe to practice his or her profession. Provided that, until such time as regulations are developed regarding the certification of civil engineers, architects, or licensed land surveyors, certification under this section shall be verification of a valid state license, permit, or other approval of qualifications.

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable charges for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and

grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate the condominium instruments.

604.12. Use of Common Elements

604.12-1. The common elements may be used only for the purposes for which they were intended and, except as provided in the condominium instruments, bylaws, or the overrule contract the common elements are subject to mutual rights of support, access, use and enjoyment by all unit owners. However, any portion of the common elements designated as limited common elements may be used only by the unit owner of the unit to which their use is limited in the condominium instruments and bylaws.

604.12-2. The declaration, bylaws or the overrule contract may allow any unit owner of a unit to which the use of any limited common element is restricted to grant the use of the limited common element to any other unit owner, subject to the rights of any existing mortgagor. Thereafter, the grantor has no further right to use the limited common element.

604.13. Common Expenses and Common Surpluses.

604.13-1. *Disposition of common surpluses.* All common surpluses of the association shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the common elements or as otherwise provided in the declaration or shall be used for any other purpose as the association decides.

604.13-2. *Funds for payment of common expenses obtained by assessments.* Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in the common elements or as otherwise provided in the declaration.

604.13-3. *Liability for assessments.* A unit owner shall be liable for all assessments, or installments thereof, coming due while owning a unit. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

604.13-4. *Condominium lien.* All assessments, until paid, together with interest on them and actual costs of collection, constitute a lien on the units on which they are assessed, if a statement of lien is filed within 6 months after the date the assessment becomes due. The lien is effective against a unit at the time the assessment become due regardless of when within the 6 month period it is filed. A statement of condominium lien is filed in the Division of Land Management, stating the description of the unit, the name of the record owner, the amount due and the period for which the assessment was due. The clerk shall index the statement of condominium lien under the name of the record owner in the condominium lien docket. The statement of condominium lien shall be signed and verified by an officer or agent of the association as specified in the bylaws and then may be filed. On full payment of the assessment for which the lien is claimed, the unit owner shall be entitled to a recordable satisfaction of the lien.

604.13-5. *Statement.* Any grantee of a unit is entitled to a statement from the association setting forth the amount of unpaid assessments against the grantor and the grantee is not liable for, nor shall the unit conveyed be subject to a lien which is not filed under section 604.13-4 for, any unpaid assessment against the grantor in excess of the amount set forth in the statement. If an association does not provide such a statement within 10 business days after the grantee's request, they are barred from claiming any lien which is not filed under section 604.13-4 prior to the request for the statement against the grantee.

604.13-6. *Priority of lien.* All sums assessed by an association but unpaid for the share of the common expenses chargeable to any unit constitutes a lien on the unit and on the undivided interest in the common elements belonging to it prior to all other liens except:

(a) Liens of general and special taxes.

(b) All sums unpaid on a first mortgage recorded prior to the making of the assessment.

(c) Mechanic's liens filed prior to the making of the assessment.

604.13-7. *Interest on unpaid assessment.* Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the association, from the date when due until paid at a rate not exceeding the highest rate permitted by law as stated in the bylaws.

604.13-8. *Enforcement of lien.* A lien may be enforced and foreclosed by an association or any other person specified in the bylaws, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property at the Division of Land Management. An association may recover costs and actual attorney fees. An association may, unless prohibited by the declaration, bid on the unit at foreclosure sale and acquire, hold, lease, mortgage and convey the unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years following the recording of the statement of condominium lien. No action may be brought to foreclose the lien except after 10 days' prior written notice to the unit owner given by registered mail, return receipt requested, to the address of the unit owner shown on the books of the association.

604.13-9. *Form of statement of condominium lien.* A statement of condominium lien is sufficient for the purposes of this regulation if it contains the following information and is substantially in the following form:

Statement of Condominium Lien
 This is to certify that _____, owner(s) of unit No. _____ in _____
 Condominium (is) (are) indebted to the association in the amount of \$ _____ as of _____
 ____, 19__ for (his)(her)(its)(their) proportionate share of common expenses of the
 Condominium for the period from (date) to (date), plus interest thereon at the rate of _____%,
 costs of collection, and actual attorney fees.

Association

By: _____

Officer's title (or agent)

Address: _____
 Telephone: _____

604.14. Insurance

604.14-1. An association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Such insurance shall not cover the contents of units, the improvements the unit owner has made, or liabilities arising strictly within the individual units.

604.14-2. Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the Land Commission has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

604.14-3. Provisions for the insurance described in section 604.14-1 and section 604.14-2 shall be made without prejudice to the right of each unit owner to obtain insurance for his or her own unit, for its contents, the improvements the unit owner has made, and liabilities that the unit owner wishes to be insured against.

604.15. Repair or Reconstruction.

604.15-1. A declaration shall provide for the repair or reconstruction of the common elements in the event of damage to all or part of the common elements of the condominium.

604.15-2.

(a) Unless otherwise provided in the declaration, in the event of damage to or destruction of common elements of a condominium, the association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium. All cost of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

(b) However, if a condominium is damaged to an extent more than the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of all the unit owners. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage

interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit.

604.16. Eminent Domain

604.16-1. *Definition.* In this section, “taking under the power of eminent domain” includes any sale in settlement of any pending or threatened condemnation proceeding.

604.16-2. *Allocation of award; provisions in declaration or bylaws.* A declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or part of the condominium. A declaration or bylaws also may provide for:

- (a) Reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; and
- (b) Rebuilding, relocation or restoration of any improvements so taken in whole or in part.

604.16-3. *Allocation of award, in absence of provisions in declaration or bylaws.* Unless otherwise provided for in a declaration, bylaws or overrule contract, any damages for a taking of all or part of a condominium shall be awarded as follows:

- (a) Every unit owner is entitled to the entire award for the taking of all or part of their respective unit and for consequential damages to their unit.
- (b) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.
- (c) In the event no reconstruction is undertaken, any award for the taking of common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

604.16-4. *Reconstruction following taking.* Following the taking of all or a part of the common elements, an association shall promptly undertake to restore the improvements of the common elements to an architectural whole compatible with the existing structure. Any costs of such restoration in excess of the condemnation award shall be a common expense. However, if the taking under the power of eminent domain is to the extent where the remaining condominium portion has been diminished to the extent that reconstruction or restoration is not practical, a condominium shall be subject to an action for partition upon obtaining the written consent of all the unit owners. In the case of partition, the net proceeds of sale, together with any net proceeds of the award for taking, shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interest in the common elements and shall be distributed in accordance with the priority of interests in each unit.

604.16-5. *Adjustment of percentage interests following taking.* Following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as provided in the condominium instruments or bylaws. The association promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit.

604.16-6. *Priority in distribution of damages for each unit.* All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

604.16-7. *Preservation of the right of appeal.* The owner of each unit taken shall have the individual right of appeal of the necessity of taking and of the condemnation award made for the taking. An association shall have the right of appeal of the necessity of taking of the common elements and the right of appeal of the condemnation award made for the taking of the common elements. An appeal by an association shall be binding upon the individual unit owners for the necessity of taking or the condemnation award made for the taking of the common elements.

The unit owners having an interest in the ownership of limited common elements may individually or as a group appeal the necessity of taking or the condemnation award made for the taking of the limited common elements.

604.17. Books and Receipts and Expenditures.

604.17-1. *Record keeping; availability for examination.* An association shall keep detailed, accurate records using standard bookkeeping procedures of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours.

604.17-2. *Disclosure information.* Within 10 days after a request by a seller other than the declarant, an association shall furnish the information necessary to the seller to comply with section twenty-three. The seller shall pay the association the actual costs of furnishing the information.

604.18. Separate Taxation.

604.18-1. Every unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessments and taxation by the Tribe for all types of taxes authorized by law including, but not limited to, special levies based on the value of property and special assessments. Neither the building, the property nor any of the common elements shall be deemed to be a parcel separate from the unit.

604.18-2. The rights, duties and obligations of unit owners under this regulation shall inure to and be binding upon grantees under tax deeds and persons acquiring title by foreclosure of tax liens and their successors in interest.

604.19. Mechanics' and Materialmen's Liens.

604.19-1. Subsequent to recording a declaration under this law and while the property remains subject to this regulation, any and all liens will exist only against individual units and the percentage of undivided interest in the common elements 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.

604.19-2. Any mechanics' lien or materialmen's lien arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

604.19-3. Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the common elements, if authorized in writing by the association, shall be paid by the association as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lien the unit owner shall be entitled to a release of his or her unit from the lien and the association shall not be entitled to assess his or her unit for payment of the remaining amount due for the repairs or improvements.

604.20. Liability

604.20-1. An action for tort alleging a wrong done by any agent or employee of a declarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing

such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

604.20-2. A judgment for money against an association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established under the declaration in an amount not exceeding the market value of the unit, but not against any other property of any unit owner.

604.20-3. All actions arising from this section shall follow the procedures described in section twenty-six.

604.21. Personal Application

604.21-1. All unit owners, tenants of the owners, employees of owners and tenants or any other persons that in any manner use property or any part thereof subject to this law shall be subject to this law, the overrule contract, and to the declaration and bylaws of the association adopted under this regulation.

604.21-2. All agreements, decisions and determinations lawfully made by an association shall be deemed to be binding upon all unit owners.

604.22. Easements and Encroachments

604.22-1. *Presumption as to existing physical boundaries.* Any existing physical boundaries of any unit or common elements 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.

604.22-2. *Encroachment as result of authorized construction, reconstruction or repair.* If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element, as a result of the duly authorized construction, reconstruction or repair of a building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

604.22-3. *Easements included in grant of unit.* A 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.

604.22-4. *Association's right of entry to make repairs.* An association shall have an irrevocable right and an easement to enter units to make repairs to common elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, an association shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of such repairs. No entry by an association for the purposes specified in this section may be considered a trespass.

604.22-5. Easements through the common elements of a condominium shall be requested at the Division of Land Management. The Division of Land Management shall notify the unit owners of the request for an easement; and they shall have 15 days from delivery of the notification in which to present their views and opinions as regards the request.

604.23. Disclosure Requirements

604.23-1. *Material to be furnished by seller to purchaser before closing.* Not later than 15 days prior to the closing of the sale of a unit to a purchaser, the seller shall furnish to the purchaser the following:

- (a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.
- (b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.
- (c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.
- (d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.
- (e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.
- (f) A plat map of any contemplated expansion of the condominium with a narrative of each stage of expansion and the maximum number of units that can be added to the condominium.
- (g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.
- (h) A copy of the overrule contract.

604.23-2. *Change in material following delivery to purchaser.* Any material furnished under sec. 23-1 may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

604.23-3. *Purchaser's right to rescind contract for sale.* Any purchaser may at any time within 5 business days following receipt of all information required under section 604.23-1 and within 5 business days following receipt of all information required under section 604.23-2, rescind in writing a contract of sale without stating any reason and without any liability on his or her part, and the purchaser is entitled to the return of any deposits made in account of the contract.

604.23-4. *Untrue statement or omission of material fact.* Any seller who in disclosing information required under section 604.23-1 makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within 6 months after facts constituting a cause of action are or should have been discovered.

604.23-5. *Waiver of purchaser's right.* Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

604.24. Blanket Mortgages and Other Blanket Liens

604.24-1. As a condition to the first transfer of title to each unit:

- (a) Every mortgage and other lien affecting such unit, including the undivided interest in the common areas and facilities appurtenant to such unit, shall be paid and satisfied of record;
- (b) A unit being transferred and an undivided interest in the common areas and facilities belonging to it shall be released by partial release duly recorded; or
- (c) A mortgage or other lien shall provide for or be amended to provide for a release of the unit and the undivided interest in the common areas and facilities that belong to it from the lien of a mortgage or other lien upon the payment of a sum certain.

604.25. Provisions Requiring Employment of Declarant

604.25-1. Any provision of a declaration or other instrument made pursuant to this law, except for the overrule contract, which requires the owner of a unit to engage or employ the declarant or any subsidiary or affiliate of the declarant for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for a sale of any unit which requires a purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void.

604.26. Appeals to Land Commission

604.26-1. All complaints arising from this law, the overrule contract, the condominium instruments, the bylaws or decisions of a condominium association or its board of directors will be presented in writing to the Division of Land Management office immediately after the party's discovery of the circumstances or decisions that created the grievance.

604.26-2. The Division of Land Management director shall attempt to mediate the grievance and shall respond to the aggrieved and all other interested parties within 30 days of receipt of the written complaint with the resolution of the grievance, if any.

604.26-3. The decisions and actions taken by the Division of Land Management staff may be taken to the Land Commission or a sub-committee created by it for the purpose of a hearing on such grievances or to the Judiciary.

604.26-4. All appeals beyond those in section 604.26-1 and 604.26-2 shall follow the procedural form described in the Administrative Procedures Act.

End.

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