

RCW 64.90.465 Conveyance or encumbrance of common elements.

(1) (a) In a common interest community other than a cooperative, portions of the common elements may be conveyed or subjected to a security interest by the association if unit owners entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all unit owners of units to which any limited common element is allocated must agree to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) Proceeds of the sale or a loan are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the unit owners of units to which the limited common elements were allocated. This subsection (1) does not apply to the incorporation of common elements into units as a result of relocating unit boundaries pursuant to RCW 64.90.260, to subdividing or combining units pursuant to RCW 64.90.265, or to eminent domain proceedings pursuant to RCW 64.90.030.

(2) (a) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if unit owners entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, all unit owners of those units, or the units to which those limited common elements are allocated, must agree to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) Proceeds of the sale or a loan are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to RCW 64.90.290, is void. This subsection (2) does not apply to the incorporation of common elements into units as a result of relocating unit boundaries pursuant to RCW 64.90.260, to subdividing or combining units pursuant to RCW 64.90.265, or to eminent domain proceedings pursuant to RCW 64.90.030.

(3) An agreement to convey common elements in a common interest community other than a cooperative, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications of an agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications of the agreement must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(4) The association, on behalf of the unit owners, may contract to convey or dedicate an interest in a common interest community pursuant to subsection (1) of this section, but the contract is not enforceable against the association until approved pursuant to subsection (1), (2), or (3) of this section. Thereafter, the association has all powers necessary and appropriate to effect the

conveyance or encumbrance, including the power to execute deeds or other instruments.

(5) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

(6) A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not deprive any unit of its rights of access and support.

(7) Unless the declaration requires a higher percentage, if the consent of eligible mortgagees holding security interests on at least eighty percent of the units subject to security interests held by eligible mortgagees on the day the unit owners' agreement under subsection (3) of this section is recorded, is obtained:

(a) A conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and

(b) An encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

(8) The consents of eligible mortgagees, or a certificate of the secretary affirming that the requisite percentage of eligible mortgagees have consented, may be recorded at any time before the date on which the agreement under subsection (3) of this section becomes void. Such consents or certificates recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting eligible mortgagees, regardless of later conveyance or encumbrances on those units. If the required percentage of eligible mortgagees consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration or created by the association after the declaration was recorded.

(9) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section. [2018 c 277 s 314.]