

**§1602-119. Rights of secured lenders**

(a) The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or [PL 1981, c. 699 (NEW).]

(2) Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to section 1603-113. [PL 1981, c. 699 (NEW).]

(b) The association shall send reasonable prior written notice by prepaid United States mail to eligible mortgage holders as hereinafter defined of the consideration by the association of following proposed actions:

(1) The termination of the condominium pursuant to section 1602-118; [PL 1981, c. 699 (NEW).]

(2) A change in the allocated interest of a unit, a change in the boundaries of a unit or a subdivision of a unit; [PL 1981, c. 699 (NEW).]

(3) The merger or consolidation of the condominium with another condominium; [PL 1981, c. 699 (NEW).]

(4) The conveyance or subjection to a security interest of any portion of the common elements; [PL 1981, c. 699 (NEW).]

(5) The proposed use of any proceeds of hazard insurance required to be maintained by the association under section 1603-113, subsection (a), for purposes other than the repair or restoration of the damaged property; [PL 1981, c. 699 (NEW).]

(6) The adoption of any proposed budget by the executive board under section 1603-103, subsection (c), and of the date of the scheduled unit owners meeting to consider ratification thereof; a summary of the proposed budget shall accompany this notice; and [PL 1981, c. 699 (NEW).]

(7) Any default in the performance or payment by a unit owner of any obligations under the condominium declaration, including, without limitation, default in the payment of common expense liabilities.

An "eligible mortgage holder" means the holder of a recorded first mortgage on a unit which has delivered written notice to the association by prepaid United States mail, return receipt requested, or by delivery in hand securing a receipt therefor, which notice shall state the mortgagee's name and address, the unit owner's name and address, and the identifying number of the unit, and shall state that the mortgage is a recorded first mortgage. Such notice shall be deemed to have been given reasonably prior to the proposed action if sent at the time notice thereof is given to the unit owners. In addition, the declaration may require that similar notice be given to other persons or of other proposed actions. [PL 1981, c. 699 (NEW).]

(c) In the event of any proposed actions described in subsection (b), paragraphs (1), (2), (3), (4) or (5), an eligible mortgage holder shall have the right but not the obligation in place of the unit owner to cast the votes allocated to that unit or give or withhold any consent required of the unit owner for such action by delivering written notice to the association with a copy to the unit owner prior to or at the time of the taking of the proposed action, which notice shall be sent by prepaid United States mail, return receipt requested, or by delivery in hand. Failure of the eligible mortgage holder to so exercise such rights shall constitute a waiver thereof and shall not preclude the unit owner from exercising such

right. In the event of any default described in subsection (b), paragraph (7), the eligible mortgage holder shall have the right but not the obligation to cure such default. [PL 1981, c. 699 (NEW).]

(d) In addition, an eligible mortgage holder, or its representative, shall have the right to attend association and executive board meetings for the purposes of discussing the matters described in subsection (b), paragraphs (1) to (6). [PL 1981, c. 699 (NEW).]

#### SECTION HISTORY

PL 1981, c. 699 (NEW).

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