

**58-3106. Common areas and facilities.** (a) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities as expressed in the declaration. The declaration may allocate to each apartment or condominium unit an undivided interest in the common areas and facilities proportionate to either the size or par value of each apartment or condominium unit. The undivided interests in the common areas and facilities shall add up to one (1) if stated as fractions or one hundred percent (100%) if stated as percentages. The undivided interest allocated to each apartment or condominium unit shall be reflected by the declaration or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith.

(b) Except as otherwise provided in this act, the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners expressed in an amended declaration duly recorded. The undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this act as provided in K.S.A. 58-3116 and 58-3126. Any covenant to the contrary shall be null and void.

(d) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(e) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bylaws.

(f) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

(g) If a condominium contains any convertible land or is an expandable condominium, the undivided interests in the common areas and facilities may be reallocated and altered without the consent of all apartment owners as set forth in the declaration and in this act.

(h) Until an amendment to the declaration is executed and recorded by the declarant and the board of directors of the association of apartment owners, as provided by this act, interests in the common areas and facilities shall not be allocated to any condominium unit proposed for construction to be created within any convertible land or on any additional land if the condominium is an expandable condominium.

(i) To reallocate and alter interests in the common areas and facilities after units are constructed upon convertible or additional land, the declarant and the board of directors of the association of apartment owners shall execute and record an amendment to the declaration which shall reallocate and alter undivided interests in the common areas and facilities among all owners on an equitable formula set forth in said declaration so that the condominium units constructed upon convertible or additional land shall be allocated undivided interests in the common areas and facilities on the same basis and formula as the units depicted on the floor plans recorded simultaneously with the original declaration. Such reallocation and alteration by the declarant and the board of directors shall not require the consent of all the owners of units.

**History:** L. 1963, ch. 329, § 6; L. 1975, ch. 297, §2; July 1.