

## MONTANA

### **TITLE 70. PROPERTY CHAPTER 23. UNIT OWNERSHIP ACT -- CONDOMINIUMS**

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#### **Part 1. General Provisions**

**70-23-101. Short title.** This chapter may be cited as the "Unit Ownership Act".

**70-23-102. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.
- (2) "Building" means a multiple-unit building or buildings comprising a part of the property.
- (3) "Common elements" means the general common elements and the limited common elements.
- (4) "Common expenses" means:
  - (a) expenses of administration, maintenance, repair, or replacement of the common elements;
  - (b) expenses agreed upon as common by all the unit owners; and
  - (c) expenses declared common by [70-23-610](#) and [70-23-612](#) or by the declaration or the bylaws of the particular condominium.
- (5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter.
- (6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.
- (7) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:
  - (a) the land on which the building is located, except any portion of the land included in a unit or made a limited common element by the declaration;
  - (b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;
  - (c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;
  - (d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;
  - (e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
  - (f) the premises for the lodging of janitors or caretakers of the property; and
  - (g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.
- (8) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.
- (9) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of undivided ownership.
- (10) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.
- (11) "Project" means a real estate condominium project whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for

sale.

(12) "Property" means the land, all buildings, improvements, and structures on the land, and all easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

(13) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or other instruments or documents affecting the title to real property.

(14) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(15) "Unit designation" means the number, letter, or combination of numbers and letters designating a unit in the declaration.

(16) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit must be considered a unit owner.

**70-23-103. Applicability -- submission by declaration required.** In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with [70-23-301](#).

## **Part 2. Regulation of Unit Sales Prior to Construction (Repealed)**

**70-23-201. Repealed.** Sec. 3, Ch. 12, L. 1999.

**70-23-202. Repealed.** Sec. 3, Ch. 12, L. 1999.

**70-23-203. Repealed.** Sec. 3, Ch. 12, L. 1999.

**70-23-204. Repealed.** Sec. 3, Ch. 12, L. 1999.

**70-23-205. Repealed.** Sec. 3, Ch. 12, L. 1999.

**70-23-206. Repealed.** Sec. 3, Ch. 12, L. 1999.

## **Part 3. Creation -- Declaration and Bylaws**

**70-23-301. Contents of declaration.** A declaration must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in [70-23-901](#) and the residence or place of business of the person which must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under [76-3-203](#) or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable.

**70-23-302. Preliminary declaration.** A preliminary declaration, setting forth as many of the particulars required by [70-23-301](#) as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by [70-23-301](#).

**70-23-303. Name of property -- similarity prohibited.** No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words "apartment", "motel", "building", "court", "place", or similar words.

**70-23-304. Declaration to be approved by department of revenue before recording.** Before a declaration may be recorded in the county in which the property is located, it must be approved by the department of revenue. A declaration must be approved unless:

- (1) the name does not comply with [70-23-303](#); and
- (2) all taxes and assessments due and payable have not been paid.

**70-23-305. Recording of declaration.** (1) When a declaration is made and approved as required, it must, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date of recording must be entered on the declaration.

(2) At the time of recording a declaration, the person offering it for record shall also file a copy, certified by the recording officer to be a true copy, with the department of revenue.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording.

**70-23-306. Floor plans recorded with declaration -- certification.** (1) Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access.

(2) There shall be attached to the floor plans a statement of a registered architect, registered professional engineer, or registered professional land surveyor who has reviewed the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by an architect, engineer, or surveyor that the plans fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built, there shall be recorded within 30 days from the date of completion of the building or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered professional land surveyor certifying that the floor plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

**70-23-307. Bylaws -- adoption, recording, and amendment.** (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by 75% of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

**70-23-308. Contents of bylaws.** Subject to [70-1-522](#), the bylaws must provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of the directors, and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by [70-23-102](#), that constitutes a quorum;

(3) the election of a presiding officer, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for those expenses, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of the unit owners' respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to [70-23-307](#).

#### **Part 4. Nature of the Ownership Interest**

**70-23-401. Property status of the unit.** While the property is submitted to this chapter, a unit in the building may be individually conveyed, leased, or encumbered and may be the subject of ownership,

possession, or sale and of all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

**70-23-402. Exclusive ownership and possession of unit -- joint ownership.** (1) Each unit owner is entitled to the exclusive ownership and possession of the owner's unit.

(2) A unit may be jointly or commonly owned by more than one person.

**70-23-403. Common elements -- undivided interest of unit owner.** (1) Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value.

(2) The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

**70-23-404. Common elements -- undivided interest to remain attached to unit.** The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**70-23-405. Common elements to remain undivided -- partition prohibited.** The common elements shall remain undivided, and no unit owner shall bring any action for partition or division of any part thereof except as provided in [70-23-805](#). Any covenant to the contrary is void.

#### **Part 5. Rights and Duties Incidental to Unit Ownership**

**70-23-501. Common profits and expenses.** The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentage of undivided interest of each in the common elements.

**70-23-502. Certain work on unit by owner prohibited.** A unit owner may not make a repair or alteration or perform any other work on the owner's unit that would jeopardize the soundness or safety of the property, reduce the value of the property, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

**70-23-503. Common elements -- use by unit owner.** Each unit owner may use the common elements in accordance with the purposes for which they are intended but may not hinder or encroach upon the lawful rights of the other unit owners.

**70-23-504. Maintenance and improvement of common elements.** (1) The necessary work of maintenance, repair, and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair, or replacement of the common elements or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

**70-23-505. Abandonment or waiver of use not to effect exemption.** A unit owner may not be exempted from liability for the owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the owner's unit.

**70-23-506. Compliance with bylaws, rules, and covenants required -- action.** Except as provided in [70-1-522](#), each unit owner shall comply with the bylaws and with the rules adopted pursuant to the bylaws and with the covenants, conditions, and restrictions in the declaration or in the deed to the owner's unit. Failure to comply with the bylaws, rules, covenants, conditions, and restrictions is grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner

## **Part 6. Conveyances, Liens, and Common Expenses**

**70-23-601. Contents of deed or lease of unit.** Except as provided in [70-1-522](#), the deed or lease of a unit must contain:

- (1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;
- (2) the unit designation of the unit;
- (3) the use for which the unit is intended;
- (4) the percentages of undivided interest in the common elements appertaining to the unit;
- (5) any further details the grantor and grantee or lessor and lessee may consider desirable.

**70-23-602. Liens to be satisfied or released at time of first conveyance.** At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit, including the undivided interest of the unit in the common elements, shall be paid and satisfied of record or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

**70-23-603. Lien allowable against unit not against the property.** Subsequent to recording a declaration and while the property remains subject to this chapter, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

**70-23-604. Construction lien -- no effect on nonconsenting owner -- exception.** Labor performed or materials furnished with the consent or at the request of a unit owner or the owner's agent, contractor, or subcontractor may not be the basis for the filing of a construction lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent must be considered given by the owner of any unit in the case of emergency repairs performed or furnished with the consent or at the request of the manager.

**70-23-605. Lien effective against two or more units -- release from.** If a lien becomes effective against two or more units, the owner of each unit subject to the lien has the right to have the owner's unit released from the lien by payment of the amount of the lien attributable to the owner's unit. The amount of the lien attributable to a unit and the payment required to satisfy a lien, in the absence of agreement, must be determined by application of the percentage established in the declaration. A partial payment, satisfaction, or discharge may not prevent the lienor from proceeding to enforce the lienor's rights against any unit and the undivided interest in the common element pertaining to a unit not released by a payment, satisfaction, or discharge.

**70-23-606. Records of receipts and expenditures affecting common elements -- inspection.** (1) The manager shall keep detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

(2) Such records and the vouchers authorizing the payments and receipts for payments shall be available for examination at the manager's place of business by the unit owners at convenient hours of weekdays.

**70-23-607. Claim for common expenses -- priority of lien -- contents -- recording.** (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

- (a) tax and assessment liens; and
- (b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

- (a) a true statement of the account due for such common expenses after deducting all just credits and offsets;
- (b) the name of the owner of the unit or reputed owner, if known;
- (c) a description of the property where the common expenses were furnished and the designation of the

unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under Title 71, chapter 3, part 5. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

**70-23-608. Foreclosure of lien under claim for common expenses -- action without foreclosure.** (1)

The proceedings to foreclose liens created by [70-23-607](#) shall conform as nearly as possible to the proceedings to foreclose liens created by Title 71, chapter 3, part 5. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

**70-23-609. Foreclosure on unit -- payment of rent -- purchase of unit by manager.** (1) In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

(2) The manager acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid on the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

**70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses.** When the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, the purchaser and the purchaser's successors and assigns are not liable for any of the common expenses chargeable to the unit that became due prior to the acquisition of title to the unit by the purchaser. The unpaid share of common expenses is a common expense of all the unit owners, including the purchaser and the purchaser's successors and assigns.

**70-23-611. Joint liability of grantor and grantee for unpaid common expenses.** In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the grantor for the grantor's proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee for the common expenses. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed for any unpaid charges against the grantor in excess of the amount set forth in the statement.

**70-23-612. Insurance of building -- premiums as common expenses.** (1) The manager as trustee for the unit owners shall, if required by the declaration, by the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and other hazards as required, without prejudice to the right of each unit owner to insure the owner's own unit for the owner's own benefit.

(2) The premiums for insurance on the building are common expenses.

**70-23-613. Disclosure by seller -- seller to furnish documents -- delay period.** (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or the seller's agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or the seller's agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement must provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay, the prospective purchaser may withdraw the offer without penalty.

## **Part 7. Taxation and Exemptions (Repealed)**

**70-23-701. Repealed.** Sec. 4, Ch. 452, L. 1985.

**70-23-702. Repealed.** Sec. 4, Ch. 452, L. 1985.

**70-23-703. Repealed.** Sec. 4, Ch. 452, L. 1985.

## **Part 8. Removal of Property From Unit Ownership Act**

**70-23-801. Removal from chapter -- recorded instrument -- consent of lienholders.** All of the unit owners may remove a property from the provisions of this chapter by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of this chapter.

**70-23-802. Obsolete property -- restoration or sale -- removal from chapter.** Ninety percent of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If 90% of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If 90% of the unit owners agree to sell the property, the property shall be considered removed from the provisions of this chapter.

**70-23-803. Damage to property -- decision not to repair or rebuild -- removal from chapter.** If within 60 days after the date of the damage to or destruction of all or part of the property the association of unit owners does not decide to repair, reconstruct, or rebuild, the property shall be considered removed from the provisions of this chapter.

**70-23-804. Effect of removal -- ownership in common -- liens.** If the property is removed from the provisions of this chapter, as provided by [70-23-801](#) through [70-23-803](#), the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

**70-23-805. Effect of removal -- subject to partition -- sale.** If the property is removed from the provisions of this chapter, as provided in [70-23-801](#) through [70-23-803](#), it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

**70-23-806. Removal no bar to resubmission.** The removal of the property from the provisions of this chapter shall in no way bar its resubmission.

## **Part 9. Actions and Process**

**70-23-901. Actions -- service of process.** (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit.

(2) Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process.

(3) At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of \$10 which shall be a taxable disbursement.

**70-23-902. Change of agent for service of process.** If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in [70-23-901](#), it shall record an amendment to the declaration. The amendment must be certified by the presiding officer and the secretary of the association of unit owners and must state the name of the successor with the successor's residence or place of business as required by [70-23-301](#)(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

**Part 10. Enforcement and Penalty (Repealed)**

**70-23-1001. Repealed.** Sec. 3, Ch. 12, L. 1999.

**70-23-1002. Repealed.** Sec. 3, Ch. 12, L. 1999.