

## **SOUTH DAKOTA**

### **CHAPTER 43-15A CONDOMINIUMS**

**43-15A-1.** Definition of terms. Terms as used in this chapter mean:

- (1) "Commission," the South Dakota Real Estate Commission;
- (2) "Co-owner," any person, firm, corporation, limited liability company, partnership, association, trust, or legal entity, or any combination thereof who owns a condominium within the project;
- (3) "Council of co-owners," all co-owners of the condominium;
- (4) "Master deed" or "master lease," the deed or lease recording the property of the condominium;
- (5) "Project," the entire parcel of real property divided or to be divided into condominiums, including all structures on the property;
- (6) "Property," land whether leasehold or fee simple and the buildings or building, all improvements and structures on the land and all easements, rights and appurtenances belonging to the land;
- (7) "To record," to record pursuant to the laws of this state relating to the recordation of deeds.

**Source:** SL 1975, ch 270, § 1; SL 1986, ch 302, § 79; SL 1994, ch 351, § 101.

**43-15A-2.** Estates subject to chapter. "Condominium," as used in this chapter, unless the context otherwise requires, shall mean an estate in real property consisting of an undivided interest in portions of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building or industrial and commercial building on such real property, such as, but not restricted to, an apartment, office, or store. A condominium may include in addition a separate interest in other portions of real property. Such estate may, with respect to the duration of its enjoyment, be either an estate of inheritance or perpetual estate, an estate for life, or an estate for years.

**Source:** SL 1975, ch 270, § 1 (2).

**43-15A-3.** Establishment of condominium project--Master deed or lease. Whenever a developer, the sole owner, or the co-owners of a building or buildings expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enumerated by § 43-15A-4, their desire to submit their property to the formation of a condominium established by this chapter, there shall be thereby established a condominium project.

**Source:** SL 1975, ch 270, § 2.

**43-15A-4.** Particulars required in master deed or lease. The master deed or lease to which § 43-15A-3 refers shall express the following particulars:

- (1) The description of the land, whether leased or in fee simple, and the building or buildings, expressing their respective areas;
- (2) The general description and the number of each condominium, expressing its area, location, and any other data necessary for its identification;
- (3) The description of the common areas of the building or buildings; and
- (4) The provisions requiring the council of co-owners to maintain insurance on the condominium.

**Source:** SL 1975, ch 270, § 5.

**43-15A-5.** Common areas defined. "Common areas," as used in this chapter, unless the context otherwise requires and unless otherwise provided in the master deed or lease, includes:

- (1) The land whether fee simple or leased, on which the building or buildings stand;
- (2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits and communication ways;
- (3) The basements, flat roofs, yards, gardens, recreation facilities, and parking areas, unless otherwise provided or stipulated;
- (4) The premises for the lodging of janitors or persons in charge of the building or buildings, except as otherwise provided or stipulated;
- (5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks, pumps, and the like;
- (6) The elevators, garbage incinerators, and in general all devices or installations existing for common use; and
- (7) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

**Source:** SL 1975, ch 270, § 1 (6).

**43-15A-6.** Joint or common ownership. Any condominium may be jointly or commonly owned by more than one person.

**Source:** SL 1975, ch 270, § 3.

**43-15A-7.** Exclusive and common rights of owners. Any condominium owner shall have an exclusive right to his condominium and shall have a common right to a share, with other co-owners, in the common areas of the property.

**Source:** SL 1975, ch 270, § 4.

**43-15A-8.** Recording of transfers and encumbrances of individual units. Provisions shall be made for the recordation of the individual condominiums on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordation.

**Source:** SL 1975, ch 270, § 5.

**43-15A-9.** Recording of master deeds and leases--Tax inapplicable to original recordation. A master deed or lease shall be recorded in the same manner and subject to the same provisions of law as are deeds; provided, that no state or local recordation tax upon the value of the property transferred shall apply to any such deed or portion thereof recorded solely for the purpose of complying with the provisions of § 43-15A-3.

**Source:** SL 1975, ch 270, § 5.

**43-15A-10.** Notice of intent to sell domestic condominium--Contract voidable if notice not given. Prior to the time when a domestic condominium project is to be offered for sale in this state, the developer shall notify the real estate commission in writing of his intention to sell such offerings. If the developer fails to notify the commission as provided in this chapter, the purchaser may at his option void the contract for sale.

**Source:** SL 1975, ch 270, § 6; SL 1986, ch 302, § 80.

**43-15A-11.** Fee to accompany notice of intent--Questionnaire--Form and content. The notice of intention to sell shall be accompanied by a fee of twenty-five dollars for each condominium unit up to a maximum of five hundred dollars and by a verified copy of a questionnaire provided by the commission which has been properly

completed by the developer. The questionnaire will be in such form and content as will require full disclosure of all material facts, including, but not limited to:

- (1) A full disclosure of rights and privileges to common areas;
- (2) The sales price of each unit;
- (3) Down payment requirement;
- (4) Interest rate on mortgages;
- (5) Estimated annual property tax attributable to the condominium;
- (6) Estimated annual fire and hazard insurance attributable to condominium; and
- (7) The amount to be charged to the purchaser under the maintenance contract and under what circumstances the costs may be raised.

**Source:** SL 1975, ch 270, § 7; SL 1986, ch 302, § 81.

**43-15A-12.** Inspection of condominium project. After appropriate notification has been made pursuant to §§ 43-15A-10 and 43-15A-11, an inspection of the condominium project may be made by the Real Estate Commission.

**Source:** SL 1975, ch 270, § 8; SL 1986, ch 302, § 82.

**43-15A-13.** Waiver of initial inspection. The Real Estate Commission may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the commission to notify the developer of its intent to inspect his project within thirty days after notification of intention is properly filed pursuant to §§ 43-15A-10 and 43-15A-11 will be construed a waiver of such inspection.

**Source:** SL 1975, ch 270, § 10; SL 1986, ch 302, § 83.

**43-15A-14.** Filing fee and inspection expenses to accompany notice of intent--Payment to inspector. When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the Real Estate Commission to be necessary to cover the actual expenses of such inspection, not to exceed seventy-five dollars a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses, which shall be paid pursuant to § 43-15A-15 as a fee to the board representative inspecting such project.

**Source:** SL 1975, ch 270, § 9.

**43-15A-15.** Deposit and expenditure of fees. The fees collected in this chapter shall be deposited and expended according to the rules promulgated pursuant to chapter 1-26 by the Real Estate Commission.

**Source:** SL 1975, ch 270, § 20; SL 1986, ch 302, § 84.

**43-15A-16.** Public report of examination findings--Status of report. When the Real Estate Commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts available. A public report shall be construed to be neither an approval nor a disapproval of a project.

**Source:** SL 1975, ch 270, § 11; SL 1986, ch 302, § 85.

**43-15A-17.** Commission report required before offer to sell or taking reservations to purchase. No unit in a condominium project may be offered for sale until the Real Estate Commission has issued a final or substitute public report thereon, nor may reservations to purchase be taken until the commission has issued a preliminary, final, or substitute public report.

**Source:** SL 1975, ch 270, § 11; SL 1986, ch 302, § 86.

**43-15A-18.** Supplementary report on investigations made after final or substitute report issued--True copy to purchasers. If, after a final or substitute public report has been issued, the Real Estate Commission decides to conduct further inquiries or investigations in order to protect the general public in its real estate transactions, the commission may issue a supplementary public report describing the findings thereof. Upon the issuance of a supplementary public report, the developer shall issue a true copy thereof to all purchasers.

**Source:** SL 1975, ch 270, § 15; SL 1986, ch 302, § 87.

**43-15A-19.** Copy of reports issued to prospective purchaser before binding contract for sale--Time to read copy--Receipt. No developer may enter into a binding contract or agreement for the sale of any unit in a condominium project until a true copy of the Real Estate Commission's final or substitute public report thereon with all supplementary public reports, if any, has been issued and given to the prospective purchaser who has been given no less than ten days to read same, and, his receipt taken therefor.

**Source:** SL 1975, ch 270, § 14; SL 1986, ch 302, § 88.

**43-15A-20.** True copies to be exact reproductions of commission's reports. The true copies of the Real Estate Commission's public reports shall be an exact reproduction of those prepared by the commission.

**Source:** SL 1975, ch 270, § 16; SL 1986, ch 302, § 89.

**43-15A-21.** Receipts kept by developer--Inspection--Duration. Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the Real Estate Commission or its deputies, for a period of three years from the date the receipt was taken.

**Source:** SL 1975, ch 270, § 14; SL 1986, ch 302, § 90.

**43-15A-22.** Material change in offering prohibited without written notice. It is a Class 1 misdemeanor for the developer of the project, after an offering is submitted to the Real Estate Commission, to materially change the setup or value or use of such offering without first notifying the commission in writing of such intended change and substantially notifying all purchasers and prospective buyers of such change.

**Source:** SL 1975, ch 270, § 17; SL 1983, ch 15, § 2; SL 1986, ch 302, § 91.

**43-15A-23.** Deposits held in escrow until delivery of deed. Any deposit made with a reservation to purchase or a contract to purchase shall be held in escrow in a separate fund for such deposits designated as such until the deed for which a deposit was made is delivered to the depositor.

**Source:** SL 1975, ch 270, § 12.

**43-15A-24.** Management or recreation facility contract period limited--Subsequent contracts by council of co-owners. No management or recreation facility contract may be entered into by a developer for a period of longer than two years. All subsequent management or recreation facility contracts shall be made by council of co-owners.

**Source:** SL 1975, ch 270, § 13.

**43-15A-25.** False statement, fraud, or violation of provisions as misdemeanor. Any person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and a person who, with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a project contains a written statement that is false or fraudulent, issues, circulates, publishes, or distributes the same, or causes the same to be issued, circulated, published, or distributed, or who, in any other respect, violates or fails to comply with the provisions set forth in §§ 43-15A-10 to 43-15A-26, inclusive, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any order, decision, demand, or requirement of the Real Estate Commission under §§ 43-15A-10 to 43-15A-26, inclusive, is guilty of a Class 1 misdemeanor.

**Source:** SL 1975, ch 270, § 18; SL 1983, ch 15, § 3; SL 1986, ch 302, § 92.

**43-15A-26.** Investigation of developer suspected of violations--Examination of books--Developers to keep records available. If the Real Estate Commission has reason to believe that a developer is violating any provision set forth in §§ 43-15A-10 to 43-15A-26, inclusive, or the rules of the commission promulgated pursuant thereto, the commission may investigate the developer's project and examine the books, accounts, records, and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain records of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the commission upon reasonable notice and demand.

**Source:** SL 1975, ch 270, § 19; SL 1986, ch 302, § 93.

**43-15A-27.** Repealed by SL 1980, ch 294, § 2043-15A-28. Validation of previously established vertical and horizontal property regimes and condominiums--Deadline for enforcing rights--Notice of pendency. Any vertical and horizontal property regime established pursuant to former chapter 43-15, or any condominium established pursuant to chapter 43-15A recorded before January 1, 1992, in the office of the register of deeds of the county in which the land is located, which was in compliance with former chapter 43-15 or chapter 43-15A, respectively, is hereby declared to be valid.

If any person had any vested right in any real property conveyed under either of said chapters, and no action or proceeding to enforce such right was begun prior to July 1, 1993, such right shall be forever barred; and no action or proceeding so brought shall be of any force or effect or maintainable in any court of this state unless, prior to July 1, 1993, there was recorded in the office of the register of deeds of the county in which the real property affected is located, a notice of the pendency of such action, in accordance with the provision of chapter 15-10.

**Source:** SL 1980, ch 294, § 21; SL 1992, ch 307, § 52.

**43-15A-29.** Lien for erection, repair, or improvement of a single development--Apportionment of liens. A lien holder who contributes to the erection, alteration, repair, or other general improvement of a single development of condominiums shall apportion his demand among the condominiums affected and shall assert a lien for a proportionate part upon each and upon the ground appurtenant to each respectively.

**Source:** SL 1984, ch 284, § 2.

**43-15A-30.** Promulgation of rules to administer and enforce chapter. The Real Estate Commission may promulgate rules pursuant to chapter 1-26 relating to the administration and enforcement of the provisions of this chapter.

**Source:** SL 1986, ch 302, § 94.