

§ 47F-3-112. Conveyance or encumbrance of common elements.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, or any larger percentage the declaration specifies, agree in writing to that action; provided that all the owners of lots to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all the lots are restricted exclusively to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall be as provided by agreement between the lot owners to which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.

(b) The association, on behalf of the lot owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsection (a) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any lot owner or the association in or to the common element conveyed or encumbered, including the power to execute deeds or other instruments.

(c) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section is void.

(d) No conveyance or encumbrance of common elements pursuant to this section may deprive any lot of its rights of access and support. (1998-199, s. 1.)