

AN ACT

Bill 20-139
Act 20-308
effective
April 28, 2014

Codification
District of
Columbia
Official Code
2001 Edition

To amend the Condominium Act of 1976 to clarify the applicability of its provisions, to create a definition for electronic transmission and amend the definition for unit owner in good standing, to adopt the business judgment rule to govern decisions of condominium boards, to allow for the relocation of unit boundaries unless prohibited by the condominium instruments, to allow for the subdivision of units unless prohibited by the condominium instruments, to provide that if a unit owners' association provides notice of a proposed amendment to the condominium instruments to the address of record of a mortgagee and that mortgagee fails to respond within 60 days, the failure to respond will be deemed to be consent to the amendment, to require open meetings of a condominium's executive board and authorize electronic meetings, to clarify the unit owners' association's right to assess certain members for maintaining common elements, to allow the board to pledge as collateral for a loan or otherwise assign a unit owners' association's assessment income, to amend requirements governing insurance to allow a unit owners' association to require unit owners to purchase insurance, to permit a unit owners' association to transfer responsibility for paying the deductible in certain circumstances, to amend statutory lien requirements, to require a unit owners' association to maintain records and provide owners a right of inspection, and to allow for the issuance of a corporate surety bond or irrevocable letter of credit to secure a deposit on a condominium unit.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Condominium Amendment Act of 2014".

Sec. 2. The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1901.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Code Official § 42-1901.01) is amended to read as follows:

"Sec. 101. Applicability of act; corresponding terms; supersedure of prior law.

"(a) This act shall apply to all condominiums created in the District of Columbia; provided, that except as otherwise expressly set forth in this act, any provision of this act that became effective after the creation of a condominium, horizontal property regime, or condominium project shall not invalidate an existing provision of the condominium instruments.

"(b) For the purposes of this act:

"(1) The terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium";

"(2) The term "co-owner" shall be deemed to correspond to the term "unit owner";

"(3) The term "council of co-owners" shall be deemed to correspond to the term "unit owners' association";

"(4) The term "developer" shall be deemed to correspond to the term "declarant";
and

"(5) The term "general common elements" shall be deemed to correspond to the term "common elements."

Amend
§ 42-1901.01

“(c) This act shall supersede the Horizontal Property Act of the District of Columbia, approved December 21, 1963 (77 Stat. 449; D.C. Official Code § 42-2001 *et seq.*) (“Horizontal Property Act”), and Regulation 74-26 of the District of Columbia City Council, enacted October 18, 1974. No condominium shall be established except pursuant to this act after March 28, 1977. This act shall not be construed, however, to affect the validity of any provision of any condominium instrument complying with the requirements of the Horizontal Property Act and recorded before March 28, 1977. Except for section 411, subtitle IV shall not apply to any condominium created before March 29, 1977. Any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before March 29, 1977, shall be valid and enforceable if the amendment would be permitted by this act and if the amendment was adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect when the amendment was adopted. If an amendment grants a person any right, power, or privilege permitted by this act, any correlative obligation, liability, or restriction in this act shall apply to that person.

“(d) This act shall not apply to any condominium located outside the District of Columbia. Sections 402 through 408 and sections 412 through 417 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless exempt under section 401.

“(e) Except as otherwise provided in this act, amendments to this act shall not invalidate any provision of any condominium instrument that was permitted under this act at the time the provision was recorded.”.

(b) Section 102 (D.C. Official Code § 42-1901.02) is amended as follows:

**Amend
§ 42-1901.02**

(1) A new paragraph (12B) is added to read as follows:

“(12B) “Electronic transmission” shall mean any form of communication, not directly involving the physical transmission of paper, which creates a record that may be:

“(A) Retained, retrieved, and reviewed by a recipient of the communications; and

“(B) Reproduced directly in paper form by a recipient through an automated process.”.

(2) A new paragraph (32) is added to read as follows:

“(32) “Unit owner in good standing,” unless otherwise defined in the condominium instruments, shall mean a unit owner who is not delinquent for more than 30 days in the payment of any amount owed to the unit owners’ association, or a unit owner who has not been found by the unit owners’ association or its executive board to be in violation of the condominium instruments or the rules of the unit owners’ association.”.

(c) Section 209 (D.C. Official Code § 42-1902.09) is amended as follows:

**Amend
§ 42-1902.09**

(1) The existing language is redesignated as subsection (a).

(2) A new subsection (b) is added to read as follows:

“(b) The decisions and actions of the unit owners’ association and its executive board shall be reviewable by a court using the “business judgment” standard. A unit owners’ association shall have standing to sue in its own name for a claim or action related to the

common elements. Unless otherwise provided in the condominium instruments, the substantially prevailing party in an action brought by a unit owners' association against a unit owner or by a unit owner against the unit owners' association shall be entitled to recover reasonable attorneys' fees and costs expended in the matter."

(d) Section 225(a) (D.C. Official Code § 42-1902.25(a)) is amended to read as follows:

Amend
§ 42-1902.25

"(a) Unless expressly prohibited in the condominium instruments, the boundaries between adjoining units may be relocated in accordance with:

"(1) The provisions of this section and other applicable law; and

"(2) Any lawful restrictions and limitations specified in the condominium instruments."

(e) Section 226(a) (D.C. Official Code § 42-1902.26(a)) is amended to read as follows:

Amend
§ 42-1902.26

"(a) Unless expressly prohibited by the condominium instruments, a unit may be subdivided in accordance with:

"(1) The provisions of this section and other applicable law; and

"(2) Any lawful restrictions and limitations specified in the condominium instruments."

(f) Section 227 (D.C. Official Code § 42-1902.27) is amended by adding a new subsection (g) to read follows:

Amend
§ 42-1902.27

"(g)(1) Unless otherwise specified in the condominium instruments, if the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a unit to amend the condominium instruments, that provision shall be deemed satisfied if the procedures under this subsection are satisfied.

"(2) If the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a residential unit to amend the condominium instruments, the unit owners' association shall cause a copy of a proposed amendment to the condominium instruments to be delivered to the last known address of each holder of a mortgage or deed of trust entitled to notice. Absent notice of written instructions to the contrary, the association may reasonably rely upon the address of each holder as contained in the recorded mortgage or deed of trust.

"(3) If the holder of a mortgage or deed of trust of a residential unit that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days from the date the proposed amendment is mailed or delivered to the holder, the holder shall be deemed to have consented to the adoption of the amendment.

(4) The inadvertent failure to deliver a copy of any proposed amendment to the condominium instruments to each holder of a mortgage or deed of trust entitled to notice, despite good faith efforts by the unit owners' association, shall not invalidate any action taken pursuant to this section."

(g) Section 303 (D.C. Official Code § 42-1903.03) is amended to read as follows:

Amend
§ 42-1903.03

"Sec. 303. Meetings; electronic notice.

"(a) Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the unit

owners' association and shall be open to all unit owners of record in good standing. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of time, place, and purposes of the meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units and to one other address as any of them may have designated in writing to the officer, or notice may be hand delivered by the officer; provided, that the officer certifies in writing that notice was hand delivered to the unit owner. Alternatively, notice may be sent by electronic means to any unit owner who requests delivery of notice in an electronic manner and who waives notice by mail or hand delivery, pursuant to subsection (e) of this section.

“(b)(1) Except as otherwise provided in the condominium instruments, all meetings of the unit owners' association, committees of the unit owners' association, and the executive board shall be open for observation to all unit owners in good standing. Minutes shall be recorded and shall be available for examination and copying by unit owners in good standing. This right of examination may be exercised:

“(A) Only during reasonable business hours or at a mutually convenient time and location; and

“(B) Upon 5 days' written notice identifying the specific minutes requested.

“(2) Notice, including the time, date, and place of each executive board meeting, shall be furnished to a unit owner who requests this information and published in a location reasonably calculated to be seen by unit owners. Requests by a unit owner to be notified on a continual basis must be made at least once a year in writing and include the unit owner's name, address, and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the executive board conducting the meeting.

“(3) Unless otherwise exempt as relating to an executive session pursuant to paragraph (5) of this subsection, at least one copy of the agenda furnished to members of the executive board for a meeting shall be made available for inspection by unit owners.

“(4) Meetings of the executive board may be conducted or attended by telephone conference or video conference or similar electronic means. If a meeting is conducted by telephone conference, video conference, or similar electronic means, the equipment or system used must permit any executive board member in attendance to hear and be heard by, and to communicate what is said by all other executive board members participating in the meeting.

“(5)(A) The executive board, upon a motion and an affirmative vote in an open meeting to assemble in executive session, may convene in executive session to consider:

“(i) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;

“(ii) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

“(iii) Pending or anticipated litigation;

“(iv) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

“(v) Consultation with legal counsel;

“(vi) Matters involving individual unit owners or members, including violations of the condominium instruments or rules and regulations promulgated pursuant to the condominium instruments and the personal liability of a unit owner to the unit owners’ association; or

“(vii) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings

“(B) For the purpose of subparagraph (A)(iii) of this paragraph, the term “anticipated litigation” means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

“(6) The motion to assemble in executive session shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during an executive session to those purposes specifically set forth in the motion. A motion passed, or other formal action taken, in an executive session shall be recorded in the minutes of the open meeting, but this shall not require disclosure of any details that are properly the subject of confidential consideration in an executive session. The action or actions authorized by a motion passed in an executive session shall be reflected in minutes available to unit owners in good standing. The requirements of this section shall not require the disclosure of information in violation of law.

“(c) Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period of time during each regularly scheduled meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners’ association. During a meeting at which the agenda is limited to specific topics, or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

“(d) The executive board may take action without a meeting by resolution issued with the unanimous written consent of the members of the executive board in support of the action being taken. A copy of the resolution shall be attached to the minutes of the next executive board meeting that occurs following its adoption.

“(e)(1) Notwithstanding any language contained in the condominium instruments, the unit owners’ association may provide notice of a meeting or deliver information to a unit owner by electronic transmission if:

“(A) The executive board authorizes the unit owners’ association to provide notice of a meeting or deliver information by electronic transmission;

“(B) The unit owner provides the unit owners’ association with prior written authorization to provide notice of a meeting or deliver material or information by electronic transmission; and

“(C) An officer or agent of the unit owners’ association certifies in writing that the unit owners’ association has provided notice of a meeting or delivery of material or information by electronic transmission as authorized by the unit owner pursuant to this subsection.

“(2) Notice or delivery by electronic transmission shall be considered ineffective if:

“(A) The unit owners’ association is unable to deliver 2 consecutive notices; and

“(B) The inability to deliver the electronic transmission becomes known to the person responsible for the sending of the electronic transmission.

“(3) The inadvertent failure to deliver notice by electronic transmission shall not invalidate any meeting or other action.”.

(h) Section 305 (D.C. Official Code § 42-1903.05) is amended by adding a new subsection (g) to read as follows:

**Amend
§ 42-1903.05**

“(g)(1) Notwithstanding any language contained in the condominium instruments, the executive board may authorize unit owners to submit votes or proxies by electronic transmission if the process used to provide notice of a vote and the means to submit votes or proxies are made in a consistent form approved by the executive board and available to all unit owners and the electronic transmission contains information that verifies that the vote or proxy is authorized by the unit owner or the unit owner’s proxy.

“(2) If the condominium instruments require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if unit owners have the option of casting printed secret ballots.

“(3) The inadvertent failure to submit, receive, or count votes or proxies by electronic transmission shall not invalidate any meeting or other action; provided, that the persons responsible for facilitating electronic transmission shall make good-faith efforts to submit, receive, and count the votes or proxies and resolve problems when they become known.”.

(i) Section 307(a) (D.C. Official Code § 42-1903.07(a)) is amended to read as follows:

**Amend
§ 42-1903.07**

“(a)(1) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of a condominium shall belong to:

“(A) The unit owners' association in the case of the common elements;
and

“(B) The individual unit owner in the case of any unit or any part of a unit.

“(2) Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either access to the owner's unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and

responsibilities. To the extent that damage is inflicted on the common elements or any unit that is accessed, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair of the damage. Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may elect to maintain, repair, or replace specified unit components, or limited common element components for which individual unit owners are responsible, using common expense funds, if failure to perform the maintenance, repair, or replacement could have a material adverse effect on the common elements, the health, safety, or welfare of the unit owners, or the income and the common expenses of the unit owners' association. The maintenance, repair, or replacement may be at the expense of the unit owners' association or, in the reasonable judgment of the executive board, if a limited number of units is affected, at the expense of the unit owners affected. The expense will be considered for all purposes an assessment against any unit to which the limited common element appertains.”.

(j) Section 308(a) (D.C. Official Code § 42-1903.08(a)) is amended as follows:

Amend
§ 42-1903.08

(1) Paragraph (14) is amended to read as follows:

“(14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments to the extent necessary for the reasonable performance of the unit owners' associations' duties and responsibilities, unless expressly prohibited in the condominium instruments;”.

(2) A new paragraph (14A) is added to read as follows:

“(14A) Power to reasonably restrict the leasing of residential units; provided, that any restriction described under this paragraph shall not apply to a unit that is leased at the time of any action taken to restrict the leasing of residential units until the unit is subsequently occupied by the owner or ownership transfers;”.

(k) Section 310 (D.C. Official Code § 42-1903.10) is amended as follows:

Amend
§ 42-1903.10

(1) Subsection (b) is amended by striking the phrase “Commencing not later” and inserting the phrase “Unless the condominium instruments expressly provide otherwise, commencing no later” in its place.

(2) A new subsection (d-1) is added to read as follows:

“(d-1) Each unit owner shall, to the extent reasonably available, purchase condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage at a minimum of \$10,000 and condominium owner personal liability insurance coverage at a minimum of \$300,000; provided, that the executive board may increase the minimum amounts required under this subsection at a meeting properly noticed under this act.”.

(3) Subsection (e) is amended as follows:

(A) Paragraph (3) is amended by striking the phrase “policy;” and inserting the phrase “policy; and” in its place.

(B) Paragraph (4) is amended by striking the phrase “; and” and inserting a period in its place.

(C) Paragraph (5) is repealed.

(4) Subsection (j) is amended as follows:

(A) The existing language is designated as paragraph (1).

(B) A new paragraph (2) is added to read as follows:

“(2) Unless the condominium instruments provide otherwise, if the cause of any damage to or destruction of any portion of a condominium originates from the common elements, the association’s property insurance deductible shall be a common expense. If the bylaws do not indicate the entity responsible for payment of a deductible amount if the cause of damage to or destruction of a portion of a condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated shall be responsible for the association’s property insurance deductible in an amount not to exceed \$5,000; provided, that the unit owners’ association affords notice to unit owners of this responsibility before the damage is caused. If the owner is responsible for the association’s property insurance deductible or an uncovered loss up to \$5,000, this amount shall be assessed against the owner’s unit. Nothing in this section is intended to limit the rights of a unit owners’ association to pursue its subrogation rights, if any, against a unit owner in whose unit the cause of the property or personal liability damage or destruction originated.”.

(l) Section 313 (D.C. Official Code § 42-1903.13) is amended as follows:

**Amend
§ 42-1903.13**

(1) Subsection (a) is amended as follows:

(A) The lead in language to subsection (a) is amended by striking the word “instruments” and inserting the phrase “instruments, along with any applicable interest, late fees, reasonable expenses and legal fees actually incurred, costs of collection and any other reasonable amounts payable by a unit owner under the condominium instruments,” in its place.

(B) Paragraph (2) is amended by striking the phrase “to enforce the lien. The provisions of” and inserting the phrase “to enforce the lien or recordation of a memorandum of lien against the title to the unit by the unit owners’ association. The provisions of” in its place.

(2) Subsection (c) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “past due, unless the condominium instruments provide otherwise. Any language” and inserting the phrase “past due. By accepting a deed to a condominium unit, the owner shall be irrevocably deemed to have appointed the chief executive officer of the unit owners’ association as trustee for the purpose of exercising the power of sale provided for herein. Any language” in its place.

(B) Paragraph (3) is amended to read as follows:

“(3) The power of sale may be exercised by the chief executive officer of the unit owners’ association, as trustee, upon the direction of the executive board, on behalf of the unit owners’ association, and the chief executive officer of the unit owners’ association shall have the authority as trustee to deed a unit sold at a foreclosure sale by the unit owners’ association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.”.

(3) Subsection (f) is amended by striking the phrase “for costs and attorneys’ fees.” and inserting the phrase “for reasonable costs and attorneys’ fees actually incurred by the unit owners’ association.” in its place.

(m) Section 314 (D.C. Official Code § 42-1903.14) is amended to read as follows:

**Amend
§ 42-1903.14**

“Sec. 314. Books, minutes, and records; inspection.

“(a) The unit owners’ association, or the declarant, the managing agent, or other person specified in the bylaws acting on behalf of the unit owners’ association, shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the association’s expenses related to the common elements and any other expenses incurred by or on behalf of the association.

“(b) Subject to the provisions of subsection (c) of this section, books and records kept by or on behalf of the unit owners’ association, including the unit owners’ association membership list, mailing addresses of unit owners, and financial records, including aggregate salary information of the unit owners’ association employees, shall be available in the District of Columbia and within 50 miles of the District of Columbia, for examination and copying by a unit owner in good standing or such unit owner’s authorized agent so long as the request is for a proper purpose related to the unit owner’s membership in the unit owners’ association, and not for pecuniary gain, commercial solicitation, or other purpose unrelated to the unit owner’s membership in the unit owners’ association. This right of examination may be exercised only during reasonable hours on business days. The books shall be subject to an independent audit upon the request of owners of units to which 33 1/3 % of the votes in the unit owners’ association pertain or a lower percentage as may be specified.

“(c)(1) Books and records kept by or on behalf of a unit owners’ association may be withheld from examination or copying by unit owners and their agents to the extent that they are drafts not yet incorporated into the unit owners’ association’s books and records or if the books and records concern:

“(A) Personnel matters relating to specific, identified persons who work for the unit owners’ association, including a person’s medical records;

“(B) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

“(C) Pending or anticipated litigation;

“(D) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

“(E) Communications with legal counsel;

“(F) Disclosure of information in violation of law;

“(G) Minutes or other records of an executive session of the executive board;

“(H) Documentation, correspondence, management, or reports compiled for or on behalf of the unit owners’ association or the executive board by its agents or committees for consideration by the executive board in executive session; or

“(I) Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner’s files kept by or on behalf of the unit owners’ association.

“(2) For the purposes of paragraph (1)(C) of this subsection, the term “anticipated litigation” means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

“(d) Before providing copies of any books or records, the unit owners’ association may impose and collect a fee reflecting the actual costs of materials and labor for providing access to copies of the requests books and records.”.

(n) Section 404(a)(5)(F) (D.C. Official Code § 42-1904.04(a)(5)(F)) is amended by striking the phrase “alienation; and” and inserting the phrase “alienation, including restrictions on the rental of units; and” in its place.

**Amend
§ 42-1904.04**

(o) Section 409 (D.C. Official Code § 42-1904.09) is amended as follows:

**Amend
§ 42-1904.09**

(1) The existing text is designated as subsection (a).

(2) New subsections (b), (c), (d), (e), (f), (g), and (h) are added to read as follows:

“(b) The declarant of a condominium may:

“(1) Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the District, in the form and amount set forth in subsection (e) of this section; or

“(2) Obtain and maintain an irrevocable letter of credit issued by a financial institution insured by the federal government, in the form and amount set forth in subsection (f) of this section.

“(c) Except as provided in subsection (d) of this section, the declarant shall maintain the surety bond or letter of credit until the first of the following occurs:

“(1) A deed to the unit is granted to the purchaser;

“(2) The purchaser defaults under a purchase contract for the unit entitling the declarant to retain the deposit; or

“(3) The deposit is refunded to the purchaser.

“(d) The declarant may make withdrawals from an escrow account established under subsection (a) of this section that consists of sum received to finance the construction of a unit to pay, in accordance with a draw schedule agreed to by the purchaser in writing, documented claims of persons who have furnished labor or material for the construction of the unit.

“(e) The surety bond shall be payable to the District for the use and benefit of every person protected under the provisions of this act. The declarant shall file the bond with the Department of Housing and Community Development. The surety bond may either be in the form of an individual bond for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount of the bond shall be equal to the amount of the deposits.

“(f) The letter of credit shall be payable to the District for the use and benefit of persons protected under the provisions of this act. The declarant shall file the letter of credit with the Department of Housing and Community Development. The letter of credit may be in the form of an individual letter of credit for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount of the letter of credit