

(H. B. 3454)
(Conference)

(No. 281)

(Approved August 15, 2008)

AN ACT

To amend Sections 3 and 11 of Act No. 104 of June 25, 1958, as amended, known as the “Condominiums Act,” for the purpose of clarifying that the square measure of the areas recorded in the master deed and/or plans of a condominium as annexes for the particular and exclusive use of an apartment shall not be included when computing the square measure of said apartment or percentage of share in common elements, except when the master deed and/or plans of the condominium expressly provide otherwise; provide the unanimity requirement for enclosing or roofing the patios, terraces or open areas of an apartment, except when so contemplated in the original plans, shall not apply to the enclosing or roofing of patios, terraces or open areas located in the land of the real property intended for the exclusive use of certain apartments constituted under the regime prior to July 4, 2003; and for other purposes.

STATEMENT OF MOTIVES

Act No. 104 of June 25, 1958, as amended, now known as the “Condominiums Act” (formerly known as the “Horizontal Property Act”), was amended with the approval of Act No. 103 of April 5, 2003. The Statement of Motives of Act No. 103, *supra*, set forth that such Act had the purpose of improving and strengthening the horizontal property regime existing in Puerto Rico, in view of the social purpose of this system, which is highly vested in public interest with respect to our urban development.

With the enactment of Act No. 103, *supra*, this Legislature has learned that the present practice when creating horizontal property regimes in Puerto Rico, and drafting, preparing, and recording the master deeds and plans that constitute such regimes, has confused developers, notaries, registrars, and the general public as to

the interaction between the provisions of Section 3 and those of Section 8 of Act No. 104, as amended by Act No. 103, and the effect of such interaction in the calculation of the square measure of the apartments and their respective percentage share in the common elements of a condominium.

The confusion lies in the fact that the description and definition of the term “apartment” in Section 3, include the word and term “annex,” that is, those areas in a condominium that according to the master deed and the corresponding plans have been designated for the particular use of one apartment to the exclusion of other apartments. On the other hand, Section 8 provides the basis to calculate the percentage share in common elements; however, it fails to state whether or not the annexes should also be included when making such calculation. Usually, apartment annexes are parking areas, patios, and terraced roofs, which are expressly designated for exclusive, particular, and private use.

For the purposes of clarifying this situation and continuing to make an efficient horizontal development feasible in Puerto Rico, this Legislature deems that it should be the owners of the condominiums themselves who shall determine whether or not the square area of one or more annexes is to be included when calculating the corresponding square measure of the apartments and their respective percentage shares in common elements. We believe that this is the most balanced and reasonable solution to this situation. If the Condominiums Act continues in effect without having this situation clarified, the confusion as to the term “annex” and the criteria to be followed when calculating the percentage share of an apartment in common elements shall continue to exist at the time of preparing and recording the documents that constitute the regime.

On the other hand, when the above cited Act No. 103 was approved, the new Section 11 of the Condominiums Act provided that the projection (the right to build upwards) was a general common element of the property, and we therefore

accurately provided that as of that time, the enclosing or roofing of patios, terraces or open areas, as well as the construction of new stories above the roof and above or below the land, would require the unanimous consent of the owners, provided that such works are not contemplated in the plans submitted with the deed that constitutes the regime. Indeed, as of the time of the approval of Act No. 103, *supra*, that is, ninety (90) days after April 5, 2003, unanimous consent was required to carry out this kind of works, except that such works have been contemplated in the original plans of the building.

However, this new provision adversely affected those apartments with patios, terraces or open areas at ground level that were constituted in the regime prior to such date, and since this new requirement did not exist, the possibility of enclosing or roofing such areas was never contemplated in the plans, since this was always believed to be possible. In fact, it was not until then that it was expressly and categorically prohibited. This omission is particularly harmful for apartments with patios, terraces or open areas in the first story or lower level, be it understood, at ground level, which are susceptible to multiple problems including problems regarding safety, such as the access of persons foreign to the premises, the possibility of serious accidents caused by objects falling from above apartments, and the constant accumulation of waste or garbage in these patios or open spaces, among others. In other words, as the law is intended to be interpreted, when an apartment is afflicted by constant difficulties, disturbances and nuisances caused by falling objects and may cause bodily injuries to one person, there is no practical recourse for these owners to solve the problem other than a unanimous decision. This obstacle was established through the amendments to the Act. The situation has worsened, since now there are apartments that are under the same regime but are being treated differently after the approval of amendments regarding this subject. The intent of this Legislature was never to

prohibit the use and enjoyment by owners of their properties by means of prohibitions that did not exist when they acquired their properties.

Based on the above, the abovementioned Section 11 is also hereby amended in order to provide that the unanimity requirement for enclosing or roofing the patios, terraces or open areas of an apartment, except when so contemplated in the original plans thereof, shall apply only to apartments that were constituted into the regime before the approval of this new requirement through Act No. 103, *supra*, to wit, April 5, 2003. As of that date, all horizontal development owners have been apprised that, in the event they wish to have the option of enclosing or roofing their patios, terraces or open areas designated for the exclusive use by the owner, it must be expressly stated in the plans to be submitted together with the deed constituting the regime. In this manner, we are closer to achieving our purpose of improving and strengthening the horizontal property regime existing in Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 3 of Act No. 104 of June 25, 1958, as amended, is hereby amended to read as follows:

“Section 3.- Apartment – Definition.-

For the purposes of this Act, apartment shall be understood to be any unit of construction, sufficiently delimited, consisting of one or more cubic spaces, closed, partially closed, or open, and its annexes (if any), even if they are not contiguous, provided that said unit (1) is susceptible to any type of independent utilization, and (2) has a direct exit to a public thoroughfare or a given common space leading to such thoroughfare. The square measure of the areas recorded in the master deed and/or plans constituting a building as the annex of an apartment for the particular use of such apartment, thus excluding all other apartments, shall not be included when computing the square area of the apartment in question or its

percentage share in the common elements of the real property, except that the sole owner of the apartments or, if more than one owner, all owners by unanimity, in the original master deed for the constitution of the regime and/or those documents prepared and executed to modify an already existing regime, expressly provide otherwise for one or more annexes, in which case, for such purpose, only those annexes so specified in the original master deed or the documents to amend an existing horizontal property regime shall be take into account.”

Section 2.- Section 11 of Act No. 104 of June 25, 1958, as amended, is hereby amended to read as follows:

“Section 11.- General Common Elements of the Property.-

The common elements of the property are the following:

- (a) The following are considered to be general and necessary common elements, not susceptible to individual ownership by the owners, and subject to a regime of undivided interest:
 - 1) The projection, understood as the right to build upwards. Except as provided in Section 14A of this Act, the enclosure or roofing of patios, terraces or open areas, as well as the construction of new stories above the roof and above or below the ground that are not contemplated in the plans submitted with the deed constituting the regime, shall require the unanimous consent of the owners, provided that this requirement shall not apply to the enclosure or roofing of patios, terraces or open areas located on the ground or lower story (ground level) of the property, intended for the exclusive use of certain

apartments that were constituted in the regime before April 5, 2003.

- 1) ...
- 2) ...
- 3) ...
- 4) ...
- 5) ...

b. The following shall be deemed to be general common elements, except as otherwise provided or stipulated:

- 1) ...
- 2) ...
- 3) ...
- 4) ...
- ...”

Section 3.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 281 (H. B. 3454)** (**Conference**) of the **7th Session of the 15th Legislature** of Puerto Rico:

AN ACT to amend Sections 3 and 11 of Act No. 104 of June 25, 1958, as amended, known as the “Condominiums Act,” for the purpose of clarifying that the square measure of the areas recorded in the master deed and/or plans of a condominium as annexes for the particular and exclusive use of an apartment shall not be included when computing the square measure of said apartment or percentage of share in common elements, except when the master deed and/or plans of the condominium expressly provide otherwise; etc.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 19th of January of 2010.

Solange I. De Lahongrais, Esq.
Director