

## REMOVING/ALTERING PARTITION BETWEEN ADJOINING UNITS



BY JOHN RICHARDS  
ATTORNEY  
RICHARDS, KIMBLE  
& WINN, PC

As I am sure we have already mentioned, most of the provisions passed this past session regarding condominiums and non-condominiums do not take effect until July 2014.

Another important section that provides important clarification between condominiums and non-condominiums unfortunately falls into the category of not taking effect this year.

There has always been a long standing question for community association lawyers as to the procedure and necessary votes to remove a partition wall when units adjoin one another. For example, whether I own units in a townhome-style P.U.D. or in a condominium, many times an owner buys two adjoining units and desires to remove or alter the partition wall between said units in order to create one large unit. I have seen this in several locations, primarily in downtown SLC and in Summit County.

First and foremost, it is important to remember that if your declaration sets forth the requirements for removing or altering a partition wall between adjoining wall, the terms of your declaration will control. Therefore, the statutes for condominium and non-condominium, once they take effect, will be applicable if your declaration is silent.

If your declaration is silent and you acquire an adjoining unit that shares a common wall with another unit, you may remove or alter a partition between your two units even if the partition wall is entirely or partly common area of the Association. However, you may not alter or remove said wall if the structural integrity or the mechanical systems of the building would be damaged or if the removal or alteration would reduce the support of any portion of the common areas or the unit.

There is one last consideration to make note of before you undertake such an alteration. That is you can not violate the Utah Municipal Code or the County Code as it relates to vacating, altering, or amending a sub-division plat. Both codes state that “unless a local ordinance provides otherwise, the public hearing requirement does not apply and a land-use authority may consider at a public meeting, an owner’s petition to vacate or amend a sub-division plat if, among other things, the petition is to join two or more of the petitioner’s contiguous lots”. In other words, there is still a formality on the county and city level with respect to the plat map but it does not seem a major impediment to removing or altering a partition wall.

As you can imagine, because of the Board and/or Management Committee’s obligation to protect the structural integrity or the common areas, the Board or Committee may require that the owner submit, at the owner’s expense, a registered professional engineer or professional architect’s opinion, that the proposed change will not affect the structural integrity of the building, will not harm the mechanical systems of the building or will not compromise any structural components.

The Board or Committee may, but is not required to, require the owner to pay all the Association’s legal and other expenses related to the proposed alteration of the building or unit. Obviously, I believe that all such costs should be born by the requesting owner and not by the community at large.

Presuming that all the requirements to remove or alter a partition wall are met, such action does not change an assessment or voting right attributable to unit owner’s unit or the acquired unit unless the declaration provides otherwise. This means, that despite consolidating two lots or two units you still must pay the equivalent assessment related to the ownership of two units or lots and have the voting rights attributable to two lots unless the declaration provides otherwise.

A final important point to note is that the Board has the authority to oversee this process to ensure the building and common areas are not harmed, but no owner vote is required unless it part of a municipal ordinance requirement.

VISIONS OF DIRT FLYING,  
LEGISLATORS WHIPPING EACH  
OTHER, CHEERING AND  
MOANING ON THE SIDELINES,  
POUNING FEET, INCREDIBLE  
PRESSURE, AND NEAR CHAOS