

## CLIENT MEMO ON CONDOMINIUMS

The words "Condominium" and "Co-operative" refer to types of legal structures and not to physical structures. Condominium and co-operative ownership can apply to apartments and townhouses but could be applied equally well to an office building, warehouse or summer cottage development.

In Canada there are few co-operative apartments. Condominiums are more common. In a cooperative ownership the corporation owns the entire building and the individuals own shares in the building. Individuals have leases for their respective units.

In a condominium project, the member obtains a deed or transfer to a specific dwelling unit and he becomes a co-owner with all other members of the common elements. Thus, it can be seen that in condominiums, one receives these rights indirectly through a company.

### LEGAL FRAMEWORK

In comparison to single detached dwellings, condominium owners are living much more closely together and, therefore, are more dependant on each other for various purposes. Accordingly, a condominium owner's rights are, of necessity, more restricted (and his obligations towards his neighbours are greater) than the rights of an owner of a detached and semi-detached dwelling. These rules and regulations are contained in The Condominium Act, the Declaration (the document that creates the legal status of the condominium), the By-Laws (the internal documents of the Condominium Corporation) and the rules and regulations.

### THE CONDOMINIUM ACT

The Condominium Act was enacted in 1967 and from that time until now the sale of condominium units has been increasing at a very high rate, and currently represents a large percentage of the real estate market.

In general terms the Act describes the basic rights and obligations of all the people involved with the project, i.e. the builder, the unit owner, the Condominium corporation and the mortgagee.

The Condominium Act regulates the matters of greatest importance to the success of the condominium project. In many areas, it provides minimum requirements and allows private enterprise to provide for other requirements. For example, it provides certain basic requirements that the Declaration must have and in addition, lists several other matters that a Declaration may include.

### DISCLOSURE STATEMENT

This documents sets out the legal documents and framework of the condominium and is required to be given to the purchaser under the Act. Prior to purchase if any amendment is made the Disclosure must be given again to the purchaser.

## STATUS CERTIFICATE

When you purchase a new or previously occupied condominium you must obtain a Status Certificate. This Status Certificate sets out the payments made by the unit owners for the unit, indicates the common reserve funds held by the condominium, and if there is any lien held against the condominium for non-payment of common expenses.

## THE DECLARATION

A Condominium cannot be established as a condominium until a Declaration is registered on the title of the property. The Declaration sets out the basic constitution of the Condominium. It is registered in the registry office. It legally separates the units and the common elements so units or apartments can be sold separately with individual legal titles.

In a condominium you own your own unit and a portion of the common elements through your percentage of ownership expressed in the declaration.

The board of directors who are elected by the residents manage the affairs of the condominium.

## THE BY-LAWS

The By-Laws of a condominium project consider matter of lesser importance. Some of these matters are the internal operation of the Condominium Corporation, the holding of meetings, the Board of Directors, the officers of the Condominium Corporation, the duties and powers of the condominium corporation, the banking arrangements and the requirements of providing notice. The Condominium Act provides that the By-Laws of the Condominium Corporation may be amended by a vote of members who own 66 2/3%, or such greater percentage as is specified in the Declaration of the common elements. A certified copy of each By-Law must be registered on title in order for the By-Law to be effective.

## RULES AND REGULATIONS

The rules and regulations of a condominium project are intended to govern the everyday rights and obligations of the unit owners. These rules and regulations are usually similar to the rules and regulations in force in a rental apartment building.

## THE CONDOMINIUM CORPORATION

When a project is constituted as a condominium project, a corporation without share capital is created and the members of the corporation are the owners of the various units. The Condominium Act also provides that the members of the corporation share the assets of the corporation in the same proportions as the proportions of their common interests as set forth in the Declaration. The objects of the Condominium Corporation are to manage the property any assets of the corporation. The condominium corporation is similar in operation to any other type of corporation and, of course, has a Board of Directors, requirements of meetings, quorum requirements for meetings, officers and the keeping of corporate records. The members of the condominium corporation, being unit owners, are eligible for election to the Board of Directors.

As previously mentioned, unit owners are eligible to vote at meetings of the condominium corporation. However, The Condominium Act provides that a mortgage of a unit may contain a provision authorizing the mortgagee under that mortgage to exercise the right of the unit owner to vote or to consent and, if the mortgage contains such provision, the mortgagee may, of course, exercise this right to vote or consent in place of the owner. This right to vote or consent is usually taken by the mortgagee (lender) in most condominium mortgages today.

## COMMON EXPENSES

The common expenses of the Condominium Corporation are paid by all the unit owners, usually on a monthly basis. The ratio in which the total amount of the common expenses are apportioned among the units is set out in the Declaration. The Condominium Act provides that a lien may be registered against the individual titles to a condominium unit for the failure to pay common expenses. This lien may be enforced in the same manner as the enforcement of a mortgage in default.

## MANAGEMENT AGREEMENT

It is usual to find that the Condominium Corporation has entered into a management agreement with a manager who undertakes to fulfill all the obligations of the Condominium Corporation with respect to the management and operation of the property such as snow removal, up-keep of common property, etc. and, of course, the manager will usually receive a fee for these services. Common Expenses may include, gardening, snow removal, exterior painting, administration of the condominium and common facilities like the gym, swimming pool, elevator etc.

### INSURANCE REQUIREMENTS IN A CONDOMINIUM

The Condominium Corporation will purchase insurance for all the units and common areas and will claim your cost of the premium from the monthly common expenses. You are still required to cover the inner portion of the unit and your own 3<sup>rd</sup> party liability for visitors and your furniture and other valuables in your condominium.

### INTERIM AND FINAL CLOSINGS

Where there is a newly constructed condominium there will be an interim and final closings. At the time of the interim closing the purchaser will take possession of the property under a lease type of an arrangement, which will cover the costs of the builder or vendor of the mortgage and other costs of operating the premises. When sufficient number of buyers have occupied the property, there will be a final closing at which time the title of the property is transferred to the purchaser. We charge separate fees for interim and final closings.

### CONCLUSION

Condominiums saves you the trouble of snow clearing and maintenance and are usually cheaper than single family dwellings of similar size. It is helpful to understand the legal framework for the maximum enjoyment of this type of residence.

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