

Condominiums 101

Condominiums are peculiar “creatures.” They are often thought of as a lifestyle choice, but they are actually a special legal form of property ownership under which an individual purchases and owns a unit in a multi-unit complex. What follows is a legal explanation of what a residential condominium is, how it functions, and some of the hot-button issues that can cause turmoil within condominium communities.

When you purchase a condominium unit, you actually purchase your individual unit together with a share in the entity (usually a condominium trust) that governs and maintains the common elements of the community. Common elements vary but typically encompass everything outside the unit’s interior walls, such as the land, recreational facilities, walkways, outside grounds, lobbies, hallways, elevators, and parking. The ownership of the common elements is shared among the individual unit owners (often termed as their “beneficial interest”), as is the cost of their operation, maintenance, and ongoing replacement. The management of the common facilities is typically delegated to a small group of unit owners elected to the board of trustees.

The condominium lifestyle can be attractive. It often relieves the unit owner of certain dreaded obligations like shoveling snow and mowing the lawn, it can be less expensive than other types of home ownership, and it can provide a sense of community. There is, however, a price to pay for the benefits of association. In order to promote the welfare of the condominium community, owners must give up a certain degree of freedom. Many condominiums have rules limiting everything from exterior decorations, pets, and the frequency of visitors to policies regarding rentals, etc., and sometimes disagreements about the rules of the community can lead to dysfunction.

When most people purchase a condominium unit, they do not typically give much thought to how their community works. It functions like a microcosm of society. The unit owners pay monthly dues to the homeowner’s association (“HOA”), much like municipal taxes. The HOA, which is generally governed by a board of trustees, functions as the local government. The trustees function as elected officials. They establish an annual budget, collect and expend the revenue of the HOA, plan for maintenance and repairs, and oversee the community’s reserve fund. The board of trustees also functions as the “police,” seeing to the enforcement of any restrictions or rules and levying fines for violations where appropriate.

The HOA is a powerful collection of elected trustees. The vast majority of the time, the trustees volunteer their time toward the goal of ensuring a smooth-running community for all. Other times, however, a few overzealous trustees may exceed the limits

of their authority. The kind of divisiveness that results from an autocratic board can bring smaller condominiums to financial ruin and chaos. For that reason, it is important for every condominium owner to have a basic understanding of how condominiums are supposed to function.

The rules of the road for each condominium community are set forth in the condominium documents. In Massachusetts, the condominium documents typically consist of a master deed, a declaration of trust, and rules and regulations. The master deed defines the physical boundaries of the units and distinguishes the units from the shared common areas. It provides the blueprint for how the land and facilities are allocated among the unit owners and the HOA. The declaration of trust creates the HOA, establishes a board of elected trustees, and sets forth the by-laws under which the trustees govern the community. The declaration of trust should also contain all the unique rules and regulations of the condominium.

In Massachusetts, the recorded master deed and/or declaration of trust must set forth any restrictions concerning the use and maintenance of the units and the common areas. This is important because use restrictions (such as a ban on smoking, the prohibiting of rentals, or a ban on pets) should be disclosed to buyers before they purchase their units. Use restrictions that are not set forth in the master deed or declaration of trust are not legally enforceable. Many trustees (and even professional management companies) do not realize this and mistakenly believe that they can make sweeping changes by a rule or regulation passed solely by the trustees.

In our practice, we have encountered condominium communities that improperly sought to impose restrictions on the use of units. In one case, a group of trustees imposed a rule banning pets when the condominium documents expressly permitted them. In another case, the trustees promulgated a policy that prohibited unit rentals. While the rules of the community can change, trustees need to understand that they cannot effectuate such sweeping changes in isolation.

What many owners do not realize, however, is that with the requisite vote of the unit owners (usually a supermajority), condominium associations *can* change their rules. They can ban smoking, prohibit pets, and restrict rentals in the community, irrespective of the impact on owners who purchased with different rules in place. These types of changes can have a real effect on unit owners who purchased their unit under one set of rules, only to find the rules have changed. For that reason, a higher threshold of approval is required.

Most recently, we were asked whether a condominium community could implement a ban on smoking. The answer is yes, but the

trustees could not pass such a rule without unit owner approval. Because a smoking ban regulates the use of the units and common areas, such a restriction would need to come in the form of an amendment to the by-laws. In order to pass such an amendment, typically 67 percent or more of the unit owners, as well as approval by a majority of trustees, is required. If the trustees purported to implement a smoking ban on their own, the ban would be legally invalid.

Condominium arrangements are wonderful when they work, but most unit owners do not know enough about how they should function. Lawsuits and infighting between trustees and unit owners only serve to drain the resources of the HOA. Let Fletcher Tilton explain condominium ownership and management to you. We regularly advise HOAs about how to manage their communities and adapt to the changing legal landscape, and we would be pleased to add your community to the more than 40 condominium communities we currently serve.

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