



Condominiums

March 2005

Definition

Defined loosely, a condominium is a form of private ownership of individual units of "airspace" within a multi-unit structure, combined with joint ownership of commonly used property, structures, and amenities.

The condominium is governed by the Declaration of Covenants, Conditions, and Restrictions or Condominium Declaration. The Declaration is paramount in importance partly because of its contents, which may include provisions for assessments, rights to use of the common area or common elements, development rights, special declarant rights, maintenance, easements, insurance, and other matters that bind the land and set forth rights and obligations of the owners and users of units or other property within the community.

Condominium Ownership

When we refer to condominium ownership, we are referring to specific terms and definitions:

- **Unit.** Each individual airspace is referred to as a "unit" and must be "captured," meaning completely enclosed and housed within the floor, ceiling, and walls of the structure. A unit is privately and exclusively owned and occupied by its owner(s).
- **Condominium Unit.** A "condominium unit" is defined by state law as an individual airspace together with an appurtenant interest in the general common elements.
- **General Common Elements.** By state law, to be a condominium, each airspace unit must have an appurtenant fractional or percentage interest ownership in all of the general common elements ("GCEs"). This fractional and common ownership in general common elements cannot be separated or partitioned from the airspace unit. GCEs include the structural parts of the building(s), roof, exterior walls, stairways, elevators, club houses, parking areas, etc.
- **Limited Common Elements.** In addition to GCEs, there also may be limited common elements ("LCEs") in a condominium project.

All condominium owners maintain the same fractional ownership that they have of GCEs, but the use of LCEs is restricted or limited by the Condominium Declaration to one or more, but less than all, unit owners. A typical example of an LCE would be a balcony or patio that is attached to a particular unit and intended for use by that owner alone. Another example would be a parking space or garage for use by a unit owner.

- **Association.** Since condominium owners must live together harmoniously, state law requires the documents to provide for an owners' association to govern the project and oversee its maintenance and upkeep. Such an association is normally called the "owners' association" or "homeowners' association" and is usually a non-profit corporation formed, as part of the condominium documentation, for that purpose. The corporation is governed by its Articles of Incorporation and Bylaws, and its members are composed of all condominium unit owners within the project.

Townhomes vs. Condominiums

People often try to differentiate between "condos" and "townhomes," but that is like comparing apples to oranges!

When we speak of "condominium," we are referring to a form of ownership, while "townhouse" is a description of a type of dwelling.

A "townhouse" is simply attached real estate, typically consisting of two or more floors and connected to an adjoining unit by a common wall—what in big cities used to be called "row" houses 50 years ago. Transported to the suburbs to create more units per acre, such properties are now called townhomes. A person may have "condominium ownership" of the townhome he lives in, or he may have absolute ownership.

When a title company insures a condominium unit, the exceptions on the commitment and policy are usually the same for every unit. Any easement, right-of-way, covenant, etc. affecting any portion of the common area is a burden on every unit of the project, since every unit owns a percentage of the common area.

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When an individual purchases a townhome as an attached single-family home (i.e., without condominium ownership), that ownership does not include an ownership of a percentage of the common area, and therefore any easement, right-of-way, etc. affecting the common area is not a burden to the townhome's owner. Therefore, most of the easements and rights-of-way within the common area will not be shown as exceptions to the title commitment or policy when individual properties are insured.

Colorado Condominium Statutes

The popularity of the condominium form of ownership is a recent phenomenon in the United States. Before 1960, no state had enacted condominium legislation, while today every state has some form of condominium legislation.

Condominium ownership has been officially recognized and adopted in Colorado since 1963, when the Condominium Ownership Act (or "COA") was first enacted (see CRS §38-33-101 to 105). This Act has been amended several times (to permit leasehold condominiums and to provide certain legal requirements for owners' associations, for example) but the COA basically specifies the required contents of condominium declarations, for units created in or after 1983, and association bylaws.

While the provisions of the COA generally govern condominium associations created before July 1, 1992, associations created before that date may elect instead to be governed by the provisions of legislation enacted through the Colorado Common Interest Ownership Act ("CCIOA," C.R.S. §38-33.3-102).

The Common Interest Ownership Act

The CCIOA, much more comprehensive than the COA, governs virtually every facet of newly created common interest communities. However, the COA still governs condominium associations pre-dating the CCIOA, the licensing to sell condominiums and time shares, and notification of residents regarding condo conversions.

Common Interest Communities

A condominium is usually now a part of what we refer to as a "common interest community." A common interest community (or "CIC") is a development where common interest real estate is maintained through assessments for the benefit of the owners. Residential condominiums, lofts, commercial condominiums, townhomes, and

planned community development projects can all be considered CICs.

A CIC may be created only by recording a declaration that is executed in the same manner as a deed and recorded in every county where any portion of the CIC is located. The recording of the declaration itself, however, does not create a CIC unless the plat or map for the CIC is recorded as part of the declaration.

The declaration must contain very specific provisions, which are outlined as items A through O in Section 205 of the CCIOA. For instance, the declaration must contain the name of the community; state whether the community is a condominium, a cooperative, or a planned community; give a legal description of the property included in the CIC; state the maximum number of units; describe any LCEs; and make any provisions for expanding or enlarging the CIC.

Plats and/or maps also must contain certain provisions as set forth in Section 209 of the CCIOA. Each plat and/or map must be clear and legible and contain a certification that it contains all of the information required by Section 209. The plat or map must meet all the requirements of a Land Survey Plat and must meet the filing requirements imposed by the clerk and recorder of the county in which the plat or map will be filed of record.

Condominium Conversions

A condominium conversion is the process of converting rental property to a condominium form of ownership. While most involve residential property, some conversions may include office buildings or other commercial property.

The CCIOA also applies to conversions. In order for each apartment to be sold, leased, or encumbered individually, a declaration containing all of the CCIOA requirements, together with a Land Survey Plat or condominium map containing all of the CCIOA special provisions, must be recorded in the county where the apartment building is located. The condominium map must also contain the location and dimensions of any vertical boundaries, the location of horizontal boundaries, and the elevations of each floor, which creates a three-dimensional drawing of the apartment building.

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