

FREQUENTLY ASKED QUESTIONS REGARDING CONDOMINIUMS

What is a condominium?

A condominium is a multi-unit building or buildings owned under a special form of property ownership called condominium ownership. Each separate apartment or commercial unit in a condominium is owned individually in fee simple title similar to the private ownership of a single family home. Each owner also owns jointly with all other unit owners an undivided interest in the common elements of the property.

What is a unit?

A unit is an enclosed area, such as an apartment, which is precisely described in the condominium documents. A unit may be sold; it is separate and different from common elements.

What are common elements?

Common elements, also referred to as common areas, consist of all portions of the property except those areas specifically designated for private ownership as units.

What is an exclusive use?

An exclusive use is granted with regard to a portion of the property owned by all unit owners in common but the exclusive use of which is granted to the owner of a specific unit or to another person or entity. Balconies or roof decks, for example, are often defined by the condominium documents as limited common elements.

When does a property become a condominium?

A property legally becomes a condominium when the condominium documents are filed or recorded with the appropriate Registry of Deeds.

These documents state the intention of the property owner to create a condominium subject to the controlling legal and technical obligations. The condominium documents describe units and common areas and establish the methods by which the property rights will be governed. In Massachusetts, Condominiums are governed by Massachusetts General Laws Chapter 183A.

What is the difference between a condominium and a cooperative?

Owners in a cooperative hold stock in a corporation, which then leases the dwelling units to the shareholders. Rather than obtaining separate mortgages, the individual owners may be subject to a blanket mortgage on the entire property in addition to the mortgage on their unit. Under certain conditions, individual owners may be liable for real estate taxes and other obligations for units other than their own. Each owner in a condominium property holds title to his own unit in a manner similar to ownership of a single family home. As sole owner of his unit, the purchaser is responsible for the mortgage and real estate taxes (in some cases the entire condominium is taxed as a single parcel for the first year after creation of the condominium). The owner is not liable for the mortgage or taxes of any other unit. A monthly assessment on each unit pays for upkeep of the common elements and any commonly-used services or utilities.

May the individual owner sell his condominium?

The individual owner, as sole owner of the unit described in his deed, may sell his condominium

Is selling a condominium similar to selling a single family home?

Yes. The seller has the option of listing the condominium with a real estate broker or of selling the property personally. One aspect in which selling a condominium may differ from selling a single family home is that the condominium owners' association sometimes retains the right of first refusal enabling it to purchase the condominium from the seller on the same contractual terms. As in the sale of a single family home, the seller sets the market price. No limitations on this price are set by the condominium documents.

What types of information should a prospective purchaser of a condominium unit study prior to purchase?

The prospective purchaser should thoroughly study the legal documents creating the condominium and the estimated annual operating budget. The latter contains the anticipated costs of running the property as compared to revenues generated by monthly assessment fees and other sources of income.

What steps are involved in the purchase of a condominium?

The purchaser is customarily required by the seller to make an initial deposit at the time he or she makes an offer to purchase a condominium by signing an Offer to Purchase. After the Offer To Purchase has been accepted, the Buyer and Seller sign a Purchase and Sale Agreement and the Buyer increases the amount of the deposit to an amount which is generally ten per cent of the purchase price and is later applied against the purchase price as part of the down payment.

Most sales contracts are contingent upon the buyer's ability to obtain mortgage financing. Generally if the buyer notifies the seller that he is unable to obtain mortgage financing within the period of time stated in the Mortgage Contingency Clause in the Purchase and Sales Agreement, the Agreement provides that the deposit money will be refunded.

Various financial institutions such as banks and savings and loans are able to make mortgage commitments to those considering purchase of a condominium unit. These lending institutions require a signed Purchase and Sales Agreement as evidence that Buyer and Seller agree upon the terms of purchase in order to begin evaluation of the loan application. Additional documentation, often consisting of credit information and the condominium documents, will most likely be required of the purchaser. In order to qualify for a mortgage, the purchaser customarily needs a 10% to 20% cash down payment.

Once the purchaser is approved for the mortgage, the final step in the buying process is the closing. At this time the balance of the purchase price is paid to Seller and the deed conveying the title to the property is delivered to Buyer.

What costs are involved in the closing?

The buyer's closing costs will depend on the individual circumstances. Costs that may be involved include mortgage origination fee or points, appraisal fees,

credit report fees, title and title insurance charges and lender's attorney's fees.

Should the purchaser retain an attorney for the buying process?

Buying property is always a technical matter. The documents involved should be scrutinized closely. By retaining an attorney, the purchaser receives the benefit of an attorney's experience and expertise to see that his or her interests are well protected.

What are the financial obligations of a condominium owner?

The financial obligations of a condominium owner are the payment of:

- a) Real estate taxes. These monies are generally deposited in an escrow account monthly with the mortgage lender who pays the actual tax bill when it comes due.
- b) Monthly mortgage payments, if the property is mortgaged.
- c) Monthly condominium fees representing the owner's proportionate share of the costs of maintaining and operating the property.
- d) Insurance coverage for the contents of the condominium unit.
- e) Utility bills for any utilities metered individually to the unit.

How does the owner benefit from these financial obligations?

In purely financial terms, the condominium owner gains equity or cash value in the property through appreciation and monthly reduction of the principal balance of the mortgage indebtedness. Unlike rent, which is not income tax deductible, real estate taxes and mortgage interest may currently be deducted on personal federal income tax returns. These two deductions represent a major portion of the monthly payments in a condominium and can mean a reduction in federal income taxes to be paid. (Consult your tax advisor to determine the benefit to you of any such deduction)

How are real estate taxes computed on condominium units?

The tax assessor assesses each unit individually according to its value, as private homes are assessed. However, in new condominium properties there is frequently a delay in breaking down the property's tax bill into individual bills, in which case the tax bill is treated as a common expense with each owner paying his or her proportionate share.

What expenses does the monthly maintenance assessment cover?

The maintenance assessment is based on an annual estimated operating budget calculated to cover all costs related to operation and maintenance of the total property. Some examples of the types of costs involved are insurance premiums, energy costs, elevator maintenance and snow removal. An estimated annual budget specifying these items in detail should be provided to the prospective purchaser.

How is the maintenance assessment figure derived?

Operating budgets are prepared by the developer or management company based on prior accounting records of actual operating expenses in past years plus adjustments for the special requirements of condominium operations and projections of anticipated increases in utilities, wages, services and supplies.

Who pays the maintenance assessments for unsold units?

The owner of each condominium unit is responsible for making regular payments of the monthly maintenance assessment to the association. This requirement applies to the developer in his capacity as owner of all unsold unit.

Thus, the maintenance assessment will be collected in full as projected in the first year's budget regardless of how many units are sold.

Who pays for the work to the common areas being done on the property at the time of the conversion to condominiums, if any?

Major refurbishments initiated by the developer during a changeover from rental to condominium are done at the expense of the developer.

Why is there a reserve fund?

A reserve fund is set aside to provide funds for unexpected contingencies and for capital expenditures. By generating a reserve fund over a period of years, condominium owners avoid large, one-time special assessments.

How is a reserve fund collected?

At the time of the sale to the first unit owner, two months of the current condominium fee are collected from the Buyer and delivered to the Condominium Unit Owner's Association.

Must a condominium owner purchase homeowner's insurance?

Insurance companies offer specific policies, similar to apartment renters' policies, covering the contents of condominium units and offering personal liability coverage. The condominium association insures the units and the common elements as part of the common expense. Each unit owner should review this matter with their insurance agent.

Should a condominium owner purchase title insurance?

Title to a condominium home is customarily protected by title insurance just as the title of a single family home would be. Each mortgage lender requires the Buyer to purchase a loan policy insuring the lender's title. An owner's policy is available at the time of purchase for an additional charge. The loan policy must be replaced each time the property is refinanced, but the owner's policy is in effect with no additional premium for as long as the owner owns the unit. In some developments, the developer has arranged for a below market title insurance premium rate for unit buyers.

What will prevent maintenance costs from skyrocketing even higher than rent raises?

Increases in the maintenance fees are determined by the Board of Trustees of the condominium association which represents all owners. There is no profit factor as in a rental property to arbitrarily inflate the maintenance fee.

Who is responsible for the maintenance of the common elements of the property?

All condominium owners are jointly responsible for this maintenance. The responsibility for maintaining the common elements of the property is vested in the elected Board of Trustees or Managers of the condominium association, to which all owners belong. Day-to-day administration of property maintenance is usually turned over to a professional management agent, just as the owner of an apartment building would hire a professional management company.

Direction of the management company rests with the elected Trustees or Managers, who must approve the annual budget, set the level of services to be provided and make major policy decisions relating to the operation of the property. Frequently, resident committees form to investigate or oversee specific areas such as finance, operations, house rules or social activities to make recommendations to the board. Major capital expenditures generally require approval of at least majority of the voting interest of the condominium association.

What is the responsibility of the management company?

When hired by the condominium to manage the property, the management company undertakes responsibility for the administration of the operating budget, collection of monthly assessments, maintenance of the common areas, supervision of all employees and contractual services, preparation of a suggested operating budget and reporting accurately to the association all monies received *and* spent

Why is a management company necessary?

A management company offers expertise and experience in property management and in dealing with such complex areas as insurance and workmen's compensation laws. A management company supplies advice and administrative capability on a full-time and professional basis.

Who is responsible for the maintenance of the interior of the condominium unit?

The individual owner is responsible for repairs, maintenance and decoration of the condominium unit as if he or she is in a private home. The

condominium association personnel are employed by the association to maintain and repair only the common elements of the building.

Will a high level of service be maintained in the upkeep of the property?

Individual owners through the Board of Trustees and condominium association decide the quality and level of service required. Condominium properties generally reflect the great pride homeowners take in their property.

Will owning a condominium change the owner's living conditions?

The condominium homeowner will maintain his lifestyle and activities while also enjoying the advantages that accompany ownership. The condominium owner can undertake extensive decorating and improvements because the value of these will be reflected in the resale price of the unit and certainly provide a more luxurious and comfortable home. The condominium owners collectively determine the policies and management of their community.

Can a tenant purchase his apartment before the rental lease expires?

Yes. The moment ownership begins the lease and rent payments will automatically terminate.

Can the condominium documents be altered?

As a practical matter, minor changes of language or typographical corrections may be made by the property owner or developer prior to the recording of the documents. Purchasers should be informed of any and all such changes. These documents cannot be changed in any way that would alter the percentage of ownership interest in the common elements applicable to each unit or that would materially affect the buyer's rights without allowing the buyer the opportunity to consider these changes in relation to the purchase.

How much control does an individual owner have in the condominium community?

Each owner has a voice in the governing of the condominium community by electing the Board of Trustees or Managers, after an initial period in which the developer maintains control, and through direct vote on certain major issues as provided in the condominium documents.

What is the basic structure of condominium government?

All condominium owners share in condominium government through meetings, election of the Board of Trustees or Managers, service on committees and direct vote on major issues. The Board of Trustees, as representative of the owners' wishes, sets policies, hires and supervises to the extent deemed necessary and generally oversees the management of the building. The precise rules governing condominium government are set forth in the by-laws of the condominium and in the supplemental rules and regulations which are passed by the Board of Trustees, usually on the recommendation of committees comprised of unit owners.

The foregoing questions and answers may not address an area of particular concern to the reader. The most authoritative source of information to resolve questions not answered here is the condominium documents, which detail the legal definitions, rules, regulations, government and general operation of the condominium and by consultation with an attorney.