

CONDOMINIUM LIVING IN FLORIDA

Department of Business and Professional Regulation Division of Florida Condominiums, Timeshares and Mobile Homes

INTRODUCTION

Condominium living offers many benefits that appeal to increasing numbers of individuals and families. The benefits of this form of home ownership include an economical solution to constantly rising land values, building costs, maintenance expenses, and provide unit owners with an opportunity to enjoy commonly owned recreational and other facilities that might otherwise be unaffordable.

Condominium ownership is a concept that has existed in Florida since 1963. Condominium purchasers and owners are often not familiar with the complex legal requirements. This booklet is intended to acquaint unit owners and prospective buyers with the basic concepts of condominium ownership. Part I describe condominium ownership and operation and focuses on the individual's role in the condominium. Part II highlights unit owner protections under Florida law, and Part III outlines the functions of the Division of Florida Condominiums, Timeshares and Mobile Homes.

PART I CONDOMINIUM OWNERSHIP AND OPERATION

A condominium is a form of real property ownership in which an individual owns a unit exclusively and owns common elements jointly with all other unit owners in the condominium. Condominiums come in many sizes, shapes, and forms. Condominiums may be created at the time of initial construction or by converting previously existing apartments, townhouses, and hotels/motels to the condominium form of ownership. Other examples of condominiums include mobile home sites, recreational vehicle sites, boat docks, and office parks. Chapter 718 of the Florida Statutes, commonly known as the Condominium Act, and the corresponding administrative rules found in Chapters 61B-15 through 61B-24, Florida Administrative Code, are the basis for the information in this brochure and apply only to the condominium form of ownership.

Common elements are those portions of the condominium property which are not included in the units. All unit owners share ownership of the common elements in an undivided manner. The structure of the building including the roof, walls, conduit and hallways, and recreation facilities are examples of items that are usually part of the common elements. Common elements are legally attached to each unit and are transferred with the unit when it is sold. Therefore, a deed to a unit conveys the unit to a purchaser together with its proportionate ownership interest in the common elements.

The development and creation of a condominium is a technical and possibly lengthy process. In addition to business and construction considerations, a developer must also draft the condominium documents that at a minimum include a declaration of condominium, articles of incorporation of the association, and the association's bylaws. The documents, which must comply with the Condominium Act, contain restrictions on the use of the property as well as the mechanism and procedures under which unit owners will eventually operate the condominium. Thus, the developer makes many important decisions relating to the future operation of the condominium before any units are sold.

OPERATING A CONDOMINIUM

The Association

The operation of a condominium is carried out through its association, usually a not-for-profit corporation. Association members are those persons owning units in the condominium. The association manages and operates the condominium community, maintains the common elements, and provides services in furtherance of its duties to the members. Each purchaser, by accepting title to his or her unit, automatically becomes an association member, and is bound by the association rules and regulations.

Condominiums are often compared to governmental entities. The condominium association has powers and responsibilities that are similar to those of local governments. An association must establish a budget that addresses the estimated operating expenses for the current period, set aside funds for future maintenance projects, collect assessments to pay for the common expenses, and must enforce its rules and regulations. The association may also amend its documents relating to the use, maintenance, and appearance of units and the common elements.

The Board of Directors

The board of directors, initially appointed by the developer and subsequently elected by the unit owners, is responsible for managing the affairs of the association. The board may appoint committees to assist with the various duties of the association. Often such committees include a Bylaws Committee, Budget Committee, and Grounds Committee. Effective committees are important to a well-run condominium association because they help the board carry out its powers and duties.

A director is expected to carry out his or her powers and duties, as any other ordinarily prudent person would do under reasonably similar circumstances. Directors have a fiduciary relationship with the unit owners, and have the responsibility to act with the highest degree of good faith and to place the interests of the unit owners above the personal interests of the directors.

Although the board of directors is essentially the decision-making body for the condominium, the association's effectiveness rests primarily with its membership -- the unit owners. For an association to be successful, unit owners must take an active part by serving in leadership positions on the board of directors and/or its committees, attending association meetings, voting, and assisting in other affairs of the association whenever possible. These roles are essential to an association's success. Apathy on the part of the unit owners will render an association ineffective.

Each unit owner has the right to be informed and have a voice in the operation of the condominium. For this reason, Chapter 718, Florida Statutes, requires each condominium association to hold an annual meeting of its unit owners, provide adequate notice of meetings, allow unit owner participation at meetings, conduct elections, permit unit owner inspection of the official records of the association, and prepare and distribute a year-end financial report to the members. These are just some of the requirements that unit owners can expect to be fulfilled by an association's board of directors.

Management

The day-to-day management of the condominium property is one of the most important association functions. While the documents provide an outline for orderly operation, real-life operation can be a vastly different experience. It is the board's duty and responsibility to determine the association's needs, limited by the association's fiscal resources.

An association may be self-managed or hire professional management. Each association must determine the type of management best suited to its unique needs, desires, and capabilities.

Although the Condominium Act does not *require* any condominium association to do so, many condominium associations choose to contract with an outside individual or management company. However, if an association chooses to hire a manager to assist the board of directors, that person may be required to be licensed as a Community Association Manager, (CAM) under Part VIII, Chapter 468 of the Florida Statutes, known as the Community Association Management Law. This law is administered by the Division of Professions. For information concerning licensure and regulation of community association managers call (850) 487-1395. The hiring of a manager to administer the day-to-day operational functions of an association does not relieve the board from the responsibility to ensure the association complies with the Condominium Act and the Division's administrative rules.

RESTRICTIONS AND RESPONSIBILITIES OF UNIT OWNERS

Although buying a condominium unit offers advantages over buying a single family home, there are restrictions and responsibilities that accompany condominium ownership.

Restrictions

Restrictions on the use of both the individual unit and the common elements help to preserve the best interests of all unit owners. Many condominiums provide for limitations on the use, occupancy, and transfer of a condominium unit. For example, there may be restrictions on types of window coverings, pets, leasing, and the number of unit occupants.

Just as the use of the unit may be restricted, so may the use of the common elements. While all unit owners have the right to use the common elements, they must use them in the manner provided in the condominium documents and in the rules and regulations adopted by the board of directors of the association. Typical restrictions on the use of the common elements include limitations on parking and types of vehicles allowed on the premises, limitations on modifications to the condominium exterior, and restrictions on the use of recreational and other common facilities.

Since each condominium association has its own set of documents, the only way to determine the specific restrictions pertaining to a particular condominium is to review those documents. In addition to the use restrictions provided in the declaration of condominium, bylaws and articles of incorporation, the Condominium Act gives the board of directors the authority to adopt reasonable rules and regulations concerning the use of the common elements, common areas, and the recreational facilities. Restrictions are subject to change when the boards of directors or unit owners properly amend the documents to provide for such a change.

Financial Responsibilities of Unit Owners

The cost of operating and maintaining the condominium is funded through collection of assessments by the association. Unit owners pay assessments for their shares of the common expenses according to the proportions or percentages set forth in the declaration of condominium. In a residential condominium, a unit owner's share of common expenses must be in the same proportions as their ownership interest in the common elements and the common surplus or deficit. Also, for residential condominiums created after April 1, 1992, the ownership share of the common elements assigned to each unit is required to be based either on square footage or on an equal fractional basis. Unit owners are expected to pay assessments; therefore, assessments cannot be avoided by a unit owner choosing not to utilize various common facilities.

Assessments to unit owners vary depending upon the amenities and level of services being offered in a particular condominium. If you are purchasing a unit from a developer, you are entitled to receive an estimated operating budget showing the expected costs of operating the condominium prior to closing on your unit.

Note that the budget is based on estimated expenses and may differ significantly from the actual cost of association operations. Developers often provide a guarantee of assessments for one or more fiscal periods. Such guarantees typically hold assessments to a lower amount than might occur without the developer's guaranteed subsidy. Purchasers can expect an increase in the budget after the guarantee period expires.

Unit owners may also expect to face special assessments. These assessments are in addition to the regular assessments that each unit owner pays. Special assessments are typically levied when the association determines that there is either not enough money in the budget for a particular expenditure, or the expenditure was not anticipated and therefore was not included in the annual budget. Condominium documents often contain restrictions on the board's ability to levy special assessments.

Some of the expenses which may be found in a condominium budget include: administration, management fees, maintenance, insurance, taxes, garbage collection, pest control, utilities for common areas, and reserves for capital expenditures and deferred maintenance. There are requirements in both the Condominium Act and the Division's administrative rules regarding how these expenses should be disclosed.

In addition, the unit owner should expect to be individually responsible for such items as: real estate taxes, cost of private telephone service and equipment, insurance covering the contents and interior of the unit, maintenance of the interior of the condominium unit, privately contracted janitorial or maid services, and utility costs billed directly to the unit owner. Further information along these lines may be found in the condominium documents.

PART II FLORIDA CONDOMINIUM LAW: PROTECTIONS FOR UNIT OWNERS

In addition to various protections granted to buyers, the Condominium Act contains provisions protecting the rights of unit owners. These rights ensure that unit owners have the opportunity to be informed regarding the affairs of their condominium. Others are intended to prevent problems and provide remedies for existing problems. Some of these rights are summarized below.

Association Meetings

Unit owners are entitled to have an annual meeting. The date of the annual meeting for each association should be stated in its bylaws. Unit owners are also entitled to receive advance notice of all other association meetings, board of directors' meetings, and committee meetings. Depending upon the type of meeting, the noticing requirements contained in the Condominium Act may be met by the association posting advance notice of a meeting on the condominium property, and/or by mailing or delivering notice to each unit owner. The documents may also require additional notice. In addition to the right to receive notice of meetings, unit owners also have a right to attend **all** unit owner meetings, board of directors' meetings, and committee meetings (except those meetings specifically exempted by the law). Owners also have the right to speak at these meetings on designated agenda items.

Elections

The election procedures provided in the Condominium Act require the use of secret ballots or voting machines, and do not permit elections to be conducted by proxy. An association of 10 or fewer units may provide for alternate election procedures in its bylaws upon the approval of a majority of its total voting interests. These alternate procedures may provide for elections to be conducted by general or limited proxy.

Along with the right to elect directors in a condominium association, the Condominium Act also provides a procedure by which directors can be removed from office. This process is known as recall. Directors may be recalled from the board with or without cause by the vote or agreement in writing of a majority of the total voting interests.

Assessments

Unit owners cannot be required to pay assessments (regular assessments based on the adopted budget) less frequently than quarterly. Most associations collect monthly or quarterly assessments, the condominium documents should describe the frequency of collection, due dates and provide for late fees and interest on delinquent assessments.

If the board adopts a budget requiring an increase in excess of 115 percent of the assessments for the previous year, the board, upon receiving a petition of 10 percent of the voting interests, shall call a special meeting of the unit owners to consider an alternate budget. At this special meeting, unit owners can enact a new budget with the approval of a majority of the total voting interests. If the association is under developer control, a budget cannot impose assessments greater than 115 percent of the assessments for the previous year without approval of a majority of all the voting interests, including the voting interests of the developer.

At the end of each fiscal year, unit owners are entitled to receive a year-end financial report. Depending upon the size of the association and the amount of its annual revenues, a report of cash receipts and disbursements or more detailed financial statements, prepared in accordance with generally accepted accounting principles is required to be prepared. The association must either notify the owners that the report is available and provide a copy to the unit owner upon request (at no charge to the owner) or distribute the report directly to the unit owners.

Association Books and Records

Unit owners are entitled to have access to the official records of the association. These records must be maintained within the state. Within five working days after receipt of a written request, the association must make the official records available for a unit owner's inspection within 45 miles of the condominium property or within the county in which the condominium is located. An association is required to maintain these records for a specified period of time. For example, minutes of any meeting and all accounting records must be maintained for at least seven years. Ballots, proxies, and other papers relating to voting by unit owners must be maintained for at least one year. Other records, such as a copy of the recorded declaration of condominium, must be retained permanently.

Miscellaneous

Unit owners may void certain types of contracts entered into by the developer in the name of the association. Subject to specific requirements, unit owners may also vote to cancel contracts entered into by unit owner controlled associations, such as a contract for cable television service assessed against the unit owners as a common expense.

Finally, the Condominium Act provides unit owners and their invited guests the right to peaceably assemble on the condominium property.

This right is subject to reasonable rules and regulations, promulgated by the board of directors, pertaining to the use of the common elements and recreational facilities.

PART III DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES

The Division of Florida Condominiums, Timeshares and Mobile Homes within the Department of Business and Professional Regulation is the agency charged with the responsibility of ensuring that condominium associations comply with the requirements of the Condominium Act. The Division also promulgates administrative rules necessary to implement, enforce, and interpret these laws. For condominiums, these administrative rules are found in Chapters 61B-15 through 61B-24, Florida Administrative Code. In addition, Chapters 61B-45 and 61B-50 of the Florida Administrative Code, contain the administrative rules relating to arbitration of certain disputes between unit owners and their association.

The Division handles complaints alleging violations of the Condominium Act and corresponding administrative rules related to residential condominiums. The Division will attempt to resolve complaints against developers and associations as provide in the Division's enforcement resolution guidelines, which are based primarily on the harm caused by the alleged violation, and the association's compliance history.

For unit owner controlled associations those issues considered to involve less harm are addressed through educational resolution rather than an imposition of penalties. Examples of such issues include failure to allow unit owners access to official records and failure to properly fill a vacancy on the board. Repeated violations of a similar nature will require corrective action by the association. Failure to take corrective action may subject the association to penalties. More significant violations, such as the failure to properly propose and adopt annual budgets, failure to notice and hold annual meetings, and failure to properly conduct elections, also are addressed through educational resolution, but will require a response and corrective action from the association when warranted. Repeated violations of a similar nature will generally result in an enforcement resolution, including imposition of penalties against the association. In such instances, the Division can seek penalties of up to \$5,000 in the case of a major violation and up to \$2,500 in the case of a repeated minor violation.

The Division also pursues complaints against developers, and on a limited basis, against individual board members or officers of associations. In such cases, the Division has to show that such individuals have willfully and knowingly violated the law, and have failed to take corrective action after having been provided with the opportunity to do so.

RESOLVING INTERNAL DISPUTES

The Condominium Act also provides other mechanisms for resolving disputes between unit owners and associations. The first of these mechanisms is mediation, which is defined as the process involving a neutral third person acting to encourage and facilitate the resolution of a dispute between two or more parties. It is informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. A mediator's role includes assisting the parties in identifying issues, encouraging joint problem solving, and exploring settlement alternatives. The Division maintains two lists of individuals located throughout Florida who will provide mediation for the resolution of condominium disputes. One list consists of volunteer mediators willing to provide mediation free of charge. The other list consists of mediators who provide mediation for a fee. If you wish to contact a mediator in your area, you may obtain either list by contacting the Division of Florida Condominiums, Timeshares and Mobile Homes.

The Condominium Act also provides for mandatory non-binding arbitration of certain disputes. Arbitration is a method of solving disputes by submitting them to an impartial person who has the power to make a determination concerning the issues in controversy. Before going to court, parties involved in condominium disputes as defined by the Condominium Act must petition the Division for mandatory non-binding arbitration.

Unit owners, associations, and tenants, where the subject matter of the dispute concerns a tenant's use of the unit, can petition the Division for arbitration. Disputes eligible for arbitration include the board's authority to: (1) require an owner to take action, or not to take action involving that owner's unit, or (2) alter or add to a common element or area. In addition, disputes may be arbitrated when the association is required but fails to: properly conduct elections, give adequate notice of meetings or other actions, properly conduct meetings, or allow inspection of books and records. Disputes excluded from the arbitration program include disagreements regarding the interpretation or enforcement of any warranty, the charging of a fee or assessment, and the collection of an assessment charged against a party. The following disputes are also excluded from the arbitration program: the eviction or other removal of a tenant from a unit, alleged breaches of fiduciary duty by one or more directors, and claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

If you wish to file a petition for mandatory non-binding arbitration, you may obtain a copy of the petition form and rules of procedure by contacting the Division of Florida Condominiums, Timeshares and Mobile Homes. There is a filing fee of \$50 due at the time a petition is filed.

A Glossary of Commonly Used Condominium Terms

Amendment: A written statement of a change or revision in a bylaw or other governing document.

Annual Financial Report: A report of financial activity taking place during the current year. Annual financial reports range from a minimum of a report of all the receipts and expenditures of an association for a given year, prepared on the cash basis to detailed financial statements, prepared in accordance with generally accepted accounting principles.

Articles of Incorporation: The document creating the corporate entity responsible for operating the condominium. It describes the purpose of the association as well as its powers and duties.

Assessment: A unit owner's share of the amount of money required to pay the common expenses of the association and the condominium.

Association: The entity responsible for the operation of the condominium. In most instances, the association is a not-for-profit corporation. The individual unit owners are members of the association.

Board of Directors: The representative body responsible for administration of the association. They are usually unit owners and are elected to office.

Board Meetings: Any gathering of at least a quorum of the members of the board of directors for the purpose of conducting association business.

Bylaws: The document that describes the operational requirements of the association. It provides for the administration of the association including procedures for: calling meetings,

determining voting requirements, quorums, and contains other requirements relating to the association's operation.

Common Elements: The portion of the condominium property that is not included in the units, as described in the declaration of condominium. The common elements are owned jointly by all unit owners.

Common Expenses: All expenses properly incurred by the association for the condominium in carrying out its duties and responsibilities.

Common Surplus: The excess (or deficit) of all revenues of the association over the common expenses.

Condominium: A form of ownership of real property. This property is made up of units that may be owned by one or more persons, and common elements that are owned jointly by all unit owners.

Condominium Parcel: The unit together with its undivided share in the common elements.

Conversion: A condominium that is created from existing improvements.

Declaration of Condominium: The document that establishes the property as a condominium. A condominium is considered to be legally created when the declaration is recorded in the public records of the county where the condominium is located. The declaration contains legal descriptions of the property, including the units. It also describes each unit owner's undivided share in the common elements, membership and voting rights in the association, and covenants and restrictions on the use of the units and common elements.

Condominium Documents: The set of papers creating and describing the condominium and the association, including items such as the declaration of condominium, articles of incorporation, bylaws, and any existing leases or contracts of the association.

Leasehold: The right to use property in exchange for rent.

Lien: A condominium association's claim against each condominium parcel to secure the payment of assessments.

Limited Common Elements: The portions of the common elements that are reserved for the use of a certain condominium unit or units to the exclusion of other units. They must be specified as such in the declaration of condominium.

Multi-condominium: A condominium which is part of a group of more than one condominium operated by a single condominium association.

Percentage of Ownership: The ownership share in the common elements that is assigned to each unit. The total percentage of all units must equal 100. In a residential condominium, the percentage of and manner of sharing common expenses must be the same as the undivided shares in the common elements. The percentage of ownership assigned to each unit should be found in the declaration of condominium.

Phase Condominium: A single condominium that is created over time by amending the declaration as new units are added to the project. The developer has the option, but is not obligated, to add future land, units and other improvements to the condominium for a period not

to exceed seven years from the initial creation of the condominium. As phases are added, the percentage of ownership in the common elements changes.

Proxy: Written authorization for one person to act or vote for another at a meeting of the association.

Quorum: The number of voting interests or board members of an association, who must be present at a meeting in order to legally transact business.

Reserves: Reserves are funds that are restricted as to their use and set aside by the association.

Special Assessment: Any assessment levied against unit owners other than the regular assessment required by an annual budget.

Undivided Interest in Common Elements: The percentage or share of ownership in the common elements that is appurtenant to a unit. This share passes with title to a unit and cannot be separated.

Unit: A part of the condominium property that is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration of condominium.