

## Questions and Answers on Condos and Townhouses

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- Can the homeowners' association employ a management company to assist in managing my condo or townhouse complex?
- Can the homeowners' association do anything about a developer who is causing problems in the development?

Every condo or townhouse development also has "common areas" of the property (recreation areas, sidewalks, parking lots, etc.). Condo owners share ownership of the common areas with other owners, while common areas in townhouse developments are usually owned by the homeowners' association for the benefit and use of unit owners.

Are there any other legal differences between condos and townhouses?

Yes. The creation, sale and management of condos are governed by specific statutes (the "Unit Ownership Act" for condos created before October 1, 1986 and the "North Carolina Condominium Act" for condos created on or after October 1, 1986). There are no specific statutes governing most townhouses. However, townhouse projects of more than 20 units and created on or after January 1, 1999 are covered by the Planned Community Act. So are certain developments which volunteer to be subject to all or a portion of the Act. Townhouses that fall outside the Planned Community Act are governed by the same general laws that govern single-family houses. For this reason, developers are much more likely to market townhouses. Consequently, there are far more townhouse projects than condominium projects in North Carolina.

What is a Declaration of Restrictive Covenants or Declaration of Condominium?

Unit ownership in both condo and townhouse projects is subject to certain restrictive covenants (deed restrictions). These are usually embodied in a recorded legal document called a "Declaration of Condominium" or "Declaration of Restrictive Covenants" which is recorded at the county Register of Deeds office. The declaration describes the nature of the project and establishes rules to govern the use of the units

and common areas. For example, the declaration may limit the property to residential use, require that units be a minimum size and certain architectural style, etc.

Will the closing attorney or real estate agent furnish me a copy of the declaration, restrictive covenants, and bylaws of the homeowners' association?

Not necessarily. The closing attorney does not have the specific duty to furnish these documents, but will do so if you request them. If a real estate agent is assisting you in your purchase of a condo or townhouse, the agent can probably obtain a copy of these documents. But you may want to directly consult your attorney and/or the homeowners' association. If a real estate agent furnishes you a copy of the bylaws or covenants, you should be aware that they may not be current, since they remain subject to amendment by the developer or homeowners' association.

Are there any special protections for condo purchasers?

In the past, home ownership typically involved a single-family house with a yard. But today, due to increased prices of single-family homes and changes in lifestyles, many people either cannot afford or simply prefer not to own traditional single-family homes. In response to their needs, alternative forms of home ownership have been developed. Among these are multifamily housing complexes containing townhouses and condominiums (often referred to as "condos").

This pamphlet focuses on questions frequently asked about purchasing and owning a townhouse or condo. What are homeowners' associations? What are my responsibilities as an owner of a condo or townhouse? What are the developer's responsibilities? These are some of the subject areas addressed.

The reader is cautioned however that the legal aspects of condo and townhouse ownership are too complex to be treated in detail in this pamphlet. Therefore, prospective purchasers and owners of condos and townhouses are advised to consult their attorneys for specific guidance.

## **Purchasing a Condo or Townhouse**

What's the difference between a condo and a townhouse?

Condo unit owners own the inside of their units. Townhouse owners own the complete unit, including exterior surfaces and the land on which the unit is built.

Maybe. If you are considering the purchase of a new condo unit created on or after October 1, 1986, the developer (or the developer's agent) must give you a public offering statement. This statement is prepared by the developer and contains information about the size of the development, the projected completion date, the legal documents which govern the property, and the projected common expense assessment.

It will also inform you of your right to cancel the purchase contract within SEVEN CALENDAR DAYS following your execution of the contract.

No public offering statement is required to be given to you if you purchase a condo created before October 1, 1986, a condo which is not new, or a townhouse. And you have no automatic right to cancel your purchase contract.

However, when purchasing any pre-owned condo unit created on or after October 1, 1986, the seller must give you a "resale certificate." This statement sets forth the monthly assessment for common expenses and any other fees payable by the unit owner.

Does the developer have to finish the development?

No. Unless the developer has specifically contracted to complete the development, it can stop construction of new units at any time and sell any remaining undeveloped portions of the development (subject to applicable local and state laws).

Does the developer have to provide promised amenities?

For condos created on or after October 1, 1986, the developer is required to file a plat or plan showing any improvements (swimming pools, tennis courts, club house, etc.) which are planned. Each improvement must be labeled "MUST BE BUILT" or "NEED NOT BE BUILT." The developer is required to provide only the amenities which are labeled "MUST BE BUILT." However, the developer may not promote any amenities which are labeled "NEED NOT BE BUILT."

For condos created before October 1, 1986 and for townhouses, no law requires developers to provide promised amenities. However, if the developer fails to provide a promised amenity, a property owner may file a civil suit based on the developer's misrepresentation.

Purchasers should be especially cautious when purchasing a condo or townhouse unit in a development that is incomplete.

## **Owning a Condo or Townhouse**

Who is responsible for maintaining my condo or townhouse?

Owners are responsible for maintaining the interior of their units; and townhouse owners may also be required to maintain their doors, windows, and the crawl space under their units. The homeowners' association is typically responsible for maintaining all common areas and the exterior of buildings.

What is a homeowners' association?

In all condo and townhouse projects, the "common areas" of the property (open spaces, recreation areas, tennis courts, etc.) must be managed and maintained for the benefit of unit owners. To accomplish this, a homeowners' association is usually established when the project is created. The association will have an elected executive board which will manage the association and perform such tasks as enforcing the rules and regulations and collecting the homeowners' dues.

The developer, however, usually remains in control of the association until the developer no longer has the majority of the votes in the association, or until a predetermined deadline has passed.

Can my homeowners' dues be increased?

Yes. The common expenses of your development may include grounds' upkeep, building maintenance, insurance premiums, property taxes and management fees. When these expenses go up, the cost is usually passed on to the property owners in the form of increased dues and assessments. The legal authority to increase dues and to assess homeowners should be set forth in the documents which govern the development.

Prior to signing a contract to purchase a condominium or townhouse, you should examine the governing documents to determine if you will be obligated to pay maintenance fees and assessments which may increase over time. You should find out who has the authority to establish fees and assessments and whether there are any limits to the amount which can be charged. You are less likely to be shocked by fee increases if you have read this information prior to signing a purchase agreement.

Can an owner avoid paying assessments for the common expense of the property?

No. All owners of condos (including the developer) must pay their share of common expenses. The same would also be true of townhouse owners if there is a clear and definite statement in the restrictive covenants specifying the purpose of the assessment and the authority of the homeowners' association to collect the assessment.

Can the homeowners' association tell me what I can and cannot do on my own property?

Maybe. The law allows you great freedom to tailor the use of your property to your particular lifestyle. However, this freedom is not unlimited and is subject to certain

restraints. A homeowners' association (or the developer) may be authorized by the declaration to adopt bylaws or other rules and regulations which may govern your conduct. This can substantially affect your ability to use your property. It could even restrict your ability to rent your unit to others.

So before you purchase a townhouse or condo, you should carefully read the rules governing the project and consult your attorney if you have any questions.

What should I do if I disagree with the association's rules?

If a dispute arises between you and the association over any of the association's rules, it may be necessary to resolve the matter in court. Just because a provision appears in the bylaws or rules does not automatically mean that it is enforceable. But in most cases, a rule will be upheld by the courts if it is considered "reasonable."

Or, you may try to change the rules. Any change in the bylaws or rules and regulations of the homeowners' association requires approval by the members of the association or its executive board. Each homeowner is entitled to vote.

What happens if I do not abide by the restrictive covenants, bylaws, or rules and regulations?

If you own a condo created before October 1, 1986 or a townhouse, you may be taken to court by another homeowner in the development, or by the homeowners' association (in townhouse cases), or by the developer in order to force your compliance with the development's regulations.

If you own a condo created on or after October 1, 1986, you may be subjected to a hearing before the association's judicial panel where you could be fined a maximum of \$150. In addition, another condo owner, or the association, or the developer (if units are still being built in the complex) may take you to court to force compliance.

The same procedures would apply if you wish to complain about a neighbor who may be violating one of the homeowners' association's regulations. However, other problems (such as a noisy neighbor) may not be covered by the development's covenants, bylaws or rules and regulations. In these cases, you may have to contact a law enforcement official or resort to other legal action.

Can the homeowners' association employ a management company to assist in managing my condo or townhouse complex?

Yes. A homeowners' association, through its executive board, will often employ a management company to take care of maintenance, collect dues and assessments, and carry out other day-to-day responsibilities of the homeowners' association.

The members of the executive board and the staff of management companies are NOT required to be licensed by the N.C. Real Estate Commission or any other state agency so long as their management activities do not involve the sale or rental of units. However, licensed real estate brokers who manage homeowners' associations must adhere to the N.C. Real Estate License Law and related rules. This includes keeping the collected funds of others in a trust account, and maintaining records of all collections and disbursement of these funds.

Can the homeowners' association do anything about a developer who is causing problems in the development?

If the developer is still in control of the association, it is unlikely that the association will be able to effectively take action against the developer; however, the individual homeowners may be able to take legal action against a controlling developer. If the developer is not in control, the association can treat the developer just as it would any other homeowner.