

Residential Condominium Concepts

In general terms, residential Condominiums take what otherwise might have been an apartment, townhouse or house, and permit individual sales of the separate dwelling Units. All of the dwelling Unit owners own the common areas together and collectively pay for the upkeep and other common expenses. A Condominium, however, is not like living in an apartment because the owner is usually responsible for the maintenance and repair of everything within the Unit - the property manager does not fix it, as would be the case with a tenant. To better understand Condominium ownership, an understanding of certain key concepts is needed.

Declaration: The Declaration is a written document that creates a Condominium from one or more parcels of real estate. In the Declaration, the owner declares his or her property to now be a Condominium. The Declaration divides the property into several smaller parcels: Units, which are individually owned, and the Common Elements, which are owned in common by all of the Unit owners together. The Declaration sets out what percentage of ownership interest in the Common Elements is assigned to each Unit, and the number of votes that the owner of each Unit has in the Association.

Bylaws: The Bylaws give the rules for the governance of the Condominium and the operation of the Association. The Bylaws may include restrictions on the use and maintenance of the Units and the Common Elements.

Declarant: The Declarant is the builder or developer who declares his or her property to be a Condominium by recording the Declaration and plat maps. The Declarant may reserve a period of "Declarant Control" that gives the Declarant time to finish construction of the Condominium project and/or to sell the Units. During this period, the Declarant exercises the powers and responsibilities of the Association through its exclusive right to appoint all of the directors to the Association board. As the Units are sold to purchasers, elections are held at different intervals and the Unit owners (other than the Declarant) elect an increasing number of the directors. Declarant Control lasts up to ten years in expandable Condominiums and up to three years in other Condominiums.

Unit: A Unit is the part of the Condominium that is privately owned and used by the Unit owner. A Unit owner has exclusive ownership and possession of his or her Unit. The statutes define Unit in terms of cubicles of air, enclosed spaces located on one or more floors, and rooms. However, a Unit is not limited to this apartment-like concept. A Unit may also include structural parts of a building (walls, wood frame) or a Unit may be a whole building, a building plus the surrounding land, or just land (similar to a lot). Units may also include separate areas that are some distance apart. For example, a Unit may be defined to include a dwelling plus a storage area, patio or parking space.

A Unit is defined by its boundaries. The Unit owner owns everything within the Unit boundaries. The boundaries of each Unit are defined in the Declaration, while the Condominium plat shows the general location of each Unit in the Condominium. The Declaration may describe the perimeter walls, sometimes known as the "perimetric boundaries," the upper boundaries and the lower boundaries. Generally, everything within these boundaries is part of the Unit and everything outside of these boundaries is part of the Common Elements. If the boundaries are decorated surfaces (paint, wall paper, carpet), then all of the structural and internal components of the walls are Common Elements. If the outer boundaries are the "studs" or the framing, then the Unit includes the drywall and anything attached to the studs.

Unit boundaries may impact the Unit owner's maintenance responsibilities, ability to make improvements or alterations, and insurance liability. Generally, Unit owners are responsible for all repairs and maintenance within the Unit and should obtain insurance coverage for everything included in the Unit. Unit boundaries vary from one Condominium to another.

Common Elements: Common Elements means everything else in the Condominium that is not a Unit. In a typical residential Condominium, the Common Elements may include the land, the exterior and common areas of buildings (entranceway, halls, elevator, meeting room, etc.), landscaping, roads, any outside parking areas, outdoor lighting, any recreational facilities (swimming pool, tennis courts, clubhouse, etc.) and all other common areas and amenities.

The Common Elements are owned collectively by all of the Unit owners. Each Unit is assigned a percentage ownership interest in the Common Elements. These Percentage Interests are established in the Condominium Declaration. For example, in a Condominium with 100 Units, each Unit may be allocated an undivided one percent interest in the Common Elements. Thus, the owner of a Unit would own a one percent share in the tennis courts, road, parking lot, etc.

A Unit, together with its Percentage Interest in the Common Elements, is considered to be real estate. Basically, the Unit is owned outright, and the Common Elements are owned together with all of the other Unit owners.

Limited Common Elements: The Limited Common Elements are Common Elements that are identified in the Declaration or plat as reserved for the exclusive use of less than all of the Unit owners. Typically, a Limited Common Element is reserved for the use of one Unit. Basically, you don't own it, but you are the only one who may use it. This exclusive use, however, may be subject to restrictions stated in the Declaration, Bylaws or Condominium rules. Limited Common Elements may include features like a storage area, patio, balcony, garage parking space, or a boat slip.

One advantage to having a storage locker or a parking space as a Limited Common Element is that the Unit owner may be permitted in the Condominium documents to transfer Limited Common Elements by deed to other Unit owners. Thus, Unit owners may swap garage spaces or sell an unwanted parking space. The other primary advantage relates to maintenance. If a parking space is a Limited Common Element, it may be more likely that some of the maintenance responsibilities will belong to the Association rather than to the individual Unit owner. Common Elements and Limited Common Elements are owned by all Unit owners collectively and are subject to more group control and restriction.

Percentage Interests: Every Unit owner shares in the ownership of the Common Elements with the other owners. Each Unit is allotted a portion of this ownership called the Percentage Interests. The Percentage Interests are stated in the Declaration and come automatically with the ownership of a Unit. The Percentage Interests often determine the share of common expenses that a Unit owner must pay for the repair and maintenance of the Common Elements and the operation of the Condominium Association. Percentage Interests may be an equal percentage for all Units or based upon the square footage of the Units, the location or value of the Units, or some other formula stated in the Declaration.

Association: The Association is the entity that the Unit owners use to act together as a group to manage and maintain the Condominium property and finances. This group will be either a nonstock, nonprofit corporation or an unincorporated Association. Every Unit owner is automatically a member of the Association and votes for the Association directors who, on behalf of the Association, manage and maintain the Common Elements, adopt budgets and set the amount of the fees or assessments paid by the Unit owners for the Association's common expenses. The Association directors and officers are responsible for the maintenance of the Condominium property, including lawn and garden care, snow removal, painting, roofs, outside lighting, and amenities such as swimming pools and tennis courts. They are responsible for preparing budgets, collecting assessment fees, maintaining books and records, overseeing any reserve funds, preparing financial reports, and filing tax returns. The board of directors is responsible for enforcing the rules, communicating with Unit owners and providing disclosure materials for Unit sales. Some or all of these functions may be delegated to a Condominium manager or other professionals such as accountants.

Assessment Fees: The Association sets a budget for all of the Condominium expenses and divides those expenses among the Unit owners. These fees are called "common assessments" or "condo maintenance fees" and typically are paid monthly. The Association may also create reserves for future maintenance and repairs. In addition, the Association may also charge the Unit owners with "special assessments." Special assessments tend to be for a single amount and have a specified due date. For instance, the Association may have each Unit owner pay a special assessment to help pay for major repairs when the Association's Reserve Funds are inadequate or when the cost was not anticipated in the budget.

Reserve Funds: A Condominium may systematically build a Reserve Fund to pay for future repair projects such as replacing the roof or siding. A Condominium Association may require a large, up-front contribution to these reserves by each initial Unit buyer and/or may allocate a portion of each monthly Assessment Fee to reserves. The accumulation of Reserve Funds hopefully will help save the Unit owners from having to pay large, unexpected special Assessment Fees in the future. For example, if a Special Assessment is needed to replace all of the roofs in the Condominium and there are no Reserve Funds accumulated for this purpose, the Association will either have to borrow money and incur an interest expense or impose a large special Assessment Fee against the Units. Under Wisconsin law, every Condominium is not legally required to establish Reserve Funds.

Statutory Reserve Account: A Statutory Reserve Account is established under Wis. Stat. § 703.163 for the repair and replacement of the Common Elements in a residential Condominium (optional for a small Condominium with less than 13 units or a mixed-use Condominium with residential and non-residential units). In a new Condominium, the Declarant initially decides whether to have a Statutory Reserve Account, but after the Declarant Control period ends, the Association may opt-in or opt-out of a Statutory Reserve Account with the written consent of a majority of the Unit votes. Existing Condominiums must establish a Statutory Reserve Account by May 1, 2006 unless the Association elects to not establish the account by the written consent of a majority of the Unit votes. Condominiums may have other Reserve Fund accounts used for the repair and replacement of the Common Elements that are not Statutory Reserve Accounts and that operate apart from §703.165