Condos 101: Introduction

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Condominium projects have become ubiquitous in urban centres across Canada, and Manitoba is no exception. To many people, a "condo" is a type of apartment that is owned and that requires the payment of maintenance fees. While this basic understanding is not wrong, there are many aspects of this form of real property ownership which can be nuanced and complex. Developers, property managers, unit owners and other stakeholders should be familiar with certain aspects of the condominium form of property ownership in order to best address the circumstances they may face in their respective roles.

This article introduces the broad subject of condominium law and provides a basis to explore some of the more intricate subjects, such as buying and selling a condominium unit; enforcing the rules; differences between apartment style and bare land (detached) condominium projects; and condominium development.

LEGALLY, WHAT IS A CONDO?

A condominium project (or "condo") is a type of real property comprised of units and common elements. Units are the interior spaces that belong exclusively to the owner. These are the residences of a typical apartment-style condominium project. Common elements are all the other parts of the project, such as hallways, walkways, common areas, as well as common utilities and amenities, such as the HVAC system, elevators, and so on. In a bare land condominium development, common elements can include the roads, lighting, and parking areas as well. Common elements are owned communally by all of the unit owners in accordance with their percentage interests as set out in the condominium's Declaration. This percentage interest also appears on the title to the unit.

Common elements may be 'restricted use', for example maintenance and utility rooms. While these parts of the property are common elements, not every unit owner should be able to access a building's HVAC or other utility equipment, so their use is restricted. Common elements may also be 'exclusive use', for example balconies or parking spaces. Although

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these parts of the property are common elements, they are designated for the exclusive use of the owner(s) of one unit.

In all cases, common elements are maintained through the payment of common element fees by the unit owners. Common element fees are what most people know as "condo fees" or "maintenance fees". They are monies that each owner pays into a large pool which is then used to maintain, insure and repair the condominium project. Common element fees are also used to provide services such as property management, landscaping, and snow clearing, and special amenities particular to that project, such as a gym or library.

Owning condominium property means owning and maintaining two things: a unit and a share in everything else.

HOW ARE DECISIONS MADE?

Owning a condominium also means having to make certain decisions as a group of owners, such as how to spend the common element fees, how much to save for future maintenance and capital expenditures, and what the rules of the project should be. These decisions are made by a Board of Directors elected by the unit owners. Typically, directors are elected for a term of one or two years and may stand for re-election at an Annual General Meeting at the end of their term. During their term, however, directors make a number of decisions relating to the condominium project without the pre-approval of owners. These decisions can have a significant impact on unit owners and the project as a whole.

Directors do not make these decisions in a vacuum, however, and are obligated to act within the parameters established by the documents that created the condominium project.

HOW IS A CONDO CREATED?

In the same way that a business corporation is created by the registration of Articles of Incorporation, a condominium corporation comes to exist by registering certain documents in the Land Titles Office. The condominium corporation is the entity that is responsible, through its Board of Directors, to collect common element fees and govern the condominium project. The documents required to create a condominium corporation are: the Plan, the Declaration and the initial By-law.

a) The Plan is the set of professional drawings that define the property and it contains 3 parts. Part 1 sets out the location of the building or buildings located on the land. Part 2 sets out the "property lines" within the building, defining the boundaries of the units and the common elements. Part 3 is the architectural drawings, which show, in detail, the various design elements of the condominium project (room layout, materials, detailed dimensions, exterior roofing, cladding, etc.).

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b) The Declaration is the primary operating document of the condominium project. It establishes the number of units, the percentage ownership interest that each owner has in the common elements and the percentage allocated to each unit for voting. It also sets out responsibilities for maintenance, repair and insurance as between the unit owners and the condominium corporation, and the restrictions on the use of the units and the common elements. These restrictions can include things like whether pets are allowed, whether smoking is allowed, and even things like what kind of fixtures are allowed to be installed on the exterior of units. More modern Declarations may also include provisions that contemplate the use of legalized cannabis and restrictions to prevent units from being used as "AirBnB" or "VRBO" rentals.

c) The initial By-law sets out certain governance and other provisions required to be included under the The Condominium Act (Manitoba). It is where owners, directors and property managers will find information on notice requirements for meetings, quorum, electronic participation and other procedural matters.

CONCLUSION

Condominium projects represent a unique form of property ownership that blends individual ownership of a unit with shared community living. Developers, property managers, and unit owners should be mindful of some of the basic principles of condominium law in carrying out their respective roles as stakeholders in a given condominium project.

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