

## RE12R07: Condominiums, Cooperatives and Timeshares

<https://www.mass.gov/service-details/re12r07-condominiums-cooperatives-and-timeshares>

### A Description of Condos, Coops and Timeshares

#### Objective

To provide a general overview of the Condominium Law in Massachusetts and provide an outline as to the differences between Condominiums, Cooperatives and Timeshares as a form of ownership.

#### I.

##### A. What is a Condominium:

A Form of individual ownership with a jointly owned undivided n interest in common area.

###### 1. Residential Condos

- a. Multi-Unit Buildings-
- b. Converted houses
- c. Condo
- d. Vacation Condos

###### 2. Commercial Condos

- a. Industrial
- b. Shopping
- c. Mixed Use

#### B Property Interests in Condominiums

##### 1. Real Property Interests

- a. Unit -
- b. Common Areas -

##### 2. Personal Property Interests: -Common area

Examples: Clubhouse furniture, basketball hoop, picnic table

#### C. How A Condominium is Created:

In Massachusetts a condominium is created under the provisions of Massachusetts General Laws (MGL), Chapter 183A.

The documents and instruments that create, describe, and establish the framework for governance:

##### 1. Master Deed:

This is the legal instrument that transfers property to condominium ownership and describes: *Each is different but follows a familiar pattern according to the powers of the statute.*

The deed includes:

- Description of land and buildings
- What you own and what's common area
- Description of limited common elements
- Determination of percentage interest
- Architectural and use restrictions
- Outline of managing entity
- Protection of first mortgagees
- Plat/ plot plan
- Amendments

## 2. Unit Deed:

The individual Unit Deed is the document that provides the unit buyer with the following basic rights and obligations:

- Right of ownership and % interest
- First time conveyed, has floor plans attached

## 3. The Declaration of Trust (The Bylaws)

This is the document that establishes the Condominium Association and its legal authority. Most Condominiums in Massachusetts are set up as trusts with trustees. If the association is to be incorporated, the Articles of Incorporation will establish the association and its organizational structure.

Describes obligations and powers of the Trustees, procedures for maintenance and repair of the unit and common areas, insurance requirements, association meetings, and voting rights, handling of common area expenses, reserve funds, and assessment of unit owners.

4. Rules and Regulations: Summarize important provisions of the trust which govern the conduct of residents, guests, and tenants.

## 5. Amendments

### **D. The Annual Budget:**

#### 1. Reserves

- a. Capital - allocation of funds for maintenance of the common area
- b. Contingency-reserves that cover emergencies that aren't foreseen or in the budget

*Note: language typically included in the P & S explaining that the conveyance of the condo shall be deemed to include the Seller's allocable share of reserve funds held by the organization of unit owners. This is explained to Seller when a listing is taken.*

#### 2. Condominium Fees - Determined by the annual budget; usually paid monthly.

Owners are typically assessed expenses according to their % interest.

The percentage interest is the relationship of the unit to the total of all units. The law states that this shall be the relationship of unit fair market value to the total of all market values.

3. 6 (d) certificates - refers to section of M.G.L. 183A, verifies owners payment status of fees and assessments.

4. Special Assessments - \$ needed above and beyond the current budget and reserves to replace a capital item. Any now paid? Any to be considered?

### **E. Insurance Policies:**

1. Master Insurance Policy - Property and liability coverage for common areas  
The unit owner might not be covered for certain items such as cabinets and appliances through this policy.

2. Unit Owner's Policy - Real and personal property and liability for unit owner

### **F. Unit Taxes:**

Paid individually by unit owners - usually based on both the tax assessment and % share of common area. If valuation of common area was taxed directly to the association, it would be passed on to the owners through the condo fee.

### **G. Right of First Refusal:**

Some condominium documents, in the Master Deed, or in the Declaration of Trust, contain an element called "Right of First Refusal" which guarantees to the association or its members the right to buy a unit under the same terms and conditions as set forth in a bona fide contract with a potential purchaser of that unit, provided the right is exercised within the time period specified in the documents.

Letter of Declination - Waiver of right of first refusal; required at closing

### **H Condo Super Lien Bill (Chapter 400 of M.G.L. 183A):**

1. Priority of Lien - Signed into law in 1992 - the most sweeping revision of the Mass. Condo Law since its enactment. Gives condo associations the authority to impose a "priority" lien (taking precedence over the first mortgage on the condo unit) on owners who fail to make required common-area payments. In order for costs and fees to be a super-priority item, a notice to the owner and first mortgagee after 60 days of delinquency and a separate notice to the lender 30 days before filing the lien foreclosure action. If the association were to proceed to a lien enforcement sale of the unit, the effect would be to wipe out the first mortgage. However, payment at any time of the super-priority amount will eliminate the super-priority. This provision is intended to balance the interests of associations and lenders. Important for a condo association to have legal counsel involved to serve the proper notifications and monitor the process.

2. Unit Owner's Liability - Explicit recognition that fines, losses and costs of enforcement for a unit owner's (or tenant or guest's) misconduct will constitute a lien

3. Due Diligence Issues and Fiduciary Duties:

A. Provision of access to condo docs and provision of information about rental guidelines, pets, assigned versus deeded parking.

B. Fiduciary Obligations of Buyers Agents to provide analysis of market value, alert buyer to potential issues of concern, including financial health of the complex, average length of time for units on market in complex, vacancy rates, if applicable, and % of owner-occupied units.

4. On File Documents - The association, in the custody of the trustees or management company, must keep up-to-date copies of the recorded master deed, by-laws and amendments, a minute book of the association meetings, and financial records, contracts for work or services to be provided to the association, and insurance policies. These records must be made available for inspection by unit owners and first mortgagees, including a right to copy at the requesting party's expense.

5 Management Obligations - Management contracts must provide for the right of the Board to terminate the contract for cause with 10 days notice (but giving that amount of time to cure) and 90 days (or less if the contract permits) to terminate without cause.

6(d) Certificates must be furnished within 10 business days after a written request.

## **I. Condo Conversion Statute- Emergency legislation, approved in 1983 (St. 1983, c.527)**

Major Conversion Provisions- Applies to co-ops as well as condos; doesn't apply to buildings containing less than 4 residential units-Review highlights of the law, including tenants have a period of time to purchase on terms and conditions the same or more favorable than those extended to the general public.

### Protected Classes

a. Elderly, Handicapped, Low or Moderate Income - 62 years+. Physically handicapped, income less than 80% of median income for the area set forth in HUD regs.

b. Time to Vacate- 1 year for elderly, disabled and low to moderate income people.;

c. Moving reimbursement -Up to \$750.00 of documented expenses for non-protected classes; up to \$1,000 for protected classes. Tenant has to be up-to-date on rent payments and voluntarily vacate before end of notice period to be eligible for reimbursement.

\*\*Any city or town may impose their own conversion regulations in lieu of this statute (Use example such as recent adoption of condominium conversion ordinance by city of Boston).

## **II Cooperatives:**

Unlike condominiums, residents do not own their units, but instead, own shares in a corporation that owns the building.

1. The Proprietary Lease -Spells out the number of shares a Buyer will own and states that those shares entitle him to occupy a certain space and have access to the building facilities. At closing, the Buyer receives a proprietary lease and stock certificates.

2. Monthly Fees -Amount determined by # of shares. The allocation of shares is determined by unit size, location, condition, and amenities. The monthly fee covers maintenance, repairs,

improvements, as well as payment of real estate taxes and interest on the underlying mortgage for the building(if applicable).

3. The Board of Directors- Elected from shareholders; oversees management, may have a managing agent, has the authority to approve or disprove a prospective purchaser - scrutinizes a prospect's financial documents - in a privately owned co-op (no government agency subsidy) has the right to reject anyone they feel will alter the quality of life of the co-op as long as the reason doesn't involve discrimination against a protected class  
.i.e. ( Cher, Madonna, Richard Nixon, public figures John Walsh (local case).

4. Financing Issues -

Higher risks to shareholders in case of co-op owner default on payment - the difference need to be made up by other shareholders. The bank financing co-op loans is in second position to the bank holding mortgages on the building. The Board establishes the amount of financing allowable for unsubsidized market rate cooperatives, more limited availability of co-op financing, because the only collateral is the lease and the stock certificates.

5. Special Assessments

Like a Condominium owner a cooperative member can be issued a special assessment for repairs that need to be made to the cooperative.

6. Activity coop - condo comparison list

### **III TimeShares/Interval Ownership**

Started in the French Alps in the 60's, time shares spread through Europe and reached the United States in the early 70's.

1. Ownership (Fee Simple)- The Buyer buys his unit outright for the specified week or weeks spelled out in his contract. He has a deed, title, and title insurance. He can rent or sell his timeshare for profit or leave it as part of his estate. He will pay real estate taxes and mortgage interest just as in a regular condo purchase, but the deductions are based on the fraction of the year he actually owns. Majority of time shares are purchased with a personal loan. Loans for both ownership and right-to-use plans are unsecured consumer loans.

2. Right to Use (Leasehold Interest)- Right to use every year for the specified period of time. Upon expiration of the lease period, the property reverts back to the Owner.

With both types of time shares, there is usually an annual maintenance fee.

3. Public Offering Statement

4. Exchange Programs-

- External - independent service with a membership fee
- Internal - in-house service for affiliated resorts
- Trading Network - system where owners make direct arrangements to swap units with one another

5. Example: Marriott's Custom House

6. Fractional Ownership

## **Items for Discussion:**

What is included in the condominium fee?

Operating Reserve

Capital Reserve

What are the approximate utility costs for the unit?

Are utilities metered separately or included in the fee?

Is the parking deeded or assigned?

Is there guest parking?

Are pets allowed?

Can I rent out my unit?

What are the arrangements for trash/refuse disposal?

What are the arrangements for snow removal?

Is there a security system?

Is there extra storage?

How is mail and parcel delivery handled?

What is the percentage of owner-occupied units?

## **Feedback**

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- Yes
- No