

Buying a Condominium

a user's guide

March 2009



Before you buy a condominium, ask these questions:

- What is included in the unit?
- What is included in the common property?
- What percentage ownership of common areas is included with the unit?
- What exclusive-use areas are included? Is there an additional fee? Is maintenance required?
- How many of the units are unoccupied? How many are rented?
- Do the unit owners own the recreational facilities as part of the common property, or does the condominium corporation lease them? Are they used by anyone besides the unit owners? If they are leased, what are the terms?
- Does the common property appear to be well maintained and managed?
- What is the development's history? For example, are there any persistent problems with the plumbing or other utilities? A leaky roof? Mould problems?
- If you are buying from a developer, what work remains to be done on the condominium development? Does your purchase agreement identify a completion date? Has the developer provided you with all the information required by the *Condominium Act*? What are your rights in regard to rescinding the purchase agreement?
- What are the monthly fees that owners pay to the corporation?
- What are the annual taxes? Are they included in the monthly fees?
- Does the previous owner owe any money to the corporation?
- Is there an operating surplus or deficit?
- How much money is in the capital reserve fund?

- Has a recent capital reserve fund study been completed to identify the expected cost of long term repairs or replacement of common property?
- What is the corporation's insurance policy?
- Does the corporation have any large debts?
- Is the condominium corporation currently involved in any court cases?
- Have any transactions taken place affecting the common property such as transfers, leases or re-division of the units?
- What are the bylaws?
- Are there any restrictions in the bylaws or rules governing your use of your unit? Can you have pets? Is there an age restriction on occupants in the complex? Can you operate your home-based business from your unit? Can you put up your satellite dish? Can you put in a hot tub? Read the bylaws and rules carefully.
- Will the board have to approve any remodelling plans?
- Are you personally responsible for any maintenance duties?
- Are there extra parking stalls for owners? Is there enough visitor parking? Are there restrictions on visitor or owner parking? Can you park your motor home, trailer or snowmobile somewhere?

Read these documents before you make an offer to buy:

- The proposed purchase agreement;
- The condominium plan;
- The declaration;
- The condominium corporation's bylaws and rules;
- The certificate of title for the unit you are interested in buying;
- Information about any restrictions on the use of the unit or common property;
- Any management agreement or proposed management agreement;
- Any recreational agreement or proposed recreational agreement;
- The lease, if the land on which the unit is located is leased;
- Any mortgage or proposed mortgage that may affect the title of the unit;
- The operating budget and most recent financial statements;
- Replacement or capital reserve fund information;
- The most recent capital reserve fund study report.

If you are thinking about buying a condominium, this booklet will help you to buy the property that is right for you.

What is a condominium?

There can be significant advantages in purchasing a condominium: for example, the opportunity to own property while at the same time cost effectively contracting out much of the responsibility for maintaining and repairing the property. A condominium owner may also have access to recreational facilities that they would not be able to afford on their own. However, it is very important that condominium buyers fully understand what they are purchasing.

A condominium is a type of property ownership. You own an individual unit and you share ownership of other parts of the property. In most condominiums, the entire group owns shared spaces like hallways, parking lots and playgrounds.

A condominium is not limited to any particular style of building. Some condominiums look like apartment buildings.

Other common examples are:

- Duplexes;
- Townhouses;
- Trailer parks;
- Time-share properties;
- Malls;
- Empty lots on which the owner may construct their own building.

Every condominium contains both **units** and **common property** identified in the condominium plan. A unit is the part of the property you are planning to buy as an individual. Look at the condominium plan and check the exact unit boundaries. The common property is everything in the condominium plan that is not within a unit.

Owning a condominium is different than owning other types of property. Personal relationships and interactions are much more important. As an owner, you can be required to pay for damage or improvements to common property, even property that you never use. There can also be restrictions on changes you can make to your own unit – for example, you may be required to paint the exterior a certain colour.

Condominium corporation

The **condominium corporation** is made up of the owners of all the units in the condominium. The corporation is created when the developer registers the condominium plan and declaration at the Land Titles Office in Yellowknife. The unit owners elect a **board of directors** to carry out the corporation's responsibilities. The board reports to the owners at an annual general meeting or at a special general meeting, and is responsible for actions that can affect the owners' property values. An agent or employee of the corporation can act on behalf of the corporation.

The corporation establishes detailed rules that all owners must follow. Do not buy a condominium unless you are willing to follow its bylaws and rules. The corporation is responsible for enforcing its bylaws and rules and for controlling, managing and administering the common property. Once you purchase a condominium unit, you are bound by the corporation's bylaws. Specific bylaws can give the corporation the right to impose sanctions or penalties, such as a fine, on owners who do not follow the bylaws or rules.

A condominium corporation can sue for damages to the common property. It can also be sued regarding any matter related to the common property.

What you will own, what you will share

Owning a condominium is not the same as renting an apartment, where the building owner and caretaker handle all the duties and responsibilities of running the building. In a condominium, ownership responsibilities belong to you and all the other unit owners. Before you make an offer to purchase, read the condominium plan to be sure you understand what is included in the unit and what is considered common property.

Your unit

When you buy a condominium unit, you usually own a space that is bordered by walls, floors and ceilings. In a bare land unit, you own the land that is shown to be your unit on the condominium plan and anything built on it.

You are responsible for the maintenance and remodelling of the interior of your unit. For example, if your stove breaks or your faucet leaks, you are responsible for repairing or replacing them. Unlike most apartments, you may usually paint or otherwise decorate the inside of your unit as you wish. In some condominiums, the board must approve any major remodelling plans inside your unit. If the common property or the building structure is affected, the board will need to approve the changes before you make them. Ask for permission in writing and keep a copy of the board's written approval.

Common property

The common property is identified on the condominium plan. It includes space and facilities outside the units. Every condominium is different, but some things that are usually considered common property include:

- Hallways;
- Elevators;
- The heating and electrical systems;
- Laundry and recreation rooms;
- Landscaped areas, parking areas and sometimes roads.

If you buy a unit, you will become the partial owner of the common property. That means that you will share the expense and responsibility for the repair and maintenance of this property with other unit owners. Your share of the costs is determined by the **declaration**, which sets out both your percentage ownership in the common property and the percentage to which you must contribute to the common expenses. Read the declaration carefully before you make an offer to buy.

Exclusive-use areas

You may also lease or have the right to use defined areas of the common property called **exclusive-use areas**. For example, this might include:

- A yard near your unit;
- A patio or balcony near your unit;
- A carport or parking stall.

These areas may be identified on the condominium plan or defined in the declaration. The corporation controls these areas.

Check the bylaws to see what exclusive-use areas you can use and what your responsibilities are for those areas, such as maintenance. Ask if you are the only owner entitled to the use of these areas or if the area is shared with another unit owner. If you have any questions, check with the board, manager, or developer before you buy.

Taxes

You will pay municipal taxes on your unit. The current taxes should be noted in the purchase documents. It's a good idea to check with the municipal government to confirm the taxes.

Insurance

Insurance on the condominium is usually the responsibility of the corporation. This insurance includes damage to units and common property and occupiers' liability insurance in respect of the common property. Sometimes the bylaws require that the corporation obtain additional insurance coverage.

You will also need to buy your own insurance to cover your personal property, personal liability, and perhaps any improvements made to your unit. Check the bylaws to see if improvements are covered under the corporation's policy. Ask your insurance agent or broker for more information about insurance on a condominium unit. The condominium corporation can give you a certificate of insurance that provides your agent or broker with information about the extent of the corporation's insurance policy. Check the policy for exclusions.

Condominium fees

As a condominium owner, you will be required to make regular contributions to the common expenses operating and capital reserve funds, often referred to as condominium fees. The corporation needs money to meet its financial obligations – paying for insurance premiums, snow removal, grass cutting, major repairs to common property, replacement of common property, etc. The main source of income for a condominium corporation is the money paid by the owners.

The corporation will review and collect the owners' contributions towards the common expenses fund. Make sure you know how much you will have to pay, and how this amount is calculated. Most condominium contributions are paid monthly. Be aware that the fees can go up!

The corporation is also required to maintain a capital reserve fund to pay for long-term repairs or replacement of capital property (for example, re-roofing the condominium or replacing mechanical equipment such as boilers). Each owner will be required to contribute to this fund either as a portion of their condominium fees or as a separate fee. The amount of money to be maintained in the capital reserve fund will be determined by the capital reserve fund study, which each condominium corporation is required to undertake on a regular basis.

If the corporation does not have enough money in the fund to cover significant repairs or incurs other large unexpected expenses, the board may collect funds from each condominium owner through a special assessment to cover the costs.

If you do not pay your condominium fees, the corporation can:

- If you rent the unit to a tenant, require your tenant to pay the monthly rent to the corporation to cover the unpaid condominium fees;
- File a lien against the title to the unit, meaning that you will not be able to sell your unit until the bill is paid;
- Sue you for the money you owe, including interest and its full legal fees;
- Sell or repossess your unit, even if you do not agree.

Make sure that the previous unit owner does not owe any money to the corporation. You could be required to pay any unpaid fees, or the corporation could even sell your unit without your consent. Before you buy a unit, get a certificate from the corporation that tells you:

- The amount of contributions assessed to that unit;
- How often the contribution is to be paid;
- Whether the previous owner has paid his/her share of the contributions and what remains unpaid;
- Whether the corporation has a lien or right of lien against the unit and common interest because of the previous owner's default;
- The amount of any interest owing on any unpaid condominium fees.

Your lawyer can take steps to deduct any unpaid contributions from the purchase price.

Bylaws

Every condominium has a set of bylaws. Before you buy a condominium, make sure that you understand all of the bylaws.

Owners may make or amend bylaws by passing a motion to adopt the bylaws or changes. At least two-thirds of the owners have to agree to the changes. The new bylaws are effective after the board registers them at the Land Titles Office.

All owners, and everyone occupying a unit, are bound by the bylaws and rules of the corporation. If there is a conflict between the bylaws and the *Condominium Act*, the Act applies. The bylaws may give the corporation the right to impose sanctions, like fines, on owners who fail to comply with the bylaws. The bylaws may also provide that the owners may make rules governing the use of the common property.

Talk to the people who own condominium units in the complex you are considering. Speak to a director and the manager. They can give you good information about owning a unit in the complex and about the governance of the condominium corporation.

Financing your condominium purchase

A condominium unit is financed the same way you would finance any other property purchase. You will probably get a mortgage through a financial institution and make a monthly payment of principal and interest.

If you are buying a new condominium from a developer, you need to find out if there is a “blanket mortgage” on the development (a mortgage on all of the condominium property). Talk to a lawyer for a complete explanation of a blanket mortgage and how it might affect you as an owner.

Buying from a developer

Before the developer can sell, or agree to sell, you a unit or proposed unit, they must provide you with:

- The purchase agreement, which must include a clear statement of your rights to rescind the agreement;
- The condominium plan or proposed condominium plan;
- The declaration or proposed declaration;
- The bylaws or proposed bylaws;
- Any management agreement or proposed management agreement;
- Any recreational agreement or proposed recreational agreement;
- The estimated annual budget and monthly condominium fees and the basis for these estimates;
- The lease, if the land on which the unit is located is leased, and a statement by the developer as to whether the provisions of the lease are in good standing and have not been breached;
- Any mortgage or proposed mortgage that may affect the title of the unit;
- Replacement or capital reserve fund information;
- A copy of the *Condominium Act* and the Condominium Regulations;

- A statement specifying the number and type of parking spaces and other exclusive use areas included in the purchase price and any additional monthly charges for the use of the parking spaces or exclusive use areas;
- A statement indicating how the developer is allocating parking spaces that are not for the exclusive use of a unit;
- A statement indicating the number of units that are occupied by tenants or designated for occupancy by tenants rather than for sale;
- A statement indicating whether or not a caretaker's suite is included in the condominium;
- A statement indicating the number of units, if any, designated for non-residential use;
- In the case of a proposed bare land unit, a specific description of any buildings and improvements that the developer intends to construct on the land;
- Where the units and the common elements are not substantially complete at the time the purchase agreement is entered into, descriptions, drawings or photographs showing the completed buildings and common elements.

If there is a material change in the information provided by the developer, the developer must provide you with revised information within a reasonable time after the change occurs.

The developer must deal fairly with you when entering into, performing and enforcing the purchase agreement. For example,

- The developer must generally take all reasonable steps to complete the project, sell the other units and provide you with a registerable transfer;
- The developer must hold any purchase deposit in trust in an interest bearing account;
- You have certain rights to rescind your purchase agreement and get your deposit back if you do not receive the information to which you are entitled or there is a material change in that information;
- If you are currently a tenant, you have certain rights to purchase the unit you are occupying or remain as a tenant for a longer period than would otherwise be provided by law.

Management Transition

Until a majority of units are sold, purchasers should be aware that the developer will still have voting control over the property. The *Condominium Act* does provide that a developer must take a number of steps to gradually pass control of the condominium to the condominium corporation and new owners. Specifically:

- All documentation relating to the development must be provided to the condominium corporation within 60 days after registration of the condominium;
- The developer's management agreement may be terminated earlier than provided in the agreement;
- The first annual general meeting of the corporation must be held within 45 days after more than 20% of the units are sold and in any case, not less than a year after registration of the condominium;
- The purchasers are entitled to elect a board member after more than 20% of the units are sold.

Before you move in to a newly constructed building, the developer must also provide an occupancy permit. Ask any other questions you have regarding the development and what the developer is offering. It is a good idea to seek legal advice before signing a purchase agreement.

Buying a previously owned condominium

When you buy a previously owned condominium, it is up to you to get the necessary documents and information. As in the case of all real estate purchases, it is a good idea to seek legal advice.

When you buy your condominium from the owner of the unit, you should obtain and examine the following documents before you make your offer to purchase.

- The condominium plan;
- The declaration, bylaws and any condominium rules;
- The certificate of title for the unit;
- Information about any restrictions on the use of the unit or common property;

- Any agreements, leases or mortgages affecting the unit or the common property;
- The annual budget, the most recent financial statements and a statement of the contributions required to pay for the common expenses.

The seller, the Land Titles Office, the real estate agent, the condominium board or manager, or your lawyer may be able to help you obtain these documents as well as other information that would be important in making an informed purchase decision.

The condominium corporation must keep adequate records and any member of the corporation may usually request to inspect records at any reasonable time by giving reasonable notice to the corporation.

As with the purchase of any building, it would be wise to have a building-inspection report on the unit, if possible, or to make your offer to purchase conditional on obtaining a satisfactory report.

Finally, make sure you also ask for:

- The corporation's most recent newsletter, if any, or minutes from recent meetings;
- The names of the corporation's current board of directors and property manager, if any, along with contact numbers.

Before you buy, ask about capital reserve funds

- How much money is in the capital reserve fund(s)?
- How much of the condominium fee goes to the capital reserve fund(s)?
- Has a capital reserve fund study been done, and if so, when?
- What major expenses, if any, are being considered in the capital reserve fund plan?
- How much money will be needed to establish and maintain the fund to offset future replacement costs?
- How does the board plan to raise those funds – increased condominium contributions, special assessments, etc?

Ask for a copy of any capital reserve fund report and reserve fund plan.

As buildings age, they need to be repaired and maintained. This also applies to other common property such as the exterior of the building, asphalt, underground utilities or services and landscaping. As with all other expenses of the corporation, the owners must pay for the repair or replacement costs.

Condominium ownership

When you buy a condominium you are buying a certain lifestyle. You may not have the responsibility for shovelling the snow or maintaining the common property, but you do have responsibilities as an owner who is part of the community. You need to know how condominiums are run, your responsibilities as an owner, and the responsibilities of the corporation and board of directors.

Voting rights

As an owner of a unit, you would have the right and obligation to vote. Your voting rights are determined by the *Condominium Act* and the condominium's declaration and bylaws.

At most general meetings, votes are conducted by a show of hands. The declaration or bylaws clarify who has the right to vote if more than one person owns the unit.

Depending on the bylaws, you are probably able to vote personally or by proxy. If you have a mortgage, the first mortgagee may have the right to vote in your place if it gives the corporation written notice of the mortgage.

Owners can vote on matters presented at any general meeting and on bylaw changes, changes to the common property and other matters permitted under the Act, the declaration and the bylaws. However, owners do not vote on all decisions affecting the condominium corporation. The board of directors, elected by the owners, makes most of the decisions about how to run the corporation. Your most important votes are those for the board of directors and to change the declaration or bylaws.

Board of directors

Every condominium corporation has a board of directors that manages the affairs of the corporation. The declaration or bylaws outline how many directors sit on the board, qualifications, nomination, election, term of office, compensation and removal from the board. Directors are usually volunteers who have agreed to take on the responsibility of running the condominium. The board conducts its business by holding regular meetings, usually monthly, and should call an annual general meeting for all condominium corporation members.

Each director has the responsibility to act honestly and in good faith in exercising the power and in discharging the duties of the board.

The board is generally responsible for:

- Abiding by and enforcing the *Condominium Act* and the corporation's declaration, bylaws and rules;
- Managing, administering and maintaining the common property;
- Setting and collecting condominium fees and dealing with the financial administration of the corporation;
- Preparing and approving an annual operating budget and capital reserve fund budget;
- Placing and maintaining insurance on the property;
- Establishing, maintaining and administering the corporation's operating and capital reserve funds;
- Hiring and supervising employees, contractors and any condominium manager or management company;
- Reviewing and updating the declaration and bylaws and, with proper notice, presenting the changes to the owners for approval;
- Holding an annual general meeting and reporting on how they have managed the corporation.

Your Rights and Responsibilities

As a unit owner, you would have the right and responsibility to:

- Vote on matters presented to the owners for a vote;
- Have access to common areas, subject to the bylaws and rules;
- Get information on the management or administration of the corporation;
- Inform yourself about the *Condominium Act*, the declaration, bylaws and rules setting out the policies and the governance of the condominium corporation;
- Abide by the Act, the declaration, the bylaws and the rules, and to have your family, tenants and guests do so;
- Participate in governing the condominium corporation by attending general meetings and serving on the board or on a committee;
- Maintain your own unit and any exclusive use common property;
- Buy insurance on your unit and your own belongings;
- Pay all condominium contributions and assessments on time;
- Take legal action to resolve disputes with the corporation, the board or other owners;
- Legally challenge improper conduct of a developer, condominium corporation, director or employee of the corporation, or other owner.

Read the corporation's newsletter, the minutes of the general meetings and board meetings, the budget and financial statements. Attend the meetings, express your views, and vote. If you have any complaints or concerns, give them to the board in writing so it can follow up.

Resolving disputes

Disputes between condominium owners, boards or developers are private matters. If you have a dispute with the developer or anyone in the complex, speak directly with the person involved to try and resolve the problem. If the conflict involves the *Condominium Act*, the declaration, the bylaws or the corporation, put your complaint in writing to the board of directors. If the matter is not resolved, you should consider obtaining legal advice.

If an owner or any person who has a registered interest in a unit believes there has been improper conduct by the developer, a corporation, an employee of a corporation, director or owner, they may apply to the courts to resolve the problem.

Entering the unit

The corporation, or any person authorized by the corporation, may enter your unit at any reasonable time to perform the duties of the corporation.

Renting units

If you plan to rent your unit to a tenant, you must give the condominium corporation written notice of your intention to rent, and provide the corporation with the name of the tenant and an address where you can be served with any notices. You must also notify the corporation when the unit is no longer rented. The bylaws of the corporation may require you to pay a security deposit when renting your unit.

If your contributions to the common expenses are in arrears, or if the corporation has obtained a judgment requiring you to pay an amount to the corporation, the bylaws may provide that the corporation can require the tenant to pay the rent otherwise payable to you directly to the corporation.

The tenant is bound by the bylaws of the condominium corporation. If your tenant does not comply with the bylaws or damages the common property, the bylaws may provide that the corporation can apply to a rental officer under the *Residential Tenancies Act* for an order for possession of your unit or exercise your rights as the landlord to obtain possession of the unit.

Capital reserve funds

Condominium corporations in the Northwest Territories are required to have one or more replacement or **capital reserve funds**. The reserve fund is money set aside to repair and replace the common property and any property owned by the condominium corporation that is not repaired or replaced annually.

How much money should be in the fund?

Each condominium corporation will have a different amount in its capital reserve fund. A corporation determines how much money it should have in the capital reserve fund by completing a **capital reserve fund study**. The study determines the present condition of any depreciating property that will need to be repaired or replaced within the next 25 years, as well as an estimate of when the property will need to be repaired or replaced and an estimate of the cost of the repairs or replacement.

The report based on the study will identify the current amount of money in the capital reserve fund, and the amount that should be included in or added to the capital reserve fund to ensure that there are sufficient funds in the future. A capital reserve fund report is prepared for use by the condominium board, owners and buyers. In particular, the findings in the report will be used by the directors and the owners in developing a long term plan for the funding of major repairs and replacement of common property.

Bare Land Units

In a bare land condominium, buildings occupied by a unit owner and at least part of the landscaping are usually inside the unit boundaries. The condominium corporation may establish standards for the type of construction, appearance or safety of buildings constructed on each unit but in general, the individual unit owners are fully responsible for the costs of the construction, repair and maintenance of their buildings. However, the exterior repair and maintenance obligations of the individual bare land unit owners may be transferred to the condominium corporation by passing properly worded bylaws, for example, where the owners think it would be cost effective for all owners to contract with one party for the maintenance of all buildings.

If a bare land condominium corporation is not required or authorized by its bylaws to repair and maintain the structures within the unit boundaries, funds for their repair and maintenance should not be calculated into the capital reserve fund requirements.

What are the owners' responsibilities for the capital reserve fund?

The owners elect the board to carry out the business of the condominium corporation, and the bylaws give the board the power to make decisions about the capital reserve fund. Although a responsible board will provide information to and obtain input from the owners, it does not always need to consult the owners before making decisions on the capital reserve fund. Owners can assist the board in its role by:

- Electing directors they can trust to run the corporation;
- Remembering that in most cases directors are also owners and will be affected by decisions in the same way as other owners;
- Keeping the board aware of circumstances in the condominium community which might affect funding decisions;
- Attending information sessions, reading information provided by the board, and providing feedback to the board when requested;
- Accepting that directors must make decisions in the best interests of the corporation and all the owners, which will sometimes conflict with what individual owners might believe.

What are the board's responsibilities for the capital reserve fund?

The *Condominium Act* requires that the board must:

- Maintain one or more capital reserve funds at an appropriate level;
- Prepare and provide to the owners, before or at the time of giving notice of every annual general meeting, an annual report on the capital reserve fund. This report should include the opening balance, the source of the income received during the year, what money was spent during the year, the list of property repaired or replaced and the costs incurred for the repair or replacement;
- Retain qualified persons to conduct periodic capital reserve fund studies and prepare capital reserve fund reports;
- Upon receipt of the capital reserve fund report, prepare a capital reserve fund plan for consideration by the owners at the next annual general meeting;
- Not use the capital reserve fund for “improvements” unless the owners vote to allow it. Improvements are normally changes, enhancements, alterations or additions to the common property or property owned by the corporation.

How is the capital reserve fund funded?

Corporations may meet their funding requirements by one or more of the following:

- Collecting condominium fees, and increasing them as needed;
- Charging special assessments (immediately or in the future);
- Earning income on investments;
- Borrowing money.

This gives the corporation flexibility as to how and when to deal with repair and replacement costs.

How can I learn more about condominiums in the NWT?

The *Condominium Act* outlines how condominiums operate and are managed in the Northwest Territories. The legislation covers:

- The initial creation of a condominium and condominium corporation;
- The responsibilities of the developer of a new condominium;
- The powers and duties of the corporation and the rights of unit owners;
- The division of responsibilities between the corporation and the unit owners;
- Budget and financial matters;
- Matters that may be included in the declaration or bylaws, including changing and enforcing the declaration or bylaws;
- Insurance requirements;
- Requirements for general meetings and board meetings;
- Amalgamation of condominium corporations;
- Disclosure requirements for requests for information from condominium corporations;
- The types of investments into which a condominium corporation can invest capital reserve funds.

For complete information, please read the Act, which is available on the Department of Justice's website:
www.justice.gov.nt.ca

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