



# New Hampshire

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## For the Public

### Condominium Law in New Hampshire

This pamphlet is based in NH law in effect at the **time of publication**. It is issued as a public service for general information only. It is **NOT** a substitute for specific legal advice.

If you are considering buying a condominium unit or living in a condominium development, this public information pamphlet will help you to understand the formation and government of a condominium.

**AUGUST 2000**

**Condominium Ownership**

The term "condominium" is commonly used to describe a structure or structures divided into separate, individually owned units, or it refers to one such unit within a building or complex. The key point to understand is that, under the New Hampshire Condominium Act (RSA 356-B), "condominium" refers to a specific form of ownership of real property. Under this form of ownership, a unit owner typically owns all the space inside the walls of the unit. A unit owner has a deed that usually allows them to sell, mortgage or lease the unit independent of the owners of the other units in the complex. (See the discussion "Governance of the Condominium" below.) In addition to condominiums where you own the entire unit, there are "timeshare" condominiums where you have a right to the use of a unit for a limited period of time.

Typically, the exterior walls, roof, porches, walkways, gardens and lawns, as well as the driveways and parking areas - usually referred to as "common area" or "limited common area" - are owned by all the unit owners as a whole. Limited common areas, although considered part of the general condominium property, are set aside for use by a limited number of unit owners. An example of a limited common area is a deck serving two units. Often, the expenses associated with maintaining limited common areas are the responsibility of the unit owners having exclusive use of the limited common areas. Common areas are areas to which all unit owners have access (such as hallways, roads and recreational facilities) and are controlled, managed and maintained by the unit owners as a whole. The developer - sometimes technically referred to as a "declarant" - of a condominium establishes the terms by which a condominium will operate.

**Condominium Documents**

In determining what responsibilities within your condominium are assigned to a unit owner it is important to consult two documents -- the Declaration of Condominium (the "Declaration") and the Bylaws of the unit owners' association (the "Bylaws.") A developer selling a condominium unit must provide current copies of these documents. If a private owner is selling a unit, the buyer should obtain current copies at the county registry of deeds and read them carefully.

- Declaration: The Declaration describes the number of units within the condominium and provides a general description of the facilities and amenities. It also provides a general description of any easements or restrictions on the units and the common areas; matters affecting title to the condominium and any land set aside for future development of the condominium. The Declaration also contains a legal description of the condominium property. Site plans, recorded with the Declaration, show the location of units in the condominium or a particular phase of the condominium, as well as floor plans for each unit.
- Bylaws: Each condominium complex must have a unit owners association. The Bylaws establish the governing rules of this association and describe the rights and responsibilities of each unit owner, establish a board of directors (and, in some instances, officers) and explain the manner in which decisions will be made concerning the condominium. There are also general provisions regarding insurance coverage, rules about living in the condominium and a description of any initial and recurring fees that the unit owner is required to pay to maintain the condominium's common areas. Such fees may include payments into a reserve fund for capital improvements.
- Public Offering Statement: In condominiums with more than 25 units (or with any offering of timeshare units), the developer must provide the original buyer of each unit with a Public Offering Statement which is approved by the Attorney General's office. The Public Offering Statement includes the Declaration and Bylaws as well as the name, principal address and a brief history of the developer, a plan for managing the condominium, a proposed budget for the first full year of condominium operation, a list of any express warranties provided by the developer, a form deed and a buy and sale agreement. Prospective buyers should read the Public Offering Statement carefully and consider consulting an attorney for advice about buying a condominium unit. A buyer has an unconditional right to cancel a condominium sales contract

Home

About the Bar

For Members

For the Public

Legal Links

Publications

Newsroom

Online Store

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within five days after the contract date or receipt of the Public Offering Statement, whichever is later.

#### **Warranties and Repairs**

Under New Hampshire law, the developer must provide a limited structural warranty on a unit for a minimum of one-year following the delivery of the unit to the buyer. A developer may provide a longer warranty. By law, the warranty covers all defects in structural elements, including the walls, roof, foundation, and the installation of essential utilities. If a buyer sells the unit within the one-year period, the new buyer is entitled to the same warranty for the remainder of that first year. In addition, the developer generally passes on any manufacturers' warranties, usually covering appliances and other products installed in a condominium unit.

If there is a defect in a condominium unit, and the unit owner brings the defect to the developer's attention within the warranty period, the developer is responsible for repairing the defect. In order to be able to prove that notice was given during the warranty period, the unit owner should give notice of the defect in writing. As long as the notice is within the time covered by the warranty, the developer is obligated to make the repair, even if the repair is not made within that time.

#### **Governance of the Condominium**

The condominium is governed by the unit owners or their elected representatives called the unit owners' association. The Declaration, Bylaws or Public Offering Statement often provide for the election of a board of directors by the unit owners. This board then becomes the governing body of the unit owners' association. If unit owners are dissatisfied with the way the board of directors is managing the condominium and wish to remove them from office, they should consult the condominium documents and follow the procedures exactly as set forth in the documents. Generally speaking, it is difficult to remove a member of the board of directors or an officer of the unit owners' association.

A developer may control a unit owners' association, but the period of the developer's control is regulated by state law. Generally, the developer's period of control can last from two to five years, depending on whether the developer anticipates future expansion of the project. Of course, the developer may turn over control of the condominium to the unit owners before the time allotted by the statute.

Although there is nothing in the condominium act that requires a developer to provide the unit owners' association with an accounting of the condominium fees and expenditures, a developer acts as a trustee of the association funds during its period of control and must use those funds for the purpose in the Declaration and Bylaws.

#### **Condominium Fees**

All unit owners are individually responsible for all fees and expenses associated with their own unit. Together, the unit owners are responsible for the fees and expenses relating to the common areas which include expenses for their maintenance, repair and insurance. A "condo fee" is assessed on each unit owner to pay for that person's share of the common expenses usually on a monthly basis. Similarly, unit owners who are benefited by limited common areas must share the expenses associated with those areas. The amount of the fee may vary from year to year, depending on the expenses approved by the unit owners' association.

To protect all unit owners against the possibility that a particular unit owner might not pay the required condominium fees, the unit owners' association has the right to place a lien for unpaid fee assessments on that owners' condominium unit. Such a lien could prevent a unit owner from selling the unit without first paying the past due fees. Certain procedures must be followed in order to assure that the lien of the unit owners' association is "perfected," that is, properly filed to protect the association's right to collect the assessments. These procedures are set forth in the Condominium Act and may also be stated in the condominium documents.

#### **Real Estate Taxes and Other Charges**

Municipalities tax each owner of a condominium unit. The value of that owner's share of common areas is often included in the assessed value of the unit itself, though some municipalities assess the common areas separately. Prospective buyers should investigate how taxes and other charges will be assessed on the unit before they buy. Unit owners may also be responsible for separate sewer or water charges.

#### **Bankruptcy and Bank Foreclosures**

An owner's title to their unit and their undivided interest in the common areas should remain unaffected by a developer's bankruptcy or a bank foreclosure on the developer, if the buyer received a release from the mortgage recorded by the developer's bank at the closing.

While the developer controls the unit owners' association, a bankruptcy filing by the developer will result in a trustee managing the condominium and probably an earlier than anticipated transfer of control from the developer to the unit owners' association. A bank holding a mortgage on the condominium development must receive Bankruptcy Court permission to foreclose when the developer is in bankruptcy. A foreclosing bank that takes title to the developer's interest in the property will have the authority, in most cases, to exercise the developer's rights in the project, including the right to control the unit owners' association. Similarly, a third party may purchase the developer's rights in the condominium. A foreclosing bank is generally not liable for a developer's past due assessments. These assessments are typically passed on to the unit owners.

#### **Role of the Attorney General**

Any condominium that contains more than ten units or any timeshare condominium, no matter how many units,

must be registered with the Consumer Protection and Antitrust Bureau of the Office of the Attorney General (the "Bureau,") unless the condominium will not be used for residential purposes in any way. The Bureau reviews the application for registration, or in some cases an application for exemption from registration, and issues a certificate of registration or exemption. No binding offer to buy a condominium unit may be made until the certificate is issued, but a developer may offer non-binding reservation agreements to prospective buyers and hold a buyer's deposit in escrow. The buyer may cancel this non-binding agreement for any reason and the developer or escrow agent must return the buyer's deposit within ten days.

Registration by the Bureau is not an approval or endorsement of any condominium. Registration just means that the developer has met the statutory and regulatory requirements to obtain a certificate. That is, the developer has demonstrated a financing commitment adequate to ensure completion of the condominium or a particular phase, the Declaration and Bylaws meet the statutory requirements, and the condominium has all necessary approvals.

#### **Condominium Conversions**

Tenants who live in an apartment building or complex that is being converted to condominium form of ownership have special protections provided by state law (RSA 356-C). All tenants must receive a notice from the developer about the proposed conversion that outlines tenant's rights and protections against eviction. Generally speaking, a tenant receiving a notice of conversion cannot be asked to vacate the premises during the nine-month period following receipt of the notice. An elderly (age 65 or older) or disabled tenant cannot be forced to leave until 18 months after receipt of the notice. If a tenant's lease provides for a longer period of occupancy, then the lease determines the duration of the protection against eviction. Unless there will be substantial alteration in the physical layout of the unit, a tenant will also have a right of first refusal for 30 days to buy the unit. Tenants who receive such a notice and have questions about condominium conversion should contact the Consumer Protection and Antitrust Bureau at (603) 271-3658.

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