

Condominium

A to Z

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Ancient Origins

Ancient Babylon - at least one record on the sale of part of a building.

Middle Ages - Walls were constructed to enclose cities for security, resulting in less building space and individual ownerships of parts of buildings.

Code of Napoleon - Ownership of floors and the regulation of maintenance and repairs on the common parts of a building. French laws later introduced this concept into territories annexed by Napoleon, and lived on even after Napoleon's defeat.

Origins in America

Puerto Rico influenced American statutes on condominium law.

NYC - Others trace the origins to NYC in 1881 from an 8-unit “Club Home” .

Condos first recognized in 1961 following the National Housing Act, which authorized FHA insured mortgages for condos (in states where that form of ownership was already authorized by local laws).

Louisiana – The Louisiana Civil Code of 1870 implicitly recognized ownership of individual apartments. However, Louisiana did not enact a statutory scheme adopting the condominium system of property until 1962.

Definitions

Condominium - defined by the Louisiana Condominium Act (LCA) as “the property regime under which portions of immovable property are subject to individual ownership and the remainder thereof is owned in indivision by such unit owners.”

Condominium Declaration - the instrument that subjects immovable property to the Louisiana Condominium Act. The Unit is the “part of the condominium property subject to individual ownership...” It is immovable property subject to individual ownership where the remainder thereof is owned in indivision by such unit owners.

Unit - “...part of the condominium property subject to individual ownership...a unit includes such accessory rights and obligation as art stipulated in the condominium declaration.”

Unit Designation - the number, letter, or combination thereof or any other official designation identifying a particular unit in the condominium declaration.

Definitions

Condominium Parcel - a unit together with the undivided interest in the common elements which is an inseparable component part of the unit.

Common Element - the part of the condominium property that is not a party of the individual units.

Limited Common Element - refers to common features reserved in the condominium declaration for the exclusive use of a certain unit(s).

Condominium Association - refers to a “corporation, or unincorporated association owned by or composed of the unit owners and through which the unit owners manage and regulate the condominium.

Definitions

Common Expenses -

- Expenses of administration, maintenance, repair, and replacement of the common elements
- Expenses declared to be common expenses by provisions of the LCA or by the condominium declaration or bylaws.
- Expenses agreed upon as common expenses by the unit owners.

Declarant - If the condominium has not yet been created, any person who offers to dispose of or disposes of his interest in a unit not previously disposed of; or if the condominium has been created, any person who has executed a declaration, or an amendment to a declaration to add additional property to the condominium regime, other than persons holding interests in the property solely as security for a debt or persons whose interest in the property will not be conveyed to unit owners.

Articles of Incorporation - Denotes the documents creating the condo association.

Condos Compared to Other Land Holdings

Timeshare

A timeshare interest is the right to use or occupy immovable property for a period of time or intervals of time which can be less than a full year during each year.

Timeshares can be leased or owned.

Townhouse

“Condominiums” *Nepveux v. Linwood Realty Co. Inc.*, App. 3 Cir. 1983, 435 So.2d589, writ denied 441 So.2d750.

Townhouse owners own the land the building is on. Condo owners do not.

No separate law governing townhouses. Details per development are defined in the Condo Declaration and fall under the LCA.

Property Owned & Common Elements

Separate ownership of a part of a building is established by a juridical act (contract, testament) by the owner of the entire building when authorized by law. *Expressed through law La Civ Code art 492.*

- Separate ownership of a floor or of an apartment of a building may NOT be established by acquisitive prescription, by judgment in an action for partition, or by juridical act of an owner in indivision.
- If the building is owned in indivision, all co-owners must consent.

Louisiana Condominium Act defines such ownership as owning a condominium parcel:

- the designated unit as well as
- an undivided interest in the common elements, and possibly
- an undivided interest in the limited common elements
- Unit cannot be altered without consent from all other condo owners

The Condominium Association

- The LCA requires that a unit owners' association be organized at a condo's creation date and composed solely of unit owners.
- Can be for profit, nonprofit or an unincorporated association
- Unit owners' associations are miniature private governments
- Much of the terminology used regarding interpretation of the LCA (strict interpretation, express or implied power, "necessary and proper," etc.) is also prevalent in constitutional law.
- In Louisiana and other jurisdictions, the "constitution" of these governments is the association's by laws and declaration.

Upkeep

- The association is responsible for the maintenance, repair, and replacement of the common elements..
- Each unit owner is responsible for the maintenance, repair and replacement of his or her unit. *Roach v. Kamath. 837 So. 2D 118 (La. Ct. App. 4th Cir. 2002).*
- The condominium declaration may validly provide that the association is not liable for interior repairs caused by common elements. *Roach v. Kamath. 837 So. 2D 118 (La. Ct. App. 4th Cir. 2002)*
- Association not required to repair water damage to a unit caused by leakage from a unit directly above that unit, where the owners voted not to make any interior repairs).

Condominium Privilege (lien) on the Unit

A Privilege is a right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages.

Privilege is unique to Louisiana law, but it is synonymous with the term “statutory lien.” This means it is not consensual like a contractual lien (mortgage). It exists by operation of law.

Condominium Privilege (lien) on the Unit

FOR WHAT:

1. All unpaid or accelerated sums assessed by the association, any fines or late fees in excess of \$250, plus interest and attorney's fees.
2. If unit owner fails to timely pay the assessments for common elements for a period of 3 months or more during any 8-month period, and proper notice is given, the association may accelerate the assessment on the common elements (dues) for a 12-month period and file a privilege for accelerated sum.

Condominium Privilege (lien) on the Unit

NOTICE:

1. Seven days before filing the above claim of privilege,
2. Sworn detailed statement of its claim with delinquent or accelerated amount and date of delinquency,
3. Served upon delinquent owner by personal service or registered or certified mail.

Condominium Privilege (lien) on the Unit

DURATION:

1. **1 Year:** Once the above claim is recorded, the privilege is preserved for one year from the date of recordation.
2. **Beyond 1 Year:** To preserve the lien beyond a year the association must file suit and record a lis pendens in the mortgage records which states: name of court, name and proceeding number of the case, date of filing, description of the condominium parcel, name of unit owner.
3. **When is Privilege Cancelled?**
 - a. When it is ordered cancelled by the court, OR
 - b. When the claimant / association authorizes the privilege to be cancelled.

Condominium Privilege (lien) on the Unit

DURATION CONTINUED..

4. What if the Association wins in court?

- The privilege becomes a judgment. Once recorded, it becomes a judicial mortgage on the condominium unit.
- The association can foreclose on the property as creditor on the judicial mortgage.
- Judgments don't prescribe for 10 years.

Condominium Privilege (lien) on the Unit

PRIORITY: Condo privileges are superior to all other liens/encumbrances except:

1. Privileges/mortgages/encumbrances recorded before the recordation of the declaration,
2. Privileges/mortgages/encumbrances recorded before the privilege,
3. Property taxes,
4. Governmental assessments.

Condominium Privilege (lien) on the Unit

SO WHAT?

1. This privilege affects your property by the **unilateral** action of the association. You do not consent to it the way you consent to a conventional mortgage.
2. This privilege is a lien on your property even if you eventually win in court. Of course it will be cancelled if you win, but until then it encumbers the property.

Privilege Utility Assessments

- Provided the association is in good faith regarding the management of the condominium property, the association has a separate privilege on a condominium parcel for its portion of unpaid assessment for water, sewerage, electric, or natural gas utilities.
- The privilege is preserved in the same way as above. Municipality has to give notice to the association before filing suit for nonpayment of any of these utilities.

Test Your Knowledge

HOW DOES PENDING LITIGATION AGAINST THE CONDO ASSOCIATION AFFECT THE CONDOMINIUM PARCEL?

Is a lis pendens (recorded notice of suit) against the condominium association a lien on your unit?

Can a suit become a lien on your unit?

Taxation of Condos

- Taxed individually.
- The taxes and special assessments levied against a condominium parcel constitute a basis for claiming a lien only upon the individual condominium parcel assessed, and no forfeiture or sale of a multiunit building or a common elements as a whole for delinquent taxes or assessments on individual units is permissible. *La. Rec. Stat. Ann. 9:1121.105* .

Availability of Homestead Exemption

- Prior to 1993, one had to own the land beneath their property.
- Only applicable to owners of “tracts of land”.
- Today, condominium owners are entitled to apply for homestead exemptions.

Condo Insurance

Property Insurance

- Maintained on the common elements and units

Comprehensive Liability Insurance

- Covers occurrences arising out of or in connection with use, ownership, or maintenance of common elements.
- Each owner must be insured under the policy with respect to liability arising out of his/her ownership of an individual interest in the common elements of ownership of the association.
- If, at the time of loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

Financing

- Often, the condominium declarant has obtained financing for his acquisition of the property to be converted into condominiums.
- After the condominium regime is established and the condominium declaration is recorded, the mortgage should be amended to provide that it bears upon the condominium parcels as established by the declaration.
- Typically, the lender grants partial releases of its condominium mortgage as sales of individual units occur and all or a percentage of proceeds from each sale are paid to the lender.

Buying & Selling Condos - Initial Sale

The Louisiana Condominium Act contains special protections for condominium purchasers. The protections differ depending upon whether the sale of the condominium is an initial sale or resale.

Initial Sale – obligations and protections

- The Condominium Act requires that the declarant, prior to the initial sale or execution of a contract to purchase a condominium unit, provide a purchaser of a unit with a copy of a public offering statement. La. Rev. Ann. 9:1124.102
- The purchaser may elect to cancel a contract to purchase a condominium unit within 15 days after first receiving the public offering statement. La. Rev. Stat. Ann. 9:1124.106(A).
- Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. La. Rev. Stat. Ann 9:1124.106 (B).

Buying & Selling Condos - Initial Sale

Initial Sale – obligations and protections Continued...

- As part of the initial sale of units, the seller, whether that be the condominium developer, the declarant, or a successor-in-interest, shall collect at least two months of assessments from each unit purchaser, and the funds are dedicated for the sole purpose of establishing the association's reserve account.
- The funds may be used only for the exclusive benefit of the unit owner's association and shall be turned over to the unit owner's association along with other condominium assets in accordance with the association's declaration or by-laws.

Buying & Selling Condos - Resale

Required to provide purchaser any contracts and the declaration of the association. *La. Rev. Stat. Ann. 9:1124.107(A)*

- The association, within 10 days after the request by a unit owner, shall provide a certificate containing that information necessary to enable a unit owner to comply with the certificate requirements.
- A contract to purchase a unit between a unit owner and a purchaser is voidable by the purchaser until the certificate has been provided and for 5 days thereafter or until conveyance, whichever first occurs.

Buying & Selling Condos - Resale

Case Example:

In *Berenson v. McNeil*, 597 So. 2D 94 (La. Ct. App. 4th Cir. 1992), the court held that the purchaser's rescission of the contract to purchase a condominium was ultimately pursuant to La. Rev. Stat. Ann. 9:1124.107(C) because the purchaser's cancellation of the purchase agreement was sent more than 5 days after the sellers delivered the documentation required under La. Rev. Stat. Ann. 9:1124.107 for resale of condominium units.

Court rejected the purchaser's argument. Provision applied only where the initial sale of the condo is involved, not a resale.