



Buying a Condominium

Audrey M. Loeb, B.A., LL.B., LL.M., ACCI

Condominium Ownership and What You Need to Know



**Audrey M. Loeb, B.A., LSM, LL.B., LL.M.,
ACCI**

Miller Thomson LLP
Barristers & Solicitors
Scotia Plaza
40 King Street West
Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

Tel: 416.595.8196

Fax: 416.595.8695

Email: aloeb@millერთhompson.com

Audrey Loeb carries on a focused practice in real estate and condominium law, advising with the others in the Real Estate & Condominium Practice Group, developers, buyers, sellers and condominium corporations on issues of corporate governance and operations.

Audrey is AV Rated by Martindale-Hubbell and recognized by both Best Lawyers (Canada) and Lexpert as one of Canada's leading Real Property Lawyers with a focus on condominiums.

Audrey was awarded The Law Society Medal in 2008. The Law Society Medal, established in 1985, recognizes outstanding Ontario lawyers whose service reflects the highest ideals of the profession. Audrey was awarded the medal for her significant contributions to the profession, and to her community as the founder and Chair of the "Weekend to End Breast Cancer" (now the "Weekend to End Women's Cancers") benefiting the Princess Margaret Hospital Foundation.

She is the author of the leading texts on Condominium Law in Ontario titled *Condominium: Law and Administration* and *The Condominium Act: A User's Manual*, published by Carswell.

She is Professor Emeritus of Ryerson University School of Business Management. She is a frequent lecturer for the Law Society of Upper Canada, the Ontario Bar Association and Toronto Real Estate Board. She is a regular columnist in the Toronto Real Estate Board News.

Audrey is also a former member of the National Board of Directors of the Canadian Condominium Institute (CCI), the Consumer Advisory Committee of the Board of Directors of the Taron Home Warranty Program, and the Board of Directors of the Real Estate Council of Ontario, and has written regular columns for both the *Globe and Mail* and the *Toronto Real Estate News*.

Education

London School of Economics and Political Science (LL.M.)
Osgoode Hall Law School, York University (LL.B.)
McGill University (B.A.)

She is a Member of:

- Member, Canadian Condominium Institute
- Member, Ontario Bar Association and former Co-Chair of the Condominium Committee of the Real Property Subsection (Ontario)
- Former member of the Board of Directors of the Princess Margaret Hospital Foundation and of its Audit & Accountability, Governance and Leadership Committees as well as the founder and Chair of the "Weekend to End Breast Cancer" benefitting the Princess Margaret Hospital Foundation
- Member of the Board of Directors of Bridgepoint Hospital
- Member of the Real Property Committee of the Ministry of Government & Business Services

Additional information

Recipient of the Law Society Medal (2008) in recognition of her outstanding service in accordance with the highest ideals of the legal profession. Fewer than 115 Canadian lawyers have received The Law Society Medal since it was struck in 1985.

Leading Practitioner, Best Lawyers in Canada (2008), Real Estate Law; Property Development/Condominium

Recipient, Ontario Bar Association's Real Property Section Award of Excellence (2008)

Last printed April 2010

Table of Contents

Biography	1
Introduction.....	5
What are the advantages of buying a condominium?.....	5
What is a Condominium Corporation?.....	6
Are there other types of condominium developments?	7
I've found a condominium that looks good to me. How can I evaluate it?	9
Who is responsible for what?.....	9
“Buyer Beware” I am buying from a developer, how do I know what to look for in all these documents?	10
How are prices determined for new condominium units?	11
What are the conditions by which the developer or owner can terminate the agreement to purchase?.....	11
When will I get to move into my new condominium unit?	12
What rules does the developer have to follow when selling units? What is a disclosure statement? What happens to my deposit?.....	13
What are occupancy fees?.....	15
What happens if, after signing the agreement of purchase and sale, the developer delivers a new set of documents?	16
What is a Status Certificate?	16
Are there additional costs or charges you should know about?.....	16
Is there a warranty on my property?.....	17
What are the expenses I will have to pay when I own my unit?.....	18
How are common expenses determined?	18
Our condominium is registered, what happens now?.....	19
What is a reserve fund?.....	19
Who manages the property?.....	19
Do I have a say in what happens in the condominium?	20
How does condominium living affect me as a home owner?	21
Are there restrictions on what I can do with my unit?.....	21

Can I decorate my unit any way I want?	21
Can I make changes to the Common Elements? Can I fence in my garden, install a satellite dish or install a patio?	21
Can I lease or rent the condominium unit I own?	22
Can anyone enter my unit without permission?	22
Who is responsible for maintenance and repairs?	22
Can I stop making monthly payments if I'm not happy with the Board and management?	23
Do I have to get involved?	24
I'd like to be on the Board of Directors. What should I do?	24
What is a director's role?	25
What makes a good director?.....	26
What are the responsibilities of the property manager?	27
When are meetings held and who calls them?.....	27
Who makes up the quorum and who is allowed to vote?	28
How do you change the condominium documents?.....	28
How is a condominium insured?.....	29
What about additional recreation facilities? Could a condominium corporation buy a golf course? Can it change the services I expect to receive?	30
Conclusion	30

Condominium Ownership

What You Need to Know

Introduction

The term CONDOMINIUM applies to a type of property ownership rather than to any distinct particular style of building. The term “CONDOMINIUM” doesn’t refer in any way to the physical structure of the building or building complex. Residential condominiums, which now account for one out of every three new homes built in Ontario, can be either high-rise or low-rise apartment style units, townhouses, (some known as freehold condominiums), detached houses, stacked townhouses – any configuration of housing you can imagine. Non-residential condominiums can be industrial, commercial or retail. What makes them “CONDOMINIUMS” is not their physical structure but the way in which owners have agreed to share the ownership of the common elements of the property, while retaining individual ownership of parts of the property which constitute their units.

The condominium property is made up of the units and the common elements. Those parts of the property that are not specifically designated as units are known as common elements. Accordingly, condominium ownership has a dual nature; a condominium unit owner has freehold title to his or her unit and, at the same time, shares jointly with other unit owners, the ownership of the common elements. The unit owners share the cost of operating the property through the payment of their share of the common expenses.

The *Condominium Act, 1998* governs the ownership of both residential and non-residential condominiums in Ontario. This booklet is designed for the residential unit owner.

The *Act* is divided into several parts:

- the development of condominium corporations;
- the types of developments permitted;
- the sales of condominium units; and
- the governance of condominiums and the ownership of a condominium.

What are the advantages of buying a condominium?

There are many advantages to condominium living. Some of these are:

It is more economical, generally, than comparable non-condominium housing.

It enables people of moderate and middle incomes to own their own homes.

It makes private ownership possible in areas where land values would ordinarily make this too expensive.

It eliminates some of the problems of upkeep and maintenance often associated with home ownership, since the cost of maintenance is shared and is usually the responsibility of the condominium corporation through its property management.

It allows ownership in a multi-unit property with each owner paying his or her separate realty taxes and mortgage.

It gives the owners a right, in different ways, to participate in decisions which affect their homes.

What is a Condominium Corporation?

A condominium corporation is a method of property ownership. It is created solely to manage the affairs of the condominium corporation. A condominium's affairs are regulated by the *Condominium Act* and documents known as the *Declaration, Description, By-laws and Rules*.

The *declaration* is the equivalent of the constitution of the corporation. It outlines the division of ownership within the corporation by identifying the units, the common elements and the exclusive use common elements, if any. It also sets out the percentages of ownership each unit has in the property and the percentage that each unit contributes to the monthly common expenses. The *declaration* will also indicate which costs will be the responsibility of the corporation and paid for by the owner's contributions to the monthly common expenses.

The *description* is a detailed plan of the boundaries, layout and location of the units, common elements and exclusive use common elements in the condominium.

The *by-laws* of the corporation indicate how the corporation will be organized. They deal with matters such as the Board of Directors, the officers of the corporation, the conduct of meetings, the collection of common expenses, occu-

pancy standards, insurance deductibles and other matters as permitted by the *Condominium Act, 1998*. *By-laws* are made by the Board of Directors and approved by the unit owners.

There are also *rules* of the corporation which regulate the owners' day-to-day living environment. The Board of Directors makes the *rules*. The owners are required to receive notice of the *rules* and have a right of veto and can amend or repeal them. The initial condominium documents, the *declaration, description, by-laws and rules* are prepared by the developer.

The primary purpose of the condominium corporation is to manage the condominium property. *The Condominium Act* provides standards regarding the keeping of records and the conduct of business. The *Act* and the *by-laws* outline in greater detail procedures to be followed by the corporation, including the calling, holding and conduct of general and special meetings, as well as the election, removal and replacement of directors.

Owners and residents are required to comply with the documents which govern a condominium corporation. The corporation or individual owners may enforce the *Act, declaration, by-laws or rules* either through mediation and/or arbitration or in some circumstances by going to court. The *Act* also provides, through an oppression remedy, the right to apply to a court where an owner believes that his or her rights have been unfairly affected by the conduct of either the Board of Directors or other unit owners.

Are there other types of condominium developments?

All condominiums that were created prior to May 5, 2001 and most new condominiums are standard condominium corporations. The *Condominium Act, 1998*, however, introduces additional types of condominium developments that differ from the standard condominium. The additional types of condominium developments are vacant land, leasehold, common elements and phased condominiums.

Vacant Land - allows a developer to register parcels of land as condominium units without the need for buildings. The unit then consists of the land and whatever is built on it; the common elements will usually be the roads, sewers, water systems and recreational facilities, if any. The developer may set specifications for what can or cannot be built on the units so that there is uniformity in the homes that are constructed. Usually the developer will build the house and the transaction will close upon completion of the house. The unit owner is

responsible for all costs relating to the unit including the complete repair and maintenance of the home. The condominium corporation can provide services and carry out maintenance and repair to the unit and recover the cost against the unit.

Leasehold Condominium - is like a traditional condominium except that the condominium is on land which is leased by the developer as opposed to being owned by the developer. The purchaser of the condominium unit therefore buys an interest that is limited as to its duration. The *Act* states that this lease cannot be less than 40 years or more than 99 years, plus rights of renewal. At the end of the lease the condominium building reverts to the lessor. The common expenses include rent payable to the lessor.

Common Elements Condominium - is where only the jointly owned property is part of the condominium. The individually owned parcels of land, which are tied to the condominium through an ownership interest in the condominium, are not part of the condominium corporation. They are called parcels of tied land and are commonly referred to as POTLs. This type of project allows property owners to jointly share in the costs of the common property such as roads and recreational areas, with a mechanism for ensuring that contributions to pay for these facilities are made. This is a way of getting around the non-enforceability issues of positive covenants. The surrounding properties, however, are not part of the condominium. Unpaid common expense contributions can be collected by way of a lien against the POTL. The condominium corporation can only provide services and carry out maintenance and repair to the unit if there is a separate contract with the POTL owner. There is no lien mechanism for recovering these costs against the POTL.

Phased Condominium - is where the developer builds a condominium project, for example a group of townhouses or a high-rise building and intends to build more than one phase of the project. The condominium is registered and ownership of the units is transferred to the individual purchasers. When the second phase of the project is built and registered, it is collapsed into the existing condominium and the first condominium and the second phase become one condominium corporation. Currently, multi-phased projects are registered as separate condominium corporations and they are bound by “reciprocal agreements” for the purpose of accessing, governing and paying for the shared facilities.

I've found a condominium that looks good to me. How can I evaluate it?

If people are already living there, talk to some of them. They can fill you in on the quality of construction, how well the condominium is managed and what problems they have encountered, if any. Evaluate whether they are the kind of people you will like as neighbours and whether condominium living is right for you and your family.

Evaluating a condominium that is just getting started is more difficult. Consider whether the neighbourhood seems to be growing into a pleasant residential area or whether there are indications that commercial or industrial buildings may be in process. The type of neighbourhood will affect the resale value of your unit. Check out the builder. Talk to unit owners in other condominiums built by the same builder. Check if the project is registered under the **Tarion Warranty Corporation (Tarion)**. Ask what steps have been taken to soundproof walls and floors between living units. Inadequate sound control can be a major headache, particularly in a multi-family dwelling. Ask if the project is only for residential use or whether it is a mixed-use project.

Who is responsible for what?

All condominium projects consist of two parts: the *unit* which is individually owned; and the *common elements* which are shared and jointly owned by all of the individual owners. Some common elements are created as exclusive use common elements, such as balconies and patios etc. Although owned by all the owners, they are attached to one or more units for all time and are for the sole use of the unit or units to which they are attached. The *declaration* and/or the *description* of the condominium corporation describe these in detail.

The contents of *declarations* can differ. Areas designated as common elements in one condominium corporation might be parts of individual units in another. Most often the unit is defined by its surrounding walls; however, in some cases the unit includes additional areas such as front and back yards (these are sometimes known as "Freehold condominiums"). Such distinctions can be important when it comes to the question of payment for window-washing service or repairs to the exterior brick or roof of a condominium townhouse.

A typical residential unit in an apartment style condominium project consists of a living room, kitchen, dining room, bedrooms, bathrooms, entranceway hall and closets. Townhouses and detached units might include basements, garages and front or back yards as well. The unit is the property of the owner and the

unit owner is usually responsible for its maintenance and/or repair.

The *common elements* are the parts of the development outside the individual units. These can consist of corridors, lobbies, and elevators, and mechanical and electrical systems in apartment style condominium projects as well as recreational facilities, parking areas, the grounds and structural parts of buildings. Their maintenance and repair are normally the responsibility of the corporation.

The *exclusive use common elements* may be maintained and/or repaired by either the owner or owners who have their exclusive use or the corporation, depending on what is provided in the *declaration*. Generally, balconies, parking spaces, storage lockers and lawns in townhouse condominiums are exclusive use common elements; and the cost of their maintenance may be shared by all owners or may be paid by the owner entitled to their exclusive use. Since each developer has the right to determine what part of the property will constitute the units and exclusive use common elements, every condominium may be slightly different.

“Buyer Beware”

I am buying from a developer, how do I know what to look for in all these documents?

Unless you are a lawyer, familiar with condominium purchase and sale documents and with condominium corporations, the language of these documents can be very confusing. If the salesperson or developer suggests that condominium units are available only to certain groups of people (e.g. pensioners, or adults only, etc.) be wary. Such a guarantee may not be valid. Any specific requirements you may have with respect to the way the unit or common elements should be completed or any other issues which are important to you should be set out in the agreement of purchase and sale. Be wary of statements made by sales representatives. If the issue is important to you make sure that the provision is included in the agreement of purchase and sale. **Never rely on verbal statements.**

You have a responsibility to read through these materials and make sure you understand just what it is you are buying and how being in a condominium will impact the way you live. Remember the agreement of purchase and sale was prepared by the developer’s lawyer.

Condominium living is not the same as living in a single-family home. There

are documents, which will govern what you can and cannot do when you live in the condominium. You must be familiar with these documents and accept the limitations they may impose. Once you have reviewed these documents, you should bring them to your lawyer for review. It is imperative that you tell your lawyer any points of particular importance to you and discuss with your lawyer any conditions in the documents that might affect your lifestyle. Don't expect your lawyer to read your mind!

When you purchase a new condominium from a developer you must be given a **disclosure statement**. This is the package of documents a developer prepares and gives to a buyer when he or she signs the agreement of purchase and sale. Once you receive the disclosure statement and an accepted agreement of purchase and sale for the purchase of a new unit from a developer, the *Act* provides you with a 10-DAY COOLING-OFF PERIOD. This allows you to terminate the agreement without cause and receive your deposit back if you rescind the agreement **in writing** within the 10-day period. Once the 10-day cooling-off period has expired, you are bound by the terms of the contract and must complete the purchase according to those terms. Under the *Condominium Act* any changes that you want must be made before you sign the agreement or within 10-days of signing it. *This provision does not apply to a resale condominium unit.*

How are prices determined for new condominium units?

You should know that it is the practice in the development industry to sell condominiums at a price based on the square footage of the unit, for example \$200 per square foot. The square footage, however, is not based on the interior measurements of the unit. The square footage is determined by taking the measurements of the unit to the outside walls and the middle of the partition walls between units. The difference in size between the square footage upon which the sale price is determined and the useable square footage can be 8 to 12%. Even though condominiums are usually sold this way, square footage will not necessarily be the basis on which common expense contributions are determined.

What are the conditions by which the developer or owner can terminate the agreement to purchase?

When signed by both parties, an agreement of purchase and sale freezes the price of a unit. The agreement can be terminated by the developer if the agreement includes early termination conditions, included for the benefit of the de-

veloper, and any of the conditions are not met. These conditions typically relate to the developer achieving a certain number of unit sales, obtaining planning approval for the project and securing financing approval for both the Vendor and Purchaser. If any of the specified conditions are not met the Developer can terminate the agreement of purchase and sale and the purchaser will be repaid his or her deposit with interest. These conditions have to be met by specified dates, which are often far into the future. You should be aware of how long you may have to wait before you will know for sure if the project is going to proceed. Other than for these conditions, the developer cannot terminate the agreement unless you either consent in writing or the developer obtains a court order. *[See Tarion Addendum]*

There are two types of conditions which can be included in an agreement of purchase and sale. They are listed in Schedule "A" to the *Addendum*. For conditions provided for in par.1(b) of Schedule "A", if the developer does not give written notice within 5 days of the condition date as to whether the conditions have or have not been satisfied, the conditions are deemed to be met and the agreement is binding. For conditions in 1(c) of Schedule "A", if the developer does not give notice that the conditions have been met, it means the agreement is at an end.

When will I get to move into my new condominium unit?

Until the condominium corporation is created, there is no "Unit" for ownership transfer purposes and so title to the Unit or a mortgage on the Unit is not available. However in most situations involving new condominiums, purchasers are required to occupy their units before the developer is able to transfer ownership of the units. This is called an "**occupancy closing**" and the time when the Purchaser is required to "occupancy close" until the purchaser receives the transfer of title to his or her unit is known as "interim occupancy".

Look at the present state of construction of the project in which you are interested. Does it seem reasonable to expect construction to be completed by the date shown in the agreement or the *Tarion Addendum*. The *Addendum* must contain provisions which allow developers to extend the dates when units will be available for occupancy and later title closing. They also often include provisions which allow for the acceleration of these dates.

If the developer is unable to meet the tentative, firm or delayed occupancy dates and/or fails to provide the required notices in the stipulated times, the Purchaser is entitled to compensation to a maximum of \$7,500. *[See Tarion*

Addendum]

A purchaser of a residential condominium unit, governed by **Tarion** has the right to terminate an Agreement of Purchase and Sale if a unit is not ready by the “outside closing date” and the purchaser follows the prescribed procedures.

If you buy right at the beginning of the developer’s sales campaign, you can usually expect that it may be two years before your unit will be ready. The *Addendum* provides that the developer can extend this time period. This may be necessary because the developer will usually not secure financing to start construction until there are binding sales agreements for at least 60-70% of the units. Depending on how quickly the sales take place, i.e. how hot the market is, this will vary. The longer the time it takes the developer to complete sales, the longer you will wait to get occupancy of your unit. It is important to know that it is common in the condominium industry for purchasers not to occupy their units on the tentative closing date as set out in the *Addendum*. These dates will probably be extended periodically. The developer has the right to extend these dates provided the final date for closing is not later than the Outside Closing Date. The projected dates for Tentative and Outside Closing Dates are set out in the Critical Dates Addendum attached to the Agreement of Purchase and Sale.

The Addendum must also disclose whether construction has begun or if not the expected date for commencement of construction, Within 10 days after zoning approval is obtained and/or construction has commenced, the developer must, provide written notice to that effect to the Purchaser.

If you buy when construction has already begun, the developer should be able to estimate a more reliable date for your occupancy closing. If time constraints are an issue for you or you feel you do not want to buy from plans and you need to see the finished project, you should consider waiting until the condominium is closer to completion or consider buying a resale unit. [See www.tarion.com]

What rules does the developer have to follow when selling units? What is a disclosure statement? What happens to my deposit?

The developer occupies a unique place in condominium housing. The developer has a particular interest in selling the units and registering the project.

The *Condominium Act* regulates the developer’s sales practices and influence

on the project through several important provisions.

All money the developer receives from a purchaser towards the purchase of a unit must either be held in trust by the developer's lawyer or a trustee or guaranteed by a Tarion deposit receipt or other prescribed security. You are supposed to receive a form from the developer advising you that your money is being held in trust.

You can elect, if you are in a position to do so, to pay all cash on occupancy closing, if you advise the developer of your intention to do so within the 10-day cooling-off period.

You are entitled to interest on any money you have paid, towards the purchase price from the date you pay it until the occupancy closing. The interest rate is 2% below the Bank of Canada rate (see www.bankofcanada.ca for rates).

The developer must give you a disclosure statement. This package will include a brief narrative description of the most important features of the condominium project and will include a table of contents, copies of the *declaration, by-laws, rules*, and other information that the *Act* requires. The documents the developer gives you should contain a table of contents. It includes a list of topics which the Government has determined are important issues for a purchaser to consider when buying a condominium unit. The table of contents will tell you where to look in the relevant document for information on the topic. For example the table of contents includes a listing for "pets". The index will indicate if there is a provision regarding pets in any of the *declaration, by-laws or rules* and will direct you to the appropriate document and page for the provisions which will apply in this condominium corporation. The disclosure statement will also contain a budget for the condominium corporation for the first year after registration and copies of most of the documents which will govern the condominium corporation once it comes into existence.

Condominium corporations in the first year after registration have to carry out performance audits, reserve fund studies and turnover audits. These costs are part of the common expenses of the corporation in the first year after registration.

Once an agreement of purchase and sale is signed, the developer must take all reasonable steps to register the project as a condominium corporation without delay, and transfer the ownership of the unit to the buyers as soon as possible. This means that once the developer decides to proceed with the project pur-

chasers cannot be told that the developer has decided not to obtain the condominium status (except in very exceptional circumstances).

If the developer underestimates the projects' total amount of common expenses for the first year after the condominium is registered, the *Act* requires the developer to make up the difference. This provision is intended to protect you from a developer who might deliberately underestimate the cost of common expenses in order to make the units appear more attractive to you.

As a purchaser you should be aware that common expenses may increase before registration of the condominium and will usually increase by varying degrees in the second year after registration.

What are occupancy fees?

Occupancy fees are payable by the purchaser from the time of the occupancy closing until after the registration of the condominium corporation and the title closing. The *Act* provides that these payments cannot exceed the maximum amount the purchaser would pay for the following:

- Estimated common expenses according to the developer's disclosure budget;
- Estimated realty taxes for the unit as if the unit was separately assessed; and
- Interest on "unpaid balance due on closing" on the purchase price. Until the condominium corporation is created, there is no "Unit"; ownership cannot be transferred and the purchaser is unable to obtain a mortgage. Therefore, from the date of interim occupancy until title closing, the developer will normally not receive the full purchase price from the purchaser. That unpaid amount is known as the "balance due on closing". For example, if the purchase price of a unit is \$200,000 and the deposits paid by the purchaser total \$50,000, the difference is known as the "balance due on closing". The \$150,000 **is the amount upon which interest is paid during interim** occupancy.

The amount of interest payable on the unpaid balance due on closing is the rate that the Bank of Canada has most recently reported as the chartered bank administered interest rate for a conventional one-year mortgage as of the first of the month in which the purchaser occupancy closing occurs (see www.bankofcanada.ca for rates).

What happens if, after signing the agreement of purchase and sale, the developer delivers a new set of documents?

The developer may make changes to the documents you were given when you signed the agreement of purchase and sale. If you receive any new documents from the developer, you should review them immediately to see where they differ from the material you were given originally and contact your lawyer to see what they mean and what rights you may have.

You may, if the changes are “material”, have the right to cancel the contract.

What is a Status Certificate?

When purchasing a resale condominium unit, you should ensure that your offer is conditional on receiving and reviewing a Status Certificate and the accompanying documents, as required by the *Act*. The certificate is the resale equivalent of a disclosure statement and you must review all the material that comes with the certificate to ensure that you are satisfied that both the condominium unit and the condominium corporation are suitable for you.

This certificate, for which there is a fee of \$100 inclusive of GST, must be delivered within 10 days of the request for it and the payment of the fee. It discloses whether the owner of the unit you are buying is current in the payment of common expenses as well as a picture of the condominium corporation’s financial affairs. It is to be delivered with the documents which govern the condominium corporation and in some cases, a list of those documents which also affect the corporation but are not attached. Once the list of agreements is reviewed, you or your lawyer may also wish copies of some or all of them for review. There can be an extra charge for these documents.

Are there additional costs or charges you should know about?

For new construction, there is a one time **Tarion** enrolment fee, which starts at \$373.75 for a \$100,000 unit and increases to a maximum of \$862.50, tax included. There is also Land Transfer Tax which is payable on the purchase of every property in Ontario of approximately 1 ½% of the purchase price. In the city of Toronto, a second Land Transfer Tax is payable on properties above a certain dollar value.

You may also be obligated in the agreement of purchase and sale to pay a variety of extra charges. Some examples are:

- additional charges for landscaping in townhouse projects;
- utility hook-ups;
- development charges and sewer impost charges.

Additional costs are usually included in the adjustment paragraph of the agreement of purchase and sale. You should review these with your lawyer to see which, if any, can be removed from or capped in the offer to purchase.

Most developers sell their units with the cost of GST included. The GST rebate which you are entitled to receive if the purchase price of the unit is below the maximum permitted by law and you or a member of your family will be living in the unit, will be assigned by you to the developer.

The costs listed above will not apply to a residential resale condominium.

At the time of completing the purchase, either at occupancy or final closing, the following costs have to be met:

- Remainder of the down payment (for a new purchase). The amount generally varies but it is up to 25%;
- Your Lawyer's fees;
- Adjustments (depending on what is included in the agreement of purchase and sale);
- Land Transfer Tax (payable to the government on every property transfer in Ontario);
- PST and GST on extras or upgrades, if they are not included in the purchase price (for a new purchase).

When a buyer takes possession of a condominium unit on the occupancy closing, he or she will have to give the developer the balance due on occupancy closing (the difference between the down payment and the amount to be paid when title is transferred), post-dated cheques for the occupancy fees as well as payment for the Adjustments.

Is there any warranty on my property?

Yes, the **Ontario New Home Warranty Program Act administered by the Tarion Warranty Corporation** provides protection for condominium buyers of newly constructed residential units. However, Tarion does not apply currently to properties which are renovated or built on existing foundations. There

are two ways in which Tarion provides protection.

It guarantees the buyer that any deposit or down payment made by the purchaser of a new condominium unit up to a maximum of \$20,000 will be returned if the developer is unable to complete the transaction. It warrants the construction of the units from the date of occupancy, and the common elements from the date of registration, for one year against most defects... for two years for the mechanical and electrical systems, the building envelope and water penetration... and for seven years against major structural defects.

In addition, there is a warranty for substitutions of key elements in the unit made by the developer without the consent of the purchaser. For further information on what rights you have under the Tarion Warranty Corporation you can contact them at **(416) 229-9200** or www.newhome.on.ca.

What are the expenses I will have to pay when I own my unit?

This is a question that many buyers don't consider carefully enough when purchasing a condominium. The financial obligations you will have to meet typically include:

- Mortgage payments;
- Property taxes;
- Monthly common expenses, including an amount for the reserve fund;
- Utilities and cable if not included in the common expenses; and
- Depending on how the project is designed, you may also have to pay a heat pump rental, a one time charge for a Reserve Fund Study or Engineering Audit of the building. Every Agreement of Purchase and Sale is different, so you must read it carefully.

You should also consider what the monthly operating costs are going to be? Does the estimate of common expenses you were given seem reasonable? Bear in mind that you are directly responsible for your share of the common operating expenses of the condominium. You and the other owners will have to increase your monthly common expenses to keep up with rising costs. Like everything else condominium common expenses will tend to increase.

How are common expenses determined?

The developer is responsible for allocating the contributions to common expenses to each unit. Usually the developer bases the allocation on the size of

the unit; the larger the unit the greater the amount payable towards common expenses. A developer however is not required to use this basis for common expense allocation.

Our condominium is registered, what happens now?

To protect the owners' interests, the *Condominium Act, 1998*, requires that within 42 days after the developer loses majority control of the project, all of the new owners are entitled to elect a Board of Directors.

The *Act* also requires that once 15% of the units are owner-occupied, the owners of those units are entitled to elect one representative to the Board of Directors.

What is a reserve fund?

A reserve fund is a separate trust account which all condominium corporations are required to establish. A portion of the common expenses paid by the owners is transferred monthly to this account. The reserve fund is the unit owners' savings for the major repair and replacement costs of the common elements which occur as a building gets older.

The contributions made to the reserve fund must be based on a reserve fund study which will establish the amount the Board of Directors must ensure is contributed. Under the *Condominium Act*. All condominium corporations must carry out a reserve fund study. If the reserve fund is inadequate, the Board is required to develop and implement a plan to 'top it up'.

A healthy reserve fund is a sign of a financially healthy condominium corporation. Where the reserve fund is low, it may be because the corporation has done a lot of work recently and the corporation is starting to rebuild its fund. If the low figure in the reserve is not the result of major work having been recently completed, or if the information accompanying the status certificate indicates that there is significant work which must be done and the amount in the Reserve Fund appears inadequate, then you should do further investigation.

Who manages the property?

Usually, a property management firm, under the direction of the Board of Directors, runs the day-to-day affairs of a condominium corporation. Some condominium corporations are self-managed. The Board is responsible for carry-

ing out the obligations of the Corporation as set out in the *Act*, the condominium documents (*declaration, by-law and rules*) and any agreements to which the corporation is a party

While a property management firm under contract to the corporation normally makes the day-to-day management decisions, final authority for policy decisions rests with the Board of Directors of the corporation.

Directors are elected and can be removed by the owners. A director's term is usually three years.

If the condominium corporation is unhappy with the agreements entered into by the developer on behalf of the condominium corporation, the *Condominium Act* permits the Board of Directors and/or the owners to terminate these agreements, with a few exceptions.

Do I have a say in what happens in the condominium?

You have the right to participate in the affairs of the condominium corporation.

Decisions made by the Board of Directors will directly influence the use of common elements and what you can do with your own unit. For this reason, you should be well-informed about what is happening in your corporation. The condominium corporation provides that some decisions are the sole responsibility of the owner-elected Board but others must be approved by a vote of the unit owners.

The *Act* contains provisions designed to allow unit owners a voice in the running of the corporation, even where the developer holds ownership of a large number of units. Once 15% of units are owner-occupied, the owners of these units have a right to elect a representative to the Board. Once title to 51% of the units is transferred to the purchasers by the developer, a meeting to elect a new Board of Directors to replace the developer's Board and to complete a 'turn over' of Corporation documents must be held.

In addition, *the Condominium Act, 1998* ensures that all the condominium records are available for examination by any purchaser, owner or mortgage lender. Money paid by owners towards common expenses must be held in a separate operating trust account in the name of the condominium corporation.

How does condominium living affect me as a home owner?

Condominium living may be very different from your accustomed style of life. Condominium ownership is unlike either regular home ownership or renting. The following items point out just some of these differences.

Are there restrictions on what I can do with my unit?

Yes, a condominium owner's rights of ownership are more restricted than other homeowners. The following examples indicate some of these limitations:

- A condominium owner must abide by all the provisions of the *Condominium Act* the corporation's *declaration*, by *laws and rules*;
- No owner may damage or neglect his or her unit. To do so depreciates the value of the condominium property as a whole;
- Most *declarations* for residential condominiums specify that units can be used only for residential purposes in accordance with the zoning by-law and not for commercial purposes;
- Usually the owner is forbidden from any actions which could threaten the project's insurance coverage (like having a barbecue on the balcony, for example), making any structural changes to a unit or changes to the common elements without the consent of the condominium's Board of Directors.

Can I decorate my unit any way I want?

Every condominium has varying restrictions which are set out in the *declaration* and the *rules* regarding what an owner can do with his or her unit. Usually you will be able to decorate the inside of your unit as you wish but you may not do anything that changes the appearance of the building or the exterior. Some condominiums require that the exterior of all window coverings be white or off-white. Some prohibit laying carpet or tiles on balconies.

Usually you cannot remove a wall, change plumbing fixtures, install appliances or replace flooring without the permission of the Board.

Can I make changes to the Common Elements? Can I fence in my garden, install a satellite dish or install a patio?

If you want to build a fence, install a satellite dish or a patio or make other changes to the common elements, the *Act* requires that you must have the ap-

proval of the Board of Directors and/or the corporation depending on the change.

If you wish to change the common elements, you will need the Board's permission. You will also have to meet the requirements imposed by the Board and sign an agreement which sets out your obligations with respect to the change.

Many condominium corporations require that owners, who wish to make more than just cosmetic changes to the interiors of their units, seek permission from the Board of Directors.

Can I lease or rent the condominium unit I own?

Unless restricted from doing so by provisions of the *declaration* and/or the *rules* a condominium owner can sell, rent, lease or transfer the title of his or her unit as he or she chooses. Some corporations do not allow owners to sell or rent parking units to persons who do not live in the building.

An owner who leases his or her unit must give the corporation the name of the tenant(s) and a summary of the lease or a copy of the lease. The owner and the tenant are both responsible to the corporation and the tenant can be instructed to pay common expenses for the unit if the owner fails to do so. If the tenant does pay the corporation, that amount can be deducted from the rent due to the unit owner.

The tenant is bound by all the same documents as the owners. If a tenant does not comply with the *Act* and/or the condominium documents, the condominium corporation can take legal action against the owner and/or the tenant.

Can anyone enter my unit without permission?

The *Condominium Act* states that any person authorized by the corporation may enter any unit on reasonable notice at any reasonable time to carry out its duties. The corporation may correct any condition which violates the corporation's insurance policy or the condominium documents, whether in the unit or on the common elements.

Who is responsible for maintenance and repairs?

Generally, repairs to common elements are the responsibility of the corpora-

tion; repairs to the unit are the owner's responsibility. For example, if the swimming pool in a condominium needs resurfacing, the condominium corporation must take care of this, with the cost paid from the common expenses. If a unit owner is responsible for maintaining and/or repairing the unit and/or a portion of the common elements, then the owner is responsible and if the owner fails to do it, the corporation can do it and recover the cost of the repairs from the unit owner.

Maintenance to parts of the common elements which are exclusively used by the unit owner – such as a balcony or a patio, may be the responsibility of the individual owner or of the corporation, depending on what the *declaration* provides.

If repairs must be made inside your unit – if, for example, your sink doesn't drain – the responsibility for the repairs is normally yours. For this reason, it is a good idea, in a new project where appliances have been provided, to find out about the guarantees and warranties. Are you responsible for parts and labour costs? The builder is not responsible for such costs, nor is the corporation.

Can I stop making monthly payments if I'm not happy with the Board and management?

No. You are legally bound to pay the monthly common expenses whether or not you are happy with management and/or the Board of Directors. Common expenses include the cost of insurance, accounting fees, utilities and costs for the physical upkeep of the property.

If you do not make your monthly payments, the corporation can put a lien against your property for the amount owing, together with interest and legal costs incurred. Your mortgage lender may pay these arrears on your behalf and add the amount to the principal outstanding on the mortgage, but the non-payment of common expenses constitutes default under your mortgage. If neither you nor the mortgage lender pays the arrears, the corporation can sell your unit to collect the amount owing.

If you aren't pleased with how the condominium is run, bring it to the attention of the Board of Directors or raise your concerns at an annual meeting. If the property manager is not fulfilling the terms of the management agreement, the Board can take appropriate action.

Do I have to get involved?

You should get involved. You've made an investment in this condominium. The least you can do is attend general meetings and vote on the issues.

In many ways, a condominium community operates much like a small town. Just as a town's local residents elect a town council, so condominium unit owners elect a Board of Directors to take responsibility for the running of the condominium corporation. The condominium corporation works best when there is active interest by all members.

I'd like to be on the Board of Directors. What should I do?

Let the people in your project know that you are interested and the qualifications you have to handle the job. If you are living in a new project, a meeting must be held 42 days after the developer no longer holds majority ownership of the units. A new Board, replacing the developer's Board, will be elected at that time.

The *Condominium Act* requires that there be at least three directors on the corporation's Board. Your corporation's *by-laws* may specify that there are to be more than three directors.

The owners electing the directors do not determine which person will hold which position on the Board (i.e. who is president, treasurer etc.); the elected individuals decide who will hold what position.

Directors may be elected for terms of up to three years and may run for re-election. Ideally, the first directors elected serve staggered terms and thereafter three-year terms. That way, there will always be experienced individuals on the Board.

The members who together own a majority of all the units may remove directors from office by a vote in favour of removal. If removed, the owners will elect other eligible persons to complete the unexpired portion of the removed directors' term. If a vacancy occurs on the Board due to a resignation or death, the *Condominium Act* allows the Board to appoint an eligible individual to fill the vacancy until the next annual meeting. Special rules for election and removal of an owner/occupier representative of the Board apply where more than 15% of the units are owner/occupied.

What is a director's role?

As elected representatives of the owners, the Board takes responsibility for managing the condominium property and its business affairs. The *Condominium Act* requires that at least a majority of the directors be present for the Board to transact business. Board meetings are generally held on a pre-arranged basis, usually monthly.

Every Board has certain duties, specified under the *Act*. It must ensure that the corporation's monies are held in trust and properly invested, keep the records required by the *Act*, and ensure they are available for inspection. In addition, the Board is responsible for enforcing the provisions of the *Act*, the *declaration*, the *by-laws* and the *rules*.

The *declaration* and *by-laws* of the corporation elaborate on the duties of the Board. In general, the directors are responsible for the upkeep and the maintenance of the project and other business matters, usually by supervising the actions of the property manager.

Directors also have other specific powers as elected representatives of the condominium corporation. They can hire personnel - either individuals or management companies - to maintain the common elements. They can enter into legal contracts and, with the consent of the percentage of unit owners specified in the *Act*, acquire additional property or sell existing property.

Each officer of the Board has a specific function:

- the president presides over Board meetings and leads the Board which is charged with the responsibility for the corporation's affairs;
- the vice-president assists and can substitute in the president's absence;
- the general manager, where there is one, serves as liaison between the Board and the management company;
- the secretary is responsible for the minutes of meetings, giving notices of meetings, keeping the records for the corporation, including the record of owners, mortgage lenders and leases; and
- the treasurer is responsible for expenditures and financial records. Generally, the management company takes care of all day-to-day business affairs of the corporation, reporting to the treasurer by means of financial statements and bank statements.

Since the treasurer and the Board of Directors have ultimate responsibility for

the business affairs of the corporation, no management company should be given a free hand with expenditures and it should be reporting regularly on all financial matters. The treasurer and/or one other Board member should be required to co-sign any cheques made out by the property manager. The treasurer is also responsible for overseeing the corporation's annual audit.

What makes a good director?

Directors, although they usually receive no fee for their work, are expected to take on a great deal of responsibility. Their decisions have far-reaching consequences and they are responsible for large sums of money.

It is important that a director possess some expertise in business matters. A working knowledge of the legal intricacies of condominium living would also be a tremendous asset to any director.

To avoid potential personal liability, the *Act* says that directors should seek out and rely on the advice of professionals whose expertise applies to the issues being considered. For example, if the Board of Directors consults the corporation's accountant on a financial issue, or lawyer on a legal issue, and makes a decision based on that professional's advice and the decision results in a loss, the Board members will be protected from personal liability. If however the Board members do not seek the necessary professional advice and make a decision which results in a loss to the corporation, they may not be protected from personal liability, as they may not have met the standard of care imposed upon them by the *Act*.

Board members should receive advice from several sources before hiring a management company, and they should make sure that there is a no-fault 60-day cancellation clause included in such contract. It is wise to seek legal advice on contractual matters since such undertakings can involve large sums of money.

Board members must remember that property managers do not have the engineering, accounting or legal training to qualify them to give engineering, accounting or legal advice.

There are courses available for Board members. Contact your Corporation's lawyer or the Canadian Condominium Institute for information.

For the protection of the condominium owners who must indemnify the direc-

tors for actions they might take (unless such actions are dishonest), the condominium corporation is supposed to carry directors and officers liability insurance.

What are the responsibilities of the property manager?

The property manager is an agent of the corporation and, as the name suggests, takes care of the day-to-day management of the property, under the direction of the Board.

On the authority of the Board, the property manager is responsible for collecting and disbursing common expense money. This money, which must be held in a trust account, is used to maintain and repair the property, pay insurance premiums, etc. Cheques issued by the property management company should be co-signed by at least one director of the corporation.

When are meetings held and who calls them?

The first, a general meeting of a new condominium corporation, must be called within three (3) months after a project is registered. After that, the *Condominium Act* requires that annual meetings must be held no more than six (6) months after the end of the corporation's fiscal year.

Annual general meetings are run like the meetings of any other corporation. A chairperson, usually the president, will preside at the meeting and remarks will be addressed to him or her. The chairperson's permission is required to address the floor. Minutes of the meeting must be kept to record the proceedings, including matters put to a vote. Motions will be presented and seconded; each motion will be discussed and put to a vote.

Owners at meetings will receive reports on the condominium affairs, elect directors to the Board, appoint the auditor and vote on any matters for which notice has been given to the owners and mortgage lenders. Members of the corporation will bring forward issues of general concern for discussion.

Attendance at general meetings normally is restricted by the *by-laws*. Usually only owners, their agents and mortgage lenders and guests of the corporation may attend. Others must have approval of the members, or the chairperson of the meeting, before being allowed to attend.

Owners who own 15% of the units, have the right to requisition a meeting of

the corporation to deal with those matters on which the *Act* gives the unit owners the right of approval, such as new *rules* passed by the Board of directors, removal of members of the Board of Directors and changes to the common elements or assets of the corporation.

Who makes up the quorum and who is allowed to vote?

The quorum for an owners' meeting is 25% of the owners entitled to receive notice and vote at the meeting who are present in person or by proxy. A corporation can however, pass a by-law to provide that the quorum be 33-1/3%. To determine who is eligible to receive notice and vote, the corporation keeps a register of owners and mortgage lenders. This register lists the owners' names and addresses. Each owner listed in the register on the 20th day before the meeting is held is served with notice of the meeting, as required by the *Condominium Act* at the address shown on the register and has the right to vote at members' meetings. Owners who are in arrears of common expenses for more than 30 days prior to the meeting and who do not pay the amount owing in full prior to the meeting are not entitled to be counted in the quorum or to vote at the meeting.

It is every owner's responsibility to ensure that his or her name is included in the corporation's register. If it is not included, the owner will not be entitled to receive notices, attend or vote at meetings.

When a mortgage is held on a condominium unit, the person or institution holding the mortgage will probably, by virtue of the mortgage agreement, have the right to exercise the owner's voting right, provided the owner and the corporation are notified of the lender's intention to vote 4 days in advance of a meeting. It is, however, most unusual for a lender to exercise its right to vote

How do you change the condominium documents?

In theory, members of the condominium corporation have almost unlimited power to change the documents by which they live.

In practice, however, amending these documents isn't easy. Changing the *declaration* or the *by-laws* will take a great deal of perseverance on your part.

The *Condominium Act* requires either 90% or 80% consent of all the owners of all the units or a court order on limited grounds before a *declaration* can be amended. *By-laws* can be made or amended by the Board by resolution and

confirmed, with or without amendment, by a vote in favour of members who own at least a majority of all the units. Suppose, for example, you want to have a *by-law* setting qualifications for Board members beyond what is included in the *Condominium Act*. To make this change, you need the support of a majority of the units, and the Board must approve it first.

Rules are created or amended by the Board of Directors and notice of the *rules* is given to the owners. If the owners requisition a meeting, the *rules* only become effective if they are approved at the meeting.

How is a condominium insured?

The *Condominium Act, 1998* specifies that the corporation must insure its obligation to repair the condominium property to its replacement value, subject to a reasonable deductible. The directors must have the condominium assets appraised from time to time to determine that insurance needs are being met.

The insurance premiums are part of the common expenses that all owners pay. While the insurance covers the full replacement value of the units and common elements, it does not cover the improvements to a unit or the personal property of the owner, nor will it cover a unit owner's responsibility for any insurance deductible.

Your unit owner's insurance should cover the improvements made to your unit (such as wallpaper, upgraded carpets and cabinetry, light fixtures, window coverings etc.), as well as your personal property, your liability to third parties and any deductible which may be charged back to the unit for damages caused by an act or omission by you or those for whom you are responsible.

It is wise to contact an insurance broker who is either responsible for the corporation's insurance or familiar with it, to make sure you are properly insured and there are no gaps in coverage between your insurance and the corporation's.

You will also want to know if the corporation has established what portions of a unit are considered part of a standard unit for insurance purposes. The developer is required to deliver this information to you and/or the condominium corporation. All condominium corporations registered after May 5, 2001 should have a document stating what forms the standard unit; condominiums registered before that date may have passed a by-law to establish the "standard unit" for insurance purposes. As a unit owner you are responsible to insure

anything not included in the standard unit. If damage covered by the insurance contract occurs to the condominium property, the insurance company will be contacted in writing by property management or the Board. Usually, the Board will then take charge of appraisals, the hiring of contractors or whatever else is necessary to effect repairs. Owners are not entitled to deal directly with the Corporation's insurer nor should they repair their units before checking with management to establish if the damage is insured.

What about additional recreation facilities? Could a condominium corporation buy a golf course? Can it change the services I expect to receive?

Yes, it can. A corporation does have the power to purchase property on behalf of the condominium. It is possible that it could purchase a golf course or even a small farm for members to grow their own produce. Such a purchase, however, would have to be for the use and benefit of the owners, not for investment purposes. It is more usual, however, for a condominium corporation to decide to extend existing facilities on its own property by the addition of further structures – a tennis court or a children's playground, for example.

The corporation also has the right to add, eliminate or vary the services the owners receive.

If the addition, alteration, renovation or change in service is substantial, a vote of 66-2/3% of the owners in favour of it is required. The *Act* defines what is substantial as something, which costs more than 10% of the corporation's annual budget or anything the Board decides is substantial. Changes, which are not substantial, can be made without a vote of owners. The Board alone can make some changes; other changes require that notice be given to the owners who then have a right to requisition a meeting and vote against the change.

Conclusion

Buying and living in a condominium is more complicated than in a single family home. You must understand what it is you are purchasing and whether the lifestyle will suit you and your family. Once you do the proper investigations and make your decision, you will find that the advantages of condominium living are many and you should find it a rewarding experience!