



M&O LAW CONSULT

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About M&O Law Consult

M&O Law Consult is a full-service law firm located in Accra, Ghana. We have significant experience in providing legal advice and support services to clients in various sectors of the economy, including;

- Real Estate
- Construction, Infrastructure and Transport
- Litigation and Dispute Resolution
- Energy and Natural Resources

We empower our clients through expert legal advice and strive to meet their needs through superior customer service and detailed due diligence.

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this issue

What you need to know about
condominiums

What you need to know about **Condominiums**

1) What is a condominium?

Condominiums or condos are terms used in the United States and most provinces in Canada. Condominiums are often thought of as similar to apartments, but they have legal differences.

A condominium combines the legal concepts of single ownership and tenancy in common, whereas an apartment only utilizes the concept of single ownership.

The concept of single ownership affords the owner of a piece of property the bundle of rights that typically go with real property such as land or buildings. The bundle of rights is the right to use the property, the right to possess the property, the right to exclude all others from the property and the right to sell the property.

The concept of tenancy in common says that two or more persons hold an “undivided interest” in a property but all

have an equal right to use the property.

Based on the foregoing analysis, it follows that condo ownership has a dual nature; a condominium unit owner has ownership of their unit but shares ownership of common areas with other unit owners. An apartment owner has ownership of only their unit. Thus, in condominiums, shared swimming pools and gyms, staircases, car parks, and gardens are jointly owned. In apartment buildings, these shared areas are not jointly owned, and management of them would not be the responsibility of the apartment owners.

2) What are the rules on condominiums?

Currently, there are no dedicated condominium laws governing the ownership of both residential and non-residential condominiums in Ghana, the condominium bill is the closest we have come to obtaining a condominium law but the bill has yet to go for Cabinet’s approval. Thus, a condominium arrangement would be

governed by any agreements between condominium buyers and sellers.

3) What are the advantages of buying a condominium?

A few advantages of using a condominium model are:

- a) Amenities such as saunas, swimming pools, and fitness centers are much cheaper to maintain when shared by a group of owners than by an individual property owner. Thus they are more likely to have these amenities.
- b) individual owners are not directly responsible for maintenance on the building or the common areas. Monthly condo fees will take care of all expenses related to the repair and maintenance of the community facilities.

4) What is an association?

When you purchase a condo, you are obligated to join that community's homeowner's association and pay monthly fees for the upkeep of the common areas. Countries that have rules on condos require that these associations are registered to make them legally distinct entities that have rights.

The model adopted by most countries is that their laws require the incorporation of a not for profit organization consisting of all the unit owners and formed to manage and maintain the condominium in accordance with bye-laws. Thus, these associations are duly incorporated by the developer.

Membership of the association is limited to, and compulsory for all unit owners. A unit owner can become a member under the following circumstances:

- upon subscribing to the regulations of the company or agreeing with the company to be a member; and
- the entry of the unit owner's name in the register of members of the company.

Recently, the Companies Act, 2019 Act 992 has added a further requirement to include the names and particulars of beneficial owners of companies in the register of members. This means that a prospective owner of a condominium could request for information on the beneficial owners and can use this information to make a decision about whether they would want to invest in that property or not.

5) What are the best practices for running an association?

a) *Keeping proper records of association meetings is important for many reasons:* The Companies Act requires that you keep minutes once your association is incorporated. There are other statutory books that the association is required to keep and update. These are the member's register, register of directors and secretary; register of directors' interest and disclosures, register of directors' holdings. If these books are not kept and updated, every officer of the association is liable to a fine for each day that the default continues.

Minutes keep track of issues of concern to the members of the association. They also ensure that members have a clear record of what the board and association have done.

b) *Compliance with the Companies Act:* The Companies Act has extensive filing and other requirements that the association is required to comply with. The main ones are:

i) The association is required to at least once in every year, deliver to the

The condo model provides an alternative to the traditional model of owning apartments and gives owners more control over their property

Registrar for registration its annual returns. A company can do so within thirty-six (36) days after circulating the companies profit and loss account, balance sheet and reports. Annual returns include particulars of every member of the association and every beneficial owner of the association. If this return is not filed, the association and every officer in default would be liable to a fine not exceeding three hundred Ghana cedis for each day the default continues.

ii) The association must hold an annual general meeting each year, in addition to any other general meetings, at intervals not exceeding fifteen (15) months. If an annual general meeting is not held, the association and every officer in default will be subjected to a fine.

c) *Read your governing documents and follow them:* The first thing that any director or unit owner of a condominium association should do is to read the sale and purchase agreement,

the lease or deed of assignment, the bye-laws, the company regulations and any rules and regulations that make up the association's governing documents. A director and a unit owner's duty is to comply with and enforce the rules contained in these documents.

d) Be aware of your community: Some people drive into their garage, walk from their car into their home and never wander beyond their unit. This should not be the case. Know your neighbours and residents. Look at the buildings. Examine the Balance Sheets and Financials. As a director and/or a unit owner, you have both a duty to yourself and the association to have a general awareness of the building(s), the community and the financial condition of your association.

6) I am buying from a developer, what do I look out for in all the documents?

Condo living is more complex than living in your own home. Thus, there are documents that govern how you can use the condo, and what you can and cannot do when you live in a condo. It is imperative that you review the agreements with your lawyer and do proper due diligence before you decide to buy a condo.

The main documents that you may encounter if you do purchase a condo are: the byelaws, sale and purchase agreement, sublease or deed of assignment, regulations of the association, and rules and regulations (also called "House Rules", "Community Guidelines" etc.)

Byelaws: these contain greater detail about what a unit owner is required to do such as the right to vote, the procedure for voting and the value of the unit owner's vote which is usually tied to the total percentage allocated to the unit owned by the unit owner.

In these byelaws look out for restrictions like the restrictions on pets. Now it is imperative that if a unit owner owns a pet he should come to terms on what happens to his pets when a pet ban has been enacted after he has purchased a home. In some jurisdictions, if a pet ban is enacted after owners with pets have purchased a home, those owners will be exempt.

Look out for a provision restricting the renting or leasing on units. This is also called a "rental cap". Rental caps typically limit the percentage of rented units to between ten (10) and twenty-five (25)

percent of all units. This is because owners are concerned that renters may not respect the community rules and take care of the property but this could affect a unit owner who is renting mainly for the cash flow.

Sale and purchase agreement/deed of assignment: these contain details about the payment

Being proactive and informed is key when one is a condo owner

terms, conditions that have to be fulfilled before full payment, representations and warranties.

The unit owner must ensure in the sale and purchase agreement that the developer is granting him everything he requires to perfect or register his interest in the unit. These things are: the strata plan (a site plan especially designed for condos, approved by the Director of Survey and endorsed with the Lands Commission's bar code at the back), a copy of a consent letter from the head lessor, a deed of assignment or sublease in which the oath of proof has been administered before the land registrar or a registrar of the High Court.

Without these documents, the unit owner cannot sell or mortgage the units to another. Unit owners should look out for representations and warranties in the Sale and Purchase Agreement. A representation is an assertion as to a fact, true on the date the representation is made, that is given to induce the purchaser to enter into the contract but which do not become a part of the contract. A representation which is false is called a misrepresentation and there are three (3) kinds of misrepresentations: fraudulent, negligent and innocent misrepresentation. Thus a buyer who was induced by a misrepresentation to enter into a contract can rescind it and may be entitled to claim damages if the misrepresentation is fraudulent or negligent, but not if it is innocent.

A warranty is a promise to indemnify the buyer if the claim made is not true. A breach of a warranty entitles the innocent party to sue for damages. For example, as an inducement to a purchaser, the developer could represent and warrant that it has good title to the land or that it has full authority to enter into the agreement.



Regulations of the body corporate: For our purposes, the regulations should state the objects of the company, the names of the first directors of the company, their powers, the extent of the member's liability and how unit owners can become members of the body corporate.

Rules and regulations also called "House Rules": These are the lowest level in the hierarchy of governing documents. These govern day to day living such as where you can park your car, when to observe quiet hours, what to do if you have a noisy neighbor and what the fines are if an owner does not obey the rules. These are meant to fill holes that are left in the byelaws and often changes overtime as the community changes.

Conclusion

This paper has summed up what you need to know about condominiums. As we stated earlier, buying and living in a condominium is more complicated than in a single family home. You must understand what you are purchasing by reviewing the relevant documents; and whether the lifestyle suits you and your family. Once you do the proper due diligence with the help of your lawyers and your documentation is in order, you will enjoy your condo without much hassle.



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