

# Commercial Condominiums

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## 1. What is a condominium?

- 1963: "Condominium Ownership Act", 38-33-101, et. seq., C.R.S. This Act defined a "condominium unit" as, "an individual air space unit together with the interest in the common elements appurtenant to such unit".
- 1991: "Colorado Common Interest Ownership Act", §38-33.3-101, et seq., C.R.S., commonly known as "CCIOA". This act recognizes several forms of common interest communities, *one* of which is the condominium. (Others are cooperatives, planned communities and leasehold common interest communities.)
- "Condominium means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners." §39-33.3-103 (9), C.R.S.
- Condominiums may be owned in any way that any other parcel of real estate may be owned, e.g., in fee simple, life estate with remainder; individually, in joint tenancy, etc.
- The ownership interest in a condominium is assessed and taxed separately, including the value of the condo owner's proportionate interest in the common elements.

## 2. How does a commercial condominium differ from a residential condominium?

- Commercial condo units will be assessed as commercial property rather than residential, but the way the condo is created and managed will be much the same as a residential condominium project.

- CCIOA is applicable to commercial as well as residential condominiums (there are exemptions in subsections 116 and 121 of CCIOA for certain non-residential planned communities and cooperatives, but not for condominiums).
- Senate Bill 05-100 (a) modified a portion of the Colorado Water Conservation Board statute which invalidates restrictions or burdens on xeriscaping (§37-60-126, C.R.S.) and (b) modifies various sections of CCIOA to add numerous disclosure requirements, requirements for education of board members and owners, and various prohibitions regarding such things as display of flags, political signs, etc.

4. How is a condominium project created?

- If *residential units* are being converted to condos, 38-33-112, C.R.S. (a section of the old condo act which is still in effect) requires 90-day notice to the residential tenants, and no lease may be terminated before its expiration date unless the tenant agrees.
- Whether the project is new construction or conversion of an existing building:
  - Creation and recordation of map/plat which divides the property into units, common elements and limited common elements, and
  - Creation and recordation of the Declaration.
  - Ancillary documents such as articles of incorporation of the owners association, bylaws, resolutions, minutes, etc. will also be necessary.
  - County or city may have additional requirements.

5. What types of issues are covered in the Declaration?

- A statement ("declaration") that the property is bound by the provisions of the Declaration
- New legal description of project and units
- Declarant rights regarding further development, sales office space, reservation of approval/control rights, etc.
- Description of the units, common elements, limited common elements (reference also to the map/plat)
- Allocation of common expenses among the units
- Easements (encroachments, utilities, emergency, OA, maintenance, etc.)
- Maintenance responsibilities
- Use restrictions
- Restrictions on certain alterations
- Possible alienation restrictions such as rights of first refusal
- Creation and operation of owners association ("OA")
- Budget procedure
- Insurance
- Condemnation
- Obsolescence procedures
- Assessments - normal and special
- Enforcement of assessment payment, including lien rights

- Lender rights
  - Notice requirements and procedures
  - Amendment of Declaration
6. What undertakings does a developer take on when creating a commercial condo project that are additional to those involved in developing a single-owner project?
- Greater legal fees to advise and to create governing documents for the condominium: declaration, articles of incorporation of owners association, bylaws, resolutions, minutes, others.
  - Management of owners association until owners can take over (and perhaps expenses of a management company)
  - Greater survey expenses for creation and modification of the map/plat
7. What types of properties can be condominiumized?
- Any multi-unit property. While office buildings have been most common in the past, the condominium concept is becoming increasingly popular for medical, industrial and "flex space" buildings, and can even be used in a retail context. Each type of property will involve its own special drafting concerns.
8. Can you have a mix of both residential and commercial units in a condominium?
- Yes, but the presence of both types of properties will require great thought and attention to drafting of governing documents to address potential conflicts between residential and commercial owners. Issues such as allocation of operating expenses and use of common areas can create problems, for example.
  - A mixed-use condo project may be more difficult to finance.
9. What are the potential advantages of creation of a commercial condominium project to the developer?
- Exit strategy for under-performing property.
  - Partial return of capital invested as each unit is sold.
  - Higher total sales price.
10. What are the potential disadvantages to a developer?
- Greater expenses to create
  - Need to find several buyers rather than just one. Possibly a longer total holding period.
  - Lender concerns.
11. What are the potential advantages for a buyer of a commercial condominium?

- Tax advantages of ownership
- Greater control of own interior space

12. What are the potential disadvantages to a buyer?

- The owner of a unit will have less control of operating expenses than he might anticipate, because operating expenses will be controlled by the owners association and any manager it may hire.
- Marketability when owner wishes to sell.