

The Condominium Buyers' Handbook

**State of Michigan
Department of Consumer and Industry Services
Office of Policy and Legislative Affairs
Boundary Commission
www.cis.state.mi.us/opla**

The Condominium Buyers Handbook was created by the Michigan Department of Consumer and Industry Services as required by the Condominium Act, Public Act 59 of 1978, as amended. This edition reflects Public Act 379 of 2000 amendments that took effect January 2, 2001.

This handbook is intended as a guide for people who are considering buying a condominium. It provides a summary of portions of the Condominium Act (MCL 559.101 et seq.) and is directed primarily toward residential condominium buyers, although the Act also provides for business, campground and marina condominium developments.

Although the Department of Consumer & Industry Services is identified as the administrator in the Act, the Legislature repealed the Department's regulatory responsibilities many years ago. The Act does not give the Department authority to enforce any provisions in the Act. The last section of the handbook describes the remedies the Act does provide. In addition, the Department will forward a copy of a complaint received regarding a developer of a condominium project to the developer along with a notice of available remedies in the Act. Contact:

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Condominium Ownership

Unit owners have exclusive ownership rights to their unit and the right to share the common elements of the condominium project with the other co-owners. The development is privately owned and maintained by the co-owners, unless the local government agrees to take responsibility for maintaining a portion of the development. Roads are an example of a portion of a condominium development that may become public. The master deed will designate the percentage of ownership of each condominium unit in the development. This percentage of value will determine your obligation for payment of monthly fees, assessments, and may determine your voting percentage at association meetings.

The bylaws should be read carefully as they contain provisions outlining your rights as an owner. Modifications or repairs to your unit may require approval of the co-owners association. There may be restrictions on pets, renting, use of recreational facilities, and other prohibitions in the bylaws that you should be aware of before signing a purchase agreement.

Association of Co-owners (Condominium Board):

Initially, the developer appoints the board of directors, who govern the development until the first annual meeting. The provisions for holding the annual meeting and designating the voting procedures are included in the condominium bylaws. The association of co-owners is elected by the co-owners and is responsible for governing the development and maintaining the general common elements. The general common elements may consist of hallways, lobbies, building exteriors, lawns, streets (if the roads are private), recreation facilities, heating, water and electric systems. The association has authority to determine the monthly maintenance fee and the amount of any special assessments. The association of co-owners may hire a management company to provide services for the development. Each co-owner must pay a monthly fee for these services and any special assessments.

Rules governing the association are written in the bylaws of the condominium development. After the association of co-owners is created, it may adopt bylaws for the operation of the association. Meetings of the co-owners association are meetings of a private entity, and not subject to the Open Meetings Act, which requires government agencies to allow public attendance at meetings. Associations are required to maintain a reserve fund for major repairs and replacement of common elements. The minimum amount is 10 % of the annual budget on a non-cumulative basis.

You should receive a disclosure statement itemizing the association's budget at the time you are given the master deed. The monthly assessment is considered a lien on the condominium unit and you cannot be exempt from assessments and monthly fees by nonuse of any common elements or by abandonment of the condominium unit. Co-owners must notify the association if they rent or mortgage their unit.

If you have complaints with the association or other co-owners, review the condominium bylaws to determine what recourse you have. Generally only professional arbitrators or the courts have jurisdiction over complaints between these parties.

Site Condominiums

The term "site condominium" is used to describe a condominium development with single-family detached housing instead of two or more housing units in one structure. Site condominium developments must comply with the Act. The Act requires developers to notify the appropriate local government of their intent to develop a condominium project. The type of review the development is subject to depends on the local government's ordinances. Site condominium documents are not reviewed by the State for conformance with the Act.

There is another type of residential subdivision development in Michigan that is regulated in accordance with the Land Division Act. Subdivisions developed pursuant to the Land Division Act are subject to state review for conformance with the Land Division Act.

Limited or General Common Elements

Limited common elements are property with usage restrictions. A carport space assigned to a unit is a limited common element. The yard of a unit that is a single family detached home may be a limited common element for use by the owner of that unit. General common elements may be roads, open space areas and recreation facilities. They are available for use by everyone in the development. The master deed specifies which parts of your condominium development are designated as limited or general common elements. Use of the common elements is governed by the bylaws for the condominium development.

Condominium Documents

The condominium documents include the master deed, condominium subdivision plan, bylaws for the condominium project, and any other documents referred to in the master deed or bylaws. In addition, the developer is required to provide a disclosure statement. Once the condominium association is established, it may adopt another set of bylaws pertaining to the association's operation. The association or management company must keep books and records with a detailed account of the expenditures and receipts affecting the project and its administration, and which specify the operation expenses.

Preliminary Reservation Agreements

A preliminary reservation agreement gives you the opportunity to purchase a particular condominium unit for a specified period of time upon sale terms to be determined later. The developer must place the payment you make in an escrow account with an escrow agent. If you make a payment under a preliminary reservation agreement and cancel the agreement, the developer must fully refund the money. If you subsequently enter into a purchase agreement, the developer must treat the payment made as if it was made under a purchase agreement.

Purchase Agreements

A purchaser may withdraw from a signed purchase agreement without cause or penalty within nine business days as long as the property has not been conveyed to the purchaser. The nine-business day window starts the day on which the documents listed below are received, if that day is a business day. The developer must deposit payments made under a purchase agreement in an escrow account with an escrow agent.

Before signing an agreement, it is advisable to seek professional assistance to review all condominium documents. Some issues to consider before buying include the following:

- The bylaws may contain a variety of restrictions. The bylaws may require you to receive association approval for certain actions. If you do not obtain prior approval, the association has authority to enforce any legal restrictions in the bylaws.
- You may be subject to a binding purchase agreement before construction begins or is completed. Determine whether the agreements will provide you with adequate rights if the developer does not finish the unit in time to meet the occupancy date.
- Review all restrictions, covenants, and easements that might affect the condominium project or your unit.
- Determine if the developer has reserved any rights to alter the project.
- Before signing a purchase agreement make sure you have financing, or that the agreement specifies it is dependent on your ability to obtain a mortgage commitment for the unit.
- You may want to determine if the developer is contractually obligated to finish the development. The local government may have required the developer to provide letters of credit to complete elements of the project.
- Do not rely on verbal promises, insist that everything be in writing and signed by the person who made the promise.
- When buying a condominium in a structure that has been converted from an existing building, you will also be a joint owner of the furnace, roof, pipes, wires and other common elements. Ask for an architect's or engineer's report on the condition of all building components and their expected useful life. Ask to see copies of the building maintenance records, and find out what improvements the developer has made.

Documents the Developer Must Provide

The developer must provide copies of the following documents to a prospective purchaser:

1. The recorded master deed.
2. A copy of the purchase agreement and escrow agreement
3. The condominium buyer's handbook.
4. A disclosure statement that must include information about:
 - the developer's previous experience with condominium projects,
 - any warranties undertaken by the developer, and
 - the extent to which financial arrangements have been provided for completion of all structures and improvements labeled "must be built" on the subdivision plan.

Advisory Committee

The advisory committee is established when one of the following occurs, whichever happens first:

1. 120 days after 1/3 of the units are sold to nondeveloper co-owners.
2. One year after a unit is sold to a nondeveloper co-owner.

The purpose of the advisory committee is to meet with the project board of directors to facilitate communication and aid in the transition of control to the association of co-owners. The advisory committee ceases when a majority of the board of directors of the association of co-owners is elected by the nondeveloper co-owners.

Election of Board of Directors for Association of Co-owners

No later than 120 days after 25% of nondeveloper co-owners have title to the units that may be created, at least one director, and not less than 25% of the board of directors shall be elected by the nondeveloper co-owners.

No later than 120 days after 50% of nondeveloper co-owners have title to the units that may be created, at least 33.3% of the board of directors shall be elected by nondeveloper co-owners.

No later than 120 days after 75% of nondeveloper co-owners have title to units that may be created, and before 90% are conveyed to nondeveloper co-owners, the nondeveloper co-owners shall elect all directors on the board, except if the developer owns and offers for sale at least 10% of the units, or as long as 10% of the units remain to be created, the developer shall have the right to designate one director.

If titles to 75% - 100% of the units that may be created have not been conveyed, 54 months after the first conveyance, the nondeveloper co-owners shall elect the number of

board members equal to the percentage of units they hold. The developer has the right to elect the number of board members equal to the percentage of units that are owned by the developer, if the developer has paid all assessments for those units.

Documents the Association Must Provide

The association of co-owners must provide a financial statement annually to each co-owner. The books, records, and contracts concerning the administration and operation of the condominium project must be available for examination by any of the co-owners at convenient times. All books and records must be audited or reviewed by independent accountant annually, but the audit does not have to be certified. The association must keep current copies of the master deed, all amendments to the master deed, and other condominium documents available at reasonable hours to co-owners, prospective purchasers and prospective mortgagees.

Amendments to Condominium Documents

If the condominium documents contain a statement that the developer or association of co-owners has reserved the right to amend the documents for that purpose, then the documents may be amended without the consent of the co-owners, as long as the change does not materially alter or change the rights of a co-owner.

The master deed, bylaws and condominium subdivision plan may be amended, even if the amendment will materially alter or change the rights of a co-owner with the consent of at least $2/3$ of the votes of the co-owners and mortgagees.

The method or formula used to determine the percentage of value of each unit for other than voting purposes cannot be modified without the consent of each affected co-owner. Provisions relating to the ability or terms under which a co-owner may rent a unit may not be modified without the consent of the co-owner. A co-owner's unit dimensions or the limited common elements to the co-owner's unit may not be modified without the co-owner's consent.

Remedies Available Pursuant to the Act

A developer who offers or sells a condominium unit in violation of the Act is liable to the purchaser for damages.

A person or association of co-owners adversely affected by a violation of, or failure to comply with, the Act, administrative rules issued under the authority of the Act, or any provision of an agreement or a master deed may take action in a court with jurisdiction. The court may award costs to the prevailing party.

A co-owner may take action against the association of co-owners to compel the association to enforce the condominium documents. To the extent that the condominium documents expressly provide, the court shall determine costs of the proceeding and the successful party shall recover those costs.

A co-owner may take action against another co-owner for injunctive relief or for damages for noncompliance with the terms of the condominium documents or the Act.

The bylaws must contain a provision that disputes relating to the interpretation of the condominium documents or arising out of disputes among co-owners may be resolved through arbitration. Both parties must consent to arbitration and give written notice to the association. The decision of the arbitrator is final and the parties are prohibited from petitioning the courts regarding that dispute.

A developer and a co-owner, or association of co-owners, may execute a contract to settle by arbitration for any claim against the developer that might be the subject of a civil action. A purchaser or co-owner has the exclusive option to execute a contract to settle by arbitration for any claim against the developer that might be the subject of a civil action and involves less than \$2,500. All costs will be allocated in the manner provided by the arbitration association. A contract to settle by arbitration must specify that the arbitration association will conduct the arbitration. The method of appointment of the arbitrator will be pursuant to rules of the arbitration association. Arbitration will be in accordance with sections 5001 to 5065 of Act No. 236 of 1961, MCL 600.5001 to 5065, which may be supplemented by rules of the arbitration association. An arbitration award is binding on the parties to the arbitration.

A condominium developer may be required to be a licensed residential builder under the Occupational Code. If a person has violated the Occupational Code or administrative rules, a complaint must be made within 18 months after completion, occupancy or purchase of a residential structure. Conduct subject to penalty is described in Article 24 of the Occupational Code. Complaints concerning construction may be filed with:

Michigan Department of Consumer & Industry Services
Bureau of Commercial Services
Enforcement Division
P. O. Box 30018
Lansing, MI 48909
Phone: (517) 241-9202
www.cis.state.mi.us/bcs

The Michigan Consumer Protection Act prohibits certain methods, acts, and practices, provides for certain investigations and prescribes penalties. Complaints regarding an alleged violation of the Consumer Protection Act may be filed with:

Michigan Department of Attorney General
Consumer Protection Division
P. O. Box 30213
Lansing, MI 48909
Phone: (517) 373-1140
www.ag.state.mi.us

The Act provides the right to notify the agency in a governmental unit responsible for administration and enforcement of construction regulations of an alleged violation of the state construction code, other applicable building code, or construction regulation.

A person who willfully aids in the advertisement of a statement or representation that misrepresents the facts concerning a condominium project, as described in the recorded master deed, is guilty of a misdemeanor and shall be punished by a fine or imprisonment or both. An action under this section shall be brought by the prosecuting attorney of the county in which the property is located, or by the department of attorney general.

A person can not take action arising out of the development or construction of the common elements, or the management, operation, or control of a condominium project, more than three years from the transitional control date or two years from the date of the cause of the action, whichever occurs later. The transitional control date is the date the board of directors takes office by an election where the co-owners' votes exceed the developer's votes for the board members.

Legal References

Condominium Act, P.A. 59 of 1978, as amended, MCL 559.101 et seq.

Condominium Rules, R559.101 et seq, 1985 Michigan Administrative Code
Occupational Code, P.A. 299 of 1980, MCL 339.101 et seq.

Consumer Protection Act, P.A. 331 of 1976, MCL 445.901 et seq.

Stille-Derossett-Halle Single State Construction Code Act, P.A. 230 of 1972, MCL 125.1501 et seq.

Approval: CIS Director

The Department of Consumer and Industry Services will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, political beliefs or disability. If you need help with reading, writing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

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