



## CONDOMINIUM REALES – BUYER ADVISORY

1 *The following Advisory is intended to briefly address some of the practical and legal issues that can arise in the purchase of a*  
2 *condominium previously occupied. What follows is a summary of a few of the more important issues – however, it is by no*  
3 *means exhaustive. Your real estate broker is not an expert in condominium development law, construction law, engineering, or*  
4 *other matters related to the physical structure or systems. You should secure your own independent expert(s) when purchasing*  
5 *a condominium, especially a qualified home inspector. Caveat: This Advisory does not constitute legal advice, and should not*  
6 *be relied upon in lieu of securing legal counsel from an attorney familiar with condominiums.*

7 **1. FORMS.** Oregon law requires that sellers of pre-owned condominiums, as well as sellers of one-to-four family dwellings, must provide  
8 their buyers with a completed Seller's Property Disclosure form. However, the form addresses only limited issues regarding  
9 condominiums, and there is much more that buyers should know before making a final purchasing decision. It is recommended that  
10 buyers ask their real estate broker for a Condominium Addendum (Form No. OREF-024) when making an offer to purchase a  
11 condominium, since that form requests that sellers provide their buyers with certain documents and information that goes well beyond  
12 those items addressed in the Seller's Property Disclosure form.

13 **2. HOMEOWNERS' ASSOCIATION ('HOA') DUES AND ASSESSMENTS.** One significant financial issue for condominium purchasers  
14 is to investigate the past, present, and anticipated future HOA dues. When are dues assessed – e.g. monthly, annually, etc.? How  
15 much are they and how long have they been at their current level? Try to obtain copies of a two or three year assessment history.  
16 Have the dues increased significantly over the years? If so, why? Are there any large or special assessments planned (or being  
17 discussed) by the Board of Directors? How do the HOA dues compare to those at other comparable condominium developments?  
18 What do they cover, e.g. sewer, water, reserves, insurance, etc.? Do the dues include an allocation for a reserve fund for capital  
19 improvements and major repairs? How long have contributions been made to this fund? What are the reserves being set aside for and  
20 will they be sufficient to replace or repair major capital items such as the roof, parking area or heating and cooling systems - or will there  
21 be a large special assessment because the reserves are inadequate? Buyers should consider obtaining a copy of all recent budgets  
22 and other financial information regarding the HOA – preferably going back at least for the last 12 months. Oregon law requires that the  
23 condominium Board of Directors conduct a reserve study annually. Buyers may wish to verify that this is being done and review the  
24 studies. How realistic have they been? Copies of the HOA's minutes for the last 12 months or more should be secured. Speaking with  
25 the treasurer of the HOA may be helpful. Is there any litigation existing or planned by the HOA for claims against the developer or  
26 others for construction defects or for any other reasons? Is there is a possibility of litigation by (or against) the HOA? If so, the buyer  
27 should consult with an attorney to secure further information.

28 **3. DECLARATION AND BYLAWS.** The declaration is the document that sets out the rules and regulations for the condominium unit  
29 owners. They are generally considered to be legally binding and enforceable. Violations can result in fines. The HOA has the power to  
30 file a lien on the owner's condominium unit for nonpayment of the HOA dues and/or fines. There can be personal liability for  
31 nonpayment, as well. The bylaws govern the operation and business affairs of the HOA, such as the rules for election of officers and  
32 directors, voting, and general governance of the HOA. Not all condominium documents are the same. Many place limitations on pets,  
33 vehicle parking, rental of units, in-home businesses, and other important issues. (Note: Some lenders place limitations on the  
34 percentage of units that may be rented, and if too many, financing may be difficult or impossible to obtain.) Buyers should also review  
35 any informal guidelines or rules that may have been established by the HOA which are not found in the recorded declaration or bylaws.  
36 Are the declaration and bylaws clear and understandable? Are there any other restrictions contained in them that could interfere with  
37 the buyer's intended use and enjoyment of their unit?

38 **4. ADMINISTRATION OF THE HOA.** How does the HOA enforce violations of the declaration or bylaws? Have they had to resort to  
39 lawsuits to do so? Do the officers of the HOA get along with the rest of the unit owners or is there an adversarial relationship? Some  
40 HOAs may be run by a small group of unit owners who become overly zealous in how they approach their responsibilities. Is there  
41 professional third-party management? If so, what is the cost and are they doing a good job? Are violations enforced uniformly in a  
42 timely and fair manner? Current unit owners should be asked whether they are satisfied with management, and if not, why not.

43 **5. THE PHYSICAL STRUCTURE.** The quality of construction of condominiums can vary greatly. Occasionally, pre-existing apartments  
44 or other structures are converted into condominiums. Sometimes these conversions, such as lofts, were originally designed and built for  
45 other purposes, such as storage facilities. Although there can be very good conversions, some may pose a greater risk that portions of  
46 the structure, such as the mechanical systems, roof, or exterior, are not as modern or effective as those used in new projects.

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47 This can be especially true of electrical, plumbing and HVAC systems. Soundproofing is especially important. This applies not just to  
 48 condo conversions, but to developments that were originally built as condominiums, since the proximity of neighbors is much closer in  
 49 this type of community living than in detached single family residences. Checking with other unit owners is essential before entering into  
 50 a binding purchase contract. Is there any obvious deferred maintenance either in the unit itself, or in any of the common areas, such as  
 51 the roof or parking area? Maintenance of the common areas, including the limited common areas (such as exterior decks or patios) is  
 52 usually an HOA responsibility, so deferred maintenance could reflect some financial inability of the HOA or neglect by management. Is  
 53 the siding a manmade product, and if so, how is it holding up? Will any of the siding have to be replaced? What is the age of the roof?  
 54 Where necessary, is the exterior uniformly sealed, painted and repaired? A professional home inspector should be used to evaluate  
 55 the interior of the condominium unit, no matter how new it is. If possible, the inspector should be asked about any areas of concern in  
 56 the limited and general common areas, as well, although special permission may be necessary from the HOA to do any intrusive or  
 57 exploratory examinations or testing. Buyers should ask the seller about common area problems, such as water, drainage or flooding  
 58 issues, even though they do not negatively impact the unit itself. (Note: The Seller's Property Disclosure form asks questions about the  
 59 residence in general, but does not distinguish between a condominium unit and the common areas. As a result, some sellers may fail to  
 60 disclose known defects in the common areas, believing that the disclosure form only deals with the unit itself.) Have there been any  
 61 repair problems with the common elements, especially involving water leakage in and around the roof, decks, patios, windows or siding?  
 62 The declaration should be reviewed closely on this issue – since the responsibility for repairing or replacing the windows and sliding  
 63 doors, can be imposed upon the unit owner rather than the HOA.

64 **6. INSURANCE.** The nature and amount of insurance coverage is frequently overlooked by buyers - until it is too late. How much  
 65 liability insurance does the HOA maintain in case someone is injured in a common area? Is the amount and type of coverage  
 66 comparable to similar developments, and is it adequate? If the development has a pool or other recreational facilities, will there be  
 67 enough coverage in the event of a personal injury claim? Similarly, is the hazard insurance coverage adequate? If one of the structures  
 68 burned to the ground, would there be enough coverage to replace it? Prospective buyers should be sure to carry their own personal  
 69 liability coverage as well as personal property coverage for the contents of their unit. Most carriers have policies specifically designed  
 70 for condominium unit owners. Do those running the HOA have Directors and Officers (D&O) insurance, in case they are sued  
 71 individually for a decision made in their official capacity? This is important for those prospective buyers who may wish to serve in a  
 72 leadership role.

73 **7. DEVELOPMENT/DEVELOPER.** Some condominium projects are developed in phases. Buyers should clarify with the developer if  
 74 the project is a phased development and, if so, whether all phases have been completed. If not completed, where and when is further  
 75 construction planned? Also, if the condominium development is relatively new, the developer may still control the HOA due to weighted  
 76 voting. If so, prospective buyers should ask how the developer is currently running the HOA. Remember, the developer's interests may  
 77 not be the same as the unit owners'. Has the developer sought to amend the declaration to secure more favorable provisions? If the  
 78 developer submitted an initial reserve study, as required by Oregon law, how realistic is it? Have any subsequent reserve studies  
 79 resulted in a substantial increase in assessments? Unless there is an absolute prohibition against renting the units, the developer may  
 80 rent unsold units to defray any overhead costs incurred during the marketing process. As noted above, the number of rental units may  
 81 affect the buyer's ability to obtain financing. Is the developer paying for the assessments for all of the unsold units? If the developer has  
 82 turned the HOA over to the unit owners within the last couple of years, a prospective buyer may wish to review the financial information  
 83 that was delivered at the time of initial turnover. At that time did the developer deliver to the HOA all plans, budgets, insurance policies,  
 84 and financial documents required by law?

85 **8. CONCLUSION.** Buyers have a significant responsibility to perform their due diligence in the purchase of a condominium – much of  
 86 which is quite different than the purchase of a detached single family home. Not only must the condominium and its limited and general  
 87 common elements be evaluated, but the books, records and operation of the HOA must be reviewed as well.

88 **ACKNOWLEDGEMENT**

89 *The undersigned Buyer(s) acknowledge that they (a) have read and understand this Advisory; (b) have been provided with a*  
 90 *copy for their own files, and (c) are aware that the use of one or more experts is recommended before entering into a binding*  
 91 *transaction for the purchase of a condominium.*

92 Buyer \_\_\_\_\_ Date \_\_\_\_\_ ← Buyer \_\_\_\_\_ Date \_\_\_\_\_ ←

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