



**WHAT YOU SHOULD
KNOW ABOUT
BUYING A HOME IN A
CONDOMINIUM,
COOPERATIVE, OR
HOMEOWNERS
ASSOCIATION**

Montgomery County, Maryland
Commission on Common Ownership Communities

2011

WHAT YOU *REALLY* NEED TO KNOW
ABOUT LIVING IN A COMMON
OWNERSHIP COMMUNITY

(in just one page)

- 1. Your home is governed by rules and regulations which you agree to obey simply by buying a unit or lot in the association.**
- 2. Your association is a democracy governed by an elected, volunteer board of directors which must obey and enforce the rules of the association and to keep it in good condition.**
- 3. These rules might limit what you can do with the property and what kind of vehicle you can park.**
- 4. You will have to pay regular fees or assessments to your association. If you don't pay them, the association can take legal action.**
- 5. The health of your association depends on the participation of its members in its affairs.**
- 6. *Ask for and read the Public Offering Statement or Resale Package before you go to settlement!***

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CONTENTS

I. INTRODUCTION	PAGE 1
A. What Is a Common Ownership Community?	2
Condominiums	2
Homeowner Associations	3
Cooperative Housing	3
B. How a Common Ownership Community is Run	4
C. Tax Considerations	6
D. Basic Association Documents	7
II. HOW TO SELECT A COMMON OWNER- SHIP COMMUNITY	
A. Required Disclosures	8
New condominiums	8
Re-sold condominiums	10
Condominium conversions	11
New HOAs	12
Re-sale of homes in HOAs	13
New Co-Ops	14
Older Co-ops	17

CONTENTS (continued)

B. OTHER CONSIDERATIONS

Condition of the home/unit	18
Neighborhood & master plan	18
Amenities	18
Responsibility for repair & maintenance	19

C. SPECIAL CONCERNS

Pickup trucks and commercial vehicles	19
Pets	20
Businesses & day care centers	20
Rentals	21
Smoking	21
Noise	22
Storage	22
FHA approval	22

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I. INTRODUCTION

Living in a common ownership community is becoming increasingly common, but many people do not know just what it involves or how it is different from what they are used to. These communities offer many benefits, but they are not for everyone.



This booklet explains the basics of what it means to live in a condominium association, a homeowners association, or a cooperative housing corporation, and how to compare your different options so that you will be better able to make a wise decision about where to live.

The booklet also informs you of some of your rights as a buyer of a home in these communities and how to get the information that you need to know about the home and the association to which it belongs.

A. What is a “Common Ownership Community”?

*A common ownership community (“COC”) is either a condominium association, a homeowners association (HOA), or a residential cooperative housing corporation (co-op).

* They are different from each other in some ways, but they are alike in that all the members share ownership of the association and of the property it owns.

*They are all controlled by rules which all members agree to obey when they buy lots, units, or shares belonging to the association.

* They are all regulated by special laws.



Condominiums can be multi-unit buildings or townhouses. In a condominium, the members own their own units. Usually, this means only the walls, floors and ceilings belong to the unit owner. The exterior of the building, the land it sits on, the land around it, and the structural parts of the building, are owned by all the members in common. These are called the “common elements.” Condominium associations file their declarations of covenants and their bylaws in the Land Records Office of the County Circuit Court.



Homeowner associations differ from condominiums in that the members own their own houses and the lots they are built on. The members do not own the common areas of

the association. Instead, the common areas are owned by the corporation. HOAs file their declarations of covenants in the Land Records, and they file their by-laws and all other rules and regulations in the HOA Depository, which is part of the Civil Files Office of the County Circuit Court.

HOAs can also be “umbrella” associations that contain smaller HOAs and condominium or cooperative associations as members. In this way, the members of small associations can take advantage of amenities such as parks, swimming pools and clubhouses that are operated by the umbrella association. All the member associations pay annual fees to the umbrella association for such services.

Cooperatives can be multi-unit buildings or single-family homes on separate lots. In a cooperative, the members do not own their homes. Instead, they buy shares in a corporation that owns the entire building or community. This share entitles them to lease a specific lot or unit. When the members move out, they sell their shares to the co-op. If they have made valuable improvements to their



units or lots, or if the units or lots are worth more because of better market conditions, the corporation will pay them more for the shares than they bought them for. This gives the cooperative owner many of the same benefits that ordinary homeowners have.

Cooperatives do not file their governing documents in the land records. They file them with the Corporate Charter division of the Maryland Department of Assessments and Taxation.

B. How a Common Ownership Community is Run.

All COCs operate in similar ways. Each year, there is an annual election of part or all of the board of directors. All members can vote. (If the association is still controlled by the developer or builder, he selects the board members until a majority of the units or lots have been sold.)

The annual election usually is part of the annual membership meeting, at which time the board reports on the association's business and financial affairs, and at which members can raise any business they wish.

The board of directors manages the association's money. Every year the board must propose a new annual budget for the association and distribute it to the members. **All the association's money to pay its bills must come from its members.** When the board proposes the budget it also tells the members how much the annual fees, called "assessments," must be. Each member's share is set by

the declaration of covenants. In some associations, the shares are equal. In others, the shares vary according to the size of the unit or lot, or the type of house. If a member does not pay his or her share of the assessments, the association can put a lien on the property and even put the property up for foreclosure and sale. (In a cooperative, the association can evict the member by filing suit in Landlord-Tenant Court.)

Monthly assessments can be significant, as high as \$800 or \$1000 per month, or even more in some condominiums, especially if the condominium is paying for the utilities such as water, gas, or electricity on behalf of the members.

In all these COCs, the board of directors has the authority to make almost all decisions, including setting the budget and the assessments, by itself and without a vote of the general membership. However, governing documents usually give the members the right to call special meetings to vote on removing directors from office or to repeal rules adopted by the board, and in special cases to vote upon major assessment



increases. Members are entitled to due process from their boards of directors before the board can hold them in violation of any rule and penalize them. State law also gives the members the right to attend most board meetings and to inspect most of the association's records, including

its financial records, bank accounts, audits, contracts, and other important documents.



C. Tax Considerations

Members of condominium and homeowner associations have title to their own homes. They pay real property taxes directly to the County, and these tax bills include the member's proportionate share of the taxes on the common property. They also pay their own mortgages. These taxes and the interest on their mortgages can be deductions from their Federal tax obligations.

Cooperative members do not always pay real property taxes directly, nor do they always have mortgages on their own units. The corporation might receive the tax bill and pay the mortgage. However, if the co-op complies with IRS regulations, the co-op members can deduct their proportionate shares of the real property taxes and the co-op's mortgage interest from their personal Federal tax bills.



D. Basic Association Documents

Condominiums and HOAs:

Articles of Incorporation: Most associations are founded as corporations, but this is not required by law.

Declaration of Covenants: These are the most important of all the documents. They create the “covenants running with the land,” which give the association legal authority over the units or lots that are privately owned, and they also spell out exactly what land is governed by the covenants. They establish the basic duties of the association and its board and the relative shares of the members’ ownership.

Bylaws: Next in line of authority are the association’s bylaws. These go into much greater detail about how the association will be run, and they delegate most of the association’s powers to its board.

Rules and Regulations: Also called “house rules,” these may establish more detailed requirements than the bylaws do.

For example, house rules may define what types of fences or sheds are permitted or the types of pets allowed.

Cooperatives: Cooperatives are governed by their Bylaws and their Membership or Occupancy Agreements.

II. HOW TO SELECT A COMMON OWNERSHIP COMMUNITY

A. Required Disclosures

Whether you are buying into a new or “previously owned” community, you have the right to obtain essential information about the structure and financial situation of the community.

New condominiums: A seller of a new condominium cannot enforce the sales contract unless s/he gives the prospective buyer a Public Offering Statement (POS) that includes this information:

- * a copy of the proposed contract
- * the proposed covenants, bylaws and rules
- * the proposed articles of incorporation
- * the proposed management contract
- * the existing or proposed annual operating budget
- * the buyer’s estimated monthly assessments

- * any other monthly fees the buyer must pay
- * the amount of the reserve fund
- * the policy on collection of assessments
- * the number and percentage of unit owners who are behind in their payments
- * the number of outstanding liens on file against the members
- * the number of unsatisfied judgments obtained by the condo against the members
- * the total amount of arrearages
- * whether there are any judgments or pending lawsuits against the condominium
- * a description of any plans to expand the condominium
- * the floor plan of the unit to be sold
- * a description of the amenities which the members may use and must maintain
- * whether the streets will be owned by the condominium or turned over for public use
- * for buildings more than 5 years old, a statement



of their condition and of the estimated costs of any necessary repairs.

The buyer can cancel a contract up to 15 days after receiving all the required information.

Re-sold Condominiums Units: The seller of a used condominium unit cannot enforce a sales contract for the unit unless he gives the prospective buyer a “resale package” that includes the following information:



- * a copy of the covenants, bylaws and rules
- * the amounts of the regular monthly assessment, of any unpaid special assessments, and of any other fees due to the association from the members
- * the current operating budget, and of any approved capital expenses not listed in that budget
- * the most recent balance sheet and income statement
- * details of the reserve fund for repairs and replacements
- * a summary of the insurance policies and instructions on how to inspect them
- * a statement whether the association knows of any conditions in the unit that violate the association's rules or any laws.

* whether there are any judgments or lawsuits pending against the condominium

* whether there are any recreational facilities to be used or maintained by the unit owners and whether they are part of the common elements

* the *seller of the unit* must also state whether s/he knows of any condition in the unit that is a violation of the association rules or of the law

(If the condominium has only 6 units or fewer it does not need to give all these disclosures but it must provide copies of the governing documents and of its annual expenses relating to the common elements.)

The buyer of a used condominium has up to 7 days to cancel the contract after receiving all the required information.

Condominium Conversions: The developer or owner of a rental apartment building who intends to convert it into condominiums must offer the tenants the right to purchase the units and provide them with the Public Offering Statement (POS). They have other rights as well, and for more information should contact the Montgomery County Department of Housing and Community Affairs.

New Homeowner Associations: The seller of a new home that belongs to an HOA must give the prospective buyer the following information:

- * the name, address and phone number of the seller and of the business creating the HOA and the names and addresses of the officers of the vendor
- * the name of the HOA, its location and its planned size



- * a copy of its incorporation papers, covenants, bylaws, and rules
- * a description of any property that the HOA will own or maintain
- * the actual or estimated annual budget of the HOA, including a description of the reserve fund for the maintenance of the common areas
- * the current or expected assessments that the lot

owners must pay and the procedure for setting and collecting the assessments

* the late fees and other penalties for nonpayment of assessments

* the relevant land use restrictions or how to inspect them

* any rights retained by the vendor or the business creating the HOA

The seller must give the prospective buyer these disclosures within 7 days after signing the contract. **If the buyer does not receive all the information 5 days or more before signing the contract, the buyer has 5 days to cancel the contract for any reason after receiving the information.**

(Note: buyers of lots in new HOAs of 12 or fewer lots must be given slightly different disclosures that are similar to the ones required for re-sales. See below.)

Resale of Homes in an HOA: The seller of a used home in a HOA must give the prospective buyer important information about the home and the HOA it belongs to. **This is called the “resale package.” Be sure to ask for it.** Many sellers and realtors do not know that the seller must provide it, so you have to insist. (Sellers of new homes in a new HOA of only 12 lots or fewer must give the same disclosures.) The more important disclosures include:

* whether the seller knows of any claims or violation notices involving the lot

- * the current monthly fees or assessments on the lot and whether the lot's account is up-to-date
- * the name, address and phone of the property manager or other person to contact for information about the HOA
- * whether there are any judgments or lawsuits pending against the HOA
- * a copy of the HOA's governing documents



The seller must give you this package within 20 days of the signing of the contract. If you don't get the package at least 5 days before signing the contract, you have 5 days to cancel the contract after you do receive it.

New Cooperatives: The seller of a membership in a new cooperative housing corporation must give the prospective buyer a Public Offering Statement (POS) with the contract. The POS must contain the following information:

- *the developer's name and address
- *a boundary survey of the property, and a statement whether the adjacent streets will be owned and maintained by the cooperative or dedicated to public use
- * the estimated completion dates for the project
- * whether the units can be sublet or sold by the members
- * a description of the members' voting rights
- * an opinion on whether the members will be able to pass through deductions from Federal and State income taxes or payments made by the association for real estate taxes and interest on the association's property
- * the members' rights and responsibilities for the association's loan
- * that the buyer's deposit on the purchase will be held in escrow
- * a description of the fees the buyer will have to pay as part of the purchase
- * a statement of the estimated or actual common charges the member will have to pay
- * the unit's share in the association and the unit's share of the association's overall debt

*** whether the association has or will get insurance, and if so, how much**

*** if the building is more than 5 years old, a statement of its physical condition and the estimated cost of any necessary repairs**



***what are the warranties on the unit and on the common property**

*** copies of the sales contract, membership agreement, membership certificate, articles of incorporation, bylaws, rules, floor plans, and encumbrances, member loan documents, management contract**

*** a copy of the actual or estimated annual budget showing costs of insurance, management, maintenance, utilities, general expenses, reserves, debt expense, capital expenses and taxes.**

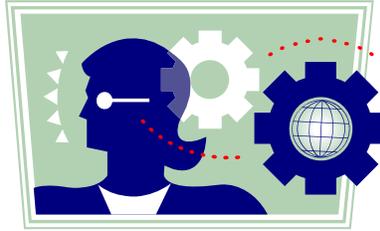
The buyer can cancel the contract within 15 days of signing the contract or receiving the POS, whichever is later and is entitled to a full refund of any deposit.

Used cooperative units: The law does not require any disclosures to prospective buyers of previously-owned coop units. However, we strongly recommend inspecting copies of these documents:

- * the membership agreement, bylaws, and rules
- * the current annual budget, and the most recent audit, if any
- * the monthly fees and whether any major fee increases are expected or under consideration
- * the boundaries of the unit or lot
- * the plat or survey of the association.

We also recommend a walk or drive-through of the entire association to get an idea of its age, condition, location and overall appearance.

B. Other Considerations



The condition of the unit or home: Especially if you are buying a used home or unit, you should have it inspected by a home inspection service. Most contracts for the sale of used homes allow you to cancel the contract if the inspection report is unfavorable.

The neighborhood and the master plan: Find out where are the schools, shopping, parks and public transportation.

If there is undeveloped land near the association, find out how it will be used. The best way to do this is to inspect a copy of the Master Plan at the Maryland-National Capital Park & Planning Commission. The Plan will show the locations of proposed roads, schools, parks, and zoning.

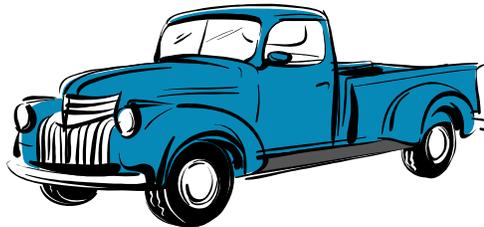
Community amenities: Many associations offer parks, playgrounds, swimming pools, community rooms and other amenities. Find out if the cost is included in the assessments. Also find out if the community will own the amenities or if the developer will retain ownership and lease

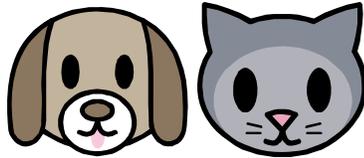
them to the community. If the amenities have not yet been completed, check the POS for information on their sizes and location. You may also want to learn about such conveniences as parking and storage spaces, especially if the community is composed of multi-unit buildings where parking and storage may be limited.

Owner/member responsibility for repair and maintenance: Be sure you understand what the owner must maintain at his or her own expense, and what the association must maintain. This is especially true for town homes, because in some associations the owner maintains the outside of the home and the lot; in others, the association maintains the outside of the house and the lot.

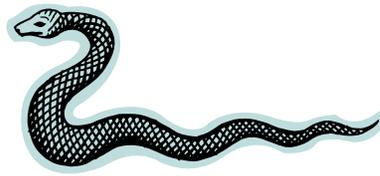
C. Special Concerns

Pickup trucks and commercial vehicles: Many associations ban pickup trucks and commercial vehicles. The rules may also apply to any vehicle used in a business, whether or not the vehicle has business lettering on it. If you own such a vehicle, you will want to find out what the rules for it are and find out where you will be allowed to park it. You might not be allowed to park it on any property owned by the association.





Pets: Many associations regulate or even ban pets. If you own a pet, you will want to find out what the association allows.



Businesses, day-care centers: Most associations limit the typed of business or commercial activities that members can operate out of their units or homes. State law allows them to ban day care centers and home-based businesses if they do so with properly-drafted bylaws. If you have, or are considering, operating a business out of the home, make sure you see the specific rules for such activities.



Rentals: Most associations regulate the members' rights to rent out their homes or units. Some might prohibit all rentals, or limit them to a fixed percentage of all the units or homes in the association.

Most also require that the rentals, when allowed, are limited only to members of one family. If you are not going to live in the unit or home, or if you are considering turning part of it into a rental unit, or taking in boarders or tenants, find out first what are the association's rules on this topic. (Note: the County requires most landlords to be licensed and to comply with County laws on leases. For more information contact the Department of Housing and Community Affairs.)



Smoking: If tobacco smoke is a concern for you, you should know that the law does not ban smoking in the private units of residential buildings. (County law does prohibit smoking in the indoor common areas of all residential buildings with 3 or more units.) Many associations have no rules on smoking.

Others might regulate smoking in the indoor or outdoor common areas. Newer buildings tend to have fewer problems with smoke transmission than do older ones. Find out what the rules for the association are and ask the seller or other residents if they have noticed any problems.



Noise: Noise is always a potential problem in multi-unit buildings. County law does not require buildings to be completely soundproof, and many older buildings were built without any attention to soundproofing at all. In an occupied building you can ask the residents about noise coming from other units or from stairways, elevators or trash chutes. If you are buying a unit from the builder or developer you can ask what specific soundproofing materials were installed. Another useful fact is whether the association requires members to install carpets to cover most of the unit's floor areas.



Storage space: If you are considering a unit in a multi-unit building, or even a town home, you may want to know if extra storage space is available and on what terms, and you should try to examine the space to see if it's suitable for your own needs.

FHA approval: The Federal Housing Administration will not insure mortgage loans to condominium buyers unless the condominium meets strict Federal standards, and not all condominiums can meet them. If you are depending on an FHA loan, ask for the condominium's FHA approval number before you make any contracts.

The Commission hopes that this booklet will help you find a community in which you will enjoy living and participating.



NOTES

COMMISSION ON COMMON OWNERSHIP COMMUNITIES

100 Maryland Avenue, Room 330

Rockville, Maryland 20850

www.montgomerycountymd.gov/ccoc