

This Document is in the form prepared and approved by the  
**WORKING GROUP ON LAWYERS AND REAL ESTATE**  
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**BUYERS' CONDOMINIUM GUIDE**

The purpose of this guide is to assist Buyers to understand the various elements involved in the purchase of a resale condominium Unit, and to assist owners in understanding how a condominium Property works. This document has been structured as a resource that can be consulted for particular issues as they arise or are of interest. We recommend you consult the table of contents and then proceed to the desired section to review the content. This is not a static document and will be changed from time to time to address issues arising out of new legislation, court cases or changing practices.

We welcome your input and suggestions through the **FEEDBACK BUTTON** at the end of this document.

Capitalized terms are defined terms that can be found in the Definitions section.

The Working Group has compiled a checklist of issues in a condominium transaction to better assist Buyers to understand the multiple matters they should consider. A chart has been created, which lawyers may provide to clients with a retainer letter or which can be consulted at:  
[www.lawyersworkinggroup.com/MasterChart.pdf](http://www.lawyersworkinggroup.com/MasterChart.pdf).

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## Links

Caution: Although every link was operational and current when added, some may be changed from time to time by their host. We would appreciate a note from you if you find a link that does not lead to the expected result. We apologize for any broken link.

1. Working with a lawyer brochure: <http://www.oba.org/en/pdf/lawyer1.pdf>
2. CMHC's Condominium Buyers' Guide: <https://www.cmhc-schl.gc.ca/en/buying/condominium-buyers-guide>
3. The Ontario Ministry of Consumer Services Condo Guide: <https://www.ontario.ca/page/owning-a-condo>
4. Ontario Condominium Authority <https://www.condoauthorityontario.ca/en-US/>
5. The Condominium Management Regulatory Authority of Ontario (CMRAO): - [www.cmrao.ca](http://www.cmrao.ca)
6. The Condominium Act, 1998 - <https://www.ontario.ca/laws/statute/98c19>
7. The Condominium Management Services Act - <https://www.ontario.ca/laws/statute/15c28>
8. Protecting Condominium Owners Act <https://www.ontario.ca/laws/statute/S15028>
9. The Condominium Authority of Ontario – Condo Buyer's Guide <https://www.condoauthorityontario.ca/en-US/resources/condo-buyers-guide/>
10. [Tarion warranty coverage and other protections – www.tarion.ca](http://www.tarion.ca)

## Disclaimer:

This Buyers' Condominium Guide is not intended to provide or replace any legal advice but rather to:

- a) assist Buyers in understanding what they should discuss with their lawyers in a resale condominium purchase transaction;
- b) clarify the workings of a condominium; and
- c) explain terminology and parties.

Buyers should read this guide and then consult with their lawyer for any further information they may require. Consulting a lawyer early in the transaction, or ideally from the very outset, will better position Buyers to understand the issues and deal with all aspects of this important purchase.

Buyers should be aware that the services they wish to receive from lawyers will not always be included in the original fee quote or standard retainer for that lawyer. If Buyers want to receive services over and above the original fee quote or standard retainer, it will be necessary to negotiate those services and fees. Any comments in this guide relating to lawyers performing work and providing opinions does not necessarily mean that Buyers should expect their lawyer to automatically perform that work.

All references throughout this guide to the "Act" are a reference to the *Condominium Act, 1998*, as amended, from time to time, unless otherwise stated.

# Guide

## Definitions:

**Agreement of Purchase and Sale:** the written contract between the Buyer(s) and Seller(s) for the purchase and sale of a particular Property (referred to in this guide as “APS”).

**Board of Directors:** the individuals elected by the Unit owners to oversee the operations of the Condominium Corporation.

**Betterments and Improvements:** changes made to a Unit or Common Elements over and above the “standard unit” description.

**Budget:** the document that sets out the revenues and expenses of the Condominium Corporation for a 12-month period as approved by the directors.

**Buyer(s):** the person or persons who is/are buying a Unit.

**Bylaws:** rules by which the Condominium Corporation is governed.

**Chattels:** personal movable property that are not purchased and transferred with the land (as opposed to Fixtures, which are attached to the land and included in the purchase of a Property). The APS has a section to deal specifically with Chattels to avoid any debate over whether a particular item is a fixture or a chattel.

**Closing:** the process by which the Buyers become the owners of the Unit and the Seller delivers keys and Possession.

**Common Elements:** the parts of the Condominium Corporation Property that are for the benefit of all Unit owners of the condominium.

**Common Expenses:** expenses of the Condominium Corporation for which all owners are responsible, and represented by each unit owner’s monthly contribution as determined by the condominium Budget.

**Conditions:** a prerequisite that must be met before the APS becomes binding on the parties.

**Condominium Corporation:** the entity that controls/manages the condominium property made up of all condominium units and Common Elements. The condominium Unit owners own the Condominium Corporation.

**Condominium Project:** the entire property of the condominium, including Units and the Common Elements.

**Declaration:** the document by which the Condominium Corporation is created which sets out basic operating procedures.

**Document Registration Agreement (DRA):** an escrow agreement between the Buyer's lawyer and Seller's lawyer regarding the exchange of closing deliveries and registration. The APS stipulates that the closing will be pursuant to the "DRA".

**Easement:** a right by which someone may use or access another person's Property (for example, to maintain a pipe, wire or for some other purpose).

**Encroachment:** a use by a third party of part of the Property (for example, a garage or fence that extends from the neighbour's Property onto the Property). This might be an authorised or unauthorised use.

**Encumbrance:** a right of a third party in the Property, with which the owner must comply, including a charge, mortgage, line of credit, security interest or a lien whereby the Property is given in guarantee of the payment of monies owed.

**Exclusive Use:** the portion(s) of the Common Elements that are designated for use by specific Unit owners only.

**Fixtures:** personal movable property that has become affixed to the land and are purchased and transferred with the land (as opposed to Chattels, which are not attached to the land nor included in the purchase of a Property). The APS has a section to deal specifically with these to avoid any debate over whether a particular item is a fixture or a chattel.

**Freehold:** the type of ownership of Property by which the owner has the greatest rights and title.

**Insurance (Condominium Corporation):** the insurance policy that the Condominium Corporation is required to maintain on the Condominium Corporation's assets, which may not fully cover the insurable interests of the Unit owner.

**Insurance (owner):** an insurance policy that is recommended for the Unit owner to cover their particular interests, including Betterments and Improvements, liability within the Unit and deductibles under the Condominium Corporation's policy.

**Joint Retainer:** where the same lawyer is acting on behalf of more than one client for a common purpose, such as husband and wife or lender and borrower.

**Joint Tenancy:** the method of ownership whereby the owners have equal ownership and the survivor(s) of the joint tenants, by law, becomes the sole owner(s) in the event of the other owner's death.

**Land Transfer Tax:** the tax payable to the Province of Ontario and the City of Toronto on the purchase of real property, including a condominium Unit.



**Licence:** a type of right by which a person is entitled to use the Property without being its owner.

**Maintenance:** the obligation to care for the Common Elements or Units on an on-going basis, which may be the responsibility of the Condominium Corporation or Unit owner.

**Phased Condominium:** a Condominium Corporation that is created in successive developments by adding Units and Common Elements over time, but within one Condominium Corporation.

**Possession:** the transfer of use, care and control from the Seller to the Buyers that occurs on Closing.

**Property:** the Unit, Common Elements or entire Condominium Corporation plan depending on its context.

**Repairs:** the work required to fix part of the Unit or Common Elements, which may be the responsibility of the Condominium Corporation or Unit owner.

**Reserve Fund:** the fund of money collected from all Unit owners over time and managed by the Condominium Corporation for the future replacement of major items, such as the roof, elevators, etc.

**Reserve Fund Study:** the review by experts as commissioned by the Condominium Corporation of all its assets to determine each component's remaining useful life and replacement cost to ensure that the Reserve Fund will have sufficient money when those costs are incurred.

**Seller(s):** the person or persons who is/are selling a Unit.

**Section 98 Agreement:** an agreement between a Unit owner and the Condominium Corporation permitting certain changes or improvements to a Unit or the Common Elements and the rules as to the on-going Repairs and Maintenance obligations.

**Special Assessment:** a lump sum, periodic amount or additional monthly amount added to the monthly Common Expenses by the Condominium Corporation to account for the inadequacy of the Reserve Fund or expenses unanticipated at the time the annual Budget was approved.

**Standard Unit Description:** features of the Unit that the Condominium Corporation is required to replace in case of a major loss, excluding Betterments and Improvements.

**Status Certificate:** the document issued by the Condominium Corporation to confirm the financial status and other matters relating to a Unit and the operation of the Condominium Corporation, including all matters that could have a financial impact on the Buyers after they acquire the Unit.

**Tenancy-in-Common:** the method of ownership whereby the owners may have unequal ownership, and on the death of one owner, the deceased's interest is distributed under the will of the deceased or via intestate rules.

**Unit:** the part of the condominium Property that is individually owned by one or more persons and can be a dwelling, parking or storage area.

**Unit Boundaries:** the limits of the Unit, separating ownership between the Unit owner and the Condominium Corporation or another Unit owner and refers to vertical (walls) and horizontal (floor/ceilings) divisions.

**Utilities:** services that benefit the Unit or Common Elements, such as water, electricity or gas.

**Working Group:** the Working Group on Lawyers and Real Estate, for which more information can be obtained on its website, [www.lawyersworkinggroup.com](http://www.lawyersworkinggroup.com).

## **Section A - Agreement of Purchase and Sale**

### **Draft or review Agreement of Purchase and Sale (APS)**

The APS is a legal document that defines the obligations and rights of the parties to the transaction. There are often matters of particular concern to Sellers or Buyers, which must be properly reflected in the APS so they may be enforced. To ensure those rights, obligations and matters are properly documented, it is preferable that the APS be reviewed by the lawyer for each of the parties before it is finally delivered and accepted. An APS usually comes to a lawyer four ways:

1. The APS is prepared by a real estate agent and is signed and accepted. In this case there can be no change to the agreement without the consent of the Buyers and Sellers;
2. The APS is prepared by the Buyers' real estate agent, is signed and accepted but contains a clause requiring approval by the Buyers' lawyer within a short period of time. In this case there can be no change to the terms of the agreement without the consent of the Buyers and Sellers;
3. The APS is prepared by the Buyers' real estate agent and is submitted to the Buyers' lawyer before it is signed and presented to the Sellers; or
4. The Buyers ask the lawyer to prepare the APS.

For the lawyer to add value and better protect the Buyers' interests, options 3 and 4 are the most desirable.

### **Discuss with lawyer items which should be included in the Agreement of Purchase and Sale**

Whether or not the APS has been signed and accepted, the Buyers and their lawyer should meet/converse at an early date to review and discuss the transaction, the Buyers' intentions relating to the future use of the Property and the reason for purchasing the Property, to ensure that their expectations are properly reflected in the APS.

### **Conditions in Agreement of Purchase and Sale**

The APS should set out the Conditions that need to be satisfied before being obligated to complete the transaction, for example: financing, review of the Status Certificate, sale of an existing home, work to be completed, etc.

### **Satisfaction of Conditions**

The APS should allow an adequate amount of time for the satisfaction of Conditions. The APS should state the consequences of failure to satisfy the Conditions. Buyers should understand the positive steps they must take to either confirm the Conditions are satisfied and the deal is to be completed, or confirm that the Conditions have not been satisfied and the APS is at an end. The APS should contain adequate provisions for notice of satisfaction or non-satisfaction of the Conditions. Most real estate brokerages will insist on a waiver or notice of fulfillment within the stated time. It is important to remember that in real estate, time is of the essence and any time limits in the APS should be strictly observed.

### **Review of Status Certificate**

An APS should always allow the Buyers a reasonable period of time to obtain and review a Status Certificate. The content of that certificate will be dealt with in greater detail under its own heading below. In general, the Status Certificate provides Buyers with information about the governance and financial stability of the Condominium Corporation and it identifies specific matters relating to the Unit being purchased.

Local market conditions may dictate that a Buyer make an offer with no Conditions in order to be competitive. In these scenarios, the lawyer may review the Status Certificate in advance of the Buyer making an offer so there is no condition on its review in the APS.

If there is a Status Certificate review condition, the period selected must provide enough time for the Buyers to request and receive the Status Certificate and then review the Status Certificate themselves and with their lawyer. One should ensure that the time period negotiated is adequate, particularly in view of Section 77(3) of the *Act* which allows the Condominium Corporation 10 days to produce the Status Certificate following receipt of a request and payment. The lawyer or the real estate agent usually requests the Status Certificate immediately after the APS is accepted.

If the Buyers have requirements for a greater or lesser amount of time to review the Status Certificate, these reasons should be discussed in advance. In any event, Buyers should be aware that there will be a time limit and they should act promptly.

Lawyers will undertake their review of the Status Certificate with an eye on legal issues but often Buyers are more concerned or impacted by lifestyle issues. Buyers should review the condominium documents for issues related to lifestyle or discuss any concerns with their lawyer and ask them to take such factors of interest into account during their review.

### **Financing – adequacy of approval/review of financing components**

Buyers need time to arrange or confirm proper financing (mortgage/line of credit) for the purchase, even if they signed the APS based on a financing pre-approval. The APS should include a condition that provides a reasonable amount of time for financing to be arranged. Buyers should also note how the condition is structured and whether they need to provide any notice or take any further action if the condition is not satisfied. It should be noted that most pre-approvals relate only to the borrowers and not to the Property. Buyers should be careful and ensure that a commitment for adequate financing will be available within the time specified in the APS for fulfilment of the financing condition. This can be a serious problem if a lender or title insurance company have already determined that they will not provide financing or insurance for a particular Condominium Project.

As with Status Certificate Conditions, it may be that the Buyer is not competitive with an offer containing a financing condition. Buyers should take care to confirm they understand the risks of not including a financing condition in the APS.

### **Parking (Unit, Exclusive Use, Licence)**

It is important that parking arrangements are made clear in the APS. Buyers should talk to their lawyer about the following items:

1. the number of spaces they require;
2. whether the spaces are owned or assigned;
3. where the spaces are located (indoor/outdoor);
4. any additional costs relating to the spaces;
5. if the Seller has the right to assign or transfer the required spaces;
6. size of parking spaces, clearance of the garage, and any restrictions on use or Encroachments that restrict use;
7. electric vehicle needs; and
8. any other concerns the Buyers might have.

If a parking space is a Unit of the condominium or an Exclusive Use Common Element assigned in the Declaration or Bylaws to the Unit being purchased, the condominium documents will reflect the proper status and they will be reflected on the condominium plans. If the spaces are Units, they should be shown as part of the description of the Property in the APS. Occasionally spaces that are Units are overlooked and are not properly transferred with the purchase of the Unit, so Buyers and their lawyer must take special care to include all Units in the transfer of title.

If the spaces are assigned or licenced by the Condominium Corporation, details of the assignment or licencing arrangements should be set out in the Status Certificate and provision should be made in the APS for the Buyer to continue the arrangement. Additionally, they may be leased from a third party owner and provision should be made in the APS for the assumption of the lease. Care should be taken to identify all Conditions and obligations of the lease or Licence. Occasionally there may be a charge to the Unit for licenced spaces. If that is the case, the cost should be identified in the Status Certificate.

Some condominiums have parking spaces that are designed for mid-sized cars only and cannot accommodate larger vehicles such as trucks or vans. The location of the parking space may also

be an issue (an example being a space next to a concrete wall which might block wheelchair access to a vehicle). Buyers should review the details of the parking space and visually inspect the parking space they will eventually use when they become owners. Access to electrical plug-ins should be considered for electric vehicles and outdoor parking spaces, if relevant. If an occupant requires disability accommodation regarding their parking space, they should contact the property management as the condominium corporation has a duty to accommodate any disability.

### **Locker – (Unit, Exclusive Use or Licence)**

Many apartment building condominiums will have lockers for storage. The APS should reflect the nature of the locker and its location. As with parking arrangements, the locker can be a Unit, an Exclusive Use Common Element, leased from a third party or simply assigned. All of the considerations which apply to parking spaces may apply to lockers.

### **Bicycle Lockers - (Unit, Exclusive Use or Licence)**

Some buildings may also have bicycle lockers that can be a Unit, Exclusive Use Common Element, leased from a third party or simply assigned. Care should be taken to identify a bicycle locker and confirm it is not a storage locker. All of the considerations which apply to parking spaces may apply to bicycle lockers.

### **Amenities (pool, tennis court, guest suite, etc.)**

Some condominiums have amenities, such as a swimming pool, exercise room, sauna, tennis court, meeting room, guest suite, children's playground, rooftop terrace or any number of other features that were designed to make the condominium attractive to Buyers. The APS should reflect the Buyers' expectations regarding the amenities: are they already constructed and available or are they to be completed in a future phase of the development; are they shared with another condominium project and is there an agreement for their joint use, Maintenance and operation; are they owned by a third party; are there restrictions on who may use the amenities, such as a prohibition of use by a tenant; is there a separate budget for the amenities and is it available for review by the Buyers? The rules and restrictions for use and operation of amenities should be reviewed by the Buyers.

## **Home inspection and Repairs/Maintenance issues in Status Certificate**

It is not as common for a home inspection to be obtained for a standard condominium as it is for a Freehold house. In the case of a standard condominium, the building or buildings in which the Unit is located will usually be part of the Common Elements. In most condominiums, repair and replacement of the Common Elements is the responsibility of the Condominium Corporation. While it is important that Buyers be aware of the condition of the Common Elements, the Condominium Corporation should have a Reserve Fund and completed a Reserve Fund Study and have a plan in place for the repair and replacement of major parts of the Common Elements.

An inspection of the Unit being purchased by a qualified home inspector can be valuable for identifying the condition of the operating systems of the Unit (electrical, plumbing, heating and air conditioning, etc.) and the condition of all Betterments and Improvements to the Unit that are not part of the Common Elements or the Standard Unit Description.

The Condominium Corporation has an obligation to advise those who request a Status Certificate of any significant Repairs/Maintenance issues in the condominium project. For this reason, the Condominium Corporation will list any issues with the Unit or Common Elements of which it is aware which could impact the Buyers.

## **Home Inspectors**

Ontario does not presently licence home inspectors. Buyers should ask for a home inspector's qualifications to understand the inspector's depth of knowledge. Most home inspectors have a standard set of investigations they carry out. Buyers should identify the nature of those investigations to ensure they address the specific concerns the Buyers may have relating to the Unit. For example, Buyers will wish to know if an inspector is qualified to inspect a Unit's heating or air conditioning system. Inspection of elements of the Unit that are beyond the expertise of the home inspector should be referred to those who are qualified. Buyers should be aware that home inspectors are not able to inspect all parts of the Unit (e.g. plumbing and electrical elements that are behind the drywall) and as a result, there are many exclusions in the inspector's report. Before the home inspector is hired, Buyers may wish to ask if they may see the exclusions that will be included in the report. Be aware that many inspectors limit the extent of their liability to the cost of the report, which is usually grossly inadequate if the inspector did not identify a major deficiency.

## **Buyers' intentions/plans for use of the Unit**

It is essential for Buyers to discuss with their lawyer the intentions they have for the use of the Unit. Changes to the structure or changes in the use of the Unit which the Buyers may wish to make are important considerations at an early stage. Without special permission from the Condominium Corporation, Buyers may not be permitted to make changes to the Common Elements, such as the installation of awnings, TV satellite dishes and gardens. Specific uses of the Unit may also be prohibited by the Declaration, Bylaws and Rules of the Condominium Corporation or by municipal zoning or other government regulations.

Buyers who want to change flooring to wood or other material in a multi-level Unit or building should make inquiries early as to whether this change is permitted and whether such permission comes with restrictions. The condominium documents may be silent on this particular issue but, because of the potential for increased noise, Condominium Corporations may not allow this change. Sometimes the Condominium Corporation has an approval process that allows it to dictate the use of certain material.

If it is important, Buyers may also want to investigate whether and under what circumstances they can operate a barbeque or other grilling/smoking devices, and/or any appliances that use propane or gas, like a heated table.

## **Description of the Unit**

It is important that the boundaries of the Unit are clearly understood by the Buyers. Buyers should review the registered condominium plans to ensure that the living areas they intend to buy are within the horizontal and vertical boundaries of the Unit. There have been circumstances where living areas have been extended by a previous Unit owner into the Common Elements without an amendment to the condominium Declaration and Description. This has resulted in substantial loss to Buyers. To overcome any misunderstanding, some lawyers send a copy of the condominium plans and boundary description to the Buyers and then discuss them at the time the closing documents are reviewed.

It is also important that the Buyers understand what elements of the structure are included in the Unit. For example, the glass in the exterior windows may be part of the Unit or part of the



Common Elements. It is equally important to understand what is part of the “standard unit” definition (see Standard Unit Description - review & purpose later in this guide).

## **Costs**

Buyers will wish to know the cost to complete the transaction. Lawyers may provide an estimate of fees and disbursements that will include: legal fees; search costs, including title and off title searches; Land Transfer Tax (there may be a reduction in Land Transfer Tax for first time home buyers); non-resident sales tax (NRST), if applicable; title insurance premiums; and any other costs the lawyer will incur in completing the transaction. Adjustments for realty taxes, Common Expenses and other pre or postpaid charges are also important to Buyers. Some costs are difficult for the lawyer to estimate at the beginning of the transaction, but Buyers should be aware of the possibility of additional costs related to the transaction as a whole. Also, lenders may deduct from the amount of the mortgage PST on mortgage insurance, bank fees or other monies for tax reserves, etc., reducing the amount available on Closing.

## **Moving day schedule**

The Buyer’s lawyer will need to have sufficient guaranteed funds to cover the balance of the purchase price and the Closing costs, on or before the Closing day. Buyers should expect delays if they are selling a house and plan to use the proceeds of sale for the purchase on the same day. If the sale is at the end of a chain of transactions, funds may not be available until the end of the day when it is too late to complete the purchase transaction. Enquiry should be made of lawyers involved in the sale to determine if there is one or more transactions on which availability of funds is dependent. It is advisable, where possible, to ensure both a purchase and a sale are not scheduled for the same day.

Buyers may want to obtain bridge financing and have their purchase transaction close days earlier than their sale. Availability of mortgage funds can also be an issue if not received until late on the day of Closing. Arrangements for keys and alarm codes, if applicable, are also important. Buyers will want to have keys to obtain access when the moving van arrives. Buyers should discuss with their lawyer the most convenient way to collect the keys and should be made aware of the liability consequences of entering into the Property before Closing and of the possible effects on the transaction.

Scheduling of elevators may be required to ensure a smooth move. Please consult with the condominium management company in advance to avoid disappointment or delays.

It is useful for Buyers to identify the possibility of any of these problems in advance of Closing and arrange to deal with them and discuss them with the real estate agent and lawyer. It can be very costly for Buyers to have a moving van sitting in the driveway for a few hours (or even holding the furniture overnight or through a weekend if the transaction is scheduled to close on a Friday).

## **Section B - Status Certificate Review**

### **Status Certificate to be provided to Buyers**

The Status Certificate is a document provided by the Condominium Corporation to persons who request it and pay the appropriate fee (presently \$100, including taxes). It is intended to provide financial and legal information relating to the Unit, the Common Elements and Condominium Corporation on which the person requesting it can rely. It is valid to the date that it is issued and may be relied on for 30 to 60 days by a title insurance provider (check with your title insurer); the title insurer may authorize reliance on the Status Certificate for as long as 120 days if the Condominium Corporation verbally confirms that there have been no changes.

The Status Certificate (also referred to as the Form 13), which must be in the form prescribed by the Ontario Government, is only a few pages long. This is the most important document for Buyers to read but it does not derogate from the importance of the other attached documents that form part of the Status Certificate. The Status Certificate and its attachments (often hundreds of pages) are often collectively referred to as the “Status Certificate.”

The Condominium Corporation has 10 days from the date of request and payment to produce the Status Certificate. The APS should provide adequate time for review of the Status Certificate after its receipt so the Buyer may terminate the transaction if there are unacceptable circumstances disclosed in the Status Certificate and the Buyer is acting in good faith.

A Status Certificate review by a lawyer cannot touch upon all of the information included in the document(s) because it is too voluminous and reviewing all such information would be cost prohibitive for the Buyers. Accordingly, Buyers should ensure that the Status Certificate is

received within the time set out in the APS and discuss any concerns with their lawyer as soon as possible. As a reminder, lawyers do not look for lifestyle issues as a standard part of their review (pets, smoking, short-term rentals, use and production of cannabis, etc.) unless requested to do so by their clients.

A Status Certificate should still be obtained even if there is no condition in the APS and must be obtained if the Buyer is financing any part of the purchase price, as it will be required by their lender.

### **Confirming Legal Descriptions**

The postal/municipal address and/or the condominium's labelling does not always correspond with the legal description for Units, lockers, bicycle lockers and parking spaces. To ensure that Buyers are receiving what they contracted for, the Buyers should review the condominium plan with the lawyer to confirm that the legal description(s) properly identifies the location of the dwelling Unit, lockers, bicycle lockers and parking spaces intended to be purchased.

### **Board of Directors of the Condominium Corporation**

It may be important for Buyers to know the names and addresses of the directors of the Condominium Corporation. Buyers may wish to know if the proper number of directors are in office. This information will be included in the Status Certificate and attached documents. Buyers may instruct their lawyer to provide advice on this if it is a concern. The construct and duties of the Board will be set out in the condominium Declaration and/or Bylaws.

### **Status Certificate Details on Common Expenses**

The Status Certificate will detail any issues with respect to the Common Expenses and will confirm the amount of Common Expenses for the Unit. Common Expenses for parking and/or locker may be listed separately. The Status Certificate will also detail any amounts that are in arrears or have been prepaid by the current owner, and any amount that has been added to the monthly Common Expenses to account for a Special Assessment or other amount owing to the Condominium Corporation by the current Unit owner.

### **Special Assessment**

A Special Assessment is a lump sum, periodic payments, or additional amount added to the monthly Common Expenses, to account for the inadequacy of the Reserve Fund or expenses that

was unanticipated at the time the Budget was approved. Typically, the Condominium Corporation will have a Reserve Fund study and reasonable annual budgets to cover all anticipated expenses. If an expense arises that cannot be covered by the Budget or Reserve Fund, the Board of Directors has the authority to declare a Special Assessment to cover the liability.

### **Reserve Fund Study**

The Condominium Corporation is mandated to manage and maintain the assets of the Condominium Corporation. Many Repairs and replacements will be required years down the road. To ensure a fair allocation of these costs between owners through the years, and not simply burden current owners with the costs, the Condominium Corporation is required to create a Reserve Fund to which each owner contributes an amount each month as part of the Common Expenses. To ensure that sufficient monies are accumulated, a Reserve Fund Study must be undertaken or updated at least every three years. The study, undertaken by engineers or other qualified individuals, will assess the various components of the structures, their useful projected life, actual wear, repair and replacement cost, and identify sums of money to repair or replace the components when needed. This fund is an asset, which properly administered, prevents large Special Assessments when operating funds are insufficient.

### **Any special conditions, notices or warnings for Buyers**

#### **Legal Proceedings and Judgments**

Legal proceedings and judgments against the Condominium Corporation could be financially detrimental to the owners in terms of increased risk that the existing Common Expense budget may not be adequate to fund. In the Status Certificate, the Condominium Corporation must detail any information it has about ongoing legal proceedings or judgments.

Legal proceedings and judgements may result in a lender refusing to finance the transaction or title insurers refusing to insure.

#### **Rental Units**

Buyers may be concerned about the number of units in the building that are rented. Control of the Condominium Corporation by owners of rental units may not be in the best interest of owner

occupiers. Unfortunately, the number of rental units disclosed on the Status Certificate may not be accurate because owners of a rented Unit do not always provide details of the rental arrangement to the Condominium Corporation. In Ontario condominiums, it is not common practice for there to be a restriction on the percentage of units that may be rented in a condominium.

It is important to distinguish a long-term rental of 6 months or more and short-term rentals like Airbnb that may be prohibited by the Condominium Corporation, terms of the Buyer's mortgage financing or the Buyer's insurance. Many condominium Declarations restrict occupancy to "family members", which would prohibit the rental or occupancy of the Unit by unrelated individuals, such as students.

### **Modifications to Common Elements and/or Units**

Unit owners can only make changes to the Common Elements with the approval of the Condominium Corporation. Some examples of the changes that owners often consider include: interior divisions or re-location of dividing walls, balcony enclosures, awnings, decks and planters, venting related to gas appliances that may extend through the exterior walls or venting related to smoking inside a Unit. These changes may already exist or be desired by the Buyers. If the Condominium Corporation approves the changes, conditions may be imposed on the Unit owner, such as design and colour criteria, and an indemnity against injury to third parties with insurance that protects the Unit owner and the Condominium Corporation. If Buyers wish to make changes to the Common Elements, these should be discussed with their lawyer. Rules relating to these changes are set out in section 98 of the Act. A Section 98 Agreement provides explicit consent by the Condominium Corporation to changes in the Common Elements undertaken by an owner with conditions for that consent.

Condominium Corporations generally do not inspect Units. Buyers should inspect the Unit to be sure that any existing changes to the Common Elements, which only benefit the Unit being purchased, have been approved by the Condominium Corporation with a Section 98 Agreement registered on title and approved by any applicable authorities and in some cases, the owners of the other Units in the condominium. If a Section 98 Agreement exists, it may impose obligations on the owner for future upkeep and to insure the Common Elements affected by the change. If a

Section 98 Agreement does not exist, the owner can be liable for removing the changes and restoring the Common Elements to their original condition.

In addition, Buyers need to ensure that they have a clear understanding of what is and is not covered under the Condominium Corporation's policy of insurance. Understanding what modifications may have been made is important because modifications to the Unit which may have been made over the years must ordinarily be insured by the Unit owner and will not be covered as part of the "Standard Unit Description" that is covered under the Condominium Corporation's policy of insurance (see section on Insurance & Standard Unit Designation below).

Even when considering modifications to a Unit that will not affect the Common Elements, owners should check with the Condominium Corporation prior to undertaking the modification to ensure compliance with the Act, the Declaration and any other applicable laws and regulations. For example, the removal of walls, the installation of flooring and any plumbing or electrical work is often regulated by the Act, the Declaration and the Ontario Building Code.

### **Management Agreements and Shared Facilities Agreements**

Most Condominium Corporations will be managed by professional property managers. There should be an agreement in place setting out the duties and fees of the manager. The property manager must be licensed and adhere to certain standards. See the Condominium Management Regulatory Authority of Ontario (CMRAO.ca) for more information.

A shared facilities agreement will be required when the condominium in which the Unit is located shares facilities such as a swimming pool, tennis court or recreation centre with a neighbouring project. The agreement will set out the obligations for use, the operational and financial management of the shared facilities.

Management agreements and/or shared facilities agreements relating to the condominium should be part of the package of documents received with a Status Certificate. Buyers may request a detailed discussion with their lawyer with respect to these documents, but this is not part of a standard Status Certificate review.

## **Financial Statements**

The financial statements of the Condominium Corporation are an important attachment to the Status Certificate but a lawyer is not qualified to provide a professional opinion on them. The lawyer's role regarding the financial statements is to advise the Buyers that they have been included with the Status Certificate and whether or not they reflect the appropriate fiscal period.

The Act requires that every Condominium Corporation have annual financial statements prepared; and if the condominium contains 25 or more units, such statements must be audited annually. A copy of the most recent statements must be produced with the Status Certificate. Buyers should ensure that the statements produced are for the Condominium Corporation's year end within the twelve months immediately prior to the date of the certificate.

If Buyers have a concern, they should retain the services of a professional (i.e. an accountant) to review and comment on the financial statements.

## **Insurance & Standard Unit Description**

A certificate of insurance obtained by the Condominium Corporation is to be provided with the Status Certificate. It should show the amounts and types of the various coverages and the term and expiry date of the policy. It should also show the deductible amount applicable to the loss under each category of policy coverage. Buyers who wish to review the whole policy will have to attend at the office of the condominium property manager.

Both the Condominium Corporation and the Buyers should have insurance coverage. The Condominium Corporation is mandated to provide coverage for damage to the assets of the Condominium Corporation, the Common Elements and the Units, in an amount equal to their replacement cost (which for the Units means the replacement cost of only the elements of a "standard unit"). A "standard unit" for the condominium will be defined in a Bylaw or a schedule held by the Condominium Corporation (pursuant to s.43(5)(h) of the *Act*). The purpose of the Standard Unit Definition is to set out the elements of the building that are to be included in the Unit for the purposes of insurance and repair after damage. The Standard Unit Description does not determine the obligation of the owner to maintain his or her Unit; it deals only with who is responsible for insuring particular components and is used to determine the policy of insurance that will respond to damage caused by an insured peril.

Anything that is located within the boundaries of the Unit but is not included in the Standard Unit Definition will be the responsibility of the Unit owner to insure. Buyers should be aware of builder or other upgrades made to the Unit that are not included in the Standard Unit Definition (“Betterments and Improvements”), for example, special flooring; countertops or cabinets. The Condominium Corporation’s policy of insurance is subject to loss deductibles, which may vary from one type of risk to another. Condominium insurance policies do not cover losses for deductibles under the Condominium Corporation’s policy and in some circumstances the deductible for a claim may be assessed against Unit owners.

Unit owners are encouraged to obtain their own insurance to cover damage to Betterments and Improvements; the Unit owner’s liability to third parties (for visitors or damage to other units), damage to the contents of the owner’s Unit; and any deductible amounts in the Condominium Corporation’s insurance policy that may be assessed against the Unit owner. In obtaining their own insurance, Buyers should provide the certificate of insurance; deductible Bylaw; and Standard Unit Description to their insurance broker so they may be provided appropriate insurance coverage for their Unit.

It is important for the Buyer and their lawyer to review the deductibles to ensure that they can obtain insurance for them. Deductibles for some Condominium Corporations are very high due to insurance issues in the past and may pose problems for Buyers trying to obtain reasonable insurance. Large insurance deductibles may also be a problem for a lender and should be investigated prior to waiving the Status Certificate condition.

Many lenders will only require proof of the Condominium Corporation’s certificate of insurance although some lenders will require a binder for an owner policy either in advance of funding or provided by the Buyer’s lawyer with a final report to the lender.

Loss procedures for the policy of the Condominium Corporation will be set out in the Declaration and Bylaws. Owners who suffer a loss should review both the insurance policy maintained by the Condominium Corporation and their own insurance policy to understand which policy provides coverage for the specific issue.



To avoid a conflict between the insurer of a Unit owner and the Condominium Corporation, a Unit owner should consider the possibility of placing their Betterments and Improvements insurance with the same insurer that covers the condominium Property.

### **Liability of owner for their own or their tenant's damages**

Unit owners may be responsible for damage that they, their guests, or their tenants cause to the Common Elements, other Units, people living in or visiting the condominium, and Property belonging to such people. Buyers should consult with their insurance broker to ensure that their Unit owner's insurance policy covers this liability.

### **Budget**

A lawyer is usually not qualified to provide extensive advice on the Budget - only that the Budget provided with the Status Certificate covers the current fiscal period and that the Common Expenses stated in the APS match the contribution in the Status Certificate. It is the responsibility of the Board of Directors of the Condominium Corporation to set a budget that provides adequately for the Condominium Corporation's Common Expenses. Buyers should become familiar with the Budget and its impact on Common Expenses for that year.

The Budget should indicate if the finances of the Condominium Corporation are in a surplus or deficit position. This indication is not necessarily determinative of the financial health of the Condominium Corporation and further examination of the financial information may be required.

The budgeted contribution to the Reserve Fund should agree with the funding formula set out on the latest Reserve Fund study and the lawyer can assist Buyers in confirming that it does. A lawyer can also assist Buyers in determining if the board of the Condominium Corporation has resolved to implement the recommendations of the Reserve Fund study. A lawyer cannot provide specific advice on the Reserve Fund Study or its implementation.

Any advice provided on the specifics of what is contained in the Budget and Reserve Fund Study documents is beyond the scope of a lawyer's Status Certificate review. If Buyers require more detailed information they should seek independent advice from an accountant familiar with the operation of condominiums.

## **Declaration**

The Declaration is the document that creates the Condominium Corporation and is registered on title at the Ontario land registry office. A copy of the Declaration should be included with the Status Certificate. The copy provided should be identical to the registered and effective copy. Your lawyer can confirm if this is the case. The Declaration deals with a number of important issues and should be reviewed by Buyers.

## **Bylaws**

A condominium may have a number of Bylaws that are enacted and registered after the registration of the Declaration. Bylaw No. 1 usually sets out operating and governance procedures for the Condominium Corporation. A Condominium Corporation may also enact Bylaws defining a standard unit, authorizing the borrowing of money, permitting submetering of utilities or approving specific changes to Common Elements, for example. A copy of the Bylaws should be attached to the Status Certificate and Buyers should review them. To be effective a Bylaw must be registered on title.

If the financial statements or the Budget discloses that the Condominium Corporation is liable for the repayment of borrowed money, the borrowing Bylaw and relevant documents should be reviewed to confirm that the proper procedures were followed and that the plan for repayment is acceptable to the Buyers.

## **Rules**

A Condominium Corporation may pass reasonable rules for the use of the Units and Common Elements. Rules are designed to make living in the condominium as harmonious as possible while having regard for the comfort, safety and enjoyment of the other Unit owners. The rules will deal with a wide range of lifestyle and other issues related to the use of the Property. Rules may address significant issues for Buyers like: pets (number, size restrictions or outright prohibitions); rentals including short-term rentals; smoking; vaping; the use and production of cannabis, etc. Buyers should review the rules carefully prior to expiry of the time for terminating the APS (the time set out in the APS for acceptance of the Status Certificate) to ensure that none of the prohibited activities will adversely affect their use of the Property. The Condominium Corporation may make new rules or change rules from time to time. Many believe that if a

particular use existed prior to a rule being implemented that it would be allowed to continue (grandparented). However, the courts have held that this is not always the case.

### **Duties of the Condominium Corporation**

The *Act* provides that the Condominium Corporation has a duty to control, manage and administer the Common Elements and assets of the Condominium Corporation on behalf of the owners. If this is of concern and if requested, the Buyers' lawyer can review the duties of the Condominium Corporation with the Buyer.

### **Maintenance and repair obligations**

The obligations for Repairs and Maintenance of the Unit and the Common Elements (including Exclusive Use Common Elements) will be allocated among the corporation and the Unit owners by the *Act* and the Declaration. Some of these obligations may also be included in the rules of the condominium. It is important that Buyers know exactly what their responsibility is for Maintenance and Repairs as this varies from Condominium Corporation to Condominium Corporation. Consult the Repairs and Maintenance Chart (see <https://www.lawyersworkinggroup.com/condominium-documents>) for a list of the matters to be considered.

### **Unit rental restrictions and procedures**

Further to the obligations under the *Act*, there may be a series of procedures to be followed when a Unit is rented. These procedures will be contained in the Declaration but may be amplified by the Bylaws, the rules or contained in a separate package of documents included with the Status Certificate. In the procedures, there may be restrictions on the rental of Units and/or restrictions on tenants using certain facilities and services or the use of the Unit for short-term rental, such as Airbnb. If the purchase is an investment, Buyers should review the procedures very carefully and make sure they are properly followed. Be aware that many Declarations restrict occupancy of the Unit (tenant or owner) to the occupant's family members (i.e. non-related parties cannot rent or occupy).

For Unit owners who would like to rent their parking or storage spaces to third parties, there may be restrictions on who may rent a space (e.g. only to another owner/tenant in the building).

## **Common Elements restrictions**

As with lifestyle restrictions and potential restrictions for tenants, there may be restrictions on the use of the Common Elements. They can include restrictions on the use of: lobby and hallways; recreation facilities; guest suites; and parking spaces. Buyers are strongly encouraged to review these items carefully to ensure that they are satisfied with the restrictions.

## **Condominium Corporation right of entry**

The Condominium Corporation has the right of entry into Units with or without consent based on certain limited circumstances as defined in the *Act* and the Declaration. Buyers should review the Declaration for the right of entry provisions.

## **Insurance requirements and loss procedures**

The Declaration will set out the insurance coverages that the Board of Directors must ensure are in place for the Condominium Corporation and the process for settling a loss under the Condominium Corporation's policy.

## **Property description and Easements**

As well as a description of the boundaries for the specific Unit, there will be a Property description of the land that comprises the whole condominium plan and any Easements affecting the land. These Easements, while not part of a standard review of a Status Certificate, may be of significant interest to Buyers, particularly if the Easements could potentially impact the enjoyment of the Unit or the Unit holder's specific lifestyle concerns.

## **Unit boundaries**

It is the lawyer's role to assist Buyers in ensuring that they are getting what they contracted for. Buyers should conduct a comprehensive review of the plans for the Unit, both two-dimensional and three-dimensional, to confirm what is owned (including the extent and location of any exclusive-use Common Elements assigned to their Unit and the general extent of the Common Elements or Property to be shared by all owners). This review is not necessarily done during the Status Certificate review period but should be done well in advance of Closing. Buyers should ask their lawyer to explain anything in the plans (and in particular the Unit description) that they do not fully understand.

It is very important that Unit boundaries are clearly understood because they are critical in identifying responsibilities for Maintenance and Repairs of the Property. It is important that owners are able to determine if any changes they may propose will extend beyond the Unit boundaries. Where a proposed change involves the Common Elements, approval may be required, and any change made by an owner without the required approval may be subject to removal at the owner's or future owner's expense.

### **Verify share of common expense and common interest (Schedule "D") and equity of division**

Schedule "D" of the Declaration sets out the percentage share of Common Expenses and common interest allocated to each Unit. The common expense share is the proportion of the Common Expenses for which each Unit is responsible. The common interest share is the proportion of ownership of the assets of the Condominium Corporation to which each Unit is entitled.

Common Expenses are typically allocated based on the size of the Units, the number of rooms or other criteria, which Buyers may not consider equitable. This is not something that can be changed, so it is important to understand this from the outset.

Buyers should review the allocation of common interest shares to satisfy themselves regarding the allocation. The common interest percentages should reflect the value of the Unit relative to other Units. This is only important if the condominium is terminated and all the Property sold. In that event, the proceeds of sale will be divided among the Unit owners according to the percentages of common interest. For example, Buyers will wish to know that the three-bedroom Unit they are purchasing will have a larger share of the proceeds of sale than a two-bedroom Unit will. It would be very unusual for a condominium to be terminated but if the whole project were destroyed or substantially damaged by a catastrophic event, the owners might vote for termination.

### **Verify consistency between APS and Declaration (Schedule "E") for what is included in Common Expenses**

Schedule "E" to the Declaration will describe, in very general terms, what is included in the Common Expenses. Buyers should carefully review Schedule "E" to ensure that what is included in the Common Expenses is what they expected. For example, Schedule "E" may say that

“hydro is included, unless separately metered”. If the Buyers expect that the Condominium Corporation will pay for all the hydro supplied to both the Unit and the Common Elements they will need to confirm with the condominium property manager.

### **Confirm Exclusive Use Common Elements designated for Unit (Schedule “F”)**

Schedule “F” to the Declaration sets out the Exclusive Use of a part or parts of the Common Elements, such as a locker, parking space balcony, deck or terrace, included with the Unit ownership. Exclusive Use Common Elements cannot be modified by an owner without the consent of the Condominium Corporation. The consequence of a modification that is not approved could be an order to return the modified Common Element to the original state. The Condominium Corporation may also refuse to maintain an unapproved modification and such Common Elements must be insured by the Unit owner.

### **Certificate of Engineer or Architect (Schedule “G”)**

The condominium plan may be registered before all the facilities and services to be provided by the Declarant are complete. Schedule “G” of the Declaration lists the items that must be completed and will include a certificate of the project architect and/or engineer with respect to each item. The lawyer can confirm if there are any items listed in Schedule G which have not been certified as complete.

### **Shared facilities**

If the condominium is near another condominium, the two may share certain facilities like a parking garage or recreational facilities. They may have entered into agreements for the shared use, management and operating costs of the facilities. The cost of operating these shared facilities and the restrictions on their use may be of interest to Buyers. Buyers should consider the possibility of a future development which would also share the facilities.

## **Section C - Searches and due diligence**

### **Title search**

The lawyer will search the title and conduct other appropriate searches that will confirm the Seller’s ownership and may disclose important matters to be addressed prior to completion of the transaction. For example: outstanding mortgages; condominium liens; outstanding agreements

between the Unit owner and the Condominium Corporation, and security interests. Almost without exception, Buyers and Buyers' lenders will not accept Encumbrances on title that will outrank their positions. It will be the responsibility of the lawyer to ensure the removal from title of all higher-ranking Encumbrances which Buyers and Buyers' lenders do not agree to accept. Some documents must remain on title, the impact of which the lawyer will discuss with the Buyers.

## **Title Opinion or Title Insurance**

Lawyers acting for Buyers in Ontario are required to advise their clients as to the options available for assuring the title to their Property. Buyers may choose a lawyer's opinion on title or purchase a title insurance policy from one of the various title insurance companies operating in Ontario. Most purchasers and lenders opt for title insurance.

### **Title Opinion**

If Buyers choose a lawyer's opinion on title, the Buyers will receive that opinion from the lawyer after the transaction closes. The lawyer's opinion will be based on the title and off title searches that the lawyer makes on the Buyers' behalf. Among other matters, a lawyer typically addresses the following in an opinion to the Buyers: (i) whether the Buyers' title is defective or unmarketable because someone else owns an interest in the Buyers' title; (ii) existence of any outstanding liens, work orders or Encumbrances; (iii) existence of any realty tax arrears; and (iv) any issues in the Status Certificate. The opinion of course will be subject to the accuracy of the responses the lawyer receives from the various governmental offices. Unlike a title insurance policy, which is discussed below, lawyers cannot provide Buyers with any opinion or protection from losses with respect to title fraud or future events.

### **Title Insurance**

A Buyers' other option is to purchase a title insurance policy. A policy of title insurance will insure Buyers against losses resulting from the various covered matters in the policy, including the matters that the lawyer would otherwise include in an opinion to the Buyers.

A title insurance policy provides certain protections, but is not a substitute for the lawyer's role in the purchase transaction. With title insurance, the lawyer does not provide the Buyers with a lawyer's opinion on title; instead, the lawyer searches title and conducts other appropriate

searches in order to give an opinion to the title insurer who in turn issues a policy to the Buyers. Legal services coverage is also available in certain title insurance policies. With this coverage if a problem arises after closing as a result of a mistake by the lawyer, the Buyers can make a claim directly against the title insurance policy rather than sue their lawyer for negligence.

Title insurance saves Buyers money by avoiding the need for some of the costly municipal and other off title searches for which the title insurance may provide protection. Each individual purchase will have different circumstances surrounding it and Buyers should discuss the specific requirements of their purchase with their lawyer.

The major benefits of a title insurance policy include:

- coverage for loss or damage arising from many forms of title fraud and other title matters;
- a no fault claims process such that Buyers do not have to demonstrate negligence in order to make a claim;
- entitlement to temporary relocation costs if there is a need to vacate the Property to complete repairs; and
- coverage for legal fees related to defending the Buyers' interest in title for matters covered under the policy.

Buyers will want to review the schedule to the policy to ensure that all Buyers' names, the Property description and details of any Easements and Encumbrances (which will remain after closing) and any custom underwriting are fully noted and acceptable. Details of any restrictions on title which may affect the use of the Property and which the title insurance policy will not cover must be reviewed by Buyers as well (examples: covenants not to alter the slope of the land, not to cut certain vegetation, to adhere to a colour scheme for the exterior of the Unit or for the backing of drapes, etc.).

As with all insurance products, title insurance does not cover defects of which Buyers are aware prior to the closing of the transaction (such as adverse circumstances disclosed in a home inspection report or Seller property information statement) or to which Buyers may have agreed in the APS. All policies are subject to exclusions and exceptions, including, but not necessarily limited to environmental matters and First Nations land claims.



To understand basic title insurance coverage for known risks or problems, Buyers may want to review two short brochures on the subject:

1. Understanding Title Insurance published by the Financial Services Commission of Ontario which may be found at [www.fsco.gov.on.ca](http://www.fsco.gov.on.ca)
2. Working With a Lawyer When You Buy a Home published by The Law Society of Ontario and the Ontario Bar Association which may be found at [http://www.oba.org/CBAMediaLibrary/cba\\_on/pdf/workingWithLawyerBrochure.pdf](http://www.oba.org/CBAMediaLibrary/cba_on/pdf/workingWithLawyerBrochure.pdf).

### **Defects in title**

Some defects in title may be covered for Buyers and lenders by a title insurance policy, subject to the exclusions, terms and conditions of the policy. Other issues may not. Some may only be covered partially/wholly for the lender but not covered for Buyers. Buyers and lenders will be consulted by their lawyer prior to Closing to discuss any title defects and to discuss the pros and cons of relying on a title insurance policy instead of resolving any outstanding issues before Closing.

### **Fraud**

The title investigation may reveal some hints (sometimes called “red flags”) of fraud. Some examples are:

1. registration of a borrowing Bylaw allowing the Condominium Corporation to borrow money with no subsequent registration of a debt instrument. This may not be genuine borrowing by the Condominium Corporation but borrowing by a fraudster;
2. a rapid increase in the value of the condominium Unit over a short period of time revealed by the purchase prices shown on registered transfers of title or even the current asking price for the Unit. This is called “value fraud”; or
3. an unusually large number of mortgage registrations and discharges of mortgages in a short period of time.

A good experienced real estate lawyer and a title insurance policy are your best protection against fraud before and after Closing.

## **Condominium plans**

Before the day of Closing, Buyers should review a copy of the relevant condominium plans to confirm they will be obtaining title to what they expected to be buying when they signed the APS. The following information must be carefully verified:

1. location of dwelling Unit, parking space and storage locker;
2. municipal address - frequently the legal Unit number and the municipal Unit number are different;
3. boundaries of Unit (vertical and horizontal);
4. boundaries of the Exclusive Use Common Elements;
5. boundaries of the Common Elements; and
6. amenities.

Also see Description of Unit above.

## **Types of condominiums**

In Ontario there are five types of condominiums. They are:

1. Standard condominium – the most common type of condominium consisting of Units and Common Elements;
2. Common Elements Condominium (CEC) - comprised solely of Common Elements and containing no Units. CECs allow for the creation of non-housing condominiums for lands or facilities that are to be shared by a group of owners, such as a private road, community centre, golf course, marina, storm management pond, etc. without the requirement to create Units supporting them. Instead, the CEC is connected to separate parcels called Parcels of Tied Land (“POTL”). The owners of the POTLs, who benefit from the use of the CEC, collectively own the CEC and are responsible for the Maintenance, Repairs, and insurance obligations in accordance with the Declaration of the CEC.
3. Phased condominium - a standard condominium that may be expanded to add additional Units and Common Elements as subsequent phases are constructed;
4. Vacant land condominium – a condominium where the Units are not part of a building or structure and do not include any part of a building or structure, and none of the Units are located above or below another Unit (i.e. the Units are akin to a lot on a plan of subdivision)

and a building is typically constructed within the boundaries of the Unit, subject to the requirements of the Declaration, Bylaws and Rules); and

5. Leasehold condominium – a condominium that is built on land leased under a long term lease.

### **Tarion New Home Warranty**

If the condominium was first occupied less than seven years ago, Tarion New Home Warranty may apply to a resale condominium Unit. Tarion was established to protect the rights of new homebuyers and regulate new homebuilders. The warranty follows the Unit and is not restricted to the first owner. Tarion administers the Ontario *New Home Warranties Plan Act*, which outlines the warranty protection that new home Buyers are entitled to in Ontario. This coverage includes:

- One and two year warranties for certain defects in work and materials;
- A seven year warranty for major structural defects; and
- Coverage for condominium Common Elements.

It can be very beneficial for Buyers to visit Tarion’s website, as it is an excellent resource: [www.Tarion.com](http://www.Tarion.com). You may also find reference to Tarion claims in the Status Certificate.

### **Off title searches**

The registered title of a condominium shows, among other things, who holds title, the type of title and what other interests affect title. There is an array of other types of searches that do not involve the title to the Property but those searches can be just as important. Some of the following matters may be covered by title insurance but Buyers may consider having their lawyer complete those searches for peace of mind, especially if Buyers intend to make alterations or suspect there may be a problem with the Property.

### **Tax certificate**

A tax certificate can be obtained to identify outstanding municipal tax, including arrears, and the amount of taxes for the current year. The tax certificate is issued by the municipality in which the Property is located (when a request for the tax certificate is made in writing and the applicable fee is paid). The tax certificate may contain other helpful information such as the amount of the previous year’s realty taxes, additional charges levied against the Property,

warnings of unusual realty tax increases being brought in incrementally, the legal description of the Property, the names of the owners as noted on the tax roll, and the tax roll number that identifies the Property.

## **Zoning**

Municipal zoning bylaws may restrict certain uses, require buildings to be set back a minimum distance from the property boundary, or require a minimum number of parking spaces. A zoning compliance report will confirm whether or not the development of the condominium project is allowed and complies with the municipality's zoning bylaw.

## **Building permit and outstanding work orders**

This search will confirm that proper building permits were issued to construct the condominium project or the Unit (or later improvements) and that the appropriate inspections were completed without issues. If there were issues, this search will confirm whether those issues were resolved or whether there are outstanding work orders which require work be either inspected or work be completed properly before the work order is removed.

## **Compliance with municipal agreements**

A municipal agreement compliance search will confirm whether the terms of any municipal agreements have been completed without problem or whether there remains outstanding work or unresolved issues.

## **Unregistered Easements**

This search, which is most relevant for unregistered Ontario Hydro Easements, determines whether there is an Easement which is not registered on title, the Easement terms and whether permission was obtained from the Easement holder to construct the condominium project should it be located on a part of the unregistered Easement.

## **Occupancy permit**

An occupancy permit is issued following a final inspection of the Property by the municipality to ensure that the work was completed in accordance with the building permit and to permit occupancy of the Property as a home. Many homeowners may undertake work without

obtaining a building permit and therefore no inspections of the work is done and no occupancy permit is issued, which may create dangerous safety situations from subpar work or materials. No one may occupy a Unit until an occupancy permit has been issued.

### **Utilities status and arrears**

Utility arrears for the Unit and charges to the date of Closing are the responsibility of Sellers (typically hydro, water and gas – if charged by way of separate meter just for the Unit and not included in the Common Expenses). Sellers sometimes forget about these charges in their haste to relocate. Title insurers may not require that a search for utility arrears be performed but that does not preclude cautious Buyers from conducting those searches. Telephone, cable and other providers are not considered utilities and do not warrant the same type of searches.

Some condominiums may have private utility providers and arrears of such metered utilities can eventually form a lien against the Unit. This information should be listed in the Status Certificate and will give direction to the Buyers and their lawyer on how to request a final bill, set up a new account and potentially hold back funds for arrears.

### **Buyer to contact utilities for transfer of ownership**

When utilities are separately metered for the Unit being purchased, Buyers should contact the relevant utility authority prior to or after Closing to have the account transferred to their name. The billing authority will want to obtain personal information from Buyers and may offer incentives and alternate payment options.

### **Buyers to verify ownership and transfer contracts**

Some Chattels or equipment that Buyers believe they are purchasing with the Unit may not be owned by the Sellers. Some may be leased or rented and some leased-to-own (the rental payments are applied to the purchase of the item). Some examples are furnace, heat pump, air conditioner, hot water tank, security systems, etc. If the APS does not require the Buyers to assume these obligations, the Seller must pay off the balance of the contract on Closing and discharge any security interest that may be registered against title. Buyers must determine whether there are rental items, whether the payments are up-to-date, whether the contracts may

be assigned to Buyers, the cost of any assignment, and make arrangements to have contracts assigned or transferred properly.

## **Section D - Tenure**

### **Joint tenancy, tenancy-in-common, ownership with children or parents**

In Ontario, land can be owned individually by a person, an entity (such as a corporation) or together with one or more parties. Land that is owned by more than one person can be held in either Joint Tenancy or Tenancy-in-Common. The significant differences between the two is Joint Tenancy's right of survivorship and equal ownership. Upon the death of one joint tenant, the other or surviving joint tenants is/are the owner of the whole Property by right of survivorship and without reference to the deceased's will. The estate or heirs of the deceased have no interest in the Property. Typically, couples with shared finances own their home in Joint Tenancy. This may not be the case for couples who have children from previous relationships. Under the Tenancy-in-Common tenure, the deceased's interest in the Property is vested in their estate and the will or intestacy rules will govern who gets that share of the Property. A share under a Tenancy-in-Common does not have to be equal (e.g. one person may own 25% and the other 75%).

Many will consider, as an estate planning mechanism, registration of the title of a Property in the name of a parent and children as joint tenants. Although this can avoid probate upon the death of the parent, this is not recommended without getting comprehensive legal advice on the risks of such an arrangement. For example, there may be tax issues or if one of the children becomes bankrupt, is sued or divorces, their interest may become the property of the trustee or claimed by a creditor or divorcing spouse. The child can also unilaterally sever the Joint Tenancy and dispose of their interest in the Property without the consent of the other title holder. Before undertaking this step, a lawyer should be consulted.

### **Spousal interests (spousal consent for matrimonial home)**

In Ontario, the law requires that a spouse who is not the owner of a matrimonial home consent to any dealings with the home by the other spouse, whether a sale or the registration of a charge/mortgage. Even if the home was acquired prior to the relationship by one spouse and

continues to be held by only one of the spouses, the other spouse must consent in writing to the sale or registration of an Encumbrance. A matrimonial home is generally the home in which the family of the spouses live, but it is not restricted to one Property. The home in the city and the cottage could both be a matrimonial home. For the purposes of matrimonial home rights, only married spouses qualify - common law spouses do not.

By signing the consent to a transfer or mortgage, the consenting spouse is waiving any rights in the Property in favour of the other party to the transaction. Therefore, in the case of a mortgage, the spouse cannot later deny the lender's right to enforce its rights under the mortgage in a power of sale or other proceedings.

### **Death of registered owner**

When an owner dies, what happens with the Property will depend on how the deceased owned the Property. If the deceased was the sole owner, the will or intestate rules dictate what happens to the Property as one of the assets of the estate.

If there are multiple owners, it depends on whether they hold the ownership as joint tenants or tenants-in-common. In a Joint Tenancy, the equal part owned by the deceased will simply be added to the share of the surviving owner(s). In a Tenancy-in-Common, the deceased's share becomes part of his/her estate and is dealt with as described in the preceding paragraph.

## **Section E - Financing**

### **Mortgage arrangements**

Most properties are purchased with borrowed money and Buyers should have pre-arranged their loan with a lender in order for the lender to provide the mortgage instructions to the lawyer acting for the Buyers in plenty of time before the Closing. Remember that a prearranged loan is not approval of a mortgage on a particular property. Buyers must ensure that their lender will approve the loan on the property they wish to purchase.

### **Loan from parents**

Loans between family members can be problematic, from whether they can be secured after traditional first mortgages to how they are guaranteed if there is an intention of the monies being

repaid. On the dissolution of a marriage, or death or bankruptcy of one of the participants, various issues may arise, including claims by a spouse, sibling or creditor/trustee. Any gift or loan from a parent should be properly documented and more comprehensive and specific legal advice is required when such a loan is being provided.

### **Secondary financing (disclosure to first lender)**

Buyers should be aware that their primary lender may prohibit them from creating any subsequent mortgages against the Property. Lawyers will be obligated to inform any lenders with priority of the existence of subsequent mortgages.

Recently, lenders have been registering mortgages that cover the full value of the Property, even if they are lending less. There may be benefits as well as drawbacks to this type of financing and Buyers should consult their lawyer to fully understand these issues.

### **Joint retainer and conflict of interest**

#### **Buyers will be obliged to acknowledge Joint Retainer when there are two or more Buyers**

Lawyers owe a fiduciary obligation to each of their clients, for example when acting for the Buyers and lender, but also when acting for spouses who are purchasing their home. Although they might have mutual interests and the lawyer is permitted to act for both, if at any time the clients' interests diverge, the lawyer cannot choose sides and may have to withdraw completely. Even if a lawyer has a duty of confidentiality, the lawyer's professional responsibility requires that the lawyer divulge any information received in a matter to all the clients who retained the lawyer to act in that matter. This means that information received from the Buyers must be communicated to the lender and vice versa. In addition, information received from one Buyer must be communicated to the other Buyer(s). To ensure that everyone understands this at the beginning of the lawyer/client relationship, clients will be asked to sign an acknowledgement when there is a Joint Retainer.



## **Lawyer acts for both lender and Buyers (subject to rules relating to private lenders)**

Generally, in residential real estate transactions, the lawyer acting for the Buyers will also act for their lender. This is a cost effective way to proceed but it raises potential issues, as the lawyer must disclose all information obtained to both lender and borrower. Buyers will be asked to sign an acknowledgment to this effect and the lawyer will have to cease acting for both clients if a conflict arises in addition to disclosing any material information to the lender.

The lawyer must issue an opinion on title to the lender or purchase a title insurance policy for the lender. The Buyers pay the lawyer's fee for services rendered to the lender and for disbursements incurred on the lender's behalf, including the title insurance premium if applicable.

## **Fees and disbursements**

### **Lawyer's estimate**

Buyers are entitled to know what the services of a lawyer will cost and should request the information when hiring a lawyer to act for them. A lawyer will generally provide clients with an estimate of the fees and expenses likely to be incurred. Expenses (called disbursements) are the amounts the lawyer will have to pay to third parties on the client's behalf to complete the service requested.

Fees represent the amount the lawyers are paid for their services. These might be estimated on a lump sum, hourly or other basis. The client should be advised of the services that will be included in the estimate provided. Buyers can ask their lawyer to put this estimate in writing. (See the Working Group's Fee and Tax Calculator to create your own estimate.)

### **Increased costs**

The lawyer should communicate to the Buyers if the final costs will exceed the estimate provided. In fact, any time a lawyer discusses an unforeseen issue Buyers should ask what effect this will have on the estimate of fees and disbursements provided.

## **Amount of money required to close the deal**

Shortly before the proposed Closing date, the lawyer will advise the Buyers how much money the Buyers must provide to the lawyer to complete the transaction. All of the information and documentation to ascertain the full amount required is typically provided to the lawyer only shortly before Closing. To facilitate matters, the Buyers only need to provide one amount to the lawyer or their law firm, in trust. Funds will need to be provided by way of a certified cheque, bank draft, or wire transfer. A complete breakdown should be provided and fully explained to the Buyers, usually when all the documents are signed at the lawyer's office. This will include amounts described below. Due to fraud concerns, it is always recommended to verify any request for funds by a direct phone call to your lawyer.

## **Land Transfer Tax**

Every Buyer must pay Land Transfer Tax to the Government of Ontario when land is purchased, with some exceptions. Residents of Toronto must pay an additional Land Transfer Tax to the City of Toronto plus an administration fee plus HST on the collection of the Toronto Land Transfer Tax. The amount is based on the purchase price and will be included in the estimate of costs described above. For an estimate of the taxes, use our calculator at <https://www.lawyersworkinggroup.com/suggested-fee-schedule>.

## **Registration costs**

In order to record the Buyers as the owners of the Property, the lawyer will be required to register in the government's database the transfer of title, any mortgages the Buyers may have arranged and other documents (if necessary). The lawyer will pay fees to the government for the registration of these documents. Presently, the cost to register most documents is \$83.11 per document (inclusive of HST) (as of November 6, 2023). These fees increase each November.

## **Disbursements**

As discussed above, the payments the lawyer makes on behalf of the Buyers to complete the work requested is passed on to the Buyers as disbursements. This will include the costs of registration, photocopying, searching, document preparation, obtaining information, bank and software fees etc. Lawyers should provide their clients with a written estimate that details the fees and disbursements they are likely to encounter for the work.

## **Statement of Adjustments items**

The Statement of Adjustments is a document prepared by the Seller's lawyer and provided to the Buyers' lawyer. It will apportion the unpaid and prepaid expenses charged against the Property between the Sellers and Buyers.

The municipality will levy taxes against the Property and require payment in one or more installments during the calendar year. The timing of the purchase and sale of a Property has no impact on the tax amount or payment. Property taxes accrue from day to day. Based on the APS, Buyers are responsible for the property taxes accruing from the date of Closing. If the Sellers have overpaid, there will be an adjustment in favour of the Sellers. If the Sellers have underpaid, there will be an adjustment in favour of the Buyers. There may also be adjustments after Closing if a supplementary tax bill is levied against the Unit in the calendar year that the purchase takes place.

Condominium Common Expenses will also be adjusted based on the number of days that the Sellers and Buyers own the Property during the month in which the Closing occurs.

Other charges that might be adjusted include: heating oil or gas, rent, pre-paid rent or deposits . Water, telephone, cable, internet and security system charges are not typically adjusted as they are paid directly to the utility or authority that provides the service. Sellers will be responsible for payment of the cost of the service provided to them up to the date of Closing. Funds in the Reserve Fund are not adjusted. The funds in the Reserve Fund are accumulated from the monthly contributions of each owner for future Repairs and replacement.

Sellers should contact the utilities and authorities providing services to the Unit and arrange to close their account and have a final billing sent to them. To ensure that service continues after closing, Buyers should contact these utilities or authorities before taking Possession to arrange for the continuation of service and to open their own accounts. For privacy reasons and account option choices provided, lawyers cannot arrange these accounts for the Buyers.

## **Other monies required to close**

### **Mortgage advance**

The purchase transaction will typically be funded from two sources, the Buyers and the Buyers' lender. Although the mortgage will be for a fixed amount, the lawyer might not receive that full amount from the lender. Some lenders will deduct certain sums from the gross amount to prepay certain costs or create reserves, such as interest until the interest adjustment date, property taxes, application or appraisal fees, CMHC fees and the PST on the fee, etc. The lawyer will let the Buyers know the amount they are required to provide once the Statement of Adjustments is received from the Sellers' lawyer, and the lender advises of the net amount to be sent to the lawyer.

### **Lawyer's fees plus applicable taxes**

The lawyer will typically request that sufficient monies for legal fees and disbursements be provided prior to the Closing. In addition to the fees and disbursements, HST is applicable to lawyer's fees and some of the disbursements.

### **Certified cheque, bank draft or wire transfer from a Canadian financial institution required**

Lawyers must use the monies they receive to pay registration fees, applicable taxes and the balance of the purchase price. Consequently, the lawyer must receive monies that their bank will consider as guaranteed funds so the funds may be used immediately without any holdback. Funds may be provided by certified cheques, bank drafts or wire transfer. Because of issues with what is accepted as guaranteed money, clients might be asked to provide the monies to the lawyer earlier than the day of Closing or even the day before Closing. It is always a good idea to determine well before the Closing date when and how your lawyer will require the funds.

### **Confirming certified cheque or draft with the bank**

Today's banking realities may obligate the lawyer to verify the veracity of the paper instrument delivered to the lawyer to fund the purchase transaction. Some financial institutions might not accept immediate dealings with certified cheques or bank drafts and for that reason the lawyer might be required to confirm the status of the paper banking instruments.

## **Privacy**

### **Statement that information collected will be kept private in accordance with the privacy policy of the lawyer**

Lawyers are required to keep all information confidential and should have a privacy policy available to their clients confirming the extent of the firm's obligations and the purposes for which client information may be used. (Note the Personal Information Protection and Electronic Documents Act (PIPEDA) requires that organizations that carry on "Commercial Activities" appoint an Information Officer and publish a privacy policy).

### **Advise how a copy of the policy may be obtained**

If it is not readily apparent from the materials provided by the Buyers' lawyer, Buyers may request a copy of the lawyer's privacy policy. These policies are often available on the lawyer's websites.

## **Identity**

### **All Buyers will be required to provide photo identification**

The Law Society of Ontario (the lawyer's licensing authority) and most lenders require that every lawyer confirm the client's identity, whether or not they have known each other for a long period of time. Clients will be required to produce their driver's licence or other forms of identification for the lawyer to examine and retain a copy for the lawyer's records. Please bring adequate identification the first time you meet with the lawyer or attend at the lawyer's office.

Often the identity requirements of the lenders are more onerous than the professional responsibility requirements. Your lawyer will advise you what forms of identification will be acceptable.

## **Other Potential Issues**

### **Acknowledgement and Direction**

In Ontario, land documents are registered electronically and lawyers electronically sign documents on behalf of their clients. Buyers and Sellers will sign a paper document called an Acknowledgement and Direction which confirm the information that the lawyer will enter in the electronic land registration system and allows lawyers to sign electronically on behalf of their clients.

### **Assigned Warranties**

Service or product warranties that have not expired may be transferable to Buyers. Some warranties may include: appliances, renovation and repairs, major Fixtures, etc. Buyers should speak to their lawyer if they have any concerns.

### **Assumed financial obligations**

Financial obligations Buyers will assume from Sellers must be discussed and understood thoroughly before Closing. Some of these obligations will involve some investigation and may include: hot water tank, security system, solar panel generation agreement, HVAC, etc.

### **Claims of creditors**

Creditors may either have an unregistered or registered claim. Unless the claim is registered against the Property, creditors will have no direct claim against the Property. If they obtain a court judgment, they could:

1. file a writ of execution with the Sheriff against the name of the debtor/Property owner, or
2. ask for it to be secured against the Property, in which case, this would require a registration on title and the creditors would be subject to all existing claims.

Condominium liens have priority over all mortgages and therefore if owners fail to pay their Common Expenses, lenders will often make the payment to protect their security and add the amount to the principal of the mortgage. This may be considered a default under the mortgage upon which the lender can take action.

Like Condominium liens, construction liens have special priority rights.

The government has special priority rights for outstanding amounts owing, and bankruptcy proceedings will impact dealings with the Property.

Lenders are also creditors, usually known to the Property owner who creates a mortgage in their favour.

Buyers must address all claims of creditors with their lawyer well in advance of Closing.

## **Closing**

The Closing of the condominium purchase is the official time when ownership passes to the Buyer and the Seller is paid the agreed upon amount. In Ontario, the registration system is typically available between 8:30 a.m. and 5:00 pm on weekdays (therefore Closings must occur within those times) and most transactions are completed in the afternoon. In the event that Buyers and Sellers are not able to complete the transaction on the assigned day, special arrangements for Possession and an extension of the Closing will need to be negotiated.

## **Delivery of keys**

Officially, keys are delivered at the Closing of the transaction. Unlike other jurisdictions, in Ontario Buyers and Sellers do not attend at the Closing of the transaction. The lawyers and their staff oversee the Closing of the transaction. Keys delivered to lawyers are released to Buyers following the successful Closing, which may not occur until 5:00 p.m. on the day of Closing. Buyers need to have a discussion with their lawyer as to when they can pick up their keys.

## **Document Registration Agreement**

The APS signed by the Sellers and Buyers provides that the Closing will be in accordance with the standard Document Registration Agreement which imposes various terms and conditions for the Closing on the lawyers.

## **Elevator**

Access to the Property may be by way of an elevator. Use of the elevator by Buyers to move their furniture and other belongings might have to be scheduled ahead of time with the manager of the Condominium Corporation. There may be a damage deposit that is required and there may be restrictions on days and times that the elevator may be booked. Buyers should call their property manager for all moving details.

## **Income Tax Implications**

Income tax implications may arise from the purchase. A change of use of the Property may trigger a taxable event (e.g., personal use to rental). There may be a question of whether the Property is a principal residence especially if there are multiple Buyers. Issues also arise if Buyers are non-residents of Canada. Buyers should consult a tax expert for proper advice on their situation.

If Sellers are non-residents of Canada or expect to become non-residents of Canada immediately following Closing, there are issues Buyers must address to protect themselves. If this is relevant to your transaction, speak to your lawyer early to discuss any impact this may have.

## **Non-resident taxation**

The Ontario government has introduced a tax on properties in the Greater Golden Horseshoe area purchased by non-residents. Buyers should advise their lawyer immediately if they are not Canadian citizens or permanent residents of Canada as this may require additional tax to be paid on the purchase transaction.

## **Private or Community Well & Septic System**

Water and sewer services may not be provided by the municipality for some properties. Instead, the water may be supplied by a private or community well. Waste sewer services may be accommodated through a private septic system. Any well and septic system would require some investigation prior to Closing.

## **Recreational facilities**

Recreational facilities and their use must be checked carefully. There may be governing documents to review such as management agreements (setting out the terms of how the asset is to be looked after), joint use agreements (setting out the terms under which other Condominium Corporations may be allowed to use the asset), Rules and regulations, and potentially prohibitions on its use – i.e. for tenants. It is important to check that the recreational facility asset is registered in the name of the appropriate entity and does not remain registered in the name of the original builder/developer.



## **Security system**

Buyers who assume a security system must obtain the code pn Closing in order to access the Property once ownership has been transferred or arrangements must be made to have the alarm turned off. Thorough knowledge of the security system and terms of service of the service provider will be an asset in the operation of the security system. Buyers should change the code(s) upon taking Possession and choose their own “code word” with the service provider in case the alarm is set off accidentally and to prevent a costly visit from the local police authority falsely called to stop a robbery in progress.

## **Updated Status Certificate**

Status certificates may become stale dated between the date of delivery and the official Closing date. It may become necessary to order a fresh Status Certificate or have the stale dated Status Certificate updated in an acceptable manner. Consult your lawyer to confirm.

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**FEEDBACK BUTTON** - <https://www.lawyersworkinggroup.com/condominium-documents>