

LEGAL OPINION ON CONDOMINIUM PROPERTY

Law applicable

Condominium Property act 2001

Condominium Property Regulations S.I N0 29 of 2002

What is a condominium?

A condominium is one of a group of housing units where each homeowner owns their individual unit space, and all the dwellings share ownership of areas of common use.

Units normally share walls, but that isn't a requirement. The main difference in condos and regular single homes is that there is no individual ownership of a plot of land. All the land in the condominium project is owned in common by all the homeowners.

Usually, the exterior maintenance is paid for out of homeowner dues collected and managed under strict rules. The exterior walls and roof are insured by the condominium association, while all interior walls and items are insured by the homeowner.

In summary it is a form of **property ownership** in which **each owner** holds title to his/**her individual** unit, **plus** a fractional **interest** in the **common areas** of the multi-unit **project**. Each owner **pays taxes** on his/her property, and is **free to sell** or **lease** it. And in essence condominiums, or condos, are apartments that are individually owned.

Common elements generally include walkways, driveways, lawns and gardens, lobbies, elevators, parking areas, recreational facilities, storage areas, laundry rooms, stairways, plumbing, electrical systems and portions of walls, ceilings and floors, and other items. Parts of the common elements may be designated for the exclusive use of one or more of the individual unit owners, in which case these are called *limited common elements* (or *limited common property*). In other words, they are limited for the use only of specific owners. Examples would

include parking spaces, roof gardens, balconies, storage lockers, and front and back yards.

In Uganda Condominiums are becoming more popular because of better land utilization, price competitiveness, built-in amenities, and convenient locations and designs. The Pros and Cons of condominiums are as discussed here under

Condominiums - Pros

- Better land utilization,
- Price competitiveness,
- Built-in amenities, and convenient locations and designs.
- There is also a wide price range, from \$50,000 to well over a million dollars depending on the features, level of luxury, and location.
- Condominium ownership appeals to active young singles, couples without children, couples with children, and pre-retirement and retired couples or singles.

Condominiums - Cons

- People live closer together, thereby potentially creating problems from time to time; frequent problem areas include the “five p’s”, pets, parking, personality, parties, and people.
- Flexibility may be affected if circumstances require that the condominium be sold in a limited time, as condominiums generally sell more slowly than single-family houses.
- Money is tied up in the condominium ownership, which may affect immediate liquidity needs in certain circumstances.
- One could be paying for maintenance and operation of amenities that one has no desire or intention to use, e.g. swimming pool, recreational centre, etc.
- Management of the condominium council is by volunteers, who may or may not have the appropriate abilities, skills and personality.
- There is possible apathy of owners, so that it is always the same people who are able and willing to serve on council.
- Some elected councils behave in an autocratic fashion.

- Mix between living in a single-family house and in a landlord-tenant relationship could cause conflict and frustration depending on people's needs, expectations, and past housing experience

Registering a condominium plan

- A proprietor or developer of an existing or planned building may divide the building into two or more units by registering with the registrar at the Lands Registry a condominium plan (S 3) this condominium plan shall be presented for registration in quadruplicate and shall indicate the number of units into which the building is divided. (S 3 (2))
- The plan must be signed by the Proprietor with the boundaries of each unit clearly defined coupled with the approximate floor area of each unit, *inter alia* (S 10)
- Further still the plan shall be drawn in water proof ink, on tracing linen or polyester film or such other material that is of a size and nature as prescribed by the Commissioner for surveys (see **rule 6** and such application shall conform to **Form 1, part 11, second schedule**)

- The plan shall also be accompanied by a certificate of a local authority showing approval of the proposed division of the structure in accordance with any enactment regulating building construction and a certificate of any boundaries of easements as granted (**S 11**)
- Before the Registrar shall register a condominium plan, he shall cause to be endorsed on the original condominium plan a notification of the subdivision as per **Rule 12 and** Upon registration of a condominium plan (**S 16**) there is implied in favor of each unit owner as appurtenant to the unit an easement for shelter, passage of water, sewerage etc The same easements as indicated above shall be implied upon registration of a condominium plan in favor of the holder of another unit holder (**S 17**)
- Upon application for registration of a condominium plan, the Registrar shall close the part of the register relating to the parcel described in the plan and open a separate part for each unit described in the plan and shall upon the payment of the prescribed fee issue a certificate of title in respect of the unit, preserving the closed part of the Register referred to above (**S 4**)
- **S 5 (2)** A certificate of title issued in respect of a unit comprised in a condominium plan registered under the Condominium Property Act 2001

shall upon registration of the plan, be deemed to have been issued under the Registration of Titles Act. It shall be in the form 1 or form 11 as specified in the third schedule

- **S 5 (3)** A proprietor of a unit in respect of which part of the register is opened under **S 4** may subject to this Act, sell, transfer, lease, charge, or otherwise deal with that unit in the same manner and form as land held under the Registration of Titles Act

Common Property

- Common property means that part of the condominium property which does not belong to any specific unit and which is used in common by the owners of the units and includes without prejudice to the general effect of the foregoing, the land on which the property is situated, support structures, infrastructure and services (**S 2**)
- The common property as provided for under **S 7** shall be held by the owners of all the units as **tenants in common** in shares proportional to the unit factors for their respective units A **tenant in Common** also referred to as **tenancy in common** is one of the ways to hold title, by two or more individuals. There is no limit to the number of individuals who can hold title to one piece of real estate. A property held by tenants in common can be owned by two owners or 100+ owners.

- **S 7 (4)** Such share in the common property cannot be disposed of or become subject to a charge except as appurtenant to the unit of an owner and a disposition or charge of a share in the common property once made shall operate to dispose of it without express reference to it
- In light of the above, **S 22** provides that any instrument evidencing any transfer, lease, grant of easement or other dealing affecting the common property or land that is to become part of the common property may be executed by a corporation if the transfer, lease, grant, or dealing has been approved by a unanimous resolution of the corporation
- A certificate under the common seal of the corporation that approval has been given shall be sufficient evidence in the absence of evidence to the contrary
- However the right to transfer or lease is qualified by **S 22 (4)** which is to the effect that no part of the common property may be transferred where such part is used as access by persons to one or more units In any other case prior to the transfer or lease all persons having registered interests other than statutory interests must be notified (**S 22 (5)**) Any such transfer of the common property must be registered as provided under **S 23**

- The incidental rights of owners of common property include such rights of support, shelter, protection, passage of water, sewerage, drainage, full, free and un interrupted access and use of light. **S 15 (1) as fortified by S 15 (1) & (2)**

Subdivision of a unit

- A unit may further be subdivided by the Proprietor thereto in accordance with the subdivision act and with the approval of a local authority by registering with the registrar a condominium plan relating to the unit intended to be subdivided or consolidated as per **S 8**
- Once registered, the land comprised in the subdivision or consolidation shall not be dealt with by reference to units in the original condominium plan **S 8 (2)** and such subdivision shall be subject to the burden and have the benefit of any easements that affect the units in the original condominium plan

Change of use

- An owner of a unit shall not change the use of his or her unit unless the corporation has by unanimous approval consented to the change of use and the planning and local authorities have approved the change **S 9**

- Where the change of use results into modifications to the condominium plan, such owner of a unit shall submit to the Registrar a modified condominium plan which shall be appended as an annex to the condominium plan of the condominium property registered under **S 4** above

Corporation

A corporation is established under **S 20** with its functions including among others managing the common property, keeping it in a good state of repair, keeping the building insured against fire and many others(**S 21**)

- A corporation is also mandated to raise amounts for the proper functioning of the common property and in pursuance of this may create an escrow account. This refers to a trust account held in the Corporations name to pay obligations such as property taxes and insurance premiums arising from the condominium transaction
- In pursuance of its duties **S 30** provides that a corporation shall make rules to provide for the management of the units and the property of the Corporation which rules may be amended or revoked by a special resolution

- The rules when made shall bind the corporation and the owners to the same extent as if the rules had been signed and sealed by the Corporation and by each owner.
- On application by the corporation, owner of a unit or a managing agent, Court may hear an order for the winding up of the Corporation which when granted shall cease to exist (S 50)

Termination of a condominium status of property

- The condominium status of property may subject to subsection 25 (2) be terminated by a unanimous resolution. According to S 48 (2) an application to terminate the condominium status of a property may be made to a court by the corporation, an owner of a unit, a registered chargee of a unit, or a purchaser under an agreement for sale of a unit
- Where Court is satisfied that under the circumstances it is just and equitable that the condominium status of the property be terminated a declaration to that effect shall be made
- As per S 49 upon termination, sale or transfer, etc of condominium property, the Corporation must immediately file with the Registrar a

notice of termination in the prescribed form (see **Rule 24 Form 1** in the fifth schedule)

- Upon receipt of such notice the Registrar will make notification to that effect on the condominium plan and on the making of such notification, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.
- The corporation shall dispose of the property or part of it by sale or transfer; however such disposal of property is subject to the written consent of all parties concerned discharging their interest.
- **S 49 (5)** The Registrar shall not register a transfer executed as above unless the transfer is accompanied by certified copies of the necessary resolutions and consents and until notification of the termination of the condominium plan has been made.
- On termination of the condominium status of the property and subsequent transfer of the property, the Registrar shall enter on the relevant register of condominium plans a notification of the cancellation of the plan and also indicate on any relevant register that the condominium plan has been cancelled (**R 14**)