

Healthy Condominium Toolkit:

Tips for Maintaining a Strong
Condominium Association

Spring 2014



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Acknowledgments

This document would not have been possible without the assistance and support of numerous individuals and organizations throughout Greater Boston. Conversations with Bob Credle at Urban Edge first raised awareness of the need for this type of resource, and we would like to thank Bob for his support and feedback throughout this process. We are grateful to Karen Wiener at Citizens Housing and Planning Association, Christine McCrorey at The Boston Home Center, Rob Tuchmann at Wilmer Cutler Pickering Hale and Dorr LLP, Heather Kulp at the Harvard Negotiation & Mediation Clinical Program, and Jim Jacobs at the Harvard Transactional Law Clinics for offering ideas and sharing their wisdom.

Finally, special thanks to the Harvard Law School students involved with this project, including Faith Alexander, Brett Heeger, Josh Wackerly, and Sarah Weiner. Working under the supervision of Amanda Kool at the Community Enterprise Project of the Transactional Law Clinics, these individuals completed countless hours of legal research, in-person interviews, and careful writing to bring these materials together.

Introduction

The purpose of this toolkit is to explain how to operate a “healthy” condominium association and why it is important to operate in such a manner. A “healthy” condominium association is one that:

- complies with all state and federal laws;
- maintains all of the proper documents and operates according to their rules; and
- puts formal structures in place to make decisions and ensure that the association runs smoothly.

Failure to do so can result in a decrease in the condominium’s value, or in some situations, an inability to sell units within the condominium. While this toolkit provides information that is applicable to condominiums of all sizes, because large condominium associations are typically managed by professional management companies, the advice that follows is targeted towards owners living in smaller condominiums (10 units or less). This toolkit was designed for current condominium owners as well as prospective purchasers. For a current owner, this toolkit provides guidelines to ensure that your condominium association is operating properly. For a prospective purchaser, this toolkit provides information to assist you in deciding if a particular condominium is right for you.

The toolkit is organized as follows:

COMMON PROBLEMS – QUICK REFERENCE GUIDE provides a list of potential problems that are common to small condominium associations, gives a potential solution to each problem, and then provides the page number where this issue is discussed in the toolkit.

OWNING A CONDOMINIUM explains what a condominium is and describes how the ownership interests in a condominium are divided.

UNIQUE ASPECTS OF CONDOMINIUM OWNERSHIP AND RELATED CHALLENGES details the ways in which condominium ownership differs from renting as well as other forms of homeownership and the difficulties that can arise from these differences.

OPERATING A HEALTHY CONDOMINIUM ASSOCIATION describes the steps that a condominium association must follow in order to be “healthy.”

POTENTIAL REMEDIES explains the options available for condominium associations to cope with unit owners who do not comply with the rules.

ADDITIONAL RESOURCES provides contact information for a number of organizations that offer assistance to condominium associations and unit owners.

Introduction

This toolkit is not intended to address all legal issues related to condominium ownership and condominium associations. When using this toolkit, please be aware of the following considerations:

- This toolkit only covers condominium requirements for Massachusetts.
- This toolkit contains general information about the law as it might apply to condominiums. The information contained herein is not legal advice and is not meant to take the place of an attorney. For specific questions about any legal matter, consult an attorney.
- Laws and federal requirements may change. It is important that you confirm the information provided in this toolkit is current before relying upon it.



Common Problems

Quick Reference Guide

1. Small condominium associations tend to base their condominium documents on templates designed for large condominiums. As a result, the documents do not address issues specific to smaller condominium associations.
 - ✓ Consult an attorney to amend your condominium documents. See page 13.
2. Owners operate the condominium association informally, meaning they do not hold regular meetings or keep adequate records. Most importantly, they have not established a decision-making process or dispute resolution system.
 - ✓ Run your condominium association like a business and follow formalities. See page 12.
3. Small condominium associations sometimes rely on one unit owner to pay communal bills and handle management tasks. If that person moves out of the condominium or becomes unable to fulfill these duties, problems can arise (such as bills going unpaid or managerial tasks being neglected).
 - ✓ Define a role for each member of the condominium association and distribute management tasks. Furthermore, ensure that everyone in the association knows how to handle essential tasks. See page 13-14.
4. Small condominium associations often require unanimous consent to make any decisions, which can enable one owner to act (or refuse to act) unilaterally and prevent important tasks from being accomplished. On the other hand, restricting decisions so that they can only be made by majority vote can leave one owner consistently outvoted and his or her interests ignored.
 - ✓ Consult an attorney to amend the voting scheme in your Bylaws to address the intricacies of your condominium association. It may be appropriate to have some issues decided by unanimous approval and others by majority vote. See page 13 .
5. One owner in a small condominium association fails to pay his or her condominium fees, and the other unit owners are unwilling or financially unable to compensate for the unpaid fees.
 - ✓ Provide for a reserve fund. See page 15.

Common Problems

Quick Reference Guide

6. Owners have different ideas about which activities are allowed and which are prohibited.
 - ✓ Carefully review condominium documents before purchasing a condominium to identify provisions that are important to you (ex. whether pets are allowed). See APPENDIX C on page 30.
7. An owner whose vote is needed is absent, sick, or otherwise unavailable.
 - ✓ With the help of an attorney, amend your condominium documents to include a procedure to address this situation. See page 12-13.
8. Unit owners cannot sell their condominiums because the condominium is not compliant with FHA, Fannie Mae, or Freddie Mac requirements.
 - ✓ Understand these requirements and assess your options for becoming compliant. See page 17-18.



Owning a Condominium

A condominium is the sum of: (1) two or more individual housing units and (2) the shared common areas. Any group of housing units legally becomes a condominium once the owner of the property files the Master Deed in the Registry of Deeds or Land Court Registry in the county where the property is located. (For more information about the Master Deed, see APPENDIX C.) Typically, all of the interior living space in an individual unit is considered property of the unit owner (Fig. 1.1). The shared common areas are everything else within the building or on the property (Fig. 1.2). This includes the pipes and electrical wires, the hallways, the lobby, the roof, the utility systems, the exterior of the building, the land, and any shared amenities, such as a pool or an indoor gym. A balcony included within a unit is often considered a “limited common area,” which means that the owner of the unit has the exclusive right to use the area, but he or she cannot make changes to the area without the approval of the other unit owners.

Key Terms

Unit:

A *unit* is the living space that is owned exclusively by one owner. The boundaries of that space are defined in the Master Deed and typically include the space from the exterior surface of the drywall inward and from the interior surface of the concrete floor slab upward, though your condominium’s particular parameters may vary.

Common Areas:

Common areas include all parts of the building and the property not otherwise included in individual units.



Individual Unit



Common Areas

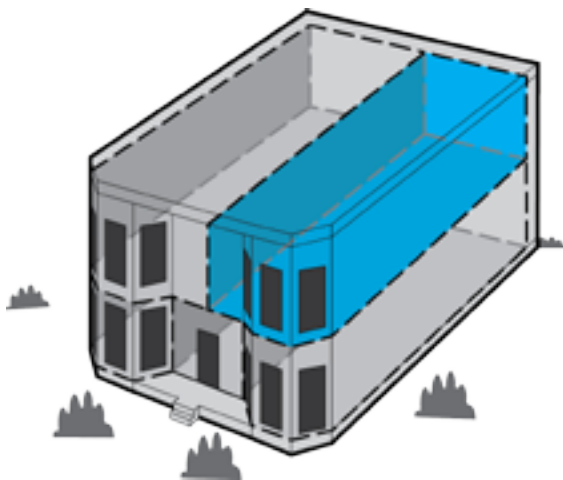


Fig. 1.1

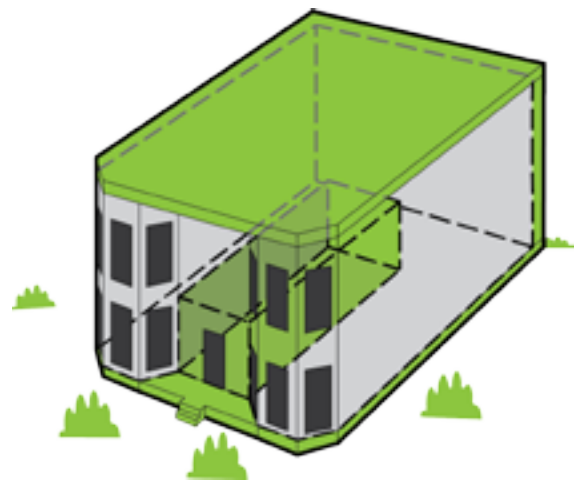


Fig. 1.2

Undivided Interest:

Undivided interest is a legal term to describe a situation in which two or more people own the same piece of property and have equal rights to enjoy and use it. Your percentage of undivided interest will be listed in the Master Deed.

Condominium Fees:

Condominium fees are the monthly charges paid by all unit owners for the upkeep of the common areas and any other shared costs. Condominium fees do not cover any costs associated with an individual unit.

Special Assessments:

Special assessments are an amount of money that a condominium association requests from unit owners in order to pay for a project or outstanding debt that was not included in the annual budget and therefore not covered by condominium fees.

Condominium Association:

A *condominium association* is a legal entity of which each unit owner is a member and thereby able to vote on certain decisions. For more information on condominium associations, see APPENDIX B.

Owning a Condominium

Individual Ownership Interest

When you purchase a unit in a condominium, you buy ownership of your unit plus ownership of a percentage of the *undivided interest* in the common areas (Fig. 1.3). Your undivided interest is important for two reasons: (1) it determines how much you pay in *condominium fees* and *special assessments*; and (2) it determines how much voting power you have within your *condominium association*. By law, this voting power cannot be separated from the ownership of the unit. In other words, you cannot give someone else your voting power unless they buy your unit. Additionally, your percentage of undivided interest cannot be altered without your consent unless your Master Deed permits otherwise.



Undivided Interest

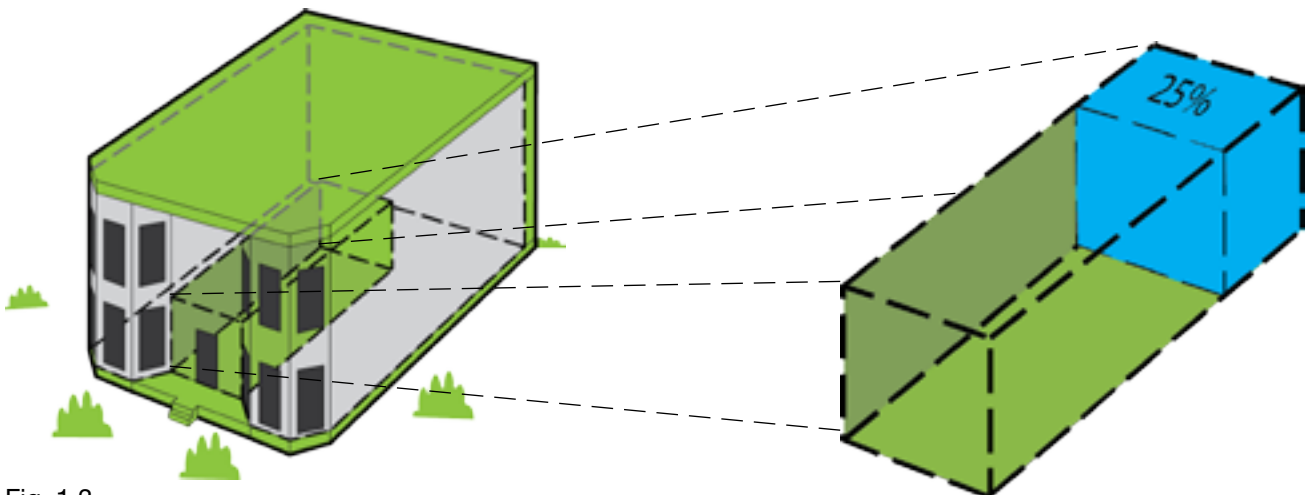


Fig. 1.3

Unique Aspects of Condominium Ownership & Related Challenges

When you rent an apartment, you are responsible for paying rent and the costs of any utilities. Your landlord is ultimately responsible for the upkeep of the building and for making repairs. Conversely, when you own a single-family home, you are responsible for all maintenance and repairs, but you are the sole owner and therefore can make any decisions about maintenance and repairs by yourself.

Ownership of a condominium is unique. When you own a unit in a condominium, you are responsible for all of the maintenance and repairs for everything inside your unit, but share responsibility for building upkeep with the other unit owners. There are many decisions that go along with this shared responsibility—for example, what the annual condominium fees are, what repairs and upgrades will be undertaken, and when the roof should be replaced as opposed to simply patching it. Because of this shared ownership structure, all of these decisions must be made by a group of people, each with his or her own ideas and interests. This can be very difficult even when people are getting along, and nearly impossible when they are not.

The shared ownership structure of a condominium has a couple of clear implications for you as an owner. First, if the condominium association does not have rules in place for making decisions and delegating responsibilities, there is a risk that crucial tasks will go uncompleted (e.g., snow is never shoveled, bills go unpaid, the roof is never fixed) or that all tasks will fall on one owner. These risks can be particularly pronounced in small condominium associations. Situations may arise where one owner becomes sick or unemployed or is financially irresponsible and all the burdens shift to the other owners. There is also the potential for owners of two units in a three unit condo, for example, to join together and constantly override the wishes of the third owner.

The second implication of the shared ownership structure is that your unit will be harder to refinance or sell if your condominium association is not functioning properly. A non-functioning condominium association is not only less attractive to a potential buyer, but banks will be less likely to lend to people interested in units located in poorly-run condominiums because of the *secondary mortgage market* requirements. If a buyer cannot obtain financing, then you may not be able to sell when you are ready to move out.

Secondary Mortgage Market:

When you obtain a mortgage to purchase a home, you are engaging in the primary mortgage market. The lender will often sell your mortgage (along with others) to government-sponsored enterprises or outside investors - this is the *secondary mortgage market*. These government-sponsored enterprises impose requirements on condominiums to ensure the mortgages, pose a low risk to investors. For more information on the secondary mortgage market, see APPENDIX A.

Unique Aspects of Condominium Ownership & Related Challenges

As a result, this shared ownership structure makes owning a unit in a condominium more complicated than other forms of homeownership. Because condominium ownership is more complicated, it carries more risk, both for you and for lenders. This additional risk is the reason there are so many rules in place that govern condominiums. These rules were established to ensure that all condominiums take measures to mitigate this risk and have structures in place to make decisions and run smoothly.



Operating a Healthy Condominium Association

Failing to have a set of rules in place to ensure that your condominium association is functioning properly can have serious consequences. For example, the value of your unit may decrease because you may be unable to market your unit to the widest pool of buyers. To avoid these problems, it is important to run your condominium association like a business. Buying a condominium is similar to becoming a partner in a business with two or three people you do not know—you need to ensure that your condominium association has formal structures in place to make decisions and ensure that everything runs smoothly. Take the following steps to ensure that your condominium association functions properly and operates in compliance with the *Massachusetts Condominium Act*, as well as the requirements established by *Fannie Mae, Freddie Mac, and the Federal Housing Administration (FHA)*:

NOTE: There are numerous requirements set forth by Fannie Mae, Freddie Mac, the FHA, and the Massachusetts Condominium Act. The purpose of this toolkit is not to address every requirement, but rather to highlight those requirements that most often impact condominium owners. It is important that your condominium association contact an attorney to confirm that it is operating in compliance with all applicable laws, rules, and regulations.

Understand Your Condominium Documents and Amend Them If They Do Not Work For Your Association.

The first step to operating a healthy condominium association is to gather all of your *condominium documents* and review them to ensure you understand all of their provisions. These documents contain everything you need to know about how your condominium association is structured and how it operates. If you do not have copies of these documents, you can find your Master Deed and *Declaration of Trust* at your local Registry of Deeds. In Boston, you can search online at <http://www.suffolkdeeds.com> (last visited April 18, 2014). These documents can be complicated and dense, so you may want to contact an attorney to review them with you and answer any questions you may have.

Massachusetts Condominium Act:

The *Massachusetts Condominium Act* is the Massachusetts law that governs condominiums.

Fannie Mae, Freddie Mac & The Federal Housing Administration (FHA):

Fannie Mae, Freddie Mac and the Federal Housing Administration (FHA) are government-sponsored enterprises that were created to promote stability in the housing market. For more information on Fannie Mae, Freddie Mac, and the FHA, see APPENDIX A.

Condominium Documents:

Condominium documents are the documents that legally create the condominium and condominium association and that establish all of the rules and procedures under which the condominium operates. These include the Declaration of Trust (or Articles of Organization/Association), Bylaws, Rules and Regulations, Master Deed, and Unit Deed. For more information on condominium documents, see APPENDIX C.

Declaration of Trust:

The *Declaration of Trust* is the legal document that created your condominium association, provided your association was formed as a trust. If your association was formed as a corporation or unincorporated association, this document will have a different name. For the sake of brevity, this toolkit refers only to the Declaration of Trust, as trusts are the most common form for condominium associations in Massachusetts. For more information, see APPENDIX B and APPENDIX C.

Operating a Healthy Condominium Association

When reviewing your condominium documents, you will need to determine whether these documents work well for your particular condominium association. Small condominium associations often base their governing documents on forms intended for large associations. As a result, these documents may not address issues specific to smaller associations. For example, when small condominium associations require unanimous consent to make any decisions, one owner can act unilaterally to prevent important tasks from being accomplished. On the other hand, allowing decisions to be made by only a majority vote can leave one owner consistently outvoted and his or her interests ignored. As a result, it is strongly recommended that small condominium associations review their documents with an attorney who specializes in this area of law and who can tailor the documents to the particular needs of their condominium association.

Hold Regularly Scheduled Meetings.

Consult your Bylaws for what steps need to be taken to have a meeting and to properly take action. Your Declaration of Trust will contain provisions that explain how a meeting must be called, who must vote to take certain actions, how often meetings must be held, and what percentage vote is required for certain actions. All decisions made for the benefit of the condominium association and any other condominium business should be conducted in accordance with the provisions set forth in the Declaration of Trust.

Larger associations will likely have separate condominium board meetings and unit owner meetings. For smaller associations, all unit owners will likely be board members, as well, and thus board meetings and unit owner meetings may be consolidated. In such cases, it is important to recognize that there may be a difference in the weight of your vote depending on whether you are voting as a board member or as a unit owner. When voting as board members, each board member is allocated one vote, so all votes are equal. However, the Massachusetts Condominium Act and your Declaration of Trust and Bylaws specify that certain decisions require unit owner voting. When voting on these decisions, each person's vote is equal to the percentage of his or her undivided interest.

The following is a list of suggested actions for your condominium association to take at a duly-called meeting (if any of these actions have not already been taken):

Elect a condominium board.

Your condominium should have a *condominium board*, even if your association is very small (Fig. 2.1). Your Declaration of Trust will define the number of board members and the appointment process. If the condominium association is small, every unit owner may be appointed as a board member. Make sure each board member knows how to handle all essential tasks so

Operating a Healthy Condominium Association

that the sudden illness or departure of one board member does not create problems for the other board members. Additionally, all condominium associations should have at least one board member (and preferably more than one) who is explicitly authorized to sign contracts and checks and otherwise act on behalf of the condominium association. It may also be helpful to request notice from departing unit owners to ensure a smooth transition. For more information on condominium boards, see APPENDIX B.

Condominium Board:

A *condominium board*, sometimes referred to as a board of trustees, is a group of unit owners who were elected by the condominium association to make decisions about how the condominium is run. The specific powers of the board members, sometimes referred to as trustees, are set forth in the Bylaws. For more information, see APPENDIX B.

Establish management roles.

Many small condominium associations cannot afford to hire people to manage the books or to take care of the property. In such cases, all the administrative and maintenance duties required to maintain the condominium association and condominium property should be distributed among the board members. It may be helpful to designate one board member as having the responsibility for ensuring that all of these duties are fulfilled. This responsibility can be rotated among the board members on an annual basis.

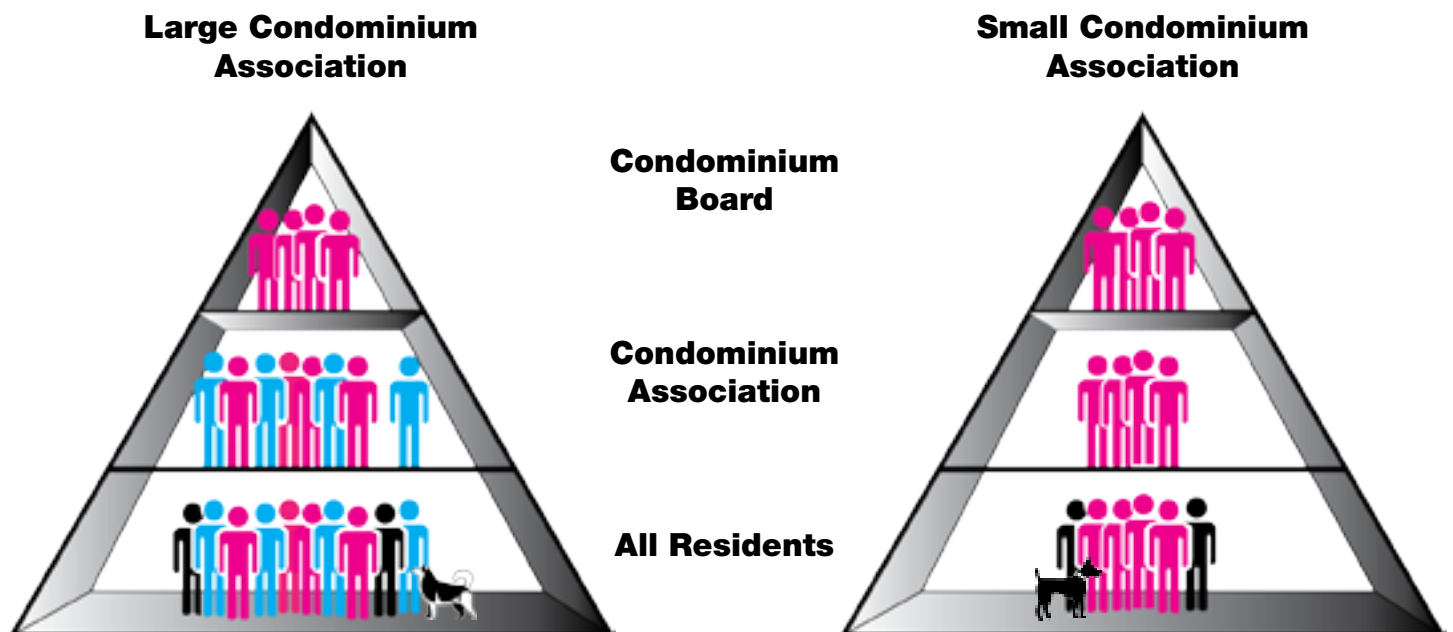


Fig. 2.1

Operating a Healthy Condominium Association

Reserve Fund:

The *reserve fund* is money that the condominium association sets aside each year for major repairs or replacement expenses, such as a new roof or HVAC system.

TIP: A condominium association may choose to hire a professional manager. A manager can handle building repairs, collection of condominium fees, and other tasks. Another option is to hire a person to handle a narrow task, such as an accountant to help manage finances. This option can be a compromise between having to delegate all managerial tasks to different board members and having to pay the expense of a professional manager to handle everything. Although it may cost more up front to hire a professional manager as opposed to self-managing the condominium, a professional manager may save your condominium association money in the long run through his or her industry knowledge and experience.

Establish an annual budget.

Establishing an annual budget for your condominium association requires estimating all of the expenses for the maintenance of the common areas for the coming year and allocating a sufficient amount for your condominium association's *reserve fund* account. Annual budget expenses include insurance premiums and fees, taxes, management or accounting fees, snow removal costs, landscaping expenses, costs of heating, lighting, and repairing the common areas, and any cleaning expenses, among others. One way to establish the annual budget is to create a schedule for when maintenance work will need to be completed and estimate how much the work will cost. That way, your condominium association can plan accordingly to ensure that the condominium fees collected each month are sufficient to cover these expenses.

Issue a financial report.

In Massachusetts, a condominium association must prepare a financial report within 120 days of the end of its fiscal year and keep it with the association's records so that it is available for inspection by the unit owners. If the condominium consists of fifty or more units, the law requires that the condominium association hire a certified public accountant to review the report.

Establish and maintain a reserve fund.

A portion of the annual budget should be set aside in a reserve fund. Many components of the common areas have a short life—for example, outdoor wooden stairs, carpeting, and hot water heaters—and will eventually need to be replaced. A reserve fund is critical to ensure that these replacements are financially feasible, as it is often easier to establish and maintain a reserve fund by allocating money for the reserve fund in the association's annual budget rather

Operating a Healthy Condominium Association

than to try to collect an adequate amount from all the unit owners once an emergency arises. Furthermore, Fannie Mae, Freddie Mac, and the FHA all require condominiums to dedicate 10% of the condominium association's revenue to the reserve fund. For this reason, many potential buyers will want to see records that show the existence of an adequate reserve fund.

Establish condominium fee collection procedures and penalties for delinquency.

After calculating the condominium association's annual expenses and reserve fund allocations, the condominium board should divide the total amount among the unit owners based on each unit owner's percentage of undivided interest and then assess this amount to the respective unit owners as condominium fees. Fannie Mae, Freddie Mac, and the FHA require that no more than 15% of the unit owners in a condominium association be 30 or more days delinquent on condominium fee payments. In addition, when unit owners sell their units, the buyer's lender will require that the seller provide a *6D certificate* stating that all fees have been paid through the closing date of the sale. A condominium association's Bylaws will describe what actions are available to the condominium association when a unit owner fails to pay condominium fees in a timely manner. Additional actions your condominium board can take to address delinquent unit owners will be discussed in the POTENTIAL REMEDIES section.

6D Certificate:

The *6D certificate* prevents owners from selling units upon which condominium fees are owed, protects buyers from assuming responsibility for any of the former owner's unpaid fees, and assures lenders that condominium associations are financially solvent.

It is important to make all unit owners aware of their responsibilities and the repercussions for failing to meet these responsibilities by providing each unit owner with a statement describing the condominium board's policy on penalty assessment and collection.

Keep Bank Accounts Separate.

Condominium associations should have at least two bank accounts: one for operating expenses (such as maintenance, insurance, and shared utility costs) and a separate one for the reserve fund. Though Massachusetts law requires keeping the money for the reserve fund in a separate account, this practice also ensures that your condominium board does not inadvertently apply money from the reserve fund to monthly operating expenses. In order to open these bank accounts, your condominium association will need to obtain an Employer Identification Number, or "EIN," from the IRS.

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EIN:

An *Employer Identification Number* is a Social Security Number equivalent for legal entities, and is often necessary for opening bank accounts or otherwise engaging in business on behalf of the company or organization. An EIN can be obtained by visiting <https://sa1.www4.irs.gov/modiein/individual/index.jsp> (last visited April 18, 2014) or www.irs.gov and clicking the “Apply for an Employer ID Number” link under the “Tools” section. The application can be filled out online by the president or chairperson of your condominium association and an EIN will instantly be generated.

Quorum:

The quorum is the smallest number of board members, as defined in the Bylaws, who must be present at a board meeting in order for decisions to be made.

Keep Meeting Minutes.

The purpose of keeping minutes at condominium association and board meetings is to memorialize all actions that take place at the meetings. The condominium board should designate one board member to take meeting minutes. Meeting minutes should include a written agenda for the meeting, a list of board members or association members, as applicable, in attendance and confirmation that a *quorum* was present, and a summary of all issues discussed, including the votes of all board members or association members.

Keep Records.

Develop a system to organize all of the condominium association’s meeting minutes and other records and to make these records available to all unit owners. The Massachusetts Condominium Act grants all condominium unit owners the right to inspect the condominium association’s records. These records should include the annual budget and reserve fund calculations, all receipts and expenditures, bank statements, insurance policies, meeting minutes, any agreements with service providers, and any other documentation related to the business of the condominium association.

Review Insurance Documents.

There are different types of insurance that Fannie Mae, Freddie Mac, and the FHA require a condominium association to maintain. The condominium association’s insurance for the building is separate from insurance policies purchased by individual unit owners regarding individual units. It is important to consult with the condominium association’s insurance broker to ensure that the condominium’s insurance policies meet the current Fannie Mae, Freddie Mac, and FHA requirements.

Understand Commercial Use and Owner-Occupancy Requirements.

Fannie Mae and Freddie Mac require that no more than 20% of the total square footage of all the units be used for commercial purposes. If your condominium is not in compliance with this requirement, you should consult an attorney that specializes in condominiums to see what options are available to you. One possible solution might be to dissolve your condominium and reform as two separate condominiums—one commercial and one residential—within the same building.

Operating a Healthy Condominium Association

Additionally, Fannie Mae and Freddie Mac require that no single owner or business own more than 10% of the units in the condominium and that over 50% of the units be owner-occupied (whether as primary or secondary homes). If the condominium has fewer than 10 units, then the requirements prohibit ownership of more than one unit.

SPECIAL ISSUES FOR OWNERS OF AFFORDABLE CONDOMINIUMS

Some condominium associations include units that are sold as affordable housing. The most important implication of this for potential buyers is that unit owners that are within the same association as affordable housing units but not in affordable housing themselves may end up paying a disproportionate percentage of condominium fees or special assessments because of accommodations required either by law or by the condominium documents. You should discuss this issue with the condominium board or look at the condominium documents before buying a unit so that you are fully aware of your obligations.

For information on mortgage products for affordable condominiums, see **ADDITIONAL RESOURCES**.

Operating a Healthy Condominium Association



Potential Remedies

Unit owners who do not pay condominium fees or comply with all of the rules and regulations set forth in the condominium documents can have a negative effect on the value of the condominium and the quality of life of its inhabitants. The Massachusetts Condominium Act offers condominium associations a number of options to address non-compliance of unit owners, which are discussed below.

It is important to note that there are legal requirements that must be fulfilled when undertaking some of the following actions. Therefore, it is recommended that your condominium association hire an attorney with expertise and experience with these practices before initiating some of the more advanced actions.

INTERNAL GRIEVANCE PROCEDURES, INCLUDING ARBITRATION AND MEDIATION

The natural first step to resolving any dispute is simply speaking to one another and attempting to work out the issue in a courteous manner. Assuming that approach fails, because litigation and foreclosure can be expensive and time-consuming, it may be beneficial for your condominium association to establish procedures to deal with disputes between unit owners or between a unit owner and the condominium board prior to resorting to the court system. There are a number of ways to amend your Bylaws to include dispute resolution processes. For example, you can establish an internal grievance system, where any disputes must first go through a grievance process within your condominium association, such as a mediation process that is overseen by a designated board member, before proceeding to litigation. See **ADDITIONAL RESOURCES** for contact information for organizations that can assist you in creating dispute resolution systems for your particular association.

In addition to establishing an internal process, your Bylaws may require owners to submit all disputes to either *mediation* or *arbitration* prior to filing a lawsuit. These options are typically cheaper than formal court actions.

MONETARY PENALTIES AND COLLECTION ACTIONS

A condominium association can undertake debt collection actions against delinquent unit owners so long as those actions comply with all state and federal debt collection laws. The first step in this process is to determine whether your condominium association's Bylaws contain provisions that establish procedures for assessing and collecting fines for nonpayment of condominium fees or for violating other rules. Once you have confirmed the existence of these provisions and understand their implications, make sure that your association carefully follows the procedures as set forth in the condominium documents. Though the specific processes will vary based on your particular association's Bylaws, the debt collection process will usually involve sending a series of timely demand letters to a unit

Potential Remedies

Mediation:

Mediation is a process where parties to a dispute meet with a neutral third party to facilitate a settlement. The aim of mediation is to reach a jointly acceptable agreement between the parties. For organizations that offer mediation services, see **ADDITIONAL RESOURCES**.

Arbitration:

Arbitration is a proceeding in which a dispute is resolved by an unbiased third person, referred to as an arbitrator. Arbitration is similar to a court proceeding, but it is a private proceeding with less procedural formalities.

Lien:

A *lien* is a legal right given to a creditor over another person's property that lasts until the debt or duty to the creditor is satisfied. If the debt or duty is not satisfied, the creditor has the right to foreclose on the property to enforce its lien.

Priority Scheme:

When multiple creditors have liens on the same property, a creditor's *priority* determines when it will be paid compared to the other lienholders. For condominium associations, the priority of the lien determines the order in which the proceeds of the forced sale of the unit will be divided.

owner who is delinquent on either condominium or penalty fee payments. Since it is in the best interest of the association and the unit owner to resolve these issues as quickly as possible, the first demand letter should prompt the unit owner to focus on the problem and offer suggestions for ways to address the problem. If these actions are unsuccessful, your condominium association may need to proceed with one of the enforcement options discussed below.

LIENS AND FORECLOSURE

The Massachusetts Condominium Act grants every condominium association an enforceable (foreclosable) lien on each unit for any unpaid common expenses and any fines or fees assessed for violations of the rules established in the condominium documents. Thus, an association is able to use its penalty assessment and lien enforcement authority in combination to enforce any unit owner obligation (not only the covenant to pay common expense assessments). Foreclosure proceedings are the most drastic measure that a condominium association can take, as a successful foreclosure proceeding results in the forced sale of the unit.

Under the Massachusetts Condominium Act, there are two basic lien *priority schemes*: a basic scheme and a super priority scheme. The basic scheme makes all condominium liens (for condominium fees or any fines or penalties levied against a unit owner) prior to all other liens except for real estate taxes, municipal assessments, liens recorded before the recordation of the master deed, and a first mortgage on the unit recorded before the date of the assessment. The super priority scheme goes a step further by granting any portion of a condominium lien that secures up to six months of unpaid condominium fees, attorney's fees, and collection costs a super priority over all other non-municipal liens, including a first mortgage on the unit. Therefore, under the super priority scheme, after a foreclosure sale, the condominium association will be paid for up to six months of unpaid condominium fees (plus any attorney's fees or money spent attempting to collect the fees) before any other creditors are paid.

Potential Remedies

NON-FORECLOSURE REMEDIES

Collection actions and lien foreclosures are not the only remedies available to condominium associations for the collection of unpaid assessments. The Massachusetts Condominium Act grants the condominium association a number of additional powers to enforce the provisions of the condominium documents. For example if the collection actions discussed above are unsuccessful, the association may opt to sue a unit owner directly for unpaid fees and charges or agree to a *deed in lieu of foreclosure* with the defaulting unit owner rather than act to foreclose.

In addition, with respect to unit owners who are renting their units to tenants, the condominium association has a right to collect rent from the tenants to offset any amounts owed by a non-paying unit owner. The condominium association may notify the tenants in writing that they are required to forward all future rent payments to the condominium association until the unpaid balance is satisfied.

A Deed in Lieu of Foreclosure:

A deed in lieu of foreclosure is a deed in which the owner conveys all interest in the property to the lender or condominium association to satisfy his or her debt.



Additional Resources

ALTERNATIVE DISPUTE RESOLUTION RESOURCES

The Harvard Mediation Program at Harvard Law School provides free, confidential mediation services by trained mediators. Learn more here: <http://www.law.harvard.edu/academics/clinical/hmp/about/index.html> (last visited April 18, 2014).

Harvard Negotiators is a student practice organization through which Harvard Law students provide advice about negotiation strategy and assist in developing dispute resolution mechanisms. Learn more here: <http://www3.law.harvard.edu/orgs/negotiators/for-clients/> (last visited April 18, 2014)

The Massachusetts Attorney General's Office funds the Face-to-Face (FTF) Mediation Program, which supports community mediation programs providing confidential, face-to-face mediation services by trained mediators to resolve a variety of disputes. Learn more here: <http://www.mass.gov/ago/consumer-resources/consumer-assistance/mediation-services/face-to-face-mediation.html> (last visited April 18, 2014).

The Community Dispute Settlement Center is a private, not-for-profit organization that provides professional mediation services at low rates. Fees are calculated on a sliding scale based on income. Learn more here: <http://communitydispute.org/mediation/types-of-mediation/housing> (last visited April 18, 2014).

Metropolitan Mediation Services offers mediation and training services in Greater Boston and mediates housing disputes in condominiums through its Community Mediation Program. Learn more here: <http://metromediation.org/> (last visited April 18, 2014).

GOVERNMENT AGENCIES

The **Department of Neighborhood Development**, a Boston municipal government agency, provides financial assistance to potential purchasers of condominiums in Boston. Learn more here: https://www.cityofboston.gov/dnd/bhc/Financial_Assistance_program.asp (last visited April 18, 2014).

The **Boston Home Center** is a division of the Department of Neighborhood Development that offers classes and other services related to home ownership. Current classes include Homebuying 102: How to Buy a Condo and Homeowner 302: Owning a Condo in a Self-Managed Condo Association. Learn more here: <https://dnd.cityofboston.gov/#page/HomeCenter> (last visited April 18, 2014).

Additional Resources

HOMEBUYER COUNSELING AGENCIES

The **Citizens Housing and Planning Association (CHAPA)** maintains a list of home buying counseling agencies. Learn more here: <http://www.chapa.org/looking-housing/homebuyer-counseling-agencies> (last visited April 18, 2014).

Urban Edge is a community development corporation that provides workshops, tools, counseling services, and other housing-related programs to support affordable home ownership. Its services include first-time home buyer courses, financial fitness classes, and post-purchase training. Learn more here: <http://www.urbanedge.org/housing-comm.php> (last visited April 18, 2014).

MORTGAGE PRODUCTS FOR AFFORDABLE CONDOMINIUMS

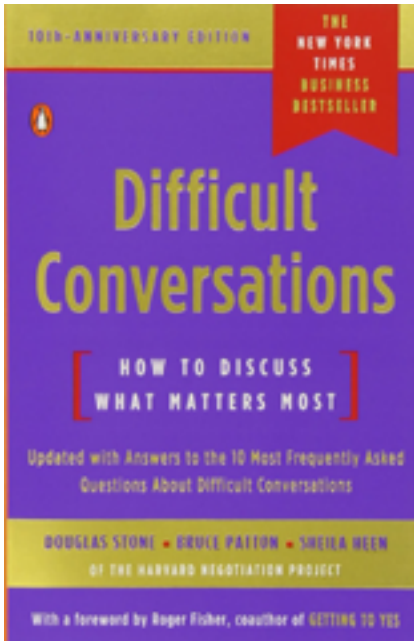
MassHousing provides affordable mortgage products. Learn more here: https://www.masshousing.com/portal/server.pt/community/home_buyers/225/loans_for_home_buyers/287 (last visited April 18, 2014).

The **Massachusetts Housing Partnership** offers mortgage products to increase homeownership opportunities for first-time, low- and moderate-income first-time buyers. Learn more here: <http://www.mhp.net/homeownership/homebuyer/> (last visited April 18, 2014).

LEGAL RESOURCES

The **Community Enterprise Project (CEP)** of the Transactional Law Clinics at Harvard Law School works to stimulate business development, increase access to capital, promote job growth, and enable affordable home ownership by engaging in direct representation of clients on transactional matters. Specifically, it assists condominium owners in understanding the rights and obligations created by their condominium documents and relevant law. Learn more here: www.harvardtlc.org (last visited April 18, 2014).

Additional Resources



ADDITIONAL LITERATURE

Douglas Stone, Bruce Patton, and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most*, New York: Penguin Group, 2000

This book, written by members of the Harvard Negotiation Project, provides tips for effective ways to facilitate difficult conversations in the negotiation and dispute resolution context.

APPENDIX A: SOURCES OF RULES THAT GOVERN CONDOMINIUMS

The rules that govern condominium associations and unit owners come from state laws, federal requirements, and the condominium documents you received when you purchased your unit. In this Appendix A, we will give a brief explanation of the main sources of those rules that your condominium association must follow.

STATE LAW

Massachusetts Condominium Act

In Massachusetts, condominiums are governed by the *Massachusetts Condominium Act*. This statute sets forth the rules that condominiums in Massachusetts must follow, including how to create a condominium, how ownership and control is divided, and what must be included in your condominium documents.

M.G.L. ch. 183A:

M.G.L. ch. 183A, available at <https://malegislature.gov/Laws/GeneralLaws/PartII/Title/Chapter183A> (last visited April 18, 2014).

FEDERAL REQUIREMENTS

Federal Housing Administration (FHA)

The Federal Housing Administration, generally known as “FHA,” provides mortgage insurance to protect lenders (often banks) from losing money if a homeowner defaults on his or her mortgage. Many first-time homebuyers choose FHA loans because the down payment requirement is often lower and the underwriting requirements are typically less stringent. In addition, there are benefits for condominiums that meet FHA approval, including an increase in the potential pool of buyers and a corresponding increase in home value. However, to secure an FHA-approved loan, the condominium must be included on FHA’s list of approved projects by fulfilling all of the FHA requirements. To find out if a particular condominium is on the list of FHA-approved projects, visit <https://entp.hud.gov/idapp/html/condlook.cfm> (last visited April 18, 2014).

APPENDIX A: SOURCES OF RULES THAT GOVERN CONDOMINIUMS

Fannie Mae and Freddie Mac

Fannie Mae, the commonly used name for the Federal National Mortgage Association, and Freddie Mac, the commonly used name for the Federal Home Loan Mortgage Corporation, are both enterprises that were started by the federal government but now operate as private companies with government oversight. Both Fannie Mae and Freddie Mac purchase mortgages from banks, package these mortgages with many other mortgages, and then sell the packages of mortgages to investors in the financial markets. The banks then use the money they receive from the sales of these mortgages to make additional mortgages (Fig. 3.1). Fannie Mae and Freddie Mac, like the FHA, want to ensure that the mortgages they buy are unlikely to default. For this reason, Fannie Mae and Freddie Mac require that the mortgages they buy meet certain criteria. Because the banks want to sell their mortgages to Fannie Mae or Freddie Mac in order to make more mortgages, banks are much less likely to lend to a buyer interested in a condominium that does not meet these secondary market criteria.

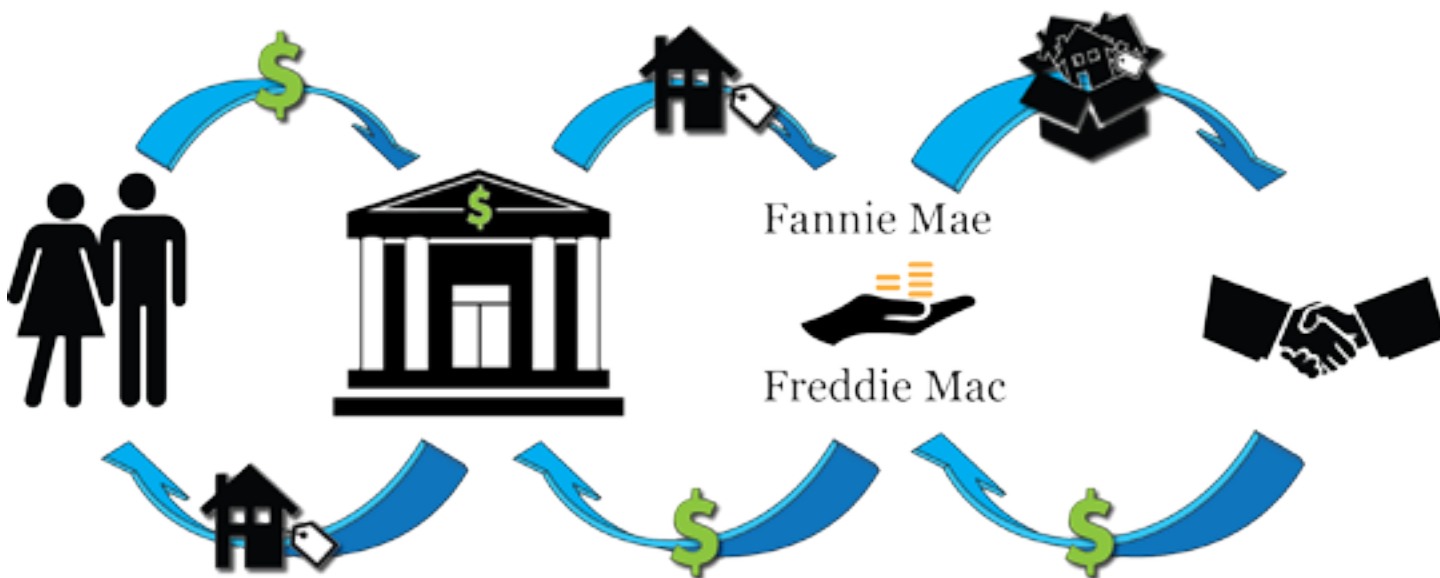


Fig. 3.1

APPENDIX B: FORMS OF CONDOMINIUM ASSOCIATIONS

Upon his or her purchase of a unit, a condominium unit owner becomes a member of the condominium association, the legal entity that governs the operations of the condominium. Each unit owner is a member of the association and is able to vote on certain decisions, though members might not have equal voting rights. The value of each member's vote is set forth in the Master Deed and is based on the value of their unit compared to the values of all the other units on the date of the condominium's creation.

In Massachusetts, condominium associations may be legally formed as a trust, as an unincorporated association, or as a corporation. Depending on the form employed, different terminology is used to refer to the condominium association's governing body and charter (i.e. founding) document, as can be seen in the table below (Fig. 4.1). Furthermore, there are differences in the way the various types of condominium associations are treated under the law. For example, the condominium association will be taxed differently depending on its entity type.

Legal Entity	Governing Body	Charter Document	Taxation
Trust	Board of Trustees	Declaration of Trust	File return under personal income tax provisions
Unincorporated Association	Board of Managers	Articles of Association (recommended but not required)	File return under personal income tax provisions
Corporation	Board of Directors	Articles of Organization	File return under corporate tax provisions

Fig. 4.1

Taxation:

See Massachusetts Department of Revenue, "*TIR 10-3: Taxation of Unincorporated Homeowners Associations*," available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2010-releases/tir-10-3-taxation-of-unincorporated.html> (last visited April 18, 2014). Please consult a tax professional for details.

APPENDIX C: CONDOMINIUM DOCUMENTS

In addition to the Massachusetts Condominium Act, which governs all condominiums in the state, your condominium documents form a set of rules that govern your specific condominium. Three of these documents—the Declaration of Trust, Bylaws, and Rules and Regulations—concern your condominium association while two of these documents—the Master Deed and Unit Deed—focus on the interests created in the property itself. You should have received these documents when you purchased your condominium.

Reminder:

Remember that throughout this toolkit, references to the Declaration of Trust can be replaced by the Articles of Organization or Articles of Association. All these documents serve as charter (or founding) documents but have different titles depending on the legal form of the condominium association. See APPENDIX B.

CONDOMINIUM ASSOCIATION DOCUMENTS

Your condominium association's documents created your condominium association, define how it will be run, and detail the rights and responsibilities allocated within your association (Fig. 5.1). The Declaration of Trust is the primary document and is supplemented by the Bylaws and Rules and Regulations. The Bylaws may be written into the Declaration of Trust, and the Rules and Regulations will often be attached. However, if your condominium association is organized as a corporation or unincorporated association, the Bylaws and Rules and Regulations will likely be separate from your Articles of Organization or Articles of Association.

Declaration of Trust, Articles of Organization, or Articles of Association

The Declaration of Trust, Articles of Organization, or Articles of Association create the condominium association and the condominium board that handles the operations of the condominium. Its provisions will cover topics such as how condominium board members are appointed and removed and how the condominium board must take action regarding various activities. The Declaration of Trust, Articles of Organization, or Articles of Association often also include standard provisions to ensure that the condominium is in compliance with Fannie Mae, Freddie Mac, and FHA requirements so that future buyers can obtain conventional financing on their units (see APPENDIX A for more information on these requirements).

Bylaws

The Bylaws set forth more specific rules for how your condominium association operates. These rules include provisions related to the powers of the board, responsibility for maintenance of the common areas, methods for the assessment of common expenses, and the type of insurance the condominium association must carry, among others.

APPENDIX C: CONDOMINIUM DOCUMENTS

Rules and Regulations

The Rules and Regulations detail the everyday rules that the unit owners must follow. The Rules and Regulations may address a wide array of topics, including pet policies, smoking prohibitions, signage restrictions, rules intended to preserve the architectural integrity of the building, noise ordinances, and trash disposal rules. In contrast with the Declaration of Trust and Bylaws, which can only be amended after a vote of all unit owners, the condominium board can usually amend the Rules and Regulations without unit owner approval.

CONDOMINIUM PROPERTY DOCUMENTS

Master Deed

The Master Deed legally creates the condominium and defines the sections of your actual condominium building. The Master Deed describes the layout and location of the building and designates which portions of the building are common areas and which are part of individual units, as well as lists each unit's percentage interest in the common areas (see OWNING A CONDOMINIUM).

Unit Deed

The unit deed defines ownership in a single condominium unit, which allows the unit to be transferred to a new owner in the event of a sale. It will reference the undivided interest in the common areas defined in the Master Deed as well as any facilities or shared common areas that are purchased with the unit. The unit deed may also include any restrictions on the unit's use, such as whether it can be used for residential or commercial purposes.



Fig. 5.1

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