

## Planned Community, Townhome and Condominium Ownership – *Which Form Should I Use?*

While most real estate brokers know a condominium when they see one, can the same be said of a “townhouse”? How do the two differ? Is there such a thing as a “townhome condominium”? Do townhomes have common and limited elements? What if the home is not a condo or townhome, but located in a “planned community”? How does that differ from a condominium or townhome?

OREF has two sets of forms to deal with these situations. One, the Residential Condominium Real Estate Sale Agreement is exclusively for the sale of *pre-owned* residential condominium units (Form 011)<sup>1</sup>, and another, the Townhouse/Planned Community Addendum (Form 023). Below is a summary of the basic distinctions between these types of ownership, and which transactional form is appropriate for each one.

**Generally.** Avoiding the technical legal distinctions for the moment, the basic differences between condos and townhomes can be summarized as follows:

- Ownership of a townhome includes the ground upon which the structure sits. The ground in the front and back of the building’s footprint is usually owned by the townhome owner. Whether the owner, or the homeowner association, is responsible for maintenance of that ground is dictated by the terms of the Conditions, Covenants and Restrictions (“CC&Rs”) or “Declaration”. Townhomes are sometimes referred to as “row houses”, where each home shares a common wall with their neighbor. The Declaration and/or the CC&Rs provides the maintenance responsibilities of the owners.
- Ownership of a condo includes just the interior of the structure. In short, metaphorically speaking, it consists of a “box of air”. Everything else is owned in common with the other owners. The use of certain common elements are reserved exclusively to the unit owner, such as the decks, while other portions of the structure and grounds are available for the use of all owners, such as recreational facilities, grounds, streets, etc.
- Since both structures, townhomes and condos, include commonly owned property (e.g. the roof of the townhome structure, and elevators in the condo building) there is a homeowner association that is set up for levying periodic assessments. The assessments are collected and accumulated for the purpose of creating a reserve fund to replace the capital improvements when their useful life expires.
- How do you to determine if property is a townhome or condo? Interestingly, there can be confusion by homeowners themselves when selling their own condo or townhome. What is the easiest way to determine one from the other? Here’s a tip from [John Hoops, Manager, REMAX Integrity](#): Check the tax assessment. If the property is a townhome, where the ground is also owned, the assessment will include land separate from the structure. If it is a condo, there is no separate assessment to the homeowner for the land.

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<sup>1</sup> If the condo has not been conveyed to a purchaser, i.e. it is brand new, the sale document is a “Unit Sales Agreement”, and its contents are governed by ORS Chapter 100.

**Governance Documents.** Typically, the HOAs for a townhome community or condo development<sup>2</sup> are non-profit corporations, run by officers and directors. The bylaws determine how the organization will operate, the frequency of meeting, voting rights, and other such regulations for the operation of the entity. Both are required under Oregon law to have annual reserve studies, which determine the depreciable life of the common areas, the cost to fully replace them, and the amount of the assessments to do so. See, [ORS 94.595](#) and [ORS 100.175](#).) Insofar as the governance documents go, there is no major distinction between condominium developments and townhome communities.

**Planned Communities.** Is it possible to have a free-standing home that is not a condo or townhome, which is in a community that requires a homeowner's association? Yes. This is because the community is a "planned community" that maintains certain common areas, such as parks or recreational areas. These common areas are jointly owned by all of the community owners (or they may be owned by the HOA itself). Again, the HOA is going to be a nonprofit corporation, governed by bylaws, and the CC&Rs and/or a separate Declaration exists to deal with managing the common areas.

**Realtor<sup>®</sup> Tips and Traps.** What (a) townhomes, (b) planned communities, and (c) condominium developments all have in common is property that is either jointly owned, or held by the homeowners (or unit owners") association. Accordingly, the Townhouse/Planned Community Addendum (OREF 023) should be use for (a) and (b), and the Residential Condominium Real Estate Sale Agreement (OREF 011) should be used for (c). What all three form have in common is that they address the following documents and issues that need to be vetted by buyers as a part of their due diligence.

- Conditions, covenants, and Restrictions ("CC&Rs") and/or Declaration.
- The HOA articles of incorporation and bylaws, including any revisions or amendments thereto.
- HOA Rules and regulations, including any revisions or amendments thereto.
- Policies, agreements, notices (not included in the requested items above) relating to: age restrictions, pets, parking, any restrictions on rental of homes.
- All minutes of meetings for the preceding months (twelve [12] if not filled in) for the HOA and the board of directors.
- Documents verifying coverage under the current policies of casualty and liability insurance for the HOA and its directors and officers ("D&O insurance").
- Documents verifying the current HOA assessments and budget, together with any HOA notices relating to potential increases in the assessments or any potential special assessments.
- Documents prepared for the HOA or its directors and/or officers acting in their official capacity, such as inspection reports, studies, bids, or proposals for repair or replacement of any actual or suspected material defects in the structural integrity or safety of the Property, and its limited or common areas.
- Documents relating to any demands or claims made by or against the HOA relating to any actual or suspected material defects in the structural integrity or safety of the Property, and its limited or common areas.

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<sup>2</sup> Technically, the association for a condominium development is a "unit owners' association" since each structure is referred to as a "unit".

- Documents showing the latest reserve study conducted by or for the HOA together with current reserve fund figures.
- The total number of homes/units with assessments over 30 days past due, expressed as a percentage of total number of homes/units in the community.
- The total number of homes/units that are non-owner occupied, expressed as a percentage of total number of homes/units in the community.

Buyer brokers need to pay special attention to the seller's HOA documents. Why? Because some associations are run better than others. Are the reserves fully funded? Are the HOA dues current? Is there any deferred maintenance of the common areas for which a large assessment will become due? How many units are being rented? Has the HOA ignored a construction defect issue that needs to be addressed?

Lastly, as a part of any due diligence, all buyers should not only insist upon obtaining copies of all relevant documents, but also, make personal contact with other homeowners to find out how things are being run. Oftentimes, more can be gleaned from a conversation with a neighbor than reviewing sanitized meeting minutes.