

ADVISORY TO BUYER: CONDOMINIUM/TOWNHOME RESALES

The following Advisory is intended to briefly address some of the practical and legal issues which can arise in the purchase of a condominium or townhome previously occupied. The legal structure of a condominium is different than for a townhome, which is typically part of a planned unit community. However, many of the issues will be similar and are discussed in this Advisory. What follows is a summary of a few of the more important issues – however, it is by no means exhaustive. Your real estate agent is not an expert in condominium or planned community development law, construction law, engineering, or other matters related to the physical structure or systems. You should secure your own independent experts when purchasing a condominium or townhome, especially a qualified home inspector. It is highly recommended Buyer employ the use of third-party professionals familiar with condominiums, townhomes, and/or planned unit developments, their associations, governance, budgets, finances, and reserves.

1. FORMS: Oregon law requires Sellers of pre-owned condominiums and townhomes, as well as sellers of one-to-four family dwellings unless excluded, must provide their Buyers with a completed Seller's Property Disclosure Statement: failure to provide a Seller's Property Disclosure Statement gives the Buyer the right to revoke their offer at any time prior to closing the transaction. The statement addresses only limited issues regarding condominiums/townhomes, and there is much more Buyers should know before making a final purchasing decision. It is recommended buyers use:

- a. The **OREF 011 Residential Condominium Real Estate Sale Agreement** when making an offer to purchase a resale condominium, or
- b. The **OREF 001 Residential Real Estate Sale Agreement** and the **OREF 024 Homeowners Association/Townhome/Planned Community Addendum** when purchasing a townhome or property in a planned community.

These forms ask Sellers to provide Buyers with documents and information that are not addressed in the Seller's Property Disclosure Statement.

2. HOMEOWNERS' ASSOCIATION ("HOA") DUES AND ASSESSMENTS: One significant financial issue for condominium and townhome purchasers is to investigate the amount of past, present, and anticipated future HOA dues and whether dues are assessed monthly, quarterly, or annually. Try to obtain copies of two or three years of assessment history. Have the dues increased significantly over the years? If so, why? Are there any large or special assessments planned (or being discussed) by the HOA's Board of Directors? How do the HOA dues compare to those at other comparable developments? What do they cover, for example, sewer, water, reserves, insurance, etc.? Do the dues include an allocation for a reserve fund for capital improvements and major repairs? How long have contributions been made to this fund? What are the reserves being set aside for, and will they be sufficient to replace or repair major components such as the roof, parking area, and heating and cooling systems, or will there be a large special assessment because the reserves are inadequate? Buyers should consider obtaining a copy of all recent budgets and other financial information regarding the HOA, preferably going back at least the last 12 months. Oregon law requires that most HOA Boards of Directors conduct a reserve study or study update annually. Buyers may wish to verify this is being done and review the studies. How realistic have they been? Copies of the HOA's minutes for the last 12 months or more should be secured. Speaking with the treasurer of the HOA may be helpful. Are there any engineering or other reports on the condition of the property? Is there any litigation, existing or planned, by the HOA for claims against the developer or others for construction defects or any other reasons? Is there a possibility of litigation by (or against) the HOA? If so, the Buyer should consult with an attorney to secure further information. It is highly recommended that Buyer employ third-party professionals familiar with condominiums/townhomes and condominium/planned community associations, as well as their governance, budgets, finances, and reserves.

3. DECLARATION AND BYLAWS: The declaration is the document that sets out the covenants, conditions, and restrictions for the condominium/townhome unit owners. They are generally considered to be legally binding and enforceable by each property owner. Violations can result in fines. The HOA has the power to file a lien on the owner's unit for nonpayment of the HOA dues, assessments, and fines. There can be personal liability for nonpayment as well. The bylaws govern the operation and business affairs of the HOA, such as the rules for the election of officers and directors, voting, and general governance of the HOA. Not all condominium/townhome documents are the same. Many place limitations on pets, vehicle parking, rental of units, in-home businesses, and other important issues. (Note: Some lenders place limitations on the percentage of units that may be rented, and if too many, financing may be difficult or impossible to obtain.) Buyers should also review any informal guidelines or rules established by the HOA which are not found in the recorded declaration or bylaws. Are the declaration and bylaws clear and understandable? Are there any other restrictions contained in them that could interfere with the Buyer's intended use and enjoyment of their unit?

4. ADMINISTRATION OF THE HOA: How does the HOA enforce violations of the declaration or bylaws? Have they had to resort to lawsuits to do so? Do the officers of the HOA get along with the rest of the unit owners, or is there an adversarial relationship? Some HOAs may be run by a small group of unit owners who become overly zealous in how they approach their responsibilities. Is there professional third-party management? If so, what is the cost, and are they doing a good job? Are violations enforced uniformly in a timely and fair manner? Current unit owners should be asked whether they are satisfied with management, and if not, why not.

5. THE PHYSICAL STRUCTURE: The quality of construction of condominiums and townhomes can vary greatly. Occasionally, pre-existing apartments or other structures are converted into condominiums/townhomes. Sometimes these conversions, such as lofts, were originally designed and built for other

Buyer Initials ____ / ____ Date _____

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47 purposes, such as storage facilities. Although there can be very good conversions, some may pose a greater risk than portions of the structure, such as
48 the mechanical systems, roof, or exterior, are not as modern or effective as those used in new projects. This can be especially true of electrical, plumbing,
49 and HVAC systems. Soundproofing is especially important. This applies not just to condo conversions but to developments originally built as
50 condominiums/townhomes since the proximity of neighbors is much closer in this type of community living than in detached single-family residences.
51 Checking with other unit owners is essential before entering a binding purchase contract.

52 Is there any obvious deferred maintenance either in the unit or common areas, such as the roof or parking area? Maintenance of the common areas,
53 including the limited common areas (such as exterior decks or patios), is usually an HOA responsibility, so that deferred maintenance could reflect some
54 financial inability of the HOA or neglect by management. Is the siding holding up? Will any of the siding have to be replaced? What is the age of the roof?
55 Where necessary, is the exterior uniformly sealed, painted, and repaired? A professional home inspector should be used to evaluate the interior of the
56 condominium/townhome unit, no matter how new it is. If possible, the inspector should also be asked about any areas of concern in the limited and
57 general common areas. However, special permission may be necessary from the HOA to do any intrusive or exploratory examinations or testing. In a
58 townhome, the inspector will typically do a full exterior inspection for the unit, similar to what they would perform on a single-family residence. Buyers
59 should ask the seller about common area problems, such as water, drainage, or flooding issues, even though they do not negatively impact the unit itself.
60 (Note: The Seller's Property Disclosure Statement asks questions about the residence in general but does not distinguish between a unit and the common
61 areas. As a result, some Sellers may fail to disclose known defects in the common areas, believing that the disclosure statement only deals with the unit
62 itself.) Have there been any repair problems with the common elements, especially involving water leakage in and around the roof, decks, patios,
63 windows, or siding? The declaration should be reviewed closely on this issue – since the responsibility for repairing or replacing the windows and sliding
64 doors can be imposed upon the unit owner rather than the HOA. Lastly, some condominium/townhome developments include more than one building.
65 Some were built in phases, where some buildings are older than others. Prospective purchasers should look at the development as a whole since
66 problems can exist in some buildings or phases and not in others. For this reason, speaking with unit owners in various parts of the development can be
67 valuable to better understand any structural or maintenance problems, even if they do not affect the particular unit or common area of interest to the
68 prospective Buyer.

69 **6. INSURANCE:** The nature and amount of insurance coverage is frequently overlooked by Buyers until it is too late. How much liability insurance does
70 the HOA maintain in case someone is injured in a common area? Is the amount and type of coverage comparable to similar developments, and is it
71 adequate? If the development has a pool or other recreational facilities, will there be enough coverage in the event of a personal injury claim? Similarly, is
72 the hazard insurance coverage adequate? If one of the structures burned to the ground, would there be enough coverage to replace it? Prospective
73 Buyers should be sure to carry their own personal liability coverage and personal property coverage for the contents of their unit. Most carriers have
74 policies specifically designed for condominium unit owners. A townhome unit would need full coverage for the structure as well. Do those running the HOA
75 have Directors and Officers (D&O) insurance in case they are sued individually for a decision made in their official capacity? This is important for those
76 prospective Buyers who may wish to serve in a leadership role.

77 **7. DEVELOPMENT, DEVELOPER:** Some condominium/townhome projects are developed in phases. Buyers should clarify with the developer if the
78 project is a phased development and, if so, whether all phases have been completed. If not completed, where and when is further construction planned?
79 Also, if the development is relatively new, the developer may still control the HOA due to weighted voting. If so, prospective Buyers should ask how the
80 developer is currently running the HOA. Remember, the developer's interests may not be the same as the unit owners. Has the developer sought to
81 amend the declaration to secure more favorable provisions? If the developer submitted an initial reserve study, how realistic is it? Have any subsequent
82 reserve studies resulted in a substantial increase in assessments? Unless there is an absolute prohibition against renting the units, the developer may
83 rent unsold units to defray any overhead costs incurred during the marketing process. As noted above, the number of rental units may affect the Buyer's
84 ability to obtain financing. Is the developer paying for the assessments for all of the unsold units? If the developer has turned the HOA over to the unit
85 owners within the last couple of years, a prospective buyer may wish to review the financial information delivered at the initial turnover. At that time, did the
86 developer deliver to the HOA all plans, budgets, insurance policies, and financial documents required by law?

87 **8. CONCLUSION:** Buyers have a significant responsibility to perform their due diligence in purchasing a condominium/townhome – much of which is quite
88 different from purchasing a detached single-family home. Not only must the condominium or townhome and its limited and general common elements be
89 evaluated, but the books, records, and operation of the HOA must also be reviewed.

90 **9. ACKNOWLEDGEMENT:** The undersigned Buyer(s) acknowledge they (a) have read and understand this Advisory, (b) have been provided with a copy for
91 their own files, and (c) are aware the use of one or more experts is recommended before entering a binding transaction for the purchase of a condominium or
92 townhome.

93 Buyer _____ Date _____ a.m. _____ p.m. ←

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