

**New Jersey
N2K Hour:**

**Condominiums
&
Homeowner
Associations**

**Webex Presentation:
March 9, 2021**

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Condominiums in New Jersey

- Condominiums in NJ are created by statute enacted in 1970 (N.J.S.A. 46:8B-1).
- Title to the specific unit is held by the owner, while title to the land, exteriors, etc. is held by all unit owners in common.
- Condos can be created on vacant land or land with existing buildings (a “conversion”).
- NJ even allows the condominium concept to be applied to boat docks or a “dockaminium”.

The Master Deed

- A condominium is formally created upon the recording of the Master Deed with the county clerk.
- The party who records the Master Deed is known as the sponsor.
- The Master Deed must set forth specific items under N.J.S.A. 46:8B-9 (Note: This is NOT the full list):
 - Legal description of the land
 - Description of the common elements
 - Description and interest of the units
 - By-laws of the Condominium Association

What's a Common Element?

- Common elements are the areas of land which are not part of the individual units but subject to the condominium regime (N.J.S.A. 46:8B-3(d))
 - Stairways, hallways, yards, elevators, roofs, lobbies, parking areas, driveways, utilities, etc.
- Limited Common Elements are areas that are reserved for the exclusive use of a specific unit owner(s) (N.J.S.A. 46:8B-3(k))
 - Set forth in the Master Deed.
 - Examples: parking spaces, balconies, porches, roof decks
 - Interest is appurtenant to the Unit and can't be conveyed separately (The Unit Owner doesn't individually own it)

Condominium Ownership

- A Unit Deed is used to convey ownership of the unit and percentage of the common elements.
- Unit Deeds may contain specific language related to the rights of that Unit (Example: Specific parking spaces, exclusive access to storage or yards)
 - Always review the Master Deed and any Amendments!
- The Unit Deed must include a description that refers to the Master Deed recording information.
 - A Unit Deed should NOT be a metes and bounds description of the land

What about Parking Spaces?

- Parking Spaces can be tricky – always review the Master Deed and any Amendments.
 - There may only be the right for a Unit Owner to park in a space (not specific rights to a particular one)
 - Individual Units may have the exclusive use of a space (limited common element)
 - The Parking Spaces themselves can also be designated as a separate Unit
 - Master Deed should contain provisions on the conveyance of such a parking space.
 - Watch out for separate taxes!

The Condo Association

- The structure of the Association largely depends on the Condo – it can be very formal with elected members or just the “next door neighbor”.
- The Association does NOT hold title to any part of the condo
- The Association acts on behalf of the Unit Owners for the management of the Condo
 - Examples: Common maintenance and repairs, special projects, common utilities, etc.
- The Association may levy both common and special assessments against the Unit Owners.

Conveying a Condo Unit

- Always review the Master Deed, along with any By-Laws, Rules and Regulations, etc. Make sure they are recorded!
- Confirm there are no unpaid dues with the Association
 - N.J.S.A 46:8B-21 (d) – Upon demand, Association must provide the unit owner, unit purchaser, holder of mortgage or other lien a certificate evidencing the amount of unpaid assessments within 10 days of the request.
 - All parties other than the unit owner are entitled to rely on the certificate with their liability limited to the amounts in the certificate.
- Watch out for limited common elements – the Unit Owner does NOT own these items – just has a right to use

Conveying a Condo Unit - The Policy

- You must always include an exception in Schedule B-II for the terms and conditions of the Master Deed and any Declaration of Covenants and Restrictions
- Surveys are not typically ordered, if lender or owner wants survey coverage, you may issue the New Jersey Survey Endorsement (Without Survey) for Residential Condominiums and Co-operatives (NJRB 5-164).
- Require/Except for all real estate taxes and municipal charges be paid – watch out for new construction!
- Require all Condo Assessments are paid to date and liens are released

Assessments and Condo Liens

- Each Unit Owner is obligated to pay their unit's assessments.
 - An Owner automatically becomes subject to assessments upon purchase of Unit
 - Both Grantor and Grantee become liable for unpaid dues
- If a Unit Owner fails to pay their assessments, the Association may file a lien against the Unit
 - Condo liens become effective upon recording with the County Clerk (N.J.S.A. 46:8B-21)
 - Condo liens can be foreclosed on (similar to a mortgage) and/or become a money judgment against the Owner.

Condo Assessments and Mortgages

- A purchase money mortgage (senior position) has priority over Condo Assessments owed PRIOR to the acquisition of title through foreclosure (N.J.S.A. 46:8B-22).
 - Foreclosure must name the Association as a defendant if a lien has been filed.
 - Upon successful foreclosure, the lender (or 3rd party bidder) becomes responsible for all subsequent condo assessments
 - Watch out for situations where lender hasn't recorded the sheriff's deed – **THEY ARE STILL RESPONSIBLE FOR ASSESSMENTS**

...There's always an exception

- Recorded Condo Liens enjoy a limited priority over senior liens (including mortgages) pursuant to N.J.S.A. 46:8B-21.
 - This limited priority does NOT include liens for Federal taxes or property taxes
- The priority is limited to six (6) months of charges that were unpaid at the time the lien was recorded.
- Regarding a mortgage, the limited priority only applies to liens recorded BEFORE service of a foreclosure upon the Association or the recording of a Lis Pendens related to foreclosure.
 - Association is obligated to file its liens in a timely manner.

...There's always an exception

- The limited priority of a Condo Lien is only effective for five (5) years from the recording.
 - The Condo Association is required to act in timely manner – if they don't enforce within this time period, priority is lost
- The Limited Priority forces the lender (or 3rd party) to pay all assessments after the foreclosure as well as six (6) months prior to acquiring the title to the Unit.
- Although the Condo Lien enjoys a priority over senior liens, including mortgages, contact your Underwriter if you see a situation where the Association has divested such a lien through foreclosure.

Foreclosure Checklist for Condos

- Just as with any other foreclosure, review the Chancery Abstract.
- Confirm that the Association was named (check judgment search and title search for condo liens)
- Common situation: Condo Association was named and divested in a foreclosure. There are still Condo liens outstanding on record. Association refuses to release them saying “they are released by operation of law”.
 - This technically isn’t true but what do you? Demand certificate pursuant to N.J.S.A 46:8B-21 (d).

Tidelands and Condos

- The developer/sponsor **should** have dealt with any tideland claims on the property at the time the condo was created/converted.
- Remember – all Unit Owners own the common elements together – therefore, they are all technically responsible for claims affecting these areas
- If a portion of the condominium property is claimed by the state and there isn't a grant, contact your underwriter.
 - Depending on the situation, we may be able to provide affirmative coverage if we can determine that the grant only affects the common elements of the condominium and not the actual unit being sold

Planned Unit Developments (PUDs)

- Different than a condo, there isn't a distinct form of real property ownership by the PUD.
- A PUD typically affects a group of houses or townhomes within the same neighborhood or development.
- These homes shares common facilities (clubhouses, pools, lakes, tennis/golf areas, etc.)
- A PUD is created by recording a declaration of covenants and restrictions that affect certain properties.
 - Deeds should contain references to these covenants and restrictions
- Property owners are most often required to join a Homeowner Association (HOA)

PUDs and HOAs

- Although there are some governmental regulation of PUDs (mainly, the Planned Real Estate Development Full Disclosure Act) – there aren't set rules for how a HOA must be organized.
 - Depending on the PUD, you may see a formal organization such as a corporation or LLC or something much more informal.
- The HOA is responsible for the maintenance of the common areas and the collection of assessments.
- A HOA can also file judgment liens against a property for failure to pay assessments.
- HOA liens DO NOT enjoy a priority over senior liens

PUDs and HOAs – What to watch out for

- Confirm that the property is subject to a PUD/HOA by review of the title search
 - The most current deed may not include a reference to the covenants/restrictions, make sure to look back in the chain
- Require proof that all assessments owed to the HOA have been paid to date
- If there is a recorded Declaration of Covenants and Restrictions, except for it in Schedule B-II
- Pay close attention to properties located in developments near lakes. Lake Associations have become very aggressive with the enforcement of assessments.

Co-Operatives (Co-Ops) in NJ

- Established by the Co-operative Recording Act of New Jersey (N.J.S.A. 46:8D-1) in 1988
 - Co-Ops established before this are NOT subject to the Act.
- The unit owner does not actually have a fee interest in the real property. Instead, they have a long-term leasehold interest along with ownership of shares of the Co-Op Corporation.
 - The leasehold interest and ownership of shares can not be conveyed separately.
 - The Co-Op Corporation is the holder of the fee interest in the real property.

Co-Operatives (Co-Ops) in NJ

- Similar to a condominium, the unit owner pays monthly and special assessments to the Co-Op corporation for common maintenance costs.
 - May also include costs related to a master mortgage on the property and real estate taxes.
- Conveyances of a unit are subject to approval by the Co-Op Master.
 - Always contact the Master for approval and confirmation of any specific requirements.
- Loans for the Units are typically secured by a UCC Financing Statement (not a mortgage) and assignment of the owner's leasehold interest.

Co-Operatives (Co-Ops) in NJ

- A Co-Op is effectively a mixture of real and personal property.
- Consequently, the conveyance and insurance of a Co-Op transaction (with or without financing) is typically more complicated than a standard transaction.
- Always contact your Underwriter early on in a Co-Op transaction to ensure all necessary requirements are met.

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Please mark your calendars for our:

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April 13, 2021

11:00AM

Tax Sale Issues