

**New Jersey  
N2K Hour:**

**Condominiums  
&  
Homeowner  
Associations**

**Webex Presentation:  
January 9, 2024**

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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”).

# 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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.

## 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 share 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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Tuesday

February 13, 2024

11:00AM

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