This Document is in the Form approved by the

WORKING GROUP ON LAWYERS AND REAL ESTATE

on **August 15, 2014 for**

**CONSULTATION PURPOSES**.

**BUYERS’ CONDOMINIUM GUIDE**

A consumer’s guide to understanding the purchase of a condominium unit and the working of a condominium property.

Prepared by the Working Group on Lawyers and Real Estate

The purpose of this guide is to assist Buyers so they may understand the various elements involved in the purchase of a condominium unit. It is also meant to assist owners in understanding how a condominium property works.

Although one might wish to read the entire document, this document has been structured as a resource which can be consulted for particular issues as they arise or are of interest. In view of that, it has been broken down into sections to be read independently. We recommend you consult the table of contents and then proceed to the desired section to review the content.

This is not meant to be a complete document but one that we envisage will be changed from time to time to address issues arising out of new legislation, court cases or changing practices.

We welcome your input to suggest other items to cover to develop further ones already touched upon. To facilitate your comments and suggestions, we added a FEEDBACK BUTTON at the end of this document.

The Working Group has compiled a Checklist of issues in a condominium transaction to better assist Buyers understand the multiple matters they should consider. A chart has been created, which the lawyer may provide to the client with the retainer or can be consulted at [www.lawyersworkinggroup.com/MasterChart.pdf](http://www.lawyersworkinggroup.com/MasterChart.pdf).

Table of Contents

[Links 5](#_Toc396232828)

[Disclaimer: 6](#_Toc396232829)

[Definitions: 6](#_Toc396232830)

[Section A – Agreement of Purchase and Sale 7](#_Toc396232831)

[Draft or review APS 7](#_Toc396232832)

[Discuss with lawyer items which should be included in APS 7](#_Toc396232833)

[Review of Status Certificate 7](#_Toc396232834)

[Financing – adequacy of approval/review of financing components 8](#_Toc396232835)

[Parking (unit, exclusive use, licence) 8](#_Toc396232836)

[Locker – unit, exclusive use or licence 9](#_Toc396232837)

[Amenities (pool, tennis court, guest suite, etc.) 9](#_Toc396232838)

[Home inspection and repair/maintenance issues in Status Certificate 10](#_Toc396232839)

[Home Inspectors 10](#_Toc396232840)

[Conditions in APS 11](#_Toc396232841)

[Buyers’ intentions/plans for use of the unit 11](#_Toc396232842)

[Satisfaction of Conditions 11](#_Toc396232843)

[Description of the unit 12](#_Toc396232844)

[Costs 12](#_Toc396232845)

[Review purpose of Reserve Fund Study 12](#_Toc396232846)

[Moving Day Schedule 13](#_Toc396232847)

[Section B - Status Certificate Reviews 14](#_Toc396232848)

[Status Certificate to be provided to Buyers 14](#_Toc396232849)

[Confirming Legal Descriptions 14](#_Toc396232850)

[Board of Directors of the Condominium Corporation 15](#_Toc396232851)

[Status Certificate Details on Common Expenses 15](#_Toc396232852)

[Any special conditions, notices or warnings for Buyers 15](#_Toc396232853)

[Legal Proceedings and Judgments 15](#_Toc396232854)

[Rental Units 16](#_Toc396232855)

[Modifications to common elements and/or units 16](#_Toc396232856)

[Management Agreements and Shared Facilities Agreements 17](#_Toc396232857)

[Financial Statements 17](#_Toc396232858)

[Insurance 18](#_Toc396232859)

[Indemnity by Owner for Owner’s or Owner’s tenant’s damages 19](#_Toc396232860)

[Budget 20](#_Toc396232861)

[Declaration 20](#_Toc396232862)

[By-laws 21](#_Toc396232863)

[Duties of the Corporation 21](#_Toc396232864)

[Maintenance and Repair Obligations 21](#_Toc396232865)

[Unit Rental Restrictions and Procedures 21](#_Toc396232866)

[Lifestyle Restrictions 22](#_Toc396232867)

[Common Element Restrictions 22](#_Toc396232868)

[Condominium Corporation Right of Entry 22](#_Toc396232869)

[Insurance requirements and loss procedures 22](#_Toc396232870)

[Property Description and Easements 23](#_Toc396232871)

[Unit boundaries 23](#_Toc396232872)

[Verify consistency between APS and Declaration (Schedule “E”) for what is included in common expenses 23](#_Toc396232873)

[Verify share of common expense and common interest (Schedule “D”) and equity of Division 24](#_Toc396232874)

[Confirm Exclusive use common elements designated for unit (“Schedule “F”) 24](#_Toc396232875)

[Certificate of Engineer or Architect (Schedule “G”). Are there items that are not certified as complete? 24](#_Toc396232876)

[Existence of By-laws and borrowing 25](#_Toc396232877)

[Standard Unit Description – Review & Purpose 25](#_Toc396232878)

[Rules 26](#_Toc396232879)

[Shared Facilities 26](#_Toc396232880)

[Section C - Title Insurance 27](#_Toc396232881)

[Benefits of Title Insurance 27](#_Toc396232882)

[Understanding Title Insurance 27](#_Toc396232883)

[Title Investigation 28](#_Toc396232884)

[Title Opinion 28](#_Toc396232885)

[Defects in Title 28](#_Toc396232886)

[Fraud 28](#_Toc396232887)

[Condominium Plans 29](#_Toc396232888)

[Types of Condominiums 29](#_Toc396232889)

[Tarion Warranty 30](#_Toc396232890)

[Off Title Searches 30](#_Toc396232891)

[Tax Certificate 31](#_Toc396232892)

[The following searches are normally covered by title insurance 31](#_Toc396232893)

[Zoning 31](#_Toc396232894)

[Building Permit and Outstanding Work Orders 31](#_Toc396232895)

[Compliance with Municipal Agreements 32](#_Toc396232896)

[Unregistered Easements 32](#_Toc396232897)

[Occupancy Permit 32](#_Toc396232898)

[Confirm Utilities Status and Arrears 32](#_Toc396232899)

[Buyer to Contact Utilities for Transfer of Ownership 32](#_Toc396232900)

[Buyers to Verify Ownership and Transfer Contracts 33](#_Toc396232901)

[Section D - Tenure 33](#_Toc396232902)

[Discuss joint tenancy, tenancy in common, ownership with children or parents. 33](#_Toc396232903)

[Spousal interests (spousal consent for matrimonial home) 33](#_Toc396232904)

[Death of registered owner 34](#_Toc396232905)

[Claims of creditors 34](#_Toc396232906)

[Land transfer tax implications and rebates for First time home buyers 35](#_Toc396232907)

[Income Tax ramifications 35](#_Toc396232908)

[Section E - Financing 36](#_Toc396232909)

[Confirm Buyers have attended to mortgage arrangements, if required 36](#_Toc396232910)

[Solicitor will act for both Lender and Purchaser (subject to rules relating to private lenders) 36](#_Toc396232911)

[Advise Buyers to provide name of solicitor to Lender ASAP 36](#_Toc396232912)

[Loan from parents 36](#_Toc396232913)

[Secondary financing (disclosure to first lender) 36](#_Toc396232914)

[Joint Retainer and Conflict of Interest 37](#_Toc396232915)

[Buyers will be obliged to acknowledge joint retainer when there are 2 or more Buyers 37](#_Toc396232916)

[Fees and Disbursements 37](#_Toc396232917)

[Lawyer will provide estimate of all costs at an early date 37](#_Toc396232918)

[If circumstances give rise to increased costs solicitor will advise 37](#_Toc396232919)

[Money to close 38](#_Toc396232920)

[Land Transfer Tax 38](#_Toc396232921)

[Registration Costs 38](#_Toc396232922)

[Disbursements 38](#_Toc396232923)

[Statement of Adjustment items 39](#_Toc396232924)

[Other monies required to close 39](#_Toc396232925)

[Mortgage advance 39](#_Toc396232926)

[Lawyer's fees plus applicable taxes 40](#_Toc396232927)

[Lawyer will require a certified cheque or bank draft from a Canadian Financial Institution for money to close 40](#_Toc396232928)

[Lawyer may confirm certified cheque or draft with the bank on which it is drawn 40](#_Toc396232929)

[Privacy 40](#_Toc396232930)

[Statement that information collected will be kept private in accordance with the privacy policy of the solicitor 40](#_Toc396232931)

[Advise how a copy of the policy may be obtained 41](#_Toc396232932)

[Identity 41](#_Toc396232933)

[All Buyers will be required to provide photo identification 41](#_Toc396232934)

[Most mortgage lenders will require at least one item of additional identification 41](#_Toc396232935)

[Other Potential Issues 41](#_Toc396232936)

[Private or Community Well & Septic System 41](#_Toc396232937)

[Income Tax Implications 41](#_Toc396232938)

[Recreational Facilities 42](#_Toc396232939)

[Assumed Financial Obligations 42](#_Toc396232940)

[Assigned Warranties 42](#_Toc396232941)

[Closing 42](#_Toc396232942)

[Delivery of Keys 42](#_Toc396232943)

[Elevator 43](#_Toc396232944)

[Security System 43](#_Toc396232945)

[Up-Dated Status Certificate 43](#_Toc396232946)

[Document Registration Agreement 44](#_Toc396232947)

[Acknowledgement and Direction 44](#_Toc396232948)

[FEEDBACK BUTTON 44](#_Toc396232949)

[Schedule A 45](#_Toc396232950)

[Definitions 45](#_Toc396232951)

# Links

Caution: Although every link was operational and current when added, some may be changed from time to time by their host. We appreciate a note from you if you find a link which does not lead to the expected result. We apologize for any broken link.

1. Working with a lawyer brochure: <http://www.oba.org/en/pdf/lawyer1.pdf>
2. CMHC’s Condominium Buyers’ Guide: <https://www03.cmhc-schl.gc.ca/catalog/productDetail.cfm?cat=1&itm=3&lang=en&fr=1383598072681>
3. The Ontario Ministry of Consumer Services Condo Guide. <http://www.sse.gov.on.ca/mcs/en/Pages/Condos.aspx>

**Guide**

# Disclaimer:

This Buyers’ Condominium Guide is not intended to provide or replace any legal advice but rather to assist Buyers in understanding what they need to discuss with their lawyers in a resale condominium purchase transaction, to clarify or elaborate on the workings of a condominium and explain steps, terminology and parties. This guide was created as a reference guide to be consulted by Buyers on the basis that it would not necessarily be read in its entirety, although Buyers are encouraged to do so. It was created to provide some background information relating to items that appear in the Table of Contents. It is assumed that the guide will be consulted from time to time during the course of the transaction, or after the purchase as questions arise, so that Buyers may be as fully informed as possible. Buyers should read this guide and then consult their lawyers for any further information they may require. We recommend that you consult a lawyer to fully explore any issues after you have reviewed this text, and to assist you in the purchase of your condominium unit. Consulting a lawyer early in the transaction and from the very outset will better position you to understand the issues and deal with all aspects of this important purchase in order to better protect your rights and ensure you are fully satisfied with your purchase.

Buyers should be aware that the services they wish to receive from lawyers will not always be included in the original fee quote or standard retainer for that lawyer. If Buyers want to receive services over and above the original fee quote or standard retainer it will be necessary to negotiate those services with the lawyer. Any comments in this guide relating to lawyers performing work and providing opinions does not necessarily mean that Buyers should expect their lawyer to automatically perform that work.

All references throughout this guide to the Act shall be a reference to the *Condominium Act, 1998*, unless otherwise stated.

# Definitions:

See Schedule A

# Agreement of Purchase and Sale

## Draft or review APS

The agreement of purchase and sale (“APS”) is a legal document which defines the obligations and rights of the parties to the transaction. There are often matters of particular concern to Sellers or Buyers which must be properly reflected in the agreement so they may be enforced. To ensure those rights, obligations and matters are properly documented, it is preferable that the APS be reviewed by the lawyer for the Parties before it is finally delivered and accepted. There are four ways an agreement usually comes to a lawyer:

1. The APS is prepared by a real estate agent and is signed and accepted. In this case there can be no change to the agreement without the consent of both parties.
2. The APS is usually prepared by the Buyers’ real estate agent, is signed and accepted but contains a clause requiring approval by the Buyers’ lawyer within a short period of time.
3. The APS is prepared by the Buyers’ real estate agent and is submitted to the Buyers’ lawyer before it is signed and presented to the Sellers.
4. The Buyers ask the lawyer to prepare the APS.

For the lawyer to add value and better protect the Buyers’ interests, option 4 is the most desirable.

## Discuss with lawyer items which should be included in APS

Whether or not the APS has been signed and accepted, the Buyers and lawyer should meet at an early date to review and discuss the transaction, the Buyers’ intentions relating to future use of the property and their motivation for purchasing the property, to ensure that their expectations are properly reflected in the APS.

## Conditions in APS

The APS should set out the conditions that the Buyers will wish to have fulfilled before being obliged to complete the transaction, for example financing, sale of an ~~e~~xisting home, repairs to be completed, etc.

## Satisfaction of Conditions

Buyers will wish to have the APS allow an adequate amount of time for the satisfaction of conditions. The APS should state the consequences of failure of satisfaction of the conditions. Buyers should understand the positive steps they must take to either confirm the conditions are met and the deal is to be completed, or confirm that the conditions have not been met and the APS is at an end. The APS should contain adequate provisions for notice of satisfaction or failure of the conditions. Most real estate brokerages will insist on a waiver or proper written notice within the stated time.

## Review of Status Certificate

An APS should always allow the Buyers a reasonable period of time to obtain and review a status certificate. The content of that certificate will be dealt with in greater detail under its own heading. In general, the status certificate provides Buyers with information about the governance and financial stability of the condominium corporation and it identifies specific matters relating to the unit being purchased.

The period selected should provide enough time for the Buyers to request, receive and review the status certificate by themselves and with their lawyer. **One should ensure that the time period negotiated is adequate,** particularly in view of Section 77(3) of the *Act* which gives the corporation 10 days to produce the status certificate following receipt of a request. It is usually requested by the lawyer or the real estate agent immediately after the APS is accepted.

The Buyers may have reasons that require a greater or lesser amount of time, these should be discussed. **In any event, Buyers should be aware that there will be a time limit and they should act promptly.**

## Financing – adequacy of approval/review of financing components

Buyers need time to arrange or confirm proper financing(mortgage) for the purchase if they signed the APS based on a pre-qualification. The APS should include a condition that provides a reasonable amount of time for financing to be arranged. Buyers should also note how the condition is structured and whether they need to provide any notice or take any further action if the condition is not satisfied. It should be noted that most pre-qualifications relate only to the borrower and not to the property. Buyers should be careful and ensure that a commitment for adequate financing will be available within the time specified in the APS.

## Parking (unit, exclusive use, licence)

It is very important that parking arrangements are made clear in the APS. The Buyers should talk to their lawyer about the following items:

1. the number of spaces they require;
2. whether the spaces are owned or assigned;
3. where the spaces are located;
4. any additional cost relating to the spaces;
5. if the Seller has the right to assign or transfer the required spaces; and
6. any other concerns the Buyers might have.

If the parking spaces are units of the condominium or are exclusive use common elements allocated by the Declaration to the unit being purchased, the condominium documents should reflect the proper status. If the spaces are units they should be shown as part of the description of the property in the APS. Occasionally these spaces are overlooked and are not properly transferred with the purchase of the unit.

If the spaces are licenced by the corporation, or leased from a third party owner, details of the licencing arrangement or lease should be set out in the status certificate and provision should be made in the APS for assignment of the licence or lease. Care should be taken to identify all conditions and obligations of the lease or licence. Occasionally there may be a charge to the unit for licenced spaces. If that is the case, the cost should be identified in the status certificate.

Buyers may want to carefully investigate the parking space they will eventually use when they become owners. Some condominiums have parking spaces that are designed for mid-sized cars only and cannot accommodate larger vehicles such as Hummers, trucks or vans. The location of the parking space may also be an issue and should be reviewed (an example being a space next to a concrete wall which might block wheelchair access to a vehicle). With the advent of electric vehicles and outdoor parking spaces, access to plug-ins should be considered.

## Locker – (unit, exclusive use or licence)

Most apartment building condominiums will have lockers for storage. The APS should reflect the nature of the locker and its location. As with parking arrangements the locker can be a unit, an exclusive use common element, or it can be licenced or simply assigned. All of the considerations which apply to parking spaces may apply to lockers.

## Amenities (pool, tennis court, guest suite, etc.)

Most condominiums will have some amenities, such as a swimming pool, exercise room, sauna, tennis court, meeting room, guest suite, children’s playground, rooftop terraces or any number of other features that were designed to make the condominium attractive to Buyers. The APS should reflect the Buyers’ expectations regarding the amenities: are they already constructed and available or are they to be completed in a future phase of the development; are they shared with another project and is there an agreement for their joint use, maintenance and operation; are they owned by a third party; is there a separate budget for the amenities and is it available for review by the Buyers; and have the rules and restrictions for use and operation been reviewed by the Buyers?

## Home inspection and repair/maintenance issues in Status Certificate

It is not as common for a home inspection to be obtained for a standard condominium as it is for a freehold house. In the case of a standard condominium, the building or buildings in which the unit is located will usually be part of the common elements. In most condominiums, repair and replacement of the common elements is the responsibility of the condominium corporation. While it is important that Buyers be aware of the condition of the common elements, the condominium corporation should have completed a reserve fund study and have a plan in place for the repair and replacement of major parts of the common elements.

An inspection of the unit being purchased by a qualified home inspector is valuable to identify for the Buyers the condition of the operating systems of the unit (electrical, plumbing, heating and air conditioning, etc.) and the condition of all betterments and improvements to the unit that are not part of the common elements.

The condominium corporation has an obligation to advise those who request a status certificate of any significant repair/maintenance issues in the project. For this reason, they will list any issues with the unit, common elements or other which could have an impact on the Buyers. It is therefore important to review the status certificate for any issues which are raised and what the corporation has to advise in their regard. This may have an impact on Buyers.

## Home Inspectors

Ontario does not presently licence home inspectors. Buyers should ask for a home inspector’s qualifications to understand the inspectors depth of knowledge. Most home Inspectors have a standard set of investigations they carry out. Buyers should identify the nature of those investigations to ensure they address the specific concerns they may have relating to the unit. For example, Buyers will wish to know if an inspector is qualified to inspect a unit’s heating or air conditioning system. Inspection of elements of the unit that are beyond the expertise of the home inspector should be referred to those who are qualified. Buyers should be aware that home inspectors are not able to inspect all parts of the unit (e.g. plumbing and electrical elements which are behind the drywall) and as a result there are many exceptions in the report. Before the home inspector is hired Buyers may wish to ask if they may see the exceptions that will be included in the report.

## Buyers’ intentions/plans for use of the unit

It is always important for Buyers to discuss with their lawyer the intentions they have for the use of the unit. Changes to the structure or changes in the use of the unit, which the Buyers may wish to make, are important considerations at this early stage. Without special permission from the condominium corporation, the Buyers will not be permitted to make changes to the common elements, such as the installation of awnings, TV satellite dishes and gardens. Specific uses of the unit may also be prohibited by the Declaration, By-Laws and Rules of the corporation or by zoning or other government regulation.

Buyers who want to change flooring to wood or other allergy friendly material in a multi-level unit or building should make inquiries early as to whether this change will be approved. The condominium documents may be silent on this particular issue but, because of the potential for increased noise, condominium corporations may not allow this change. Sometimes the condominium corporation has an approval process which allows it to dictate the use of certain material.

If it is important, Buyers may also want to investigate whether and under what circumstances they can operate a barbeque or other grilling/smoking devices.

## Description of the unit

It is very important that the boundaries of the unit are clearly understood by the Buyers. Buyers should review the registered condominium plans to ensure that the living areas they intend to buy are within the horizontal (footprint) and vertical (elevation) boundaries of the unit. There have been circumstances where living areas have been extended into the common elements without an amendment to the condominium Declaration. This has resulted in substantial loss to Buyers who have not confirmed the boundaries of their units. To overcome any misunderstanding, some lawyers send a copy of the condominium plans and boundary description to the Buyers and then discuss them at the time the closing documents are reviewed. It is also important that the Buyers understand what elements of the structure are included in the unit. For example, the glass in the exterior windows may be either unit or common element.

## Costs

Buyers will wish to know how much it will cost them to complete the transaction. Lawyers may provide an estimate of fees and disbursements that will include: legal fees; search costs including title and off title searches; land transfer tax; title insurance premiums; and any other costs the lawyer will incur in completing the transaction. Adjustments for taxes, common expenses and other pre or postpaid charges are also of importance to the Buyers. Some costs are difficult for the lawyer to estimate at the beginning of the transaction but the Buyers should be aware of the possibility of additional costs. Buyers must remember that there may be a reduction in Land Transfer tax for first time home buyers.

## Review purpose of Reserve Fund Study

The condominium corporation is mandated to manage and maintain the assets of the corporation. Many repairs and replacements will be years down the road. To ensure a fair allocation of these costs between the owners through the years, and not simply burden current owners with the costs, the corporation creates a reserve fund to which each owner contributes a small amount each month as part of the common expenses. To ensure that sufficient monies are accumulated, a reserve fund study is undertaken at regular intervals. The study undertaken by engineers or other qualified individuals will assess the various components of the structures, their useful projected life, actual wear, repair and replacement cost, and identify a sum of money to repair or replace the component when needed. This fund is an asset, which if properly administered, prevents large special assessments to affect the work when monies are insufficient.

## Moving day schedule

The lawyer will need to have sufficient guaranteed funds to cover the balance of the purchase price and the closing costs, on or before the closing day. Buyers should be aware that delays can be expected if they are selling a house and expecting the proceeds of sale to be used for the purchase. If the sale is at the end of a chain of transactions, funds may not be available until the end of the day when it is too late to close the purchase. Enquiry should be made of lawyers involved in the sale to determine if there is one or more transactions on which availability of funds is dependent. In cases like this the Buyers, may be advised to seek bridge financing. Availability of mortgage funds can also be a problem if they are not received until late on the day of closing. It can be very costly for Buyers to have a moving van sitting in the driveway for a few hours (or even holding the furniture overnight).

Arrangements for keys is also very important. The Buyers will want to have keys to obtain access when the moving van arrives. Buyers should discuss with their lawyer the most convenient way for them to collect the keys. They should also be made aware of the liability consequences of entering into the property before closing and of the possible effects on the transaction.

It is useful for the Buyers to identify the possibility of any of these problems in advance of closing and make arrangements to deal with them and discuss them with the real estate agent.

# Status Certificate Reviews

## Status Certificate to be provided to Buyers

The status certificate is a document provided by the condominium corporation to persons who request it and pay the appropriate fee. It is intended to provide financial and legal information relating to the unit and corporation on which the person requesting it can rely.

The actual status certificate is only a few pages long. This is the most important document for Buyers to read. The status certificate and its attachments (often hundreds of pages) are often collectively referred to as the “status certificate.”

The corporation has 10 days from the date of request to produce the status certificate. The APS should provide adequate time for review of the status certificate so the transaction may be avoided if there are unacceptable circumstances disclosed.

A status certificate review by a lawyer cannot touch upon all of the information included in the document(s) because it is too voluminous and cost prohibitive for the Buyers. As such, Buyers should ensure that the status certificate is received within the time set out in the APS and discuss any concerns with their lawyer as soon as possible.

**A status certificate must still be obtained even if there is no condition in the APS.**

## Confirming Legal Descriptions

The unit number in the postal address is often not the same as the legal unit number. To confirm that the Buyers are receiving what they contracted for, the lawyer should review the condominium plan with the Buyers to confirm that the legal description(s) properly identifies the location of the units they intend to buy.

Another complication is ensuring that parking spots and lockers are included and properly located, if applicable. Locker and parking spots will fall into one of three categories: unit(s) that may be separately owned; exclusive use common element that is tied to the particular unit in Schedule F of the Declaration; or common element that is managed by the corporation and assigned to the unit owners from time to time. In some cases such an assignment may be regulated by by-law.

## Board of Directors of the Condominium Corporation

It may be important for Buyers to know the names and addresses of the directors of the corporation. Buyers may wish to know if the proper number of Directors are in office. This information will be included in the status certificate and attached documents. Buyers may instruct their lawyer to provide advice on this if it is a concern.

## Status Certificate Details on Common Expenses

The status certificate will detail any issues with respect to the common expenses. First, it will confirm the amount of common expenses for the unit. Common expenses for parking and/or locker may be listed separately, however. The certificate will also detail any amounts that are in arrears or have been pre-paid by the current owners, and any amount that has been added to the monthly common expenses to account for a special assessment or other amount owing to the corporation by the current unit owner.

A Special Assessment is a lump sum or additional monthly amount added to the monthly common expenses to account for the inadequacy of the reserve fund or unanticipated expenses at the time the budget was approved.

# Any special conditions, notices or warnings for Buyers

## Legal Proceedings and Judgments

Legal proceedings and judgments against the condominium corporation could be financially detrimental to the owners in terms of increased risk that the existing common expense budget may not be adequate to fund the proceeding and a special assessment may be needed. In the status certificate, the condominium corporation must detail any information it has about ongoing legal proceedings or judgments.

## Rental Units

Buyers may be concerned about the number of units in the building that are rented. Control of the corporation by owners of rental units may not be in the best interest of owner occupiers. Unfortunately, the number of rental units disclosed on the status certificate may not be accurate because the owner of a rented unit does not always provide details of the rental arrangement to the corporation.

## Modifications to common elements and/or units

Unit owners can only make changes to the common elements for the benefit of their unit with the approval of the condominium corporation. Some examples of the changes that owners often consider include: balcony enclosures, awnings, decks and planters, and venting related to gas appliances that may extend through the exterior walls. These changes may already exist or be desired by the Buyers. In approving the changes the corporation will impose conditions on the unit owner such as design and colour criteria and may also require an indemnity against injury to third parties with insurance that protects the unit owner and the corporation. The rules relating to these changes are set out in section 98 of the *Act*.

A section 98 agreement provides explicit consent by the condominium corporation to changes in the common elements undertaken by an owner and it imposes the conditions of that consent. If Buyers wish to make changes to the common elements these should be discussed with the lawyer. Buyers should also inspect the unit to be sure that any changes to the common elements, which only benefit the unit being purchased, have been approved by the corporation with a section 98 agreement registered on title. If there is one, the details of such an agreement may create obligations on the part of the owner for future upkeep of the unit.

The condominium corporation does not inspect units. If the previous owners undertook any modifications and such modifications extend to or affect the common elements, the Buyers need to be satisfied that they were properly approved by the corporation, the owners or any applicable authorities. In addition, Buyers need to ensure that they have a clear understanding of what is and is not covered under the corporation’s policy of insurance. Understanding what modifications may have been made is important because modifications to the unit which may have been made over the years must ordinarily be insured by the unit owner and will not be covered as part of the “standard unit description” that is covered under the corporation’s policy of insurance. (See insurance below).

Owners should check with the corporation prior to undertaking any modification to ensure that they will comply with the *Act*, the Declaration and any other applicable laws and regulations. For example, the removal of walls, the installation of flooring and any plumbing or electrical work is often regulated by the *Act* and the Declaration as well as the Ontario Building Code.

## Management Agreements and Shared Facilities Agreements

Most condominium corporations will be managed by professional property managers. There should be an agreement in place setting out the duties and fees of the manager. There is presently no licensing or standards to be a property manager, although the government is looking at this issue.

A shared facilities agreement will be required when the condominium in which the unit is located shares facilities such as a swimming pool, tennis court or recreation centre with a neighbouring project. The agreement will set out the obligations for use, operational and financial management of the shared facilities.

Management Agreements and/or Shared Facilities Agreements relating to the condominium should be part of the package of documents received with a status certificate. Buyers may request a detailed discussion with their lawyer with respect to these documents, but this is not done as part a standard status certificate review.

## Financial Statements

The Financial Statements of the condominium corporation are an important attachment to the status certificate but the lawyer is not qualified to provide a professional opinion on them. The lawyer’s role regarding the Financial Statements is only to advise the Buyers that they have been included with the status certificate and whether or not they reflect the appropriate fiscal period.

The *Act* requires that every condominium corporation have annual financial statements prepared and audited annually. A copy of the most recent statements must be produced with the status certificate. Buyers should ensure that the statements produced are for the corporation’s year end within the twelve months immediately prior to the date of the certificate.

## Insurance

A certificate of insurance obtained by the corporation is to be provided with the status certificate. It should show the amounts and types of the various coverages and the term and expiry date of the policy. It should also show the deductible amount applicable to the loss under the insurance policy. Buyers who wish to review the whole policy will have to attend at the office of the condominium property manager.

Both the condominium corporation and the Buyers should have insurance coverage. The condominium corporation is mandated to provide coverage for damage to the assets of the corporation, the common elements and the units, in an amount equal to their replacement cost (which for the units means the replacement cost of only the elements of a “standard unit”). Unit owners are encouraged to acquire their own insurance to cover: damage to elements of the unit which are not included in the description of a “standard unit” (usually called “betterments and improvements”); the unit owner’s liability to third parties; damage to the contents of the owner’s unit; and, any deductible amounts in the corporation’s insurance policy which may be assessed against the unit owner.

A “standard unit” for the condominium will be defined by a by-law or separate description. The purpose of the standard unit definition is to set out the elements of the building that are to be included in the unit for the purposes of insurance and repair after damage. Anything that is located within the boundaries of the unit but is not included in the definition of standard unit will be the responsibility of the unit owner.

The standard unit description does not determine the obligation of the owner to maintain his or her unit. It deals only with who is responsible for insuring particular components and is used to determine the policy of insurance that will respond to damage caused by an insured peril, if and when such damage occurs.

Most mortgage lenders will only require proof of insurance by way of production of a copy of the certificate of insurance from the condominium corporation.

The corporation’s policy of insurance is of course subject to loss deductibles, which may vary from one type of risk to another. condominium insurance policies do not cover losses for deductibles under the corporation’s policy and in some circumstances the deductible for a claim made under the corporation’s policy may be assessed against unit owners. The corporation’s policy also excludes coverage of betterments and improvements and applies only to those finishes and components listed in the standard unit description. Buyers should be aware of builder or other upgrades made to the unit that are not included in the description of a standard unit. Typical examples are: special flooring; countertops; and cabinets, but there may be many other improvements of which Buyers should be aware.

In obtaining their own insurance, Buyers should provide the certificate of insurance, deductible by-law and standard unit description to their insurance broker so they may be provided appropriate insurance coverages for their unit.

Loss procedures for the policy of the condominium corporation will be set out in the Declaration and by-laws. Owners who suffer a loss should review both the insurance policy maintained by the condominium corporation and their own insurance policy to understand which policy provides coverage for the specific issue.

## Indemnity by owner for owner’s or owner’s tenant’s damages

Unit owners may be responsible for damage that they, their guests or their tenants cause to the common elements or to other units. Buyers should consult with their insurance broker to ensure that their unit owner’s insurance policy covers this liability.

## Budget

A lawyer is usually not qualified to provide extensive advice on the budget - only that the budget provided covers the current fiscal period. It is the responsibility of the Board of Directors of the corporation to set a budget which provides adequately for the corporation’s common expenses. Buyers should become familiar with the budget and its impact on common expenses for that year.

The budget should indicate if the finances of the condominium corporation are in a surplus or deficit position. This will help in assessing the financial health of the corporation. It is not the lawyer’s role to provide a detailed opinion on whether the budget is appropriate.

The budgeted contribution to the reserve fund should agree with the funding formula set out on the latest reserve fund study and the lawyer can assist Buyers in confirming that it does. The lawyer can also assist Buyers in determining if the board of the condominium corporation has resolved to implement the recommendations of the reserve fund study. The lawyer cannot provide specific advice on the reserve fund study or its implementation.

Any advice provided on the specifics of what is contained in these documents is beyond the scope of a lawyer’s status certificate review. If buyers require more detailed information they should seek independent advice from an accountant familiar with the operation of condominiums.

## Declaration

The Declaration is the document that creates the condominium corporation and is registered on title. A copy of the Declaration should be attached to the status certificate and Buyers should review it to understand the issues it sets out. The copy provided should be identical to the registered and effective copy. Your lawyer can confirm if this is the case. The Declaration deals with a number of issues, including the items below.

## By-laws

A condominium may have a number of by-laws. By-law No. 1 is generally a document which sets out operating procedures for the corporation. A corporation may also enact by-laws such as: a borrowing by-law; a by-law defining a standard unit; and other by-laws which specifically deal with various issues. A copy of the by-laws should be attached to the status certificate and Buyers should review them.

## Rules

The condominium corporation will have passed Rules for the use of the units and common elements. The Rules are designed to make living in the condominium as harmonious as possible while having regard for the comfort, safety and enjoyment of the other unit owners. The Rules will deal with a wide range of lifestyle and other issues related to the use of the property. Buyers should review the Rules carefully prior to expiry of the time for avoiding the purchase (the time set out in the agreement of purchase and sale for acceptance of the status certificate) to ensure that none of the prohibited activities will adversely affect their use of the property.

## Duties of the Corporation

The *Act* provides that the corporation has a duty to control, manage and administer the common elements and the assets of the corporation on behalf of the owners. If of concern and if requested, the Buyers’ lawyer could provide a review of the duties of the condominium corporation.

## Maintenance and repair obligations

The obligations for repair and maintenance of the unit and the common elements (including exclusive use common elements) will be allocated among the corporation and the unit owners by the *Act* and the Declaration. Some of these obligations may also be included in the Rules of the condominium. It is important that Buyers are aware of exactly what their responsibility is for maintenance and repair as this varies from corporation to corporation.

## Unit rental restrictions and procedures

Further to the obligations under the *Act*,there are a series of procedures to be followed when a unit is rented. These procedures will be contained in the Declaration but may be amplified by the by-laws, the Rules or contained in a separate package of documents included with the status certificate. If the purchase is for investment purposes, Buyers should review the procedures very carefully and make sure they are properly followed. In the procedures there may be restrictions and requirements with respect to the rental of units and/or restrictions on tenants using certain facilities and services.

For unit owners who would like to rent their parking or storage spaces to third parties, there may be restrictions on who the space can be rented to (e.g. only to another owner/tenant in the building).

## Lifestyle restrictions

Condominium ownership differs from other types of ownership in that Rules are in place to maintain a consistent environment within the condominium community. The Rules are found as an attachment to the status certificate and should be reviewed in detail by Buyers, being mindful of their lifestyle choices. For example, the Rules can include: restrictions/prohibitions on pets; window coverings; noise; bicycles; elevator usage; garbage disposal; decorations; barbeque usage and automobile maintenance in the parking space.

## Common element restrictions

As with lifestyle restrictions and potential restrictions for tenants, there may be restrictions on the use of the common elements. They can include restrictions on the use of: lobby and hallways; recreation facilities; guest suites; and parking spaces. Buyers are strongly encouraged to review these items carefully to ensure that they are satisfied with these restrictions.

## Condominium corporation right of entry

The condominium corporation has the right of entry into units with or without consent based on certain limited circumstances as defined in the *Act* and the Declaration. Buyers should review the Declaration for the right of entry provisions.

## Insurance requirements and loss procedures

The Declaration will set out the insurance coverages that the Board of Directors must ensure are in place and the process to make a claim under the condominium corporation’s policy.

## Property description and easements

As well as a description of the boundaries for the specific unit, there will be a property description of the land which comprises the whole condominium plan and any easements that the land is either subject to or enjoys. These easements, while not part of a standard review of a status certificate, may be of significant interest to Buyers, particularly if the easements could potentially impact on the enjoyment of the unit or the unit holder’s specific lifestyle concerns.

## Unit boundaries

It is the lawyer’s role to assist Buyers in ensuring that they are getting what they contracted for. Buyers should conduct a comprehensive review of the plans for the unit, both two-dimensional and three-dimensional, to confirm what is owned (including the extent and location of any exclusive-use common elements assigned to their unit and the general extent of the common elements or property to be shared by all owners). This review is not necessarily done during the status certificate review period but should be done as soon as possible. Buyers should ask their lawyer to explain anything in the plans (and in particular the unit description) that they do not fully understand.

It is very important that unit boundaries are clearly understood because they are critical in identifying responsibilities for maintenance and repair of the property. It is important that owners are able to determine if any changes they may propose will extend beyond the unit boundaries. Where a proposed change involves the common elements certain approvals may be required, and any change made by an owner without the required approval may be subject to removal at the owner’s expense.

## Verify consistency between APS and Declaration (Schedule “E”) for what is included in common expenses

Schedule “E” to the Declaration will describe, in very general terms, what is included in the common expenses. Buyers should carefully review Schedule “E” to ensure that there it includes in the common expenses what they expected. For example, Schedule “E” may say that hydro is included, **unless separately metered**. If the Buyers expect that the corporation will pay for all the hydro supplied to both the unit and the common elements they will need to make enquiry of the condominium property manager.

## Verify share of common expense and common interest (Schedule “D”) and equity of division

Schedule D sets out the percentage share of common expense and common interest allocated to each unit. The common expense share is the proportion of the common expenses for which each unit is responsible. The common interest share is the proportion of ownership of the assets of the condominium to which each unit is entitled.

Buyers should review the allocation of shares to be satisfied that they are equitable. The common interest percentages should reflect the value of the unit relative to other units. This is only important if the condominium is terminated and all the property sold. In that event, the proceeds of sale will be divided among the unit owners according to the percentages of common interest. For example, buyers will wish to know that the three bedroom unit they are purchasing will have a larger share of the proceeds of sale than a two bedroom unit. It would be very unusual for a condominium to be terminated but if the whole project were destroyed or substantially damaged by a catastrophic event, the owners might vote for termination.

## Confirm exclusive use common elements designated for unit (Schedule “F”)

A unit may enjoy the exclusive use of a part or parts of the common elements, such as a locker, parking spot, balcony, deck or terrace. Exclusive use common elements cannot be modified without the consent of the condominium corporation. The consequence of a modification that is not approved could be an order to return it to the original state. The condominium corporation may also refuse to maintain it.

## Certificate of Engineer or Architect (Schedule “G”).

Are there items that are not certified as complete? Usually the condominium plan is registered before all the facilities and services to be provided by the Declarant are complete. Schedule “G” of the Declaration lists the items that must be completed and will include a certificate of the project architect and/or engineer with respect to each item. Where a listed item is not complete, the Declarant will be required to produce a certificate of the municipality confirming that it holds adequate security to guarantee completion of the listed facilities and services. Once they are complete, an amendment to Schedule G must be registered to certify the completion. The lawyer can confirm if there are any items listed in Schedule G which have not been certified as complete.

## Existence of by-laws and borrowing

Soon after registration of the condominium Declaration, the Declarant should register a general operating by-law and a standard unit by-law. The Declarant may also pass and register a general borrowing by-law. Larger borrowings by the corporation must be approved by a separate by-law. The corporation may pass other by-laws from time to time that relate to specific matters.

All outstanding by-laws of the corporation must be included with the status certificate. Buyers should review them and ask their lawyer to explain anything that is not understood.

If the financial statements or the budget disclose that the corporation is liable for the repayment of borrowed money, the specific borrowing by-law and relevant documents should be reviewed to confirm that the proper procedures were followed and that the plan for repayment is understood.

## Standard unit description – review & purpose

The *Act* allows a condominium corporation to pass a by-law which defines the elements of the building that will form part of a standard unit. The purpose of this definition is twofold. First, it is used to help determine the repair and maintenance obligations of the unit owner and the corporation. Second, it defines the insurance obligations of the unit owner and the condominium corporation.

Subject to any allocation of obligations set out in the Declaration, the corporation is to repair and maintain the common elements and the owner is to repair and maintain the unit. The standard unit definition makes the relative obligations of the unit owner and the condominium corporation clear. Buyers should be careful to review and understand the extent of the obligations they will assume when purchasing a unit. The corporation’s obligation is to insure a standard unit and be responsible for replacing/repairing it when an insured event occurs. The owner is responsible for any improvements or upgrades over and above the standard unit description and for any deductibles.

It is usually the obligation of the condominium corporation to insure the units and common elements against the risk of damage by fire etc. Buyers should refer to the standard unit description to identify what is not to be insured by the corporation. For example, some of the elements that could be excluded from the standard unit are: floor coverings; kitchen countertops; cabinets; bathroom fixtures; etc.

Buyers should consider having the standard unit definition reviewed by their own insurer to ensure that important parts of the structure are properly insured.

## Shared facilities

If the condominium is in the vicinity of another condominium, the two may share certain facilities like a parking garage or recreational facilities. They may have entered into agreements for the shared use, management and operating costs of the facilities. The cost of operating these shared facilities and the restrictions on their use may be of concern to Buyers. Buyers should consider the possibility of any other development which would also share the facilities.

# Title Insurance

## Benefits of title insurance

Title insurance is one of the many tools available to lawyers, buyers and lenders when a property is being purchased. The title insurance provides certain protection, but is not a substitute for the lawyer’s role in the purchase transaction. The lawyer is still required to search the title and conduct other appropriate searches in order to provide an opinion on title. The lawyer’s opinion on title is then delivered to the title insurance company so that an appropriate title insurance policy may be issued in the names of Buyers, lenders or both.

Legal services coverage is also available in certain title insurance policies (if that coverage is offered by the title insurance company you choose). This coverage may prevent the need for the client to seek recourse against the lawyer involved in the purchase transaction should a problem arise after closing as the policyholder can make a claim directly against the title insurance policy.

Title insurance save Buyers some money by avoiding the need for some of the costly municipal and other searches for which the title insurance may provide protection. Each individual purchase will have different circumstances surrounding it and title insurance provides a valuable protection, each buyer should discuss the specific requirements of their purchase with their lawyer.

## Understanding title insurance

To understand basic title insurance coverage for known risks or problems Buyers may want to review two short brochures on the subject:

1. Understanding Title Insurance published by the Financial Services Commission of Ontario which may be found at [www.fsco.gov.con.ca](http://www.fsco.gov.con.ca)
2. Working With a Lawyer When You Buy a Home published by The Law Society of Upper Canada and the Ontario Bar Association which may be found at <http://www.oba.org/CBAMediaLibrary/cba_on/pdf/workingWithLawyerBrochure.pdf>.

# Title investigation

## Title opinion

While the lawyer will search the title and report to the title insurer, the search will disclose important matters which need to be dealt with in the transaction. For example: outstanding mortgages; condominium liens; outstanding agreements between the unit owner and the condominium corporation; and a variety of other issues. It will be the responsibility of the lawyer to clear the title of any encumbrances taking priority to the purchase, which the Buyer has not agreed to accept. Some documents will remain on title and they will need to be discussed with the Buyers. A section 98 agreement which permits an encroachment onto the common elements for the benefit of a unit, is an example.

Following the completion of the title search and other due diligence searches conducted by the lawyer, the title insurance policy is issued indicating the presence of all easements and other encumbrances on title. Buyers will want to review the schedule to the policy to ensure that all Buyers’ name(s), property description and details of any easements and encumbrances (which will remain after closing) are fully noted and acceptable. Details of any restrictions on title which may affect the use of the property and which will not appear in the title insurance policy must be available to Buyers as well (examples: covenants not to alter the slope of the land, not to cut certain vegetation, to adhere a colour scheme for the exterior of the unit or for the backing of drapes, etc.).

## Defects in title

Some defects in title may be covered by the title insurance policy, subject to the exclusions, terms and conditions of the policy. Other issues may not. Some may only be covered for the lender or in a limited fashion. Buyers and lenders will be consulted by their lawyer prior to closing to discuss any issues and to discuss the pros and cons of relying on the title insurance policy instead of fixing the issues.

## Fraud

The title investigation may reveal some hints (sometimes called “red flags”) of fraud. Some examples are:

1. registration of a borrowing by-law allowing the condominium corporation to borrow money with no subsequent registration of a debt instrument. This may not be genuine borrowing by the condominium corporation but borrowing by a fraudster;
2. a rapid increase in the value of the condominium unit over a short period of time revealed by the purchase prices shown on registered transfers of title or even the amount currently being asked for the unit. This is called “value fraud”; or
3. an unusually large number of mortgage registrations and discharges of mortgages in a short period of time.

A good experienced real estate lawyer and a title insurance policy are your best protection against fraud before and after closing.

## Condominium plans

Before the day of closing, Buyers should review a copy of the relevant condominium plans to confirm they will be buying what they expected to be buying when they signed the APS. The following information must be carefully verified:

1. location of unit, parking space and storage locker;
2. municipal address;
3. boundaries of unit;
4. boundaries of the exclusive use common elements;
5. boundaries of the common elements;
6. amenities.

Also see Description of unit above.

## Types of condominiums

In Ontario there are five types of condominiums. They are:

1. Standard condominium – the most common type of condominium consisting of units and common elements;
2. Common Elements condominium – a condominium that consists of common elements only (such as a road or a boat dock);
3. Phased condominium - a condominium that may be expanded to add additional units and common elements as subsequent phases are constructed;
4. Vacant Land condominium – a condominium where the units are not part of a building or structure and do not include any part of a building or structure, and none of the units are located above or below another unit (i.e. the units are akin to a lot on a plan of subdivision and a building is typically constructed within the boundaries of the Unit, subject to the requirements of the Declaration, bylaws and Rules); and
5. Leasehold condominium – a condominium that is registered against leased land, under a long term lease.

## Tarion New Home Warranty

In certain circumstances, the Tarion New Home Warranty may apply to a resale condominium unit if the warranty has not expired. Tarion is a private corporation which was established in 1976 to protect the rights of new home buyers and regulate new home builders. Tarion administers the Ontario *New Home Warranties Plan Act*, which outlines the warranty protection that new home Buyers are entitled to in Ontario. This coverage includes:

•One and two year warranties for certain defects in work and materials;

•A seven year warranty for major structural defects; and

•Coverage for condominium common elements (the common or shared area of condominium buildings.)

It can be very beneficial for Buyers to visit Tarion’s website as it is an excellent resource: [www.Tarion.com](http://www.Tarion.com).

## Off title searches

The registered title of a condominium shows, among other things, who or what holds title, what type of title exists and other interests the title may be subject to. There is an array of other types of searches which do not involve the title to the condominium but those searches can be just as important. Of particular note are the searches described below.

## Tax certificate

A tax certificate is obtained for two reasons. It is a tax arrears certificate relating to an individual unit and discloses the amount of past due taxes. It usually also sets out the amount of interim and final realty taxes charged for the current year and the amounts that remain outstanding**.** The tax certificateis issued by the municipality in which the property is located (when a request for the tax certificate is made in writing and the applicable fee is paid). The tax certificate may contain other helpful information such as the amount of the previous year’s realty taxes, additional charges levied against the property, warnings of unusual realty tax increases being brought in incrementally, the legal description of the property, the names of the owners as noted on the tax roll, and the tax roll number which identifies the property.

The title insurance company may not require that a tax certificate be obtained prior to closing. Some title insurance companies may ask that Sellers provide a copy of the last realty tax bill, evidence that the realty taxes are paid up-to-date and an undertaking to re-adjust the realty taxes after closing. Buyers may still want to obtain a tax certificate, despite the requirements of any title insurer, in order to obtain full information on the Property and avoid any post-closing time re-adjustments.

# The following searches are normally covered by title insurance

The following matters are normally covered by title insurance but that does not preclude having those searches performed for peace of mind, especially if Buyers suspect there may be a problem with the property.

Zoning – whether or not the development of the condominium project is allowed.

Building permit and outstanding work orders – whether the proper building permits were issued to construct the condominium project or the unit (or later improvements) and the appropriate fee paid, whether the appropriate inspections were completed without problems. If there were problems, whether those problems were resolved or whether there are outstanding work orders which require work be either inspected and the work order removed, or the work be completed properly before the work order is removed.

Compliance with municipal agreements – whether the terms of the municipal agreement (such as a Subdivision Agreement which governs the builder and the municipality in the building of the condominium project) have been completed without problem or whether there remains outstanding work or unresolved issues.

Unregistered easements – this search, which is most relevant for unregistered Ontario Hydro easements, determines whether there is an easement which is not registered on title, the easement terms and whether permission was obtained from the easement holder to construct the condominium project should it be located on a part of the unregistered easement.

Occupancy permit – whether a final inspection of the property has been completed, work has been completed in accordance with the building permit and the property may be occupied as a home.

## Utilities status and arrears

Utility (typically hydro, water and gas – if charged by way of separate meter just for the property and not included in the common expenses) arrears for the property and charges to the date of closing are the responsibility of Sellers. Sellers sometimes forget about these charges in their haste to relocate. Title insurers may not require that a search for utility arrears be performed but that does not preclude cautious Buyers from conducting those searches. Telephone, cable and other providers are not considered utilities and do not warrant the same type of searches.

## Buyer to contact utilities for transfer of ownership

When utilities are separately metered for the unit being purchased, Buyers should contact the relevant utility authority prior to and after closing to have the account transferred to their name. The billing authority will want to obtain personal information from Buyers which only they can provide.

## Buyers to verify ownership and transfer contracts

Some chattels or equipment which Buyers believe they are purchasing with the Property may not be owned by Sellers. Some may be leased or rented and some leased to own (the rental payments are applied to the purchase of the item). Some examples are fridge, stove, furnace, heat pump, air conditioner, hot water tank, security systems, etc. Buyers must determine whether there are rental items, whether the payments are up-to-date, whether the contracts may be assigned to Buyers, the cost of any assignment, and make arrangements to have contracts assigned or transferred properly.

# Tenure

## Joint tenancy, tenancy in common, ownership with children or parents

In Ontario, land can be owned individually by a person, an entity (such as a corporation) or together with one or others. Land which is owned by more than one person can be held in either joint tenancy or tenancy in common. The significant differences between the two is the right of survivorship and equal ownership in the joint tenancy tenure. Upon the death of one joint tenant, the other or surviving joint tenant is the owner of the whole property by law and without passing through a will. The estate or heirs of the deceased have no interest in the property. Typically, married couples own their matrimonial home in joint tenancy. Under the tenancy in common tenure, the deceased’s interest in the property is vested in his/her estate and the will or intestacy rules will govern who gets that share of the property. A share under a tenancy in common does not have to be equal (e.g. one person may own 25% and the other 75%).

Many will consider, as an estate planning mechanism, registration of the title of a property in the name of the surviving parent and children as joint tenants. Although this can avoid probate upon the death of the parent, there are issues to be aware of. For example, there may be tax issues or if one of the children becomes bankrupt, is sued or divorces, his/her interest may become the property of the trustee or claimed by a creditor or divorcing spouse. Before undertaking this step, a lawyer should be consulted.

## Spousal interests (spousal consent for matrimonial home)

In Ontario, the law requires that a spouse who is not the owner of a matrimonial home must consent to any dealings with the home by the other spouse, be it a refinancing or sale. Even if the home was acquired prior to the relationship by one spouse and continues to be held by only one of the spouses, the other spouse must consent. A matrimonial home is generally the home in which the family of the spouses live, but it is not restricted to one property. This could include the home in the city and the cottage. Also, for the purposes of matrimonial home rights, only married spouses qualify - common law spouses do not.

By signing the consent, the consenting spouse is waiving any rights in the property in favour of the other designated party. Therefore, in the case of a mortgage, the spouse cannot later deny the lender’s right to enforce its rights under the mortgage in a power of sale or other proceedings.

## Death of registered owner

When an owner dies, what happens with the property will depend on how they owned the property. If a sole owner, the Last Will and Testament will dictate what happens or the property will be dealt with as one of the assets of the estate.

If there are multiple owners, it depends on whether they hold the ownership as joint tenants or tenants in common. In a joint tenancy, the equal part owned by the deceased will simply be added to the share of the surviving owner(s). In a tenancy in common, the deceased’s share becomes part of his/her estate and it is dealt with as described in the preceding paragraph.

## Claims of creditors

Creditors may either have an unregistered or registered claim. Unless the claim is registered against the property creditors will have no direct claim against the property. If they obtain a court judgment, they could:

1. file a writ of execution with the Sheriff against the name of the debtor/property owner, or
2. ask for it to be secured against the property, in which case, this would require a registration on title and the creditors would be subject to all existing claims.

Construction liens have special priority rights but it is best to discuss this specifically with your lawyer in the event one exists.

The government has special priority rights for taxes owing, and bankruptcy proceedings will impact dealings with the property, however, both are too complex to properly discuss here and the reader is encouraged to contact a lawyer.

Lenders are also creditors, usually known to the property owner who creates a mortgage in their favour.

## Land transfer tax implications and rebates for first time homebuyers

All transfers of property in Ontario are subject to a land transfer tax, whether registered or not, except for a few exceptions, briefly described below. Land transfer tax in Ontario is normally based on the price paid for the property at the following rate:

The tax rate in effect since June 1, 1989:

• 0.5% of the value of the consideration up to and including $55,000, and

• 1% of the value of the consideration which exceeds $55,000 up to and including $250,000, and

• 1.5% of the value of the consideration which exceeds $250,000, and

• 2% of the amount by which the value of the consideration exceeds $400,000 for land that contains at least one and not more than two single family residences.

Your lawyer will ask you to provide him/her with the amount of the tax, which must be paid to the Province at the time of the registration of the transfer.

Since December 13, 2007, all first-time homebuyers may be eligible for a refund of all or part of the tax for all homes, whether newly constructed or resale. The maximum amount of the refund is $2,000. If the refund is claimed at time of registration, it may offset the land transfer tax ordinarily payable. If not claimed at registration, the refund may be claimed directly from the Ministry of Finance. No interest is paid on this refund. To claim the refund, you:

• must be at least 18 years of age;

• must occupy the home as your principal residence within nine months of the date of transfer; and

•cannot have ever owned a home, or an interest in a home, anywhere in the world.

In addition:

• your spouse cannot have owned a home, or an interest in a home, anywhere in the world while being your spouse; and

• in the case of a newly constructed home, where the agreement of purchase and sale was entered into before December 14, 2007, you must be entitled to a Tarion New Home Warranty.

If your property is in the City of Toronto, in addition to the provincial land transfer tax, your property is subject to a municipal land transfer tax, which generally mimics the provincial tax.

Income tax ramifications – Any transaction may have income tax implications and buyers should consult a tax expert for proper advice on their situation.

# Financing

## Mortgage arrangements

Most purchases are financed and Buyers should have pre-arranged their loan with a lender in order that the lender can provide the mortgage instructions to the lawyer acting for the Buyers in plenty of time before the closing.

## Lawyer acts for both lender and Buyers (subject to rules relating to private lenders)

Generally, in residential real estate transactions, the lawyer acting for the Buyers will also act for their lender. This is a cost effective way to proceed but it raises potential issues as the lawyer must disclose all information obtained to both lender and borrower. Buyers will be asked to sign an acknowledgment to this effect.

## Provide name of lawyer to lender ASAP

In order to ensure that mortgage instructions are communicated promptly to the Buyers’ lawyer, the Buyers should inform their lender of their choice of lawyer for the transaction.

## Loan from parents

Loans to family can be problematic, from whether they can be secured after traditional first mortgages, to how they are guaranteed if there is an intention of the monies being repaid. On the dissolution of a marriage, death or bankruptcy of one of the participants, various issues may come to life, including claims by spouse, siblings or creditor/trustee.

## Secondary financing (disclosure to first lender)

Buyers should be aware that their primary lender may prohibit them from creating any subsequent mortgages against the property. Lawyers will be obligated to inform any lenders with priority of the existence of subsequent mortgages.

Recently, lenders have been creating mortgages that cover the full value of the property, even if lending less. There may be benefits as well as drawbacks to this type of financing and Buyers should consult their lawyer to fully understand these issues.

# Joint retainer and conflict of interest

## Buyers will be obliged to acknowledge joint retainer when there are two or more Buyers

Lawyers owe a fiduciary obligation to each of their clients, for example when acting for the Buyers and lender, but also when acting for spouses who are purchasing their home. Although they might have mutual interests and the lawyer is permitted to act for both, if at any time their interests diverge, the lawyer cannot choose sides and may have to withdraw completely. Even if a lawyer has a duty of confidentiality, the lawyer’s code of conduct requires that the lawyer divulges any information received in a matter to all his/her clients. This means that information received from the Buyers must be communicated to the lender and vice versa. Also, information received from one spouse must be communicated to the other spouse. To ensure that everyone understands this at the beginning of the lawyer/client relationship, clients will be asked to sign an acknowledgement when there is a joint retainer.

**Buyers will have to acknowledge conflict where solicitor acts for Buyers and Lender**

# Fees and disbursements

## Lawyer’s estimate

Buyers are entitled to know what the services of a lawyer will cost and should request the information before hiring the lawyer to act for them. A lawyer will generally provide clients with an estimate of the fees and expenses likely to be incurred. Expenses (called disbursements) are the amounts the lawyer will have to pay to third parties on the client’s behalf to complete the service requested. Examples of these are costs to: search registries; obtain copies of documents; prepare documents; file documents; order certificates; order reports; obtain title insurance; etc. Fees represent the amount the lawyers are paid for their services. These might be estimated on a lump sum, hourly or other basis. The client should be advised of the services that will be included in the estimate provided. Buyers can ask their lawyer to put this estimate in writing.

## Increased costs

The lawyer should communicate this to the Buyers if the final costs will exceed the estimate provided. In fact, any time a lawyer discusses an unforeseen issue, Buyers should ask what effect this will have on the estimate of fees and disbursements provided.

## Money to close the deal

**Lawyer will provide details of the balance due on closing**

Shortly before the proposed closing date, the lawyer will advise the Buyers how much money the Buyers must provide to the lawyer to complete the transaction. All of the information and documentation to ascertain the full amount required is typically provided to the lawyer up to the last moments of the transaction. To facilitate matters, the Buyers only need to provide one amount to the lawyer or his/her law firm, in trust. A complete breakdown should be provided and fully explained to the Buyers, usually when all the documents are signed at the lawyer’s office. This will include amounts described below.

## Land Transfer Tax

As previously discussed, every Buyer must pay land transfer tax to the Government of Ontario when land is purchased with some exceptions. Residents of Toronto must pay an additional land transfer tax to the City of Toronto. The amount is based on the purchase price and will be included in the estimate of costs described above.

## Registration costs

In order to record the Buyers as the owners of the property, the lawyer will be required to register the transfer of title, any mortgages the Buyers may have arranged and other documents (if necessary) in the government’s database. The lawyer will pay fees to the government for the registration of these documents. Presently, the cost to register most documents is $71.30 per document (inclusive of HST) (as of March 2014).

## Disbursements

As discussed above, the payments the lawyer makes on behalf of the Buyers to complete the work requested is passed on to the Buyers as disbursements. This will include the costs of registration, photocopying, searching, document preparation, obtaining information, etc. Lawyers should provide their clients with a written estimate which details the fees and disbursements they are likely to encounter for the work.

## Statement of Adjustments items

The Statement of Adjustments is a document prepared by the Seller’s lawyer and provided to the Buyers’ lawyer. It will apportion between the Sellers and Buyers the unpaid and prepaid expenses charged against the property.

The municipality will levy taxes against the property and require payment in one or more installments during the calendar year. The purchase and sale of a property has no impact on the tax amount or payment. Property taxes accrue from day to day. Based on the agreement of purchase and sale, Buyers are responsible for the property taxes accruing from the date of closing. If the Sellers have overpaid, there will be an adjustment in favour of the Sellers. If the Sellers have underpaid, there will be an adjustment in favour of the Buyers.

Other charges which might be adjusted include: heating oil or gas, rent, pre-paid rent or deposits and condominium common expenses. Water, telephone, cable, internet and security system charges are not typically adjusted as they are paid directly to the utility or authority which provides the service. Sellers will be responsible for payment of the cost of the service provided to them up to the date of closing.

Sellers should contact the utilities and authorities providing services to the property and arrange to close their account and have a final billing sent to them. To ensure that service continues after closing, Buyers should contact these utilities or authorities before taking possession to arrange for the continuation of service and to open their own accounts. For privacy reasons and account option choices provided, lawyers cannot arrange these accounts for the Buyers.

reserve funds in the condominium corporation are not adjusted. The funds are created by each owner contributing a monthly sum for future repairs and replacement.

# Other monies required to close

## Mortgage advance

The purchase transaction will typically be funded from two sources, the Buyers and the Buyers’ lender. Although the mortgage will be for a fixed amount, the lawyer might not receive that full amount from the lender. Some lenders will deduct certain sums from the gross amount to prepay certain costs or create reserves, such as interest until the interest adjustment date, property taxes, application or appraisal fees and others. The lawyer will let the Buyers know the amount they are required to provide once the Statement of Adjustments is received from the Sellers’ lawyer, and the lender advises of the net amount to be sent to the lawyer.

## Lawyer's fees plus applicable taxes

The lawyer will typically request that sufficient monies for legal fees and disbursements be provided prior to the closing. In addition to the fees, HST is applicable to lawyer’s fees and some of the disbursements.

## Certified cheque or bank draft from a Canadian Financial Institution required

Lawyers must use the monies they receive to pay registration fees, applicable taxes and the balance of the purchase price. For these reasons the lawyers must receive monies which their banks will consider as guaranteed funds so they may be used immediately without any holdback. Funds may be provided by certified cheques, bank drafts or electronic funds transfer. Because of issues with what is accepted as guaranteed money, clients might be asked to provide the monies to the lawyer earlier than the day of closing or the day before. It is always a good idea to determine well before the closing date when your lawyer will require the funds.

## Confirming certified cheque or draft with the bank

Today’s banking realities may obligate the lawyer to verify the veracity of the paper instrument delivered to the lawyer to fund the purchase transaction. Some financial institutions might not accept immediate dealings with certified cheques or bank drafts and for that reason the lawyer might be required to confirm the status of the paper banking instruments.

# Privacy

## Statement that information collected will be kept private in accordance with the privacy policy of the lawyer

Lawyers are required to keep all information confidential and should have a privacy policy available to their clients confirming the extent of the firm’s obligation to keep client information confidential and the purposes for which it may be used. (Note PIPEDA requires that organizations carrying on “Commercial Activities” must appoint an Information Officer and publish a privacy policy.)

## Advise how a copy of the policy may be obtained

If it is not readily apparent from the materials provided to you by your lawyer, you may ask them for a copy of their privacy policy.

# Identity

## All Buyers will be required to provide photo identification

The Law Society of Upper Canada, the lawyer’s licensing authority, requires that every lawyer confirm the client’s identity, whether or not they have known each other for a long period of time. Clients will be required to produce their driver’s licence or other forms of identification for the lawyer to examine and retain a copy for the lawyer’s records. This is a government regulation. Please bring adequate identification the first time you meet with the lawyer or attend the lawyer’s office.

Often the identity requirements lf the lenders are more onerous than the professional responsibility requirements. Your lawyer will advise you what forms of identification will be acceptable.

# Other Potential Issues

Private or Community Well & Septic System- Water and sewer services may not be provided by the municipality for some properties. Instead, the water may be supplied by a private or community well. Waste sewer services may be accommodated through a private septic system. Any well and septic system would require some investigation prior to closing.

Income Tax Implications- **I**ncome tax implications may arise from the purchase. There may be a question of whether the property is a principal residence especially if there are multiple Buyers. Issues also arise if Buyers are non-residents of Canada. If Sellers are non-residents of Canada or expect to become non-residents of Canada immediately following closing, there are issues Buyers must address to protect themselves. If this is relevant to your transaction, speak to your lawyer early to discuss any impact this may have.

Recreational facilities-Recreational facilities and their use must be checked carefully. There may be governing documents to review such as management agreements (setting out the terms of how the asset is to be looked after), joint use agreements (setting out the terms under which other condominium corporations may be allowed to use the asset), Rules and regulations, and potentially prohibitions on its use – i.e. for tenants. It is important to check that the recreational facility asset is registered in the name of the appropriate entity and does not remain registered in the name of the original builder/developer.

Assumed financial obligations-Financial obligations Buyers will assume from Sellers must be discussed and understood thoroughly before closing. Some of these obligations will involve some investigation and may include: hot water tank, security system, solar panel generation agreement, HVAC, etc.

Assigned Warranties – Service or product warranties that have not expired may be transferable to Buyers. Some warranties may include: appliances, work done, major fixtures, etc.

## Closing

The closing of the condominium purchase is the official time when ownership passes to the Buyer and the Seller is paid the agreed upon amount. In Ontario, the registration system is typically available between 9:00 a.m. and 5:00 pm on weekdays (therefore closings must occur within those times). In the event that, Buyers and Sellers are not be able to complete the transaction on the assigned day, special arrangements for possession and an extension of the closing will need to be negotiated.

## Delivery of keys

Officially, keys are delivered at the closing of the transaction. Unlike other jurisdictions, in Ontario Buyers and Sellers do not attend at the closing of the transaction. The lawyers and their staff oversee the closing of the transaction. Keys delivered to lawyers are released to Buyers following the successful closing, which may not occur until 5:00 p.m. on the day of closing. Buyers need to have a discussion with their lawyer as to when they can pick up their keys.

## Elevator

Access to the property may be by way of an elevator. Use of the elevator by Buyers to move their furniture and other belongings might have to be scheduled ahead of time with the manager of the condominium corporation. There may be a damage deposit that is required and there may be restrictions on days and time that the elevator may be booked. Buyers should call their property manager for all moving details.

## Security system

Buyers who assume a security system must obtain the code prior to closing in order to access the property once ownership has been transferred or arrangements must be made to have the alarm turned off. Thorough knowledge of the security system and terms of service of the delivery company will be an asset in the operation of the security system. Buyers should change the code(s) upon taking possession and choose their own “code word” with the service provider in case the alarm is set off accidentally and to prevent a costly visit from the local police authority hoping to stop a robbery in progress.

## Up-dated status certificate

Status certificates may become stale dated between the date of delivery and the official closing date. It may become necessary to order a fresh status certificate or have the stale dated status certificate up-dated in an acceptable manner. Consult your lawyer to confirm.

## Document Registration Agreement

The APS signed by the Sellers and Buyers provides that the closing will be in accordance with the standard Document Registration Agreement which imposes various terms and conditions for the closing.

## Acknowledgement and Direction

In Ontario, land documents are registered electronically and lawyers electronically sign documents on behalf of their clients. Buyers and Sellers will sign a paper document called an Authorization and Direction which allows lawyers to sign electronically on behalf of their clients.

# FEEDBACK BUTTON

# Schedule A

## Definitions

Board of Directors: refers to the individuals elected by the unit owners to oversee the operations of the condominium corporation;

Betterments and Improvements: refers to changes made to a unit or common elements over and above the “standard unit” description and for which the unit owner must individually insure;

Budget: refers to the document which sets out the revenues and expenses of the condominium corporation for a twelve month period as approved by the directors;

Buyers: refers to a person or persons who is/are buying a unit;

Bylaws: refers to the procedures by which the condominium corporation is governed;

Chattels: refers to personal movable property which are not purchased and transferred with the land, as opposed to fixtures which are attached to the land and included in the purchase of a property. The APS has a section to deal specifically with these to avoid any debate;

Closing: refers to the process by which the Buyers become the owners of the unit;

Common Element: refers to the parts of the condominium corporation plan which are for the benefit of all unit owners of the condominium;

Common Expenses: refers to the expenses of the condominium corporation for which all owners are responsible for, as represented by their monthly contribution as determined by the directors;

Conditions: refers to a pre-requisite obligation which must be met before the APS becomes binding on the parties;

Condominium Project: refers to the entire property of the condominium, including units and the common elements;

Declaration: refers to the document by which the condominium corporation is created and sets out basic operating procedures;

Document Registration Agreement: refers to the document Buyers sign to authorise their lawyer to conclude the registration of their purchase, setting out the terms of the escrow closing. The APS stipulates that the closing will be pursuant to the “DRA”;

Easement: refers to a right by which someone can access or maintain a pipe, wire, ditch or some other matter over another person’s property;

Encroachment: refers to a right of a third party to part of the property, for example, a garage or fence which extends from the neighbours onto your property;

Encumbrance: refers to a right of a third party in the property, which the owner must comply with, for example, a mortgage or a lien whereby monies owed are guaranteed by the property;

Exclusive Use: refers to that the designated user can exclude all other owners, so that a part of the common elements could be used so as to restrict any other person from it;

Fixtures: refers to personal movable property which has become affixed to the land and are purchased and transferred with the land, as opposed to chattels which are not attached to the land nor included in the purchase of a property. The APS has a section to deal specifically with these to avoid any debate;

Freehold: refers to the type of ownership of property by which the owner has the greatest rights and title;

Insurance (condominium corporation): refers to the insurance policy that the condominium corporation is required to maintain on the corporation’s assets, which may not fully cover the insurable interests of the units owner;

Insurance (Owner): refers to the insurance policy that the unit owner is recommended to obtain to cover his/her particular interests, including betterments and improvements, liability within the unit and deductibles under the condominium corporation’s policy;

Joint Retainer: refers to that the lawyer is acting on behalf of more than one client, such as husband and wife or lender and borrower;

Joint Tenant: refers to the method of ownership whereby the owners have equal ownership and the survivor of the joint tenants, by law, becomes the sole owner in the event of the other’s death;

Land Transfer Tax: refers to the tax payable to the Province of Ontario and the City of Toronto on the purchase of real property, including a condominium unit;

Licence: refers to a type of right by which a person is entitled to use property to the exclusion of others without being its owner;

Maintenance: refers to the obligation to care for the common elements or units on an on-going basis;

Phased condominium: refers to that the corporation is created in successive developments by adding units and common elements over time, but within one condominium corporation;

Possession: refers to the transfer of use to the Buyers which occurs on Closing;

Property: refers to either the unit, common elements or entire condominium corporation plan depending on its context;

Repairs: refers to the work required to fix part of the unit or common element;

Reserve Fund: refers to amount of money collected from all unit owners over time and managed by the condominium corporation for the future replacement of major items, such as the roof, elevators, etc.;

Reserve Fund Study: refers to the review by experts as commissioned by the condominium corporation of all its assets to determine each component’s remaining useful life and cost of replacement to ensure that the reserve fund will have sufficient money when those costs are incurred;

Sellers: refers to the person or persons who is/are selling a unit;

Section 98 Agreement: refers to an agreement between a unit owner and the condominium corporation permitting certain changes or improvements to a unit or the common elements and the rules as to the on-going repair and maintenance obligations;

Standard Unit Description: refers to features of the unit as built by the developer and for which the condominium corporation is required to replace in case of a major loss, but does not include betterments and improvements over time;

status certificate: refers to the document issued by the condominium corporation to confirm the financial status and other matters relating to a unit and the operation of the condominium corporation; all matters which could have a financial impact on the Buyers after they acquire the unit;

Tenant in Common: refers to the method of ownership whereby the owners may have unequal ownership and on the death of one of the owner’s his/her interest is part of his/her estate to be distributed under the will or via intestate rules;

Unit: refers to the part of the condominium property which is individually owned by one or more persons and can be a dwelling, parking or storage space;

Unit Boundaries: refers to the limits of the unit, separating ownership between the unit owner and the condominium corporation or another unit owner and refers to vertical (walls) and horizontal (floor/ceilings) divisions;

Utilities: refers to services which benefit the unit or common elements, such as water, electricity or gas;

Working Group: refers to the Working Group and Lawyers and Real Estate for which more information can be obtained on its website, [www.lawyersworkinggroup.com](http://www.lawyersworkinggroup.com);