

# CONDOMINIUM OWNERSHIP

THIS ARTICLE IS A MODIFIED VERSION OF A CHAPTER FROM THE BOOK "HOW TO BUY REAL ESTATE IN MEXICO" AND IT EXAMINES THE DIFFERENT TYPES OF CONDOMINIUM OWNERSHIP, COMMON PROPERTY, OWNERS' RIGHTS AND OBLIGATIONS, PROCEDURES TO ESTABLISH CONDOMINIUM OWNERSHIP, AND MANAGEMENT OF CONDOMINIUM PROPERTIES.

## INTRODUCTION

Co-ownership by condominium is an obligatory, permanent and regulated form of co-ownership. Condominium ownership involves any real estate where there is a combination of individual and co-ownership of property. Condominium ownership should not be confused with the co-ownership, even though they are similar, they are not legally treated the same. In co-ownership all the owners have title to all the property held in co-ownership.

In condominium ownership, each person has an exclusive right to his department or unit of property and, at the same time, is also co-owner of the common areas. Moreover, it is possible that several persons be co-owners of a condominium unit, and also be, as a group, co-owners of the common areas of the condominium property. Condominium ownership, therefore, refers to real/immovable property that belongs to several owners, each of which has exclusive rights on each unit and joint ownership rights on the assets and common areas.

Condominium ownership is defined as real/immovable property with vertical, horizontal, or mixed construction, susceptible to individual ownership by various owners, and common areas which are co-owned and undivided.

Article 951 of the Civil Code for the Federal District states that:

When different apartments, housing units, houses or premises of a property, belonging to different owners, constructed in vertical form, horizontal or mixed, susceptible to independent use by having their own exit to a common area of the property or to a thoroughfare, each owner has an exclusive and singular right to the property on his apartments, housing units, house or premises. Additionally, he shall have joint ownership rights to the common areas necessary for his adequate use and enjoyment.

The rights and obligations of the condominium owners are regulated by the condominium's title documents and its regulations, the Civil Code, and the corresponding Condominium Law. Each condominium owner or occupant may use his unit in a quiet and orderly manner, provided that he does not affect the tranquility of the other owners and occupants. He must not compromise the stability, safety, healthiness or comfort of the condominium, nor incur by omission that which produces the same results.

An owner may not use his condominium for purposes other than those specifically agreed, or in such a way as to be immoral or contrary to good customs. In the event of doubt as to the use of the condominium, the permissible uses are those that are presumed as correct due to the nature of the condominium and its location.

With regard to the services, common areas, and general facilities, all the owners are obligated not to carry out any activity that hinders or makes less effective its operation. The owners must not hinder the enjoyment of common property, or put at risk the safety and tranquillity of the joint owners, even when such activity is carried out in the interior of his property. The common assets of the condominium are limited exclusively to

real/immovable property, but also include all the personal/moveable property used for ornament, safety, operation and service, such as gardening and cleaning equipment, as well as furniture used in common areas and in the foyers, etc.

The infringer of these dispositions is responsible for the payment of the expenses that are necessary to recoup or reinstate the services and facilities in question. He is also responsible for the payment of damages that are caused; independently of the fact that violation of this provision is cause for the rescission of the contract in question. In addition to being accountable for the damages caused, the guilty party may also be sued and forced to sell his rights in public auction under the terms of Article 38 of the Condominium Law.

## TYPES OF CONDOMINIUM OWNERSHIP

Article One of the Condominium Law states the following:

When different apartments, dwellings, houses or premises of a property, constructed in a vertical, horizontal or mixed form, susceptible to independent use due to having their own exit to a common area (of the property) or public street, which are owned by different owners, each one of them will have the singular and exclusive property right to his apartment, dwelling, house or premise, and, additionally, the right of co-ownership to the common areas of the property, necessary for adequate use and enjoyment.

In accordance with Article Two of the Condominium Law, there are three types of condominium ownership:

1. When a building which consists of various apartments, dwellings, houses or premises, has common and undivided ownership areas and is owned by various owners.
2. When various apartments, dwellings, houses or premises, with common and undivided ownership areas, are constructed on a piece of real/immovable property with the intention of selling them to various individuals.
3. When the owners of a piece of real/immovable property divide that property into various apartments, dwellings, houses or premises, with common and undivided ownership areas, with the intention of selling them to various individuals.

## CONDOMINIUM OWNERS

The law defines “condominium owner” (*condómino*) as the individual or legal entity which, in the capacity of owner, has possession of one or more apartments, dwellings, houses or premises. For the effects of the condominium law, the owner of a condominium is the person who, having executed and complied with an agreement to acquire the condominium property, is considered as owner.

Every owner is entitled to the exclusive ownership right to his apartment, dwelling, house or premises and the co-ownership to common areas in proportion to the value of his apartment, dwelling, house or premises as determined in the condominium’s title documents.

Therefore, a condominium owner is defined as:

- A legal entity or individual that it is in possession of one or more units in the capacity of owner.
- The person that, having executed a contract by virtue of which, upon compliance, becomes the owner.

In the first hypothesis, it is assumed that a legal entity or individual is a joint owner due to the fact that he is in possession of units. As such, the other joint owners are not obligated to request that such an owner produce property in order to demand compliance of all the obligations that correspond to a joint owner.

In the second hypothesis, condominium ownership is attributed to anyone who has signed a contract to acquire the property in the future, as in the case of a promissory agreement or a reserve title agreement. In these two cases, the buyer does not yet have title to the condominium property; however, even when the acquisition of the property is deferred, the law considers such a buyer to be an owner from the date of the contract.

A possible problem arises when the buyer does not comply with the terms of the promissory agreement or the reserve title agreement, and, therefore, does not gain title to the property. In such cases, who is responsible for condominium dues?

The other condominium owners are not parties to the promissory agreement or to the reserve title agreement, therefore, they are not affected by the noncompliance of the contract. The rights and obligations involved in condominium ownership are not personal; rather, such rights are dependent on the provisions inherent to the objective character of being a condominium owner.

Therefore, the rights of the buyer are those which are specified in the promissory agreement or the reserve title agreement, however, such rights cannot surpass or violate the rights legally provided for under condominium ownership. The obligations of the buyer, in addition to those that are normally included in such agreements, also include those legal provisions that concern condominium ownership. The obligations also include those established in the condominium regulations, and in the agreements of the condominium owner's meetings. In the event of noncompliance of the buyer, any future possessor or owner is liable before the other owners for any outstanding obligation created by such noncompliance.

### COMMON PROPERTY

The law defines common property as follows:

- The land, cellars, entrances, foyers, galleries, passageways, staircases, courtyards, gardens, parks, paths, interior streets, meeting facilities, sports and recreation facilities, spaces dedicated by the construction licenses as sufficient for vehicles parking; as long as such areas are of general use;
- The premises intended for the administration, and the housing of the janitor and security guards; as well as those intended for the general facilities and common services;
- Constructions, facilities, appliances and other objects that serve as use of common satisfaction, such as wells, cisterns, elevators, hoists, incinerators, cooking stoves, ovens, pumps and motors; sewage and water ducts; distribution channels for drainage, heating, electricity and gas; safety construction, ornamentation and similar fixtures, with the exception of those which are exclusively for each individual unit;
- The foundations, structures, retaining walls and the ceilings of general use,
- Any other part of the property facilities that is designated as such by the unanimity of the joint owners, to use or to enjoy in common or that is established as such in the Regulation of the Condominium or in the title deed.

Within the common property it is important to distinguish between property which belongs to all the joint owners, and the property which is common only to contiguous owners, such walls and divisions that separate units.

Only the contiguous joint owners own common walls and floors and other divisions that separate the individual units. Owners of condominium units all have the same rights regardless of their physical location. In other words, owners of more desirable units, such as those on the ground floor and the penthouse do not have more rights than the remaining joint owners. Unless the Regulations of the Condominium establishes otherwise, the owners of a ground floor unit may not occupy or make exclusive or preferential use of the foyers, cellars, gardens, courtyards which surround his unit. Likewise, the owners of the penthouse or top floor may not occupy the attics or ceiling, or add new floors, or other constructions. The same restrictions are germane to the other joint owners of the condominium property.

When certain areas of a condominium's common property are leased, or are used for commerce, a percentage of the obtained profits must be applied to the administration, maintenance and operation expense funds as determined annually by the condominium owners' meeting.

## RIGHTS AND OBLIGATIONS OF CONDOMINIUM OWNERS

Each condominium owner has an exclusive right to his apartment, housing unit, house or premises, and a right to the joint ownership of common assets of the property in proportion to the value of his property, as set forth in the title deed of the condominium.

The value of the units does not vary, and the fact that they were not acquired on the same date, or at the same price for equal units, does not, in any way, affect the value used for determining one's proportional share of the common property. This is because the values used are all determined in the condominium's title deed, and such proportions are calculated on those original values and do not change. Therefore, even if the sale value of any unit should change, due to changes in the market, the proportions that correspond to each unit in the common assets of the condominium stay the same.

However, when additions or improvements are made to a unit, the common property proportion that corresponds to each joint owner can vary. In such cases, a new calculation of the property's value must be carried out, based on a legally authorized appraisal. It must be approved by the condominium owners' meeting and filed with the Public Registry of Property. The common property proportion that corresponds to a unit should always be included in any sales agreement and be the same as what is filed with the Public Registry of Property.

The common property proportion used in the law only refers to rights of ownership and not to use rights, which are equal for all. In other words, if one unit is worth more than another unit, this fact does not entitle the owner of the first unit to use the common assets more than the other owners.

Condominium owners are allowed to make all kinds of repairs and additions to the interior of their units provided that it does not affect the structure, the principal walls or other essential elements of the building, or lead to damage to the condominium's stability, safety, healthiness, or comfort. Similarly, no one may cut clear spaces or windows, or paint or decorate exterior walls in a form that is inharmonious with the rest of the condominium structures or that may damage the general aesthetics of the property.

Each co-owner has the right to make use of the common assets and enjoy the services and general facilities pursuant to its nature and ordinary fate, provided that he does so without restricting the rights of the other co-owners. However, if a co-owner abandons or waives his right to use any of the common assets, he is still subject to the obligations imposed by the law, the title deed, the Regulation of the Condominium and the other relevant legal dispositions.

Every co-owner can use, enjoy and dispose of his property within the limitations and prohibitions of the law, and of the provisions of the title deed and of the Regulation of the Condominium. However, a co-owner may not sell or lease part of his property, such as a flat or bedroom, service rooms or a private site for parking.

In the terms of article 38 of the Condominium Law, violation of these provisions is cause for the rescission of the contract in question, or the violator may also be sued and forced to sell his rights in public auction. He is also accountable for the damages caused. To exercise this action, a resolution by a special owners meeting is required. Those who represent a minimum of 75% of the value of the condominium property must agree upon this resolution.

If the condominium is destroyed in whole or in a proportion that represents at least three-fourths of its value as determined by a legal appraisal, the condominium owners may agree to the reconstruction, or to the division of the property and the common assets that remain, or to its outright sale. The majority must represent at least 51% of the total value of the condominium. If the destruction does not reach three-fourths, owners who represent at least 75% of the total value of the condominium is needed to adopt any of the above alternatives.

In either case, if the condominium owners meeting agrees to reconstruction, the owners who voted against reconstruction or the minority, are obligated to contribute to the reconstruction in proportion to the value of their respective units, or they may sell their rights. Such a sale may be in favor of the majority, if the minority

agrees; however, in any event, after six months the sale becomes compulsory at the appraisal price determined by a public broker or by a trust institution.

Every condominium owner has the right to attend and participate in condominium meetings. Each owner's voting rights is determined to be in direct relation to the percentage of his ownership as set forth in the condominium's title documents. An owner and his tenant, or any other assignee may decide who has to perform determined obligations before the other co-owners, and in such cases, the assignee may represent the owner in condominium meetings. The owner is ultimately responsible for compliance to the obligations that are assumed by the assignee.

All owners must pay their proportion of the administration, maintenance and operation expense funds that are approved by the condominium owners meeting in accordance with the condominium's regulations or in accordance with a resolution adopted by the condominium owners meeting. When certain areas of a condominium's common property are leased, or are used for commerce, a percentage of the obtained profits must be applied to the administration, maintenance and operation expense funds as determined annually by the condominium owners meeting.

A Condominium property may be encumbered, without the consent of the other owners, but only when privately owned property is encumbered along with the corresponding share of the co-owned property. Likewise, it is impossible to sell only the privately owned property without including its share of the co-owned property.

Although the Condominium Law does not specifically mention that a condominium owner has the right to lease his property, such a possibility is implicitly granted in various provisions of the law. The same holds true for bailments given the similarities of the two agreements and the fact that they do not violate any of the general provisions for condominium ownership.

The law is not clear regarding the treatment of third parties that have possession of condominium property by lease or bailment. The condominium regulations should contain clauses that allow interested parties the right to sue for the rescission or cancellation of such contracts if a third party possessor violates the title documents of the condominium by using the unit in question for purposes other than those allowed. By doing so, the condominium's administrator can sue to have the occupant evicted, and can demand the payment of damages.

The law states that if a tenant does not comply with condominium obligations, the administrator may sue for eviction with the consent of the owner of the unit in question. If the owner opposes such action, then the administrator may take legal action against both the owner and the occupant under the terms of article 38 of the Condominium Law as stated above.

The condominium law gives a tenant of a condominium the right of first refusal to purchase the unit he is leasing should the owner decide to sell it. The law states that in the event that a condominium owner with a tenant occupying his property desires to sell his property, he must first notify the tenant through the condominium's administrator, through a Public Notary, or through the court. The notification must include the price offered, the terms, and other conditions of the proposed sale. The tenant then has ten days following the notification to exercise his right of first refusal.

The law does not provide the right of first refusal to other condominium owners. Until the condominium law changed on June 23, 1993, it was possible to include such a right in the condominium's regulations. However, it is doubtful that such provisions are binding given that each condominium unit is owned separately and not subject to the provisions of co-ownership.

Every co-owner is responsible for the expense of maintaining his common floors, pavements, walls or other divisions among contiguous premises. On the other hand, in vertical construction condominiums, all the co-owners pay for repairs and construction required for the roof, the exterior, and the cellars.

The following rules apply to work done to the common assets and general facilities of the condominium:

- Work necessary to maintain the condominium in good, safe, stable, and conserved state, so that the services operate normally and effectively, are carried out by the Administrator. The Administrator carries out such work under license, if necessary, of the competent authorities, and with the authorization of the Surveillance Committee. Authorization from the condominium meeting is not required. All expenses are paid from the condominium's maintenance fund. In the event that no funds are available, or unforeseen work needs to be done, the Administrator must summon a condominium meeting so that action may be taken in accordance with the Regulations of the Condominium;
- The seller is accountable for construction defects of the condominium. The remainder of the joint owners may repair such defects in the proportion to what each one owns in the total value of the condominium. In such case, they may demand payment from the seller, or cash the performance bond for the contraction and defects. The government determines the amount and the term of the bond upon issuing the building permit.
- In order to have work done to improve the appearance or comfort of the condominium, which may or may not increase its value, authorization of the condominium owners meeting is required. The authorization must be approved by a favorable vote of owners who represent 75% of the total value of the condominium.
- The joint owners carry out urgent repairs or replacements in the common assets and general facilities if the Administrator is not available.
- The expenses incurred for the operation, repair, conservation and maintenance of the general facilities and services, as well as the common areas and assets, are covered by the joint owners in the proportion to what each one owns in the total value of the condominium.

The law prohibits any work which jeopardizes the safety, stability, and conservation of the condominium or which affects the comfort of the owners. The same is true of any improvements or modifications, which permanently hinder the use of a common service or area, or those which somehow reduce the value of an individual condominium unit, even if one single owner is affected. However, in the latter two cases, the improvements or modifications may be carried out with the unanimous agreement among the joint owners and, if the value of an individual condominium unit is reduced, provided that the affected owner is compensated to his complete satisfaction.

#### **ADMINISTRATIVE PROCEDURES TO ESTABLISH CONDOMINIUM OWNERSHIP**

Before construction may begin on property to be used for a condominium project, certain procedures must be carried out:

1. The interested property owner or owners must obtain a declaration from the government which indicates that the project is feasible and complies with urban planning, development regulations, and which grants a building permit for up to 120 condominium apartments, dwellings, houses or premises.
2. In order to change the property from individual ownership to condominium ownership, the property owner or owners must make a condominium ownership statement before a public notary (*escritura publica*) indicating the following:
  - The layout, dimensions and property lines of the condominium property which clearly indicate individual ownership areas from co-owned areas.
  - Written proof that the declaration from the government mentioned above was obtained as well as all of the necessary building permits.
  - A general description of the construction and quality of building materials.
  - Descriptions of each apartment, dwelling, house or premise including parking areas.
  - The value of each apartment, dwelling, house or premise and the percentage that each represents in the total value of the whole condominium project.
  - The general use of the condominium as a whole and the particular use of each apartment, dwelling, house or premise.
  - The use and characteristics of common areas.
  - The terms and conditions of the performance bond for the contraction and defects. The government determines the amount and the term of the bond upon issuing the building permit.



- The conditions under which any of the above may be modified.
  - In addition to the above information, as an exhibit to the notarized document, certified copies of a general survey and plans for each apartment, dwelling, house or premise, and common areas; as well as the regulations of the condominium must also be included. This and any other necessary documents are delivered to the administrator of the condominium project who is legally responsible for carrying out its provisions.
3. Once the condominium ownership documents above are completed and notarized, they are then filed with the Public Registry of Property (*Registro Publico de la Propiedad*). This document serves as title to the property and allows the individual condominium units to be sold separately and registered as such in the Public Registry of Property.
  4. Finally, the condominium ownership documents are also filed at the municipal land register in order that each condominium unit is assigned a property tax identification number.

Any contract used for the acquisition of ownership of condominium property must include the above information and state that the interested buyer was given a copy of the condominium regulations certified by a public notary.

Condominium ownership is voluntarily dissolved by agreement of a minimum of 75% of the owners unless the condominium's title documents require a higher percentage. The condominium's title documents are modified in accordance with the provisions of the condominium's regulations, but the above percentage may not be lower than the 75% required by the law. The corresponding Public Notary or, as the case may be, the Director of the Public Registry of Property is responsible for assuring that all urban planning and development provisions are complied with.

#### ADMINISTRATIVE ORGANIZATION OF CONDOMINIUMS

Administratively, condominium ownership is organized much like a Mexican corporation. There is a condominium owners' meeting, a surveillance committee, and an administrator. The administration of the condominium is carried out in many different ways and by one or more people. Some condominiums like to hire a management company, or create a condominium owners association, while others prefer to appoint a sole administrator or a managing board nominated from owners. This section examines administration without a condominium owner's association, though the book goes on to discuss administration under Home Owners Associations later.

The formation of an association (*asociación civil*) is not necessary for all condominium properties. Associations have advantages but they also require greater expenses: public notary fees for its creation, revision and extinction; notarial powers of attorney granted to the association's legal representative when he is appointed, etc. They also require more formalities and tax obligations, which, if not attended to, cause more headaches than anything else does.

It is possible to administrate a condominium project with an informal association without establishing a formal association. The size and type of condominium complex is often the determining factor when deciding if a formal association is necessary. Smaller condominium complexes with a minimal amount of facilities are less likely to require an association. Their legal relationship with third parties is less than large complexes with many employees.

In cases of informal associations, the only obligation the condominium owners have is to keep an authorized minutes book (*libro de actas*), and to pay any taxes or social security payments for employees which the condominium may hire. Other taxes likely to need paying are property taxes on common assets, and income tax on any income generated from the exploitation of the common assets.

Because of the nature of condominium ownership, the law provides for representation of the condominium and its owners through a common representative who is granted sufficient powers. A sole administrator and the surveillance committee, consisting of one or more condominium owners can carry out the administration.

This form of administration has both advantages and disadvantages. When one of the owners is the administrator, he is more likely to give greater attention to the matters of the condominium, and generally, he charges for his services. However, often most owners are not willing to accept the responsibilities of administration. They may not have the time, or they do not want the hassle of confronting the other owners for collection or to insist that they respect the rights of others.

## CONDOMINIUM OWNERS' MEETING

The ultimate power and control reside in the condominium owners through the condominium owners meeting (*asamblea de condómino*), which may be either general meetings or group meetings. General meetings are those in which all the owners attend, and group meetings are those which are limited to a specific number of owners.

The law makes reference to group meetings in article 36 of the Condominium Law which states that when a condominium property consists of different parts, such as several staircases, courtyards, gardens, and facilities intended to serve one segment of owners, the related expenses are charged to the group of benefited owners, in accordance with the condominium's regulations. The same holds true for staircases, elevators, hoist and other elements, appliances or facilities that are used by only a segment of the owners.

All of the condominium owners have the right to attend these meeting which are regulated by the following guidelines:

- General meetings must be held at least once a year and as many times as they are legally convened.
- Each owner has the right to the number of votes equal to the percentage of the value his unit represents in the total value of the entire project, which appears in the corresponding property title.
- In the election or removal of the administrator or of the surveillance committee, each condominium unit is limited to one vote.
- In cases where an owner's property is affected by a mortgage, or the property was sold under a reserve title contract, or any other contract which makes a person the owner upon compliance of its terms; the owner or future owner's voting percentage is limited to the amount that he has paid, provided that it represents at least half of the sales price. His creditor or the person who has reserved title rights exercises the remaining voting rights. If the person has paid less than half of the sales price, he is not entitled to vote. This provision only governs if the creditor or titleholder attends the assembly. To do so, they must first be registered in the condominium's creditors register and possess written proof of the registration issued by the administrator prior to attending. This is explained later in this chapter in the section regarding the administrator.
- Voting is exercised personally unless the condominium's regulations provide for representation.
- The resolutions of the meetings are passed by majority vote unless the law or the condominium's regulations require otherwise.
- In the event that one owner represents 50% of the votes, 50% of the remaining votes are required to pass resolutions. If a resolution cannot be passed, either the 50% owner or the minority group may, if the condominium's regulations allow, submit the matter in question to arbitration or to a judge so the matter can be resolved.
- The meetings are presided over by the person and in the form indicated in the condominium's regulations. The administrator of the condominium acts as the secretary, or, if the administration is carried out by a company, the person the company designates acts as secretary.
- The secretary must keep a minutes book and the secretary, or a public notary, as well as the chairman of the meeting and the surveillance committee must authorize the meeting's minutes. It is recommendable that an attendance list signed by those who attend the meeting be kept to avoid situations where people say they did not attend when in fact they really did.
- The secretary must always keep the minutes book available to the owners and registered creditors. The secretary must notify them in writing as to each of the resolutions adopted by the meetings.



Meetings are called by the administrator, or by owners or by creditors who represent at least 25% of the value of the condominium when this value is accredited by a competent judge, as well as by the surveillance committee.

Notification of the condominium meeting must be made at least 10 days prior to the date of the meeting. The notification must indicate where within the condominium complex the meeting will be held, the month, day, and hour the meeting will be held, and it must include a copy of the meeting's order of the day or agenda.

When the meeting is held after the first summons, at least 90% of the voters must be present to have a quorum. If there is no quorum, another meeting must be held. After this second summons only 51% of the voters are required for a quorum. If there is still not enough persons in attendance, a third meeting must be called. After the third summons, resolutions are passed by a majority vote of those who attend. All resolutions legally adopted by the condominium owner's meeting are binding for all owners including those who were not present or those who voted against whatever was adopted.

Condominium meetings have the following powers:

- To appoint and remove the administrator and the surveillance committee, in accordance with the provisions of the condominium's regulations. They also have the power to determine how much the administrator will be paid for his services. The administrator does not have to be one of the condominium owners. Up to three people are appointed to the surveillance committee.
- Determine which activities the administrator is personally responsible for and in which activities he acts as the representative of the owners.
- Determine the amount and type of guarantee the administrator pays to assure that he carries out his duties faithfully and manages the maintenance and administration funds correctly.
- Approve the annual balance submitted by the administrator and the yearly budget.
- Establish the fees paid by the owners for the funds for maintenance and administration of the property. These funds should have enough to cover three months' expenses. The meeting must also establish the fees paid by the owners for the reserve fund. The payments are determined in proportion with the value of each apartment, dwelling, house or premise. The payments are divided into monthly payments and are paid in advance. The initial amounts required for both the reserve fund and the maintenance and administration fund must be stated in the condominium's regulations. The funds' money not immediately used may be invested but only in fixed and immediate return investments.
- Take legal action against the administrator for violations of the law, the condominium's regulations, or the condominium's title documents (*escritura constitutiva*).
- Instruct the administrator in his activities and duties.
- Make changes to the condominium's regulations and title documents as provided for by law.
- Carry out all other activities and powers granted by law, the condominium's regulations or title documents.

## THE ADMINISTRATOR

Condominium properties are managed by an administrator appointed by the condominium owners meeting in accordance with the law and the condominium's regulations. The administrator is the legal representative of the condominium and is responsible for his actions. In basic terms the administrator executes the decisions of the condominium owners meetings, and oversees the everyday care and organization of the condominium property. An individual or a company can hold the administrator's position.

The law establishes the following powers and obligations of the administrator of a condominium property:

1. To maintain an authorized register of creditors. The register reflects those creditors who choose to attend condominium meetings by notifying the administrator within a month from the date the credit was established, or in the month of January of each year. The register is also used to keep the balances due to creditors for each owner and the consent of both with regard to the correctness of such balance. These calculations are important because they also determine how many votes both the creditor and the owner

have in condominium meetings. In the event that there are discrepancies in these balances or there is an unwillingness of the debtor to consent, the balance due is determined by the surveillance committee.

2. To take care of and watch over the condominium property and the common services required, and to promote the integration, organization, and development of the community.
3. To maintain the books and documents related to the condominium and to make them available to the condominium owners.
4. To attend to the operation and up-keep of the utility services and the installations required for the condominium.
5. To carry out all acts required for the administration and conservation of the property.
6. To have any necessary construction work done which is required for the general maintenance, security, and conservation of the property, as well as that necessary to maintain functioning public utilities.
7. To execute the decisions of the condominium meeting unless they are delegated to another person.
8. To collect the money owed by the condominium owners for the maintenance, administration and reserve funds.
9. To pay the condominium's maintenance and administration expenses in accordance with the condominium's regulations.
10. To issue receipts to each of the condominium owners for payments made to maintenance, administration and reserve funds.
11. To deliver a monthly report to every condominium owner with the following information:
  - The expenses of the preceding month paid from the maintenance and administration funds.
  - A list of the fees paid by the owners and the amounts still owed to the maintenance, administration and reserve funds.
  - The current balance of the maintenance, administration funds and an explanation of what the funds will be used for in the following month.
  - The condominium owners should sign a receipt indicating that they received this report. The condominium owners have a term of five days from the date they receive the report to present observations or objections. After this term, it is assumed that they agree with the report's contents.
12. To summon the condominium owners meeting at least 10 days prior to the date of the meeting. The summons must indicate the place within the property or the place agreed to in the condominium's regulations; the month, day, and hour it will be held; and the agenda or order of the day for the meeting. In addition to the written notification delivered to the condominium owners, the administrator must also post a copy of the summons for the meeting in a location on the property that is visible to all of the owners.
13. To demand that an owner pay for damages created by that owner due to violations of provisions of the Condominium Law.
14. To see that the provisions of the law, the condominium's regulations, and the condominium's title documents are duly observed.
15. To carry out any other activities and comply with the obligations, which are established for his position by the law, the condominium's regulations, and the condominium's title, documents.

The administrator, while being the legal representative of the condominium, does not have complete and total powers over the condominium's property. The law states that the administrator has the power to represent the condominium in matters related to the administration of property and for lawsuits and collections. Any additional powers, such as the power to sell condominium property, or any other powers that require specific mention by law, require authorization from the condominium owners' meeting by majority vote representing 51% of the owners.

The actions and demands made by the administrator, within the scope of his powers in accordance with the law or the condominium's regulations, are binding for all the co-owners. The condominium owners' meeting may limit or revoke the administrator's powers at any time. The majority vote required to carry out such limitations is indicated in the condominium's regulations.

### **THE SURVEILLANCE COMMITTEE**

The surveillance committee is made up of up to three people who are co-owners. Its principal obligation is to oversee the administrator to ensure that he fulfills his obligations in accordance with the law, the condominium's regulations and title documents. The committee must also ensure that the resolutions adopted by the owners' meeting are carried out.

The surveillance committee has the following rights and obligations:

- Make sure that the administrator complies with the resolutions adopted by the owners' meeting.
- Determine outstanding balances due, for the creditors' register, in the event that there are discrepancies or an unwillingness of an owner/debtor to consent to the balances determined by the administrator.
- Authorize necessary construction and repairs.
- Verify the balance statements submitted by the administrator to the owners' meeting.
- Verify investments in the acquisition of implements and machinery from the reserve fund.
- Report to the owners' meeting with regard to the administration of the condominium.
- Verify any reports of noncompliance by the owners received from the administrator and report to the owners' meeting.
- Collaborate with the administrator in the observation of the owners to ensure their compliance with their obligations.
- Summon the owners' meeting when the administrator has failed to do so within three days; or when it judges it necessary in order to notify the owners of irregularities of the administrator. In the latter case, it should also notify the administrator to appear.
- Carry out any other activities and comply with any other obligations which are established by law, the condominium's regulations, and the condominium's title documents.

### **THE CONDOMINIUM REGULATIONS**

The Regulations of a Condominium must contain at least the following:

- The rights and obligations of the joint owners with regard to the assets of common use, specifying such assets; any limitations on exercising such rights;
- The policies regarding the administration, maintenance and operation of the condominium;
- The policies necessary to sponsor the integration, setup and development of the community;
- The manner by which the condominium owners' meetings is summoned and the person that will preside over it;
- How the Administrator and the Surveillance Committee are appointed and the powers they have;
- Requirements needed to hold the post of Administrator and participate in the Surveillance Committee ;
- Remuneration of the Administrator and the Surveillance Committee;
- Cases for the removal of the Administrator and/or the Surveillance Committee.

### **EXPENSES, TAXES AND CONTROVERSIES**

As mentioned above, all owners must pay their proportion of the administration, maintenance and operation expenses, and contribute to any reserve funds. The condominium owners meeting approves these expenses and funds in accordance with the condominium's regulations or a resolution adopted by the condominium owners meeting. Likewise, when certain areas of the condominium's common property are leased, or are used for commerce, a percentage of the obtained profits are applied to the common funds, as determined annually by the condominium owners meeting.

When a condominium consists of different parts, such as several staircases, courtyards, gardens, and facilities intended to serve a segment of the owners, any special expenses generated by those parts are charged to the segment of owners that benefit. The same holds true for staircases, elevators, hoists and other elements, appliances or facilities. The condominium's regulations should establish special procedures for the distribution of such expenses.

If an owner does not pay his monthly contribution to the condominium's common funds, an interest payment is added to the amount owed. The percentage used for the interest is fixed by condominium regulations, or, if the regulations do not mention anything in this regard, the percentage is set by law.

If an owner is behind in three payments, legal action is taken in summary executory proceedings (*aparejada ejecución en al vía ejecutiva civil*) for the total amount plus interest and penalties in accordance with the condominium's regulations.

The regulations of the condominium also establishes that when an owner is overdue in his payments, the Administrator splits the amount owed among the remaining owners, in proportion to the value of their properties, until the outstanding amount is recovered. When the owner who is overdue pays what is owed, the Administrator then reimburses the other owners the amounts that they paid plus interest.

Violation of these provisions is cause for the rescission of the contract of the owner in violation, or, the guilty party is sued and forced to sell his rights in public auction. He is also accountable for the damages caused. To exercise this action, a resolution of a special owners meeting is required and owners who represent a minimum of 75% of the value of the condominium property must agree. The infringing or delinquent owner is summoned to the meeting to defend himself. In cases of noncompliance involving people who occupy a condominium unit but do not own it, the administrator sues for eviction with the previous consent of the owner. If the owner does not consent, the administrator then proceeds against the owner and the occupant.

Regarding tax payments, the law states that owners are liable for the payment of property tax which corresponds to their unit. They are each liable for taxes on the parts of the co-owned assets which correspond to each of them and for any other taxes which are generated by the condominium.

Any controversies regarding the application of the Condominium Law, the regulations of the condominium, the title deed, and the transference of ownership, as well as any other applicable legal provisions, are submitted to arbitration if the regulations of the condominium so provide, or to the competent courts. Any written agreements executed in the arbitration, as well as those mutually executed by the owners or with its administration, with prior acknowledgment of the parties' signatures, is binding for all concerned.

## ENCUMBRANCES

Generally, encumbrances are limited to each individual condominium unit. Each of the owners is only held responsible for encumbrances levied against his property. The law states that any contract or provision that establishes the joint liability of the condominium owners for encumbrances related to condominium property is not binding. Debts that originate in obligations contained in the title deed, or that are due to a transfer of title, provisions of law, or condominium regulations, enjoy security with a security interest in real/immovable property on the condominium unit in question, even though the unit is transmitted to third parties.

## CONDOMINIUMS IN THE RESTRICTED ZONE

Condominium property in the restricted zone is held in trust if it is sold to a foreigner. Therefore, it is imperative that the bank/trustee grant a power of attorney to the beneficiary/condo owner to exercise his rights in all matters related to the condominium property.

This is not a detail to overlook. If a foreigner does not have a power of attorney from the bank/trustee, legally he cannot vote or act as an owner in condominium meetings. More importantly, if a foreigner acted in the capacity of owner without a power of attorney from the bank/trustee, any agreement made in condominium meetings is void.