



## Condominium Law Q&A

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**Question** – I just recently discovered your column and hope you can explain the difference between condos and co-ops. What are the pros and cons and approximately how much does conversion from co-op to condo usually cost? KEM

**Answer** – The three types of shared ownership housing communities governed by mandatory membership community associations are: (1) cooperatives (2) condominiums and (3) planned developments governed by homeowner associations. The key characteristic of a condominium is that the homeowner holds "fee title" to their unit and an undivided interest with the other unit owners in the common elements. In a HOA, the lot owners own their home and the HOA owns and/or operates the common areas and shared amenities. In a co-op, the unit owner actually does not own the real estate. He/she owns a share of stock in a corporation which in turn owns the real estate; that share is personalty not realty. The reason so many co-ops have converted to condominium over the years is that condominiums give the unit owners greater flexibility in being able to take the equity out of their units, should they desire to do so, by taking a mortgage on the unit; something which is not possible as a cooperative owner. The downside to conversion of a co-op to condominium is the potential increase in ad valorem taxes, given the likelihood of increased market value which comes with the ability to sell the unit separate and apart from the building as a whole, and potential taxes to investor owners when the co-op is liquidated and assets (units) are transferred to the unit owners. The

IRS has determined that the conversion of a co-op to a condominium does not create a taxable incident to a resident owner, only the non-resident investor. Conversion of a co-op to condominium is not a costly affair. Most of the expenses are associated with the need for an updated survey, creation of the condominium documents and transfer of the units from the cooperative corporation to the unit owners.

**Question** – I feel like a prisoner in my own neighborhood. Shortly after moving into my new home, I received a letter from our property owners association (POA) stating that my HOA dues were 90 days in arrears; gee, I only moved in 60 days ago, go figure. Next, I received a letter advising that my shed was in violation of the covenants, conditions and restrictions in spite of the fact that I sought approval from the architectural control committee for the shed before I purchased it, and bought the one a member of the committee told me would be acceptable. The architectural control committee seems to just have a dislike for sheds; specifically mine. When I look around the neighborhood I see many screen enclosures and screened porches that are far more visible from the street than my shed. Of particular note is a member of the architectural control committee's screened enclosure that can be seen from my street, his street as a front view and another street. His structure is almost twice the height as mine, twice the width and twice the length. Why is the POA wasting everyone's time and money on this? G.C., Ormond Beach

**Answer** – I found your reference to feeling like a prisoner in your own neighborhood of interest. In choosing a title for my new book [*New Neighborhoods: The Consumer's Guide to Condominium, Co-op and HOA Living*], I went with "New Neighborhoods" for the very reason that shared ownership housing communities are the polar opposite of traditional neighborhoods because, as a condition of ownership, unit owners must give up certain rights which are a normal incident of home ownership. Perhaps the most often quoted holding in all of shared ownership is from the decision in the case of *Sterling Village*: "Every man may justly consider his home his castle and himself as the king

thereof; nonetheless his governing fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others." Needless to say, I would encourage all community associations to try and amicably resolve disputes with their members without having to resort to the courts. That said, I am troubled by the municipality your community is in, granting a permit to install the shed knowing that your community is governed by a POA, before ascertaining if the Architectural Control Committee approved same. Beyond that, I hope you and the Architectural Control Committee are able to work this matter out.

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