

LEGAL INSIGHT

**BRICKS & BY-LAWS: UNDERSTANDING CONDOMINIUM
OWNERSHIP RIGHTS AND RESPONSIBILITIES IN
UGANDA**

The Ugandan real estate industry is experiencing exponential growth in condominium housing, which is attracting both developers and buyers who are looking to tap into the benefits that come with this housing system. This has been a ripple effect of the increase in the population over the past 10 years. The key attraction towards condominium housing is the option of a modern, secure, and convenient living option for most buyers, offering, above all, a decent return on investment for most developers.

However, with the advantages of shared amenities and a secure environment come distinct legal considerations. This article delves into the realm of 'bricks & bylaws,' elucidating the rights and responsibilities inherent in condominium ownership in Uganda. We will examine how the law delineates your ownership interest within the broader development, guide you through your role in shared spaces, and elucidate your obligations towards the condominium community.

At the core of condominium property ownership in Uganda are the Condominium Property Act of 2001 and the Condominium Property Regulations of 2002 (as amended in 2012). This pivotal legislation provides the foundation for creating and managing any condominium development by providing crucial definitions that frame the entire system. Important to note are three key terms defined as follows:

a) Unit- means a space that is situated within a building and described in a condominium plan by reference to floors, walls, and ceilings within the building

b) Unit factor- represents the proportion of ownership an individual has in the common property, facilities, and assets of the corporation. It determines the owner's financial contribution to the corporation's shared expenses and can be calculated based on factors like the size and location of the unit, as well as the view it offers.

c) Common Property- means that part of the condominium property which does not belong to any specific unit, and which is used in common by the owners of the units and includes the land on which the property is situated, support structures, infrastructure, and associated services.

d) Developer- means a person who, whether alone or in conjunction with another person, develops, sells, or offers for sale to the public, units, or proposed units

The creation of condominium status over any building or parcel of land commences with the registration of a condominium plan with the Commissioner of Land. The Condominium plan shall be accompanied by approvals from the respective physical planning authority, approvals from qualified and registered civil and structural engineers, a certificate of a registered surveyor, a certificate of an architect verifying the correlation between the plan and the existing structure, etc.

Upon an application for registration of a condominium plan, and in fulfillment of the requirements under the law to grant such application, the Registrar shall close the part of the Register relating to the parcel described in the plan and open a separate part for each unit described in the plan, and shall upon the payment of the prescribed fee, issue a certificate of title in respect of the unit. This, therefore, means that an individual or entity that purchases a condominium unit acquires a certificate of title for that unit independently from the rest of the unit owners and is, therefore, free to enjoy the property along with the rights that come along with it like any other person or entity under the Registration of Titles Act.

However, these rights are not enjoyed in a vacuum. These rights are subject to the burden and have the benefit of any easements that affect units in the original condominium plan. The incidental rights of common property owners include passage or provision of water, sewerage, drainage, gas, electricity, passage or provision of telephone, radio and telephone services, and any other service of whatever nature constitutes common property. Whatever easement is against the unit owner, the same is in their favor concerning another adjacent unit.

The law mandates a developer not to sell or agree to sell a unit to a purchaser unless he or she has delivered to the purchaser a copy of the sale agreement, the proposed rules, the proposed management agreement, the proposed recreational agreement, the certificate of title in respect to the unit, the condominium plan and the lease of the parcel if the unit is situated on a parcel under a lease.

Important to note is that once a developer registers a condominium plan, by operation of law, a 'Corporation' is constituted in respect of any building or structure to which that plan relates. The Corporation comprises individuals or entities that own units in the parcel to which the condominium plan relates. This Corporation is clothed with perpetual succession and a common seal, thus having the capacity to sue and be sued in its corporate name. The key consideration, however, is that the Companies Act shall not apply to a Corporation formed under the Condominium Property Act, 2001, as amended. This means a Corporation does not follow the operations, formalizations, or reporting requirements expected of Companies.

The Corporation's core mandate is to manage the common property and keep it in a state of good repair; maintain administrative expenses account for the control, management, and administration of the immovable and movable property and the common property, etc. A Corporation is responsible for the enforcement of its bylaws. This creates order and ensures that unit owners enjoy their property rights communally, albeit privately. However, the current legislation prohibits a Corporation from engaging itself in any trading activity, although it may invest any funds not immediately required in its operations by the Public Trustee Act.

Termination of the Condominium status of a property

The condominium status of a property can be terminated by a unanimous resolution of all unit owners where it has become impractical to continue with the property as a condominium to recover capital and (potentially) make a profit, obsolescence (whether due to building age, style or simply because the land value has outstripped the individual unit value), etc.

An application to terminate the condominium status can be made to a court by the corporation, a unit owner, a registered chargee of a unit, or a purchaser under a sale agreement for a unit. If a court receives such an application and determines that it is just and equitable to terminate the condominium status, considering the rights and interests of the unit owners, registered mortgagees, or purchasers, the court may declare the condominium status terminated. Furthermore, the court may impose any conditions and give directions as it deems appropriate following this declaration. An insurer of the property, or part of it, against destruction or damage, may appear before the court either in person, through an agent, or via an advocate when an application under this section is made.

Upon terminating a property's condominium status, the Corporation must promptly file a termination notice with the Registrar. The Registrar will then note this termination on the condominium plan, making unit owners tenants in common of the parcel in shares proportional to their unit factors. Following a unanimous resolution to terminate, the corporation is required to sell

or transfer the property. The corporation cannot dispose of the property without written consent or appropriate discharge of interests from all persons with registered interests. The Registrar will only register the transfer if it is accompanied by certified copies of the required resolutions and consents, and after the termination notification has been made on the condominium plan. Upon transfer, the Registrar will close the unit registers and re-open the previously closed Register, but the closed Register will be preserved.

In conclusion, the exponential growth of condominium housing in Uganda has ushered in a modern, secure, and convenient living option, attracting both developers and buyers. The Condominium Property Act, of 2001, and its subsequent amendments provide a robust legal framework for the creation, management, and termination of condominium properties. Unit owners must understand their rights and responsibilities, including their role in shared spaces and their obligations to the condominium community.

The formation of a corporation, the election of a management board, and the detailed procedures for the termination of condominium status ensure a structured and equitable management of these properties. Adhering to these legal stipulations guarantees that the benefits of condominium living are maximized while maintaining harmony and order within the community.

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Disclaimer

This article provides general information only and does not constitute legal advice. KTA Advocates has made every effort to ensure the accuracy of the information presented. However, the legal landscape can be complex, and this article should not be taken as a substitute for personalized legal counsel. For specific guidance regarding Ugandan condominium ownership, we strongly encourage you to contact a qualified Ugandan attorney.

Please feel free to reach out to KTA Advocates at corporate@ktaadvocates.com to discuss your specific needs.

