

SINALOA CONDOMINIUM LAW

1. Definition of Condominium and Condo owner

When several apartments, houses or premises of a property are built vertically, horizontally or both, and are susceptible to be used independently due to the existence of independent exits to a common area of the building or to a public access, and they **belong to different owners**, each of them shall have a singular and **exclusive property** right over his apartment, house, or premise, as well as a **joint right over the common areas** and elements of the property that are needed for the adequate use or enjoyment of the same.

A condo owner is understood to be the person or entity that **holds title** to one or more apartments, houses or premises and is in possession of the property. The law also recognizes as condo owners individuals which have entered into a **contract** by virtue of which one could become a condo owner once its conditions are met.

The rights of each condo owner with regard to the common property is proportional to the value of his individual condo unit in accordance with the deed of the condominium regime. Every condo owners has an equal right to common property and cannot restrict other condo owners regarding common property.

As a general rule, the sale or encumbrance of a condo unit always includes the corresponding common use property rights.

Also, the abandonment of the condo unit by an owner of common areas does not affect his obligations under law, the condominium deed or the condo regulations.

The rights and obligations of condo owners are regulated by the Sinaloa Condominium law, the condominium deed, the deeds by which condo owners acquire a condo unit, the condominium regulations, and the Civil code of Sinaloa.

The common property generally includes:

- a. The entire piece of land;
- b. The cement structures, load bearing walls, general use roofs, basements, porticos, entryway doors, vestibules, galleries, hallways, stairways, gardens, paths and streets that are for general use;
- c. Works, installations, apparatuses, and other objects that function for common use or enjoyment, like septic systems, wells, cisterns, water tanks, elevators, freight elevators, incinerators, stoves, ovens, pumps, motors, sewers, Canals, water distribution ducts, drainage, heating, electricity, cable television, Internet networks and gas;
- d. Spaces for a common patio, and vehicle parking;

e. Locales allocated for administration, reception, accommodation for the doorman and security guards; and

f. Whatever parts of the property understood in the Condominium deed to be common property and those that are unanimously resolved by the condominium owners to be for common use and enjoyment.

6. Rules for improvements in common areas. Art 19

2. Creation of a condominium property

The condominium regime can be created when:

I. The apartments, houses or commercial premises in one property, or that have been built within a property with common areas, belong to different owners;

II. The apartments, houses or commercial premises in one property built within a property with common and undividable elements and a reserved private property under the terms of the previous article, **are built to be sold to different persons**; and,

III. The owner(s) of one property divides such property in several apartments, houses or commercial premises, **in order to sell them to different persons**, as long as there is an undividable common element of private property.

3. Information required for the Condominium Deed.

The condominium regime shall be incorporated through a public deed with the owners' declaration and include the following information:

1. Proof of licenses, authorizations, or permits required for that construction type;

2. The location, size and borders and classification of the of the condominium;

3. A general description of the buildings and the quality of the materials used or to be used for construction;

4. The description of each apartment, house, commercial office or store, their number, location, measurements, parts, vehicle parking space if any, and any other information pertinent for identification purposes;

5. The nominal value that, for purposes of this Law, is assigned to each apartment, house, or commercial office or store, and the corresponding percentage over the total nominal value of the condominium.
6. General purposes of the condominium as well as purposes of each apartment, house or commercial office or store;
7. Common elements, their purpose, with all pertinent details and specifications, as well as, if needed, measurements, characteristics, and other necessary information for their identification;
8. Characteristics of bond to respond for the construction and any defects;
9. The reasons and conditions for the public deed modification;
10. The public deed shall include as an appendix, duly certified by the Notary Public, the general blue print and the blue prints for each of the apartments, houses, commercial offices or stores and common areas, as well as the Condominium By-Laws.

4. How the condominium deed is structured

1. All real estate deeds must be recorded by a public notary in order to be filed in the public registry of property. Without this requirement the deed is not legal. All of the information at the public registry is public information and open to anyone needing information.
2. The deed itself is drawn up by a public notary and is assigned filing information with a number, volume, and date with the words “*TESTIMONIO DE LA ESCRITURA DE CONSITITUCION DE REGIMEN DE PROPIEDAD EN CONDOMINIO*” along with the name of the development, such as “*BEACH PARADSE*”, and the name of the owner/developer of the property, which usually is a Mexican corporation, such as, “*MEXICAN DEVELOPMENTS*”.

FIRST SECTION OF DEED: ANTECEDENTS

The first section of the deed will include the notary’s information, the developer’s information, and a description of the property which includes a its physical description, location, tax registration number, and building description.

This section will also include a summary of the permitting process that the developer completed with the municipality which allows the development to be completed. This will usually include a land use permit, construction permit, planning permit, all of which should be filed with the deed as exhibits.

SECOND SECTION OF THE DEED: DECLARATIONS

In this section the developer declares on record that the property to be developed is being modified to allow for condominium ownership. This is known as a unilateral act since, upon its creation, there is still only one owner. The developer includes a detailed description of the property and the intended improvements which will be made to sell to third parties.

The developer would also include in this section the feasibility authorization for the condominium development issued by the Department of Urban Development and the amount of construction bond for the construction of the condominium.

The general plans of the condominium for both the individual units and the common areas are identified and filed as exhibits to the deed. This information is very important since it makes up a detailed legal description of all the property which intended to be sold to future condo owners.

SECTION 3: CLAUSES

This section is intended to lay out the basic rights and obligations that the future condo owners will be subject to. For the most part the information in this section reiterates what is required by the Condo Law by briefly stipulating the condo unit owners' rights and obligations. For this reason, the sequence of the information in the clauses in this section follows the same order as chapters in the Condo Law in as much as it is applicable:

Chapter one: Condominium Property Regime

Chapter two: Condominium Property: Individual and common property

Chapter four: Condominium owners meetings

Chapter five: The Administrator

Chapter Six: Vigilance Committee

Chapter Seven: Condominium Regulations

Chapter Eight: Conflict Resolution

More often than not the stipulations in the clauses in this section are exactly the same as what is set forth in the Condo Law. This is not a coincidence since most of these provisions are necessarily required by law, and, either cannot be waived, or requires the consent of a super majority of at least 75% of the condo unit owners to modify. The reason for this restriction has to do with the intent of the law to protect the future condo unit owners from arbitrary changes to their general rights and obligations. As a general rule the law requires the consent from more condo unit owners if the status quo is going to be affected. This is

also why the law requires that such changes are recorded before a public notary and filed at the public registry to be legal.

This is important since until someone actually buys a condo unit there only exists the potential to establish a full-fledged condominium property.

It is important to point out that the developer is not condo owner: condo owners are only created by the sale of the condo units to third parties. This fact is stated in first clause of this section and stipulates the requirement of allowing the condominium regime is precisely for “the sale to third parties” as set forth in Article 3 of the Law. It will also stipulate that the condominium regulation in accordance with the Law are attached and filed in the public registry as an integral part of the condominium deed.

The subsequent clauses are intended to summarize the legal compliance issues that the developer is required to meet such as permits, licenses, etc. It will also indicate the what improvements exist and reiterate that all of this information is included with the deed when it is filed.

Usually in the **second clause** there will be a stipulation which that all future condo unit owners entitled to the rights and obligation set forth in the Condo Law, the Civil, the provisions of the condominium deed, the condominium regulations, and the deeds of sale by which each condo unit owner acquired title to the property.

It is important to point out that unless the law explicitly allows for an exception; the articles of the Condo Law cannot be violated or modified by the condominium deed or its regulations. For this reason the condominium deed with stipulate that in the event that the condominium regulations are incomplete the provision of the Condo Law should be applied.

The **third to the fifth clauses** will usually address the rights and obligations created by the condominium deed with regard to common property. This clause will stipulate that the all condo unit owners rights and obligation are defined by the size of individual unit ownership. This simply means that the bigger your unit is you also own more of the common areas. The same holds true with regard to voting rights and participation in the payment of dues and maintenance fees. To determine exactly what rights and obligations each condo unit owner has, the condominium deed includes a table which clearly defines the percentage each unit has when compared to the whole condominium development. This percentage is the only legally acceptable means to determine what is paid each condo unit and what votes each condo unit owner is entitled to exercise at condo meetings.

The **sixth to the fourteenth clauses** will usually address other miscellaneous right and obligation set forth by the Condo Law, such as:

- ✚ mortgage limitations on common property,
- ✚ condo unit owner’s unilateral waiver of rights is not a waiver of the obligations of the Condo Law and regulations,

- ✚ respect for other condo unit owners rights,
- ✚ conditions for sale, lease and encumbrances of condo units individual rights,
- ✚ joint liability issues and notification requirements for third party use,
- ✚ Conditions and restrictions on improvements made by condo unit owners

At this point there are usually several clauses outlining how to conduct condo unit owners' meetings. Very often the deed will include a title, such as, "OWNERS MEETING" or "JOINT OWNERS ASSEMBLES".

Again, this section of clauses briefly reiterates what the Condo Law states with regard to the types of condo owners' meeting and how they are lawfully conducted.

One important clause in this section stipulates that a table for the voting rights for each condo unit is included as an exhibit to the deed. This voting rights table directly correlates to the size of each unit as a percentage of the whole development. This percentage for voting rights cannot be modified in any way without the consent of the condo unit owners and an amendment of the condominium deed.

It is also in this section that it is stipulated that a registry book of condo unit owners must be maintained and used for determining quorum at condo unit owners' meeting. This is legally required to ratify that individual condo unit owners have the right to vote at condo meetings. The registry is the responsibility of the condominium's administrator and should include each unit's number and the name, addresses, and telephone of the each owner.

Usually this is where the conditions for representation at condo owners' meetings will be stipulated. Authorization to represent should be made in writing and include the name of the representative and indicate that he is being granted powers to decisions in relation to the corresponding agenda for the meeting in question.

Unlike what many people believe, condo owners' meetings cannot be convened more than once a single day. This required by law is also reiterated in the clauses of the this section of the deed. Usually the deed will stipulate that if quorum is not met on the first call of the condo owners' meeting, the same requirements that were in place for the first meeting must be complied with. At the very minimum this would mean at least a 10 notice, not to mention the other notification formalities.

The next clauses section addresses the "ADMINISTRATION OF THE CONDOMINIUM". These clauses will usually define the limits on the administrator's powers of attorney and stipulate that the administrator has the right to sue on and carry out administrative acts on behalf of the condo unit owners, but usually limits his power to sell property.

The final section of the clauses usually reiterates that a vigilance committee must be appointed; the condominium regulation or bylaws exist and must be provided to the condo unit owners by the administrator, tax obligations, default consequences, and deed amendment requirements.

At the very end of the clauses it will usually indicate how controversies are addressed. More often than not it simple states that they must be filed with the civil courts where the property is located.

In addition the information mentioned above, the deed will have several exhibits which can be very lengthy since, as I mentioned above, these include the description of the property and tables for determining voting rights and undivided property ownership at the condominium property.

4. Filing Requirements and Disclosure

The deed of the condominium property regime that meets the requirements of this Law, must be **registered in the Public Registry of Property.**

In any contract for the acquisition of rights over the apartments, houses or commercial premises subject to the regime of condominium property, **the declarations and clauses conducive to the deed shall be inserted, stating, in addition, that the interested party has been given a copy of the Condominium Regulations, certified by the Notary Public.**

C. Contracts used to acquire a condo must include the declarations and clauses from the deed of the condominium property regime and a copy of the condo regulations certified by a public notary.

5. Condo Administration

ARTICLE 28. The condominiums shall be administrated by the person or entity appointed by the General Meeting under the terms of this Law, the deed and the Condominium By-Laws.

ARTICLE 29. Administrator will have the following rights and obligations:

1. Keep the **condo meeting minute book** duly authorized by the corresponding Secretariat of the **Municipality** where the condominium is located, as well as a record book of the creditors who attend the Assembly meetings.
2. Take care of the condominium property as well as of the common services; promote the integration, organization and development of the community.
3. Collect and keep the books and documentation regarding the condominium. These books and documents must be made available to condo owners at all times.
4. Perform all of the administration and preservation activities required by the condominium

5. Supervise the adequate operation and maintenance of the facilities and general services.
6. Enforce the condo meeting agreements;
7. Collect maintenance, administration and reserve funds fees from the unit owners
8. Pay maintenance and administration fees
9. Give receipt to unit owners for any payment made by them
10. Deliver a monthly account statement, showing:
 - a). Detailed monthly expenses.
 - b). Detailed list of pending contributions and fees. Administrator will have an available detailed report in case unit owners request it. The report must include the total amount paid by each condo owner.
 - c). Balance and usage of funds for the following month.
9. Convene Assembly meetings with at least 10 days notice from the date that the meeting will take place. The notice should include:
 - a. Where the meeting will take place at the condominium or, by exception, the meeting place included in the condominium regulations.
 - b. The time of the meeting
 - c. The order of the day or agenda
 - d. The condo owners or their representatives must be notified in writing at a predetermined place. This is usually in the condo owners book or at each condo unit.
 - e. The administrator must also post a copy of the notice in one or more visible places at the condominium property.
12. Demand liability from unit owners incurring in infringement or violation of the law or the condominium regulations regarding services or common areas.
13. Perform any other duties and provisions and ensure the fulfillment of the provisions of the law, the deed, Condominium By-Laws, Assembly Agreements, Vigilance Committee and other legal provisions.

ARTICLE 30. Regarding the common property of the condominium, the Administrator shall have general powers as attorney in fact of the condo unit owners for collection and law suits. The Granting of other specific powers, or those which legally require special clauses, require consent of the condo owners meeting with more than 51% of the condo owners present. Actions and resolutions legally made by the administrator are binding for all condo owners. However, the condo owner's meeting can modify or revoke actions of the administrator by majority vote.

General Meeting of Condominium Owners

ARTICLE 25. The General Meeting of Condominium Owners is the **supreme authority** of the condominium regime. The General Meetings may be formed by a group of condominium owners or may be general. Those formed by a group of condominium owners are called to solve cases as provided in Article 33, the rest will be general. For everybody involved, the following precautions govern:

I. **General Meetings shall be held at least once a year** and group meetings shall be held as many times as necessary, in accordance with this Law and Condominium Regulations;

II. Every unit owner shall have a number of votes equal to the percentage represented by his unit of exclusive property with regards to the total value of the condominium;

III. In the case of condominium owners who have entered into a contract with a **mortgage** guarantee or a purchase agreement with a **reservation of title** under which, in its terms, they become owners, they shall enjoy a number of votes **proportional to the price they have paid** and the other proportion of the percentage shall correspond to the creditor. This prevention will **only apply if creditors attend the Meeting**;

IV. The voting will be personal, nominal and direct, being able to **delegate the representation** and determine other forms and procedures, **if the Condominium Regulations allows**;

V. **The resolutions of the General Meeting shall be made by a simple majority of votes**, except in cases in which this Law and the Regulations of the Condominium prescribe a special majority;

VI. If one unit owner represents more than 50% of the votes and the rest of the votes of the condominium are present, at least half of the remaining votes for the agreements shall be required the resolution validity;

VII. **The General Meetings will be chaired by whoever is designated by the Condominium Regulations. The Administrator shall act as Secretary** if he is a natural person and, in case of being a corporation, by a representative of the corporation;

VIII. Registered condominium owners and creditors may convene an General Meeting **without the intervention of the Administrator and the Vigilance Committee**, when accredited by a **Notary Public or competent Judge**, who represent at least a **quarter of the value of the condominium**; and,

IX. The minutes of the General Meeting shall be authorized by a **Notary Public**, as well as by the **Chairpersons of the General Meeting** and the **Vigilance Committee**.

ARTICLE 26. When the meeting takes places in virtue of the **first summon**, **90%** of voting rights of unit owners shall be required. When the meeting takes place in virtue of the **second summon** the quorum shall be integrated at least **51%** of voting rights of unit owners shall be required. In case of a third summon, resolutions shall be adopted by a majority of those present.

The resolutions adopted by the General Meeting in the terms of this Law, the Regulations of the Condominium and other applicable provisions, bind all condominium owners, including absentees or dissidents.

ARTICLE 27. The General Meeting shall have the following **powers and obligations**:

I. Appoint and freely remove the Administrator, under the terms of the Condominium Regulations, **except those who work for the first year, who will be designated by those who grant the deed of incorporation of the condominium**. The Administrator may be one of the joint owners and the General Meeting shall fix the corresponding remuneration, which will be waived, if the latter agrees to serve the charge free of charge;

II. Specify the responsibilities of the Administrator regarding third parties, and responsibilities of the condominium owners, for acts of the Administrator, executed while performing of their duties;

III. Appoint and freely remove the Vigilance Committee;

IV. Determine the type and amount of guarantee that must be granted by the Administrator, regarding the faithful performance of their commission and the management of the funds in their care, both for the maintenance and administration of the condominium, and the reserve for the replacement of implements;

V. Examine and approve the annual statement presented by the Administrator;

VI. Discuss and approve the spending budget for each year;

VII. Establish the quotas to be borne by the condominium owners to constitute a fund for maintenance and administration expenses, and another reserve fund, for the acquisition or repair of implements and machinery with which the condominium must be counted. Payment may be divided into monthly installments, which must be paid in advance. **The amount of**

these funds will be integrated in proportion to the value of each department, housing, home or local, according to the provisions of Article 3, Fraction V of this Law. The first contributions for the constitution of both funds will be determined In the Condominium Regulation. The maintenance and administration fund must be sufficient to count in advance with the cash that covers the expenses of three months. The reserve fund, while not being applied, must be invested in fixed-income securities, redeemable at sight;

VIII. To promote what is appropriate before the competent authorities, when the Administrator breaches this Law, the articles of incorporation, the Regulations of the Condominium, as well as any applicable legal provisions;

IX. To take the appropriate measures on matters of common interest that are not included within the attributions of the Administrator;

X. Modify the articles of incorporation and the Regulations of the Condominium, in the cases and conditions that both envisage, in accordance with the applicable legal provisions;

XI. The others granted by this Law, the articles of incorporation, the Regulations of the Condominium and other applicable legal precepts.

8. Vigilance Committee

9. Condo Regulations (bylaws)

ARTICLE 32. The Regulations of the Condominium shall contain at least the following:

1. The rights and obligations of condominium owners with respect to their individual property and common use property, specifying the limitations to which the exercise of the right to use such property is subject;

2. The measures that must be taken for the best administration, maintenance and operation of the condominium;

3. The necessary provisions that promote the integration, organization and development of the community of condominium owners;

4. Manner of convening the General Meeting of condominium owners and who should preside it;

5. Manner of appointing the Administrator, the requirements that he must meet, as well as their remuneration, also reproducing the powers and obligations conferred by this Law, the articles of incorporation and the cases in which their removal proceeds;

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6. Manner of designating the Supervisory Committee, the requirements to be met by its members, their remuneration and the cases in which they should be removed; Y,
7. The matters that reserved by the condominium deed and this Law.