

LEGAL FRAME WORK OF CONDOMINIUM PROPERTY

Condominium property is regulated by both international and domestic statutes. Such include but not limited to the **United Nations Declaration of Human Rights UDHR 1948**. It provides under **Article 25** for the right to a decent standard of living. **International Convention on Civil and Political Rights ICCPR** and **The African Charter on Human and Peoples Rights** which all provide for the right to adequate living conditions, thus affirming housing as a right, thus this may include the right to own a decent Condominium Housing Unit.

In Uganda, the **1995 constitution under Article 26** provides for the right to own property individually or in association with others. A safeguard is created that no person shall except in accordance with the law and subject to adequate compensation be compulsorily deprived of any property.

Other laws include **The Condominium Property Act cap 234** and the **Condominium Regulations of 2002, which were amended in 2012,2024**, which regulate condominium in Uganda, general laws on land, taxation, ordinances of the area where the condominium maybe located.

1. DIVISION OF BUILDING INTO UNITS.

Section 2¹ provides that every proprietor or developer of condominium property to divide property into units and must have a condominium plan which shall be presented for registration in quadruplicate and shall indicate the number of units into which the building is divided and if the plan is to be developed, in phases, the developer shall indicate a time table for the development of various phases.

This principle is intended to allow Individual Ownership of these Units while at the same time maintaining shared ownership and responsibility for the common areas promoting efficient use and management of the property.

¹Condominium property Act Cap. 2001

2. CREATION OF TITLE FOR EACH UNIT/ REGISTRATION OF THE UNITS.

Under the Act, each condominium unit is to be individually registered and issued a Certificate of Title. This document serves as the official proof of ownership and includes details specific to each unit, such as its boundaries, ownership rights, and any encumbrances or restrictions.

Section 4² provides that every purchaser of condominium property is issued with a certificate of title for the title for the unit purchased accompanied with the respective condominium plan and sale agreement because it is upon this that the transfer is effected in purchaser's name. This principle ensures clear and formal recognition of property ownership and provides legal certainty for unit owners

In the case of *Kasekende v. Nsubuga*, the High Court of Uganda addressed issues related to property rights and registration in a condominium context. The case involved disputes over the registration and ownership of units within a condominium development. Court had to determine the boundary between two adjacent condominium units one owned by Kasekende and another by Nsubuga. The dispute arose when Kasekende built a wall that Nsubuga claimed encroached on his unit.

Key Points:

- a) **Registration Requirement:** The court reaffirmed the importance of adhering to the registration requirements set forth by the Condominium Property Act. It emphasized that each condominium unit must be registered to ensure clear and undisputed ownership rights.
- b) **Legal Title:** The decision highlighted that proper registration of each unit provides a legal title, which is crucial for resolving disputes and protecting the rights of unit owners. Failure to register a unit could lead to conflicts over ownership and legal claims.

This case reinforces the necessity of registering each condominium unit to ensure that ownership is legally recognized and protected. It underscores that proper registration is a fundamental requirement for upholding property rights and avoiding legal disputes.

²ibid

3. COMMON PROPERTY/ OWNERSHIP.

Section 6³ provides for common property which does not belong to any specific unit and which is used in common by the owner of the units and includes land on which the property is situated, support structures, infrastructure and services. In other words, this is property/ common area that is shared by the unit holders and tenants share this property equally and also contribute equally for the maintenance of common property.

*In **Johnson v. Ridgewood Condos (2024)*** the case involved a dispute over the use of a balcony area in a condo. The unit owner wanted to make modifications, but the HOA had specific rules about alterations to exterior parts of units.

Key Points:

- a) **Exclusive vs. Shared Spaces:** This case clarified the distinction between exclusive use areas (like individual balconies) and common areas. Even though the balcony is part of the unit, it may be subject to rules set by the condominium committee in charge of the property because it affects the building's exterior appearance.
- b) **Modification Rules:** The court ruled that while unit owners have control over their units, modifications that affect the building's exterior or shared aesthetics must comply with regulations set by the condominium management committee.

This case shows that condo ownership entails not just control over the interior of one's unit but also adherence to rules concerning the use and modification of both exclusive and shared spaces.

Therefore ownership and responsibility for common areas (like hallways and recreational facilities) with other unit owners is limited.

³Ibid

4. BOUNDARIES MAKING FOR EACH UNIT

This principle calls for clear demarcations of each individual unit to be made. This is in relation to the physical limits such as walls, floors and ceilings among others.

Section 11⁴ provides for boundaries of the unit are described by reference to the floor or ceiling or where a wall located within a unit is load becoming a wall, the only portion of that floor, wall or ceiling as that case maybe that forms part of the unit, the boundary should be the finishing material that is in the in fence of that unit including ant lath and plaster, paneling, gypsum board panels, flooring materials or covering any other material that is attached, a laid, glued or applied to the floor, wall or ceiling as the case may be.

The clear boundaries help define ownership and responsibility together with clarity on Maintenance.

5. LIABILITY OF THE UNIT OWNER

Section 18⁵ provides that owner of a unit shall only be liable in respect of any interest entered on the condominium plan in proportion to the unit factor for his / her own unit.

This principle is to the effect that each unit owner is liable for the different liabilities arising from their actions around their units including but not limited to Debts and obligations for example utility bills, damage to common areas, damage to neighboring units among others.

This ensures that unit owners take responsibility for their actions and property, maintaining the overall quality and value of the condominium property.

6. MANAGEMENT AND USE OF CONDOMINIUM PROPERTY

Section 19⁶ provides for the establishment of a corporation which is responsible for the enforcement of its by-laws and the control, management and administration of its movable and immovable property and the common property. This corporation shall have perpetual succession and common seal and shall sue or be sued.

⁴ibid

⁵ibid

⁶ibid

This corporation is established to manage the common property by setting rules and regulations to be followed by the owners of individual units during utilization of the common property.

All owners of individual Units are strictly bound by the regulations as was decided in the case of *Johnson v. Ridgewood Condos (2024)*.

In the recent Australian case of *Brisbane Management Pty Ltd v. Elan Apartments (2022)*, the Supreme Court of Australia dealt with a dispute concerning the management committee of a condominium. The case addressed the authority and functioning of the management committee, which was responsible for overseeing the day-to-day operations and maintenance of the condominium.

Key Points:

- a) **Authority of Management Committee:** The court reviewed the powers and responsibilities of the management committee, emphasizing that these bodies must operate within the authority granted to them by the condominium's governing documents and relevant legislation.
- b) **Formation and Election:** The case highlighted the procedures for forming and electing management committees, including compliance with statutory requirements and bylaws. The court affirmed that committees must be elected in a fair manner and according to established procedures.
- c) **Decision-Making and Disputes:** The case also involved issues related to the decision-making processes of the committee and how disputes between the committee and unit owners should be handled. The court provided guidance on resolving conflicts and ensuring that the committee acts transparently and in the best interests of all owners.

The decision reinforced the importance of properly establishing and managing a management committee in accordance with legal and procedural requirements. It emphasized that committees must adhere to their governing documents and statutory rules to effectively manage the condominium and address disputes.

EASEMENTS UNDER CONDOMINIUM PROPERTY.

I. Incidental rights of owners of common property

The act provides that Common property and each unit comprised in a registered condominium plan shall have as appurtenant to it, such rights of;(a) support, shelter and protection; (b) passage or provision of water, sewerage, drainage, gas, electricity, garbage and air;(c) passage or provision of telephone, radio and television services; and (d) any other service of whatever nature; over the parcel and every structure on it as may from time to time be necessary for the reasonable use or enjoyment of the common property or unit.⁷

Common property and each unit comprised in a condominium plan shall have as appurtenant to it a right to full, free and uninterrupted access and use of light through or from any windows, doors or other apertures existing at the date of the registration of the condominium plan.

The rights created by this section shall carry with them all ancillary rights necessary to make them effective as if they were easements. Nothing in this section shall affect any parcel other than the parcel to which condominium plan relates.

Easements in favor of unit owner.

Section 16 of the condominium Act Cap 2001 provides that after the registration of a condominium plan, there is implied in favor of each unit shown on the plan, in favor of the owner of the unit and as appurtenant to the unit;(a) an easement of the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support; (b) an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter; and (c) an easement for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

Easements against unit owner.

⁷ Section 15 of the Condominium Property Act 2001

The act after the registration of a condominium plan, there is implication in respect of each unit shown on the condominium plan as against the owner of a unit, an easement to which the unit is subject (a) For the subjacent and lateral support of the common property and of every other unit capable of enjoying support; (b) To provide shelter to the common property and to any unit capable of enjoying shelter; and (c) for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing within the unit as appurtenant to the common property and also to every other unit capable of enjoying those easements.⁸

When an easement is implied by this section, the owner of any utility service providing a service to the parcel, or to any unit on it, is entitled to the benefit of any of those easements which are appropriate to the proper provision of the service, but not to the exclusion of the owner of any other utility service.

The corporation shall dispose of the property or part of it by sale or transfer; however, such disposal of property is subject to the written consent of all parties concerned discharging their interest.

The Registrar shall not register a transfer executed as above unless the transfer is accompanied by certified copies of the necessary resolutions and consents and until notification of the termination of the condominium plan has been made.⁹

On termination of the condominium status of the property and subsequent transfer of the property, the Registrar shall enter on the relevant register of condominium plans a notification of the cancellation of the plan and also indicate on any relevant register that the condominium plan has been cancelled (R 14

In conclusion, the principles governing condominium property ownership are designed to balance individual rights with collective responsibilities. These principles include the clear division of ownership between private units and shared common areas, the establishment and operation of a management committee, and the need for individual Certificates of Title to

⁸ Section 17 of the Condominium Property Act 2001

⁹ Section 49 of the condominium property Act 2001

ensure legal clarity. Proper registration and adherence to governing documents and legal frameworks are crucial for maintaining order, protecting ownership rights, and ensuring effective management of condominium properties.

Effect of Registration of the condominium plan on the existing title

As highlighted hereinabove, under sections 3(2), 10(1), and Rule 6 upon approval and presentation of a condominium plan and being presented in quadruplicate clearly indicating the number of units into which the building is divided and with a clear indication of the waterproof ink on tracing linen or polyester film or such other materials that are of a size and nature approved by the commissioner Land Registration is expected to examine these documents to his/her satisfaction, the plan must be accommodated by the other certificates as discussed hereinabove.

Upon being satisfied with the presented application, under section 5(1) the Registrar shall in line with section 5(1) close the part of the Register relating to the parcel described in the plan and upon a separate part for each of the unit described in the plan and shall upon the payment of the prescribed fee issue a certificate of the title in respect of each unit.

Certificate of title issued under this Act, though not a form of Tenure reserved under the constitution shall under section 5(2) be deemed to have been issued under the RTA and it's for all purposes and intents conclusive evidence of ownership, indefeasible and only void for fraud under Section 77 of RTA and illegality under section 97 of the Land Act⁵⁸, the condominium title takes the form I of schedule II as preferred in the third schedule.

A proprietor of a condominium title shall under section 5(3) be at liberty to transfer, lease, charge, or otherwise deal with the unit in the same way as land held under the RTA; and he can also create 3rd party interests under section 6(1) and (2) which upon lodgment for registration shall be entered as encumbrances on the unit's certificate of title and also endorsed as a separate part of the certificate of title in so far as and or to the extent of the unit factor.

Subdivision of the unit, under section 8(1) it's possible for a unit owner with the approval of the local authority to subdivide the unit or consolidate his/her unit by registering with a registrar of titles a Condominium plan relating to the unit intended to be subdivided or consolidated, and in the application, he is required under section 8(2) to clearly, highlight the intended major necessary modifications to a subdivision and or consolidated units and upon

acceptance of the registration of the 56 Land Act Cap 227 as amended by Act No.1 of 2004, see CK Patel Vs Commissioner Land Registration. SCCA No-of 20 modifications, the original condominium unit shall be canceled and replaced with the newly issued plan.

The Law allows change of use of the unit under section 9(1) - (3), however, this is subject to the unanimous approval to consenting to a change by the corporation. The change in use must be endorsed by the planning authorities before the registrar entertaining it on the Register and where the change in use results in modifications to the Condominium plan, the user shall move the Registrar to register a modified condominium plan of the condominium plan that had originally been registered under section S.4.

Notably also is Section 25(2) and 49(1-5) do provide for termination of condominiums either upon effusion of the lease period in case of condos seated on leases or upon the developer wishes as such and having all the units vested in him, this is achieved by presenting a notice of termination under the

Prescribed form as set out under regulation 24, which is form number 1 in the 5th schedule to the regulations.

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TERMINATION OF A CONDOMINIUM STATUS OF PROPERTY

The condominium status of property may subject to subsection 25 (2) of the Act be terminated by a unanimous resolution. An application to terminate the condominium status of

a property may be made to a court by the corporation, an owner of a unit, a registered charge of a unit, or a purchaser under an agreement for sale of a unit

Where Court is satisfied that under the circumstances it is just and equitable that the condominium status of the property be terminated a declaration to that effect shall be made

Upon termination, sale or transfer, etc. of condominium property, the Corporation must immediately file with the Registrar a 10 notice of termination in the prescribed form which is in Rule 24 Form 1 in the fifth schedule. Upon receipt of such notice the Registrar will make notification to that effect on the condominium plan and on the making of such notification, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.