

# Condominium Ownership and Operation (MA)

A Practical Guidance® Practice Note by  
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This practice note discusses the establishment and operation of a condominium in Massachusetts, including the organization of unit owners, budget, reserves, financial audits, books and records, common area expenses, insurance, annual meetings, and establishing and enforcing rules.

For more on condominium law in Massachusetts, see [The Massachusetts Condominium Act: Mass. Ann. Laws ch. 183A](#) and [Condominium Collection Practices \(MA\)](#).

For general condominium resources, see [Residential Condominium Resource Kit](#).

## Legal Framework

Mass. Ann. Laws ch. 183A is an enabling statute, which sets out a framework for the development and operation of condominiums in the Commonwealth. Trustees of *Beechwood Village Condominium Trust v. USAlliance*

*Federal Credit Union*, 95 Mass. App. Ct. 278, 285 (2019), quoting *Queler v. Skowron*, 438 Mass. 304, 312–13 (2002).

## The Organization of Unit Owners

The operation and management of a condominium in Massachusetts is vested with the organization of unit owners. The organization of unit owners may take different forms, including a trust, an association, or a corporation. The organization of unit owners appoints and/or elects trustees, managers, or members who serve in a volunteer capacity to manage the condominium's affairs. The number, term, and qualifications of the trustees, members, or managers are specified in the trust instrument or bylaws. Their primary duties are to:

- Set an annual operating budget
- Maintain a reserve account
- Assess and collect common area charges
- Initiate and defend litigation
- Purchase building and appropriate liability insurance
- Maintain, repair, and replace the common elements
- Maintain the books and records of the association and provide owners reasonable access to inspect them
- Conduct annual unit owner meetings and elections and regular trustee/board meetings
- File annual tax returns –and–
- Establish and enforce rules in a consistent and fair manner

Mass. Ann. Laws ch. 183A, § 10(b).

The trustees owe a fiduciary duty to the organization of unit owners in the discharge of their obligations, but not to any individual unit owner. *Cigal v. Leader Dev. Corp.*, 408 Mass. 212, 219 (1990). So long as they act in their capacity as trustee, manager, or member, do not commit fraud, and undertake their obligations in good faith and in the best interest of the association, the trustees, managers, or members are typically not personally liable for their actions and are entitled to indemnification pursuant to the condominium's bylaws or trust instrument.

The organization of unit owners can appoint a managing agent to assist in the fulfillment of their obligations. Mass. Ann. Laws ch. 183A, § 10(c). The managing agent typically provides support with physical building management, clerical matters, accounting and budgeting services, contractor and vendor services, and/or management and meetings.

## Budget, Reserves, and Financial Audits

Condominium associations are like mini municipalities and to operate efficiently and effectively, their financial health is paramount. Every year, a condominium must establish an operating budget. Typically, that budget is informed by a review of year-over-year income and expenses. In most cases, the only form of income that an association has is through the collection of common expenses. Expenses can vary significantly from property to property, but nearly all condominiums will have expenses associated with insurance, bank charges, legal fees, management fees, common area maintenance and supplies, landscaping, trash removal, and water/sewer services.

The organization of unit owners has a statutory obligation to prepare a financial report within 120 days of the end of the fiscal year, including a balance sheet, income and expense statement, and a statement of funds available in the various funds of the trust, association, or corporation. A copy of the report must be made available to all owners within 30 days of completion and to any mortgagee on request. See Mass. Ann. Laws ch. 183A, § 10(d). The Condominium Act mandates CPA review of financial reports of associations with more than 50 units and provides for optional CPA review for associations with less than 50 units if voted upon by a majority of owners at a duly called meeting. See Mass. Ann. Laws ch. 183A, § 10(d).

Condominiums must have an adequate reserve fund. Mass. Ann. Laws ch. 183A, § 10(i). This means that the organization of unit owners must collect (as part of the

common expense assessments) an amount to be deposited in an account separate from its operating funds (the reserve account) for future common area repairs, replacements, and improvements. There is no statutory guidance or requirement setting a threshold amount at which reserve funding is adequate. It is important that each association independently determine how to meet capital improvement needs and unanticipated expenses. Commissioning a reserve study—which analyzes the physical and financial health of the association—can help provide the framework for ensuring that the association's reserves are adequately funded. Once the association knows how much it needs, there are several strategies to increase reserve funding:

- Increase the overall budget and amount apportioned to the reserve fund over the course of the next fiscal year
- Implement a supplemental assessment to provide an injection of new funds
- Amend the governing documents to require a contribution to the reserve fund upon the sale of a unit (a so-called reserve funding amendment)

Practitioners should check the condominium documents to see if there are reserve requirements or annual auditing requirements specific to a particular association. Further, it is also important to be aware that secondary mortgage market lenders may require that at least 10% of the annual budget be earmarked for reserves. Failure to meet certain lending guidelines on reserves can make units harder to sell and refinance.

## Books and Records

The Condominium Act requires the organization of unit owners or property manager, as applicable, to keep and maintain the association's books and records for at least seven years. The books and records to be maintained include:

- Any minute book –and–
- Financial records including:
  - Records of receipts and expenditures, invoices and vouchers, receivables, and bank statements
  - Records as to the replacement reserve and other funds, including related bank statements
  - Audits, reviews, accounting statements and financial reports as to the finances of the trust
  - Contracts for work to be performed or services to be provided to the trust –and–
  - All current insurance policies of the trust

These records must be made available to unit owners and their first mortgagees for review and copying (at the owner's expense) during regular business hours, upon reasonable notice, and at such other times as are provided for in the management agreement (if any), at the office of the trust or, if in the custody of a manager, at the property manager's office in the Commonwealth. Many property managers and associations choose to post some of the records, such as the condominium documents and annual financial reports, on a password protected owner site so they are readily available to owners and the association's operations are transparent.

## Common Area Expenses— Establishing a Collection Process

Common area expenses are the lifeblood of the condominium. The Massachusetts Condominium Act defines common expenses as “expense of administration, maintenance, repair or replacement of common areas and facilities.” Mass. Ann. Laws ch. 183A, § 1. Common area expense assessments are made to the unit owners in accordance with their percentage beneficial interest. Mass. Ann. Laws ch. 183A, § 6. The obligation to pay the assessed common area charges is not subject to offset, withholding, or defense. Mass. Ann. Laws ch. 183A, § 7; *Blood v. Edgar's Inc.*, 36 Mass. App. Ct. 402 (1994); *Trustees of Prince Condominium Trust v. Prosser*, 412 Mass. 723 (1992). Owners who contest an assessment must pay it under protest and bring a separate legal action to determine their propriety. Mass. Ann. Laws ch. 183A, § 7.

A lien for condominium expense assessments arises at the time the assessment comes due. Mass. Ann. Laws ch. 183A, § 6(a)(i). The organization of unit owners may also assess attorney's fees, costs, and interest as a common expense assessment. Mass. Ann. Laws ch. 183A, § 6(a)(ii).

It is imperative that an association establish a process for levying and collecting the charges in a timely manner to preserve its statutory lien.

An overview of the process to enforce the condominium's statutory lien is as follows:

- **Sixty-day notice.** The association issues a delinquency notice to an owner, and any first mortgage of the unit, who is at least 60 days behind (i.e., more than two months behind) in the payment of common area charges. Mass. Ann. Laws ch. 183A, § 6(c).

- **Thirty-day notice.** The association provides notice to the owner's first mortgagee at least 30 days before filing suit to enforce its statutory lien for common area charges due. Mass. Ann. Laws ch. 183A, § 6(c).
- **File suit.** The association files suit to perfect its lien for the common area charges due, including the priority of the lien for the amount of six months of regular common area fees accrued prior to the institution of suit plus the cost of collection. A certified copy of the complaint must be recorded in the appropriate registry within 30 days of its filing with the court.
- **Obtain judgment and order of sale.** The association, through legal process, obtains a judgment and order from the court establishing the amount of the lien, the priority of the lien and ordering that the association is entitled to sell the unit to satisfy the established lien in accordance with Mass. Ann. Laws ch. 254, § 5(a).
- **Foreclose on unit.** As a measure of last resort, the association can exercise the order of sale and foreclose upon the unit after providing the required notice and strictly adhering to the sale requirements.

For a full discussion of this process, see [Condominium Collection Practices \(MA\)](#). The first mortgagee may pay the delinquent fees on behalf of the unit owner to preserve its own interests and the priority of its own lien. It also may be possible for the parties to work out a payment agreement.

In Massachusetts, it is possible to perfect multiple six-month periods of priority by filing successive complaints. *Drummer Boy Homes Association, Inc. v. Britton*, 474 Mass. 17, 23 (2016). In *Drummer Boy*, the Massachusetts Supreme Judicial Court recognized that:

[B]ecause a unit owner's responsibility to pay monthly common expenses is a recurring obligation, an organization of unit owners can file successive legal actions under Mass. Ann. Laws ch. 183A, § 6, to establish and enforce multiple contemporaneous liens on a condominium unit, each with a six-month period of priority over the first mortgage, for the recoupment of successive periods of unpaid common expenses.

474 Mass. at 23.

It should be noted that special assessments are not entitled to priority over the first mortgage. If the association faces a new or unanticipated expense, associations may explore whether their governing documents allow them to amend the budget and increase common expenses mid-year through the imposition of fee increases or supplemental assessments (the liens for which would be entitled to priority).

Under Mass. Ann. Laws ch. 183A, § 6(d), unit owners can request statements (6(d) certificates) that set forth the amounts, if any, due for a particular unit. Typically, an owner will request such a certificate in connection with the sale or refinance of their unit. It is important that the certificate accurately record the amount due and owing. Once issued and recorded, the certificate operates to discharge the unit of any lien for amounts due that are not stated on the certificate. The organization of unit owners must provide the certificate within 10 business days of receipt of a request. The organization of unit owners must provide the certificate whether or not an amount is due and owing. If there are amounts due and owing, those should be stated in the certificate, including the amounts entitled to priority. Such a certificate is referred to as a “dirty” 6(d) certificate.

Finally, there are certain costs that cannot be incurred without unit owner consent/vote. The organization of unit owners must pay particular attention to approval requirements for improvements and how the cost of such an improvement can be assessed. See Mass. Ann. Laws ch. 183A, § 18.

## Insurance

Practitioners in the condominium discipline frequently receive questions related to coverage and insurance issues. One of the basic statutory duties of the trust, board, or governing entity of the association is to obtain insurance on the common areas and facilities. Mass. Ann. Laws ch. 183A, § 10(b)(1)–(6). The condominium documents may also specify the type and minimum amounts of insurance coverage required. There are several types of insurance policies most condominium associations have, or should have, in place.

### Policy Types

Policies that the association should have in place include the following:

- General liability policy providing coverage for damage or injury to third parties
- Property policy providing coverage for damage to the property or building; the policy may specify that it is all-in (i.e., covering the building and unit structure), bare walls (i.e., studs in coverage), or first sale
- Directors and officers policy providing coverage for the trust or board and individuals (board members, trustees, etc.) for loss resulting from wrongdoing (i.e., decision-making) –and–

- Policies providing other coverage including umbrella, crime, flood/earthquake, and worker’s compensation

Owners can, and should, purchase HO-6 policies to cover the unit’s contents as well as coverage for the unit owner’s portion of the master deductible.

### Insurance Amendments and Resolutions

If there are no insurance provisions in the governing documents—or the existing provisions could benefit from greater detail or clarity—an association can amend the governing documents to update the insurance provisions. This will require unit owner consent and vote or, to the extent as association is looking to clarify insurance obligations within the framework of existing insurance provisions, the association may consider adopting an insurance resolution. An insurance resolution is a policy resolution adopted by the board to outline and clarify insurance obligations.

### Vendor/Contractor Insurance

In addition to its own insurance needs, an association will want to make sure that its contractors and vendors have appropriate insurance. Associations can and should include as a term of its vendor contracts that the vendor provide appropriate certificates of insurance and require and confirm that the association has been named as an additional insured, through a written endorsement of the policy. Associations can request proof of additional insured status by contract or by endorsement.

### Coverage Determinations

If an association suffers a loss, it is important that they timely notify their carrier of the claim, document the loss, and take action to remediate/mitigate damage. The carrier will issue a coverage letter based upon the claim notice, which will be one of the following determinations:

- **Denial.** The insurance company has determined that there is no coverage for the loss under the terms policy. Association counsel can review the policy to determine if denial is proper, identify opportunities to appeal the decision or submit additional documentation for reconsideration, or, if the denial is made in bad faith, send a demand letter pursuant to Mass. Ann. Laws ch. 176D.
- **Reservation of rights.** The insurance carrier will provide a defense of the claim and will later determine if there is coverage for any adverse judgment. In Massachusetts, if the insurer has not relinquished their reservation in connection with the defense, the insured is entitled to select counsel; an insurance carrier that agreed to

provide its insured with a defense under a reservation of rights has no right to control the litigation. *Three Sons, Inc. v. Phoenix Ins. Co.*, 357 Mass. 271, 276 (1970); *N. Sec. Ins. Co. v. R.H Realty Trust*, 78 Mass. App. Ct. 691, 694-95 (2011). If the ultimate determination is that there is no coverage, the association will be responsible for any judgment entered against it.

- **Full indemnification.** The insurance carrier has determined that this is a covered claim, without reservation. This means that the carrier will pay the costs of defending the suit and will cover a judgment or settlement up to the policy limit. Some policies may exclude coverage for an award of punitive damages. The carrier will have the right to select counsel and control the litigation if it provides a full indemnification of the claim.

## Annual Meetings

The organization of unit owners must conduct annual owner meetings. The trust or bylaw instrument should set forth when and where meetings must occur, when notice should be sent, and what percentage of owners must attend (the quorum requirements) for an official meeting to be held.

Some tips for board members to help prepare and execute successful owner meetings include the following:

- Provide outlets for complaints outside the meeting process (e.g., information meetings, complaint email/box, board member Q&A)
- Organize an agenda and stick to it
- Review the meeting rules
- Model and require civility
- Set time limits for speaking
- Be prepared to address the communities' hot topics and have attorneys or other appropriate professional present if needed
- Distribute appropriate materials in advance
- Exclude nonowners from owner meetings –and–
- Keep accurate meeting minutes

Voting procedures are specified under the condominium governing documents. Some documents require in-person voting only and others will allow quorum and voting to be established by proxy. In recent years, more associations have become interested in electronic meetings and electronic voting. The Condominium Act is silent on electronic meetings and voting. Most condominium

documents did not contemplate and do not provide for electronic meetings or voting. The ability to hold electronic/virtual meetings and use electronic ballots requires an amendment to the governing documents that requires a majority or supermajority of unit owners to consent. Some considerations in drafting this type of amendment include the following:

- How to define an electronic meeting, virtual meeting, or electronic vote
- Building in flexible language for technology changes
- Contemplate what additional information a notice of meeting will require
- When and under what circumstances e-meeting or e-voting will be used
- What will count toward quorum—presence at the meeting beginning or throughout
- How owners will participate; whether owners will raise matters or vote from the floor
- If it will be recorded
- How multiple votes, change of votes, and secrecy of votes will be handled

## Establishing and Enforcing Rules

The terms of the governing documents set forth the terms and conditions of ownership of a unit in the condominium. The terms may only be amended by a vote of the unit owners entitled to a minimum beneficial interest in the condominium, often a majority or supermajority. The organization of unit owners is charged with enforcing the terms in the master deed and declaration of trust.

### Establishing the Rules

Typically, the condominium documents also give the organization of the unit owners the power to establish administrative rules and regulations governing the operation of the common areas of the condominium. The organization of unit owners cannot regulate unit conduct through administrative rules. Rules and regulations of the condominium—those measures passed only by the board or which are capable of amendment by the board without unit owner consent—may only apply to common areas of the building and not to individual units. See *Mass. Ann. Laws ch. 183A, § 11(d)*; *Johnson v. Keith*, 368 Mass. 316, 320 (1975); *Trustees of Beacon on Charles Condominium Trust v. Adler*, 2011 Mass. Super. LEXIS 71, 28 Mass. L. Rep. 231 (Apr. 12, 2011). In other words, a board alone cannot pass

a rule that prohibits pets in a unit; however, a board could pass a rule that all pets must be leashed in the common areas.

The condominium has the authority to place restrictions on the use of units. Mass. Ann. Laws ch. 183A, § 11(e) permits restrictions on the use of residential units which are designed to prevent unreasonable interference by individual unit owners with the other owners' use of their respective units and the common areas and facilities. With this authority, the organization of unit owners can limit noise and other activities that may become a nuisance or offensive to other owners.

The interpretation and application of condominium rules and requirements are subject to the doctrine of equitable reasonableness. Board of Managers of Old Colony Village v. Preu, 80 Mass. App. Ct. 728, 731 (2011); Noble v. Murphy, 34 Mass. App. Ct. 452, 457 (1993). Courts will not uphold rules that violate public policy or constitutional rights or rules that are arbitrarily applied. Board of Managers of Old Colony Village Condominium v. Preu, 80 Mass. App. Ct. 728, 732 (2011) (condominium rules could not prohibit unit owner from posting signs critical of condominium management in trash room).

## The Rules of the Road

The master deed prescribes the “rules of the game.” *Strauss v. Oyster River Condominium Trust*, 417 Mass. 442, 452 (1994). Every unit owner’s interest is subject to the limitations “set forth in the master deed and the condominium bylaws.” *39 Joy Street Condominium Association v. Board of Appeal of Boston*, 426 Mass. 485, 487 (1988). Mass. Ann. Laws ch. 183A, § 4 specifically recognizes that the right of a unit owner to possess their unit is expressly conditioned upon their compliance with the covenants contained within the condominium’s constituent documents (the master deed, bylaws, or trust as well as administrative rules and regulations). Compliance with these restrictions constitutes a condition precedent to the continued right of possession

In purchasing into a condominium unit, the owner is quite literally buying into the attendant restrictions on not only the use of the common areas, but also the restrictions on the use of the units. Some owners specially rely upon certain restrictions (e.g., rental restrictions) in deciding to purchase into a condominium. If there are restrictions that are important—or deal killers—like a pet restriction, prospective buyers should carefully review the condominium documents to understand what conditions and restrictions exist.

## Enforcing the Rules

The organization of unit owners has the authority and obligation to enforce the condominium governing documents and to do so fairly and consistently. This means that the organization of unit owners should adopt a clear process and procedure that is employed consistently and fairly enforce the documents.

A policy for enforcing the rules should consider how violations will be acted upon (e.g., complaint based or actively monitored). Things to consider in developing a complaint policy:

- Develop a written complaint policy
- The complaint and enforcement policy must be consistent with the governing documents
- How complaints will be made (e.g., by form or in writing)
- To whom complaints will be made
- What the organization of unit owners or managers will do with complaints (e.g., conduct an investigation, hearing, or allow formal written response)

Most often, if a violation is found, associations implement the following process, tailored to the specific rules and regulations of the condominium:

- **Notice/warning.** Provide notice of rule violation with a request that the owner stop the conduct and providing them with an opportunity to cure.
- **Fine.** Send violation notice and assess a fine.
- **Escalated fine or cease and desist.** Impose additional or escalating fines; send a final cease and desist warning; or limit facility access as appropriate.
- **Court action.** Institute court action and/or seek injunctive relief as allowed under the governing documents.

The association should also clearly communicate to the owner that the costs, including legal fees associated with violation of the condominium documents, constitute a common expense assessment and, if unpaid, a lien on the unit. See Mass. Ann. Laws ch. 183A, § 6(a)(ii).

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Chris is a founding member of Moriarty Troyer & Malloy LLC and brings nearly fifteen years of litigation and trial experience in the areas of community association, real estate and complex construction law. Chris's practice also focuses on condominium construction defect and transitional litigation at the trial and appellate level of the state and federal courts as well as in various alternative dispute resolution forums.

In his condominium and real estate practice Chris represents residential and mixed-use condominiums, homeowner associations and property management companies in a broad range of matters and provides advice on operational and governance issues, interpretation and amendment of governing documents, rules and bylaw enforcement, developer transition issues and common area disputes. Chris also manages the firm's common area lien enforcement practice.

Chris represents a wide variety of clients including condominium and homeowner associations, building owners, developers, general contractors, construction managers, subcontractors and suppliers in all aspects of construction transactions, disputes and litigation including defective work claims, breach of contract, and violations of M.G.L. c. 93A. Chris has expertise with disputes involving both public and private construction projects and has extensive experience with complex multi-party construction defect litigation.

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Kate is an associate in the firm's litigation department. Kate comes to MTM with years of experience in condominium and real estate litigation and recognized expertise in fair housing, affordable housing and the myriad of statutes and regulations which apply.

In her litigation practice, Kate has handled complex transitional litigation including phasing disputes, construction defect claims and related matters. Most recently in her work with the City of Boston Kate was intimately involved with the development of housing policies including drafting and testifying in support of bills that would increase homeownership opportunities for middle income households, incentivize the preservation of naturally occurring affordable housing, prevent family homelessness and enhance tenant protections.

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