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CONDOMINIUM FORMATION PROCESS - PENNSYLVANIA

In Pennsylvania, condominiums are formed under and governed by the Pennsylvania Uniform Condominium Act (68 P.S. §§3101 et seq.) (the "Condominium Act"). The purpose of this outline is to provide prospective clients with a basic understanding of the condominium formation process.

A condominium is defined in the Condominium Act as real estate, portions of which are designated for separate ownership, and the remainder of which is designated for common ownership solely by the owners of the individual condominium units. What this means in English is that a condominium must have portions that are to be owned by individuals or entities, just like any parcel of real estate, but must also have portions held in common ownership by all of the individual owners. The portions of a condominium that are separately owned are called "units;" the portions of a condominium owned in common are called "Common Elements." All of the unit owners together make up the Condominium Association, which manages the operation of the Condominium.

There are three primary documents that may be required to be prepared in connection with a condominium formation. The Condominium Act requires certain terms to be included in each of these documents. The documents are:

1. **Declaration of Condominium** – The Declaration of Condominium is signed by the property owner, notarized, and recorded with the Recorder of Deeds for the county in which the property is located. The Declaration of Condominium subjects the property to the condominium scheme of ownership, and contains the rights and obligations of the owners of condominium units, and the restrictions applicable to the property. Examples of the types of provisions included in the Declaration are the assignment of percentage interests and votes to units, use restrictions, identifying who is responsible for maintaining each portion of the condominium, and the obligation to pay assessments towards the upkeep of the condominium.

2. **Bylaws** - The Bylaws govern the operation of the Condominium Association. The Bylaws contain details such as when meetings are held, the responsibilities of the Association officers, and enforcement procedures. The Bylaws are not recorded with the Recorder of Deeds. The Bylaws must be consistent with the Declaration of Condominium.

3. **Public Offering Statement**. A Public Offering Statement is a detailed document, the purpose of which is to provide disclosures to prospective purchasers. The Public Offering Statement provides purchasers with a narrative about the property, the significant terms in the Declaration of Condominium, the Bylaws, and the Agreement of Sale, the proposed Association budget, and other important matters. A Public Offering Statement is required for all residential condominiums and cannot be waived by purchasers. For non-residential condominiums, the purchaser can waive the right to receive a Public Offering Statement, although there are specific requirements for such waiver, and certain disclosures are still required by the seller.

The basic process of forming a condominium is as follows:

1. **Preparation Phase**. The property owner (known as the “Declarant” under the Condominium Act) hires consultants to prepare the Declaration of Condominium, Bylaws and Public Offering Statement. Typically, an attorney experienced in preparing condominium documentation prepares the documents, and a civil engineer and sometimes an architect prepare the Condominium plats and plans and legal descriptions which are required exhibits to the Declaration.

2. **Initial Drafts**. Once I have met or corresponded with the owner to find out the details about the property and the specific intentions for the operation of the condominium, I prepare a draft set of documents. The draft is circulated to everyone who might have input about the condominium, along with a cover letter or email highlighting the terms that should be carefully reviewed and considered. The initial draft is typically provided to the owner, the broker, and the property manager for review.

3. **Second Draft and Exhibits**. After the comments on the initial drafts are received, I make changes based on the owner’s decisions, and prepare a second draft for review. Concurrently, I work with the engineer and, if applicable, the architect, to begin the preparation of the Declaration plats and plans and the legal descriptions. It is very important to ensure that the exhibits meet the specific requirements of the Condominium Act, and that they also reflect the owner’s intentions.

4. **Incorporation of Association.** The Condominium Act does not require the Association to be incorporated; however, many of my clients, and their management companies, prefer to incorporate. If the Association is being incorporated, I handle the preparation and filing of the Articles of Incorporation and Docketing Statement with the Pennsylvania Department of State, the required advertisement of Notice of Incorporation, and the preparation of the corporate book.

5. **Further Document and Exhibit Drafts.** It is not uncommon for there to be a fair amount of “back and forth” between me and the owner and others as the documents are “fine-tuned” to meet the owner’s needs and intentions. Similarly, I typically review and comment on several drafts of the Condominium plats and plans and legal descriptions before they are in final form. If the project is new construction for which land development approvals have been obtained, the municipality may require that the owner submit the Declaration and Bylaws to the municipality for review; once all owner comments have been included in the documents, I submit the documents for municipal review.

6. **Final Versions of Documents.** After the documents have been through the review process and the owner is satisfied, I prepare the final versions of the documents for the owner’s use. In the case of the Declaration of Condominium, I prepare the execution version of the Declaration, including the attachment of the exhibits, and transmit it to the owner to be signed, along with the final versions of the Bylaws and Public Offering Statement, if required.

7. **Declaration Recording.** The final step in the process is the recording of the Declaration of Condominium with the Recorder of Deeds. This must be done before the first settlement on a unit.

8. **Sales of Units.** The Condominium Act contains specific requirements governing the sale of condominium units. Among these are disclosure requirements (even if a Public Offering Statement is not required), and the recording of a Certificate of Completion for the unit. Some municipalities have further requirements for certifications and disclosures.

I would be happy to discuss helping you with your condominium project.