



A Major Shift in Kentucky Condominium Law

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In 1962, Kentucky enacted laws regarding condominium regimes. Since that time, the law has remained largely unchanged for nearly 50 years. Only two court cases have been decided under the current law. Little guidance exists regarding Kentucky's current condominium laws. This outdated system and lack of guidance led to inconsistent condominium governance throughout the state. In an effort to make the process for organizing and governing condominium complexes more consistent and effective, the Kentucky General Assembly passed the new Kentucky Condominium Act ("KCA"). The KCA extensively replaces the existing condominium laws. Effective January 1, 2011, the KCA is modeled after the Uniform Condominium Act ("UCA").

There are numerous benefits to the new law in Kentucky. The UCA was created over 20 years ago, and there exists extensive guidance as to its application. This guidance is found not only in notes compiled by the UCA drafters but also in the case law of the various states that have adopted variations of the UCA. Specifically, in Kentucky, the KCA provides more direction for associations and developers, particularly as to how they manage the transition to association control. Further, the KCA provides guidance as to executive board and association powers. Additionally, the KCA requires detailed disclosures for the benefit of condominium buyers. Accordingly, the KCA drafters hope to achieve common financial reports for all associations, standard financial record keeping, and less costly financial reports for associations.

The KCA is essentially divided into three parts. The first sections of the KCA relate to the creation of the condominium regime. The second part involves the powers and duties of the association and executive board. Finally, the third part deals with the rights of buyers.

For condominiums created after January 1, the entire Act applies. Significant changes in the law include a broader definition of a "condominium" which would encompass structures such as boat docks; the addition of limited common elements; and requirements involving the developer's development rights in the condominium. The laws will impact documents drafted for the organization of a condominium regime. Further, the law provides new requirements for plats. Also, there are significant changes that will impact how new condominiums are governed. The KCA even impacts termination of condominium regimes. For example, new condominiums can be terminated with an 80 percent vote. This is a fairly drastic difference from the current 100 percent vote required for existing condominium regimes.

Though the majority of the KCA will impact condominium regimes created after January 1, there are numerous provisions that apply retroactively to existing condominium regimes. Some important areas that will impact new as well as existing current condominiums involve the transition of control from developer to the association, association and board powers, clear rules related to association liens, and association financial record keeping. Further, any amendments

made to the condominium declaration, bylaws, plats or plans after January 1, 2011 must conform to the new laws.

One significant change in the new law relates to a seller's certificate, which will be required for all condominium units sold after January 1. The certificate is required for all sales, whether it is an original sale by the developer or from a subsequent owner. The purpose of the certificate is to protect condominium buyers in Kentucky. Not only will these provisions affect condominium seller and buyers but the association as well. The KCA requires the association to furnish the seller with much of the information required to be included in the certificate.

The KCA also provides associations a broad range of collection powers to enforce late assessments. These powers apply to all condominium regimes whether established before or after January 1. Most importantly, the KCA provides an "emergency provision" allowing an emergency assessment by an association with a simple majority vote at a special meeting. The statute limits the definition of such an emergency to: (1) compliance with a judicial order; or (2) the repair of an emergency structural or mechanical condition which makes, or is in imminent danger of making, the unit unsafe, uninhabitable, or uninsurable. Also, the association must obtain a certificate from a professional engineer or licensed architect stating the emergency structural or mechanical condition.

Developers should be aware that the new law includes a mandatory timeline for the transition of control from the developer to the association. Further, it sets forth a specific schedule for electing non-developer board members. Again, these provisions will apply to both existing and new condominiums.

Existing condominiums may also opt in to be governed by the new KCA in its entirety. This requires unanimous consent. One benefit to such an option could be better clarity for all the parties involved as to rights and obligations. For example, major decisions, such as the amount of the reserve fund, are explicitly left up to the Association. Further, the KCA provides clearer securitized interests in the Association, which could assist in securing lending, if necessary.