

2008 Amendments to the Condominium Act

On July 4, 2008, for the first time since 1999, the Condominium Act of 1979 was amended (the “2008 Condominium Act Amendments”). The purpose of these amendments was to provide additional protection to buyers of condominium units and to make the existing protections more effective.

The 2008 Condominium Act Amendments provide the following additional protections for buyers:

1. The advertisements and brochures used by a condominium developer to sell condominium units are deemed to be part of the contract of sale of the condominium units, and any inconsistencies between those marketing materials and the contract of sale will be interpreted in favor of the buyer or prospective buyer. Those marketing materials are required to be consistent with the application for registration of the condominium filed by the developer with the Land Department, and the developer is required to maintain copies of those marketing materials until all the units have been sold. The condominium is also required to maintain a copy of those marketing materials.
2. The contract of sale for the sale of a condominium unit by the developer (but not for a resale) is required to be in the form established by the Ministry of the Interior. Any provision in a contract of sale that is inconsistent with the established form and not in favor of the prospective buyer will not be enforceable.
3. Businesses in the condominium building are allowed to operate only in designated areas, and a separate entrance is required so that business activities do not disturb the residents.
4. The developer is responsible for paying the portion of the condominium's taxes, duties and maintenance and management expenses that are allocable to unsold condominium units.

The 2008 Condominium Act Amendments also provide that foreign persons or entities are permitted to own no more than 49% of the total area of the condominium units in the condominium building at the time the developer applied to register the condominium with the Land Department.

In addition, the 2008 Condominium Act Amendments also provide provisions relating to the governance and management of condominiums, including the following:

1. Minimum qualifications and duties of the manager are provided.
2. Powers and duties of the condominium building juristic person committee and minimum qualifications of the members of that committee are provided.
3. Rules relating to general meetings of joint owners are also provided. The manager, the committee or joint owners holding not less than 20% of the votes of the joint owners may call a general meeting. Joint owners with the right to vote not less than 25% of the total number of votes constitute a quorum, but if a quorum does not attend a meeting, a new meeting may be called within fifteen days where a quorum will not be required to transact business.
4. Special voting requirements are also provided. The following resolutions require the vote of not less than 50% of the total number of votes:
 - a. the purchase or sale of immovable property,
 - b. the grant of permission to a joint owner to make any modifications that affect the common property or exterior of the condominium,
 - c. any amendment of regulations regarding the use or management of common property,
 - d. any amendment of the ratio of joint expenses,
 - e. construction that changes the common property or
 - f. a seeking of benefits in the common property.

If a quorum does not attend a meeting to consider any of these matters, a new meeting may be called within fifteen days where the minimum voting requirement will be reduced to 33 1/3%. In addition, certain resolutions require the vote of not less than 25% of the total number of votes, such as the appointment or removal of the manager and the designation of businesses that the manager has the power to assign to others.

Finally, 2008 Condominium Law Amendments increased the penalties for violations of the Condominium Law and also provides penalties for joint owners who fail to make timely payments of their share of taxes, duties and maintenance and management expenses.

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