



# BUYING, OWNING AND SELLING A **COND** IN THE 1980s **MINIUM**

Robert Kratovil • Ruth Kratovil

A REWARD BOOK



Robert Kratovil

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# **BUYING, OWNING AND SELLING A CONDOMINIUM IN THE 1980s**

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*For*

*Tony*

*and*

*Melanie*

## Preface

At the end of World War II, America embarked upon a home building boom unparalleled in human history. Purchasers of the new homes were returning veterans who planned marriage and children.

Today home building is in low gear. The word on everyone's lips is "condominium." The market is changing also. Singles and childless working couples comprise an increasingly important segment of the market.

The newly-built condo and the newly-converted condo offer amenities not available in the used-home market, one of which is developer-arranged financing, often at below-market rates. Developers have learned the sales value of the "buy-down" of mortgage interest by paying cash bonuses to mortgage lenders, resulting in a lower interest payment by buyers for as long as three years.

As the condo has demonstrated its ability to appreciate in value and hold its own with homes in this regard, it has attracted countless buyers who seek a hedge against inflation. Shelter from income taxation is as available for the condo as it is for the home. And as the supply of rental apartments continues to dwindle, investors have sought out individual condo units to buy and lease to tenants, finding the built-in management features of the condo most attractive.

Nor is the energy-efficient aspect of the condo lost on homeseekers.

Apartment dwellers have greeted with enthusiasm a haven where landlords cannot raise their rent each year or cut costs by constantly cutting down on maintenance and services.

Even so, the condo is far from the ideal of problem-free housing. Barring of children and pets often provokes litigation. Those accustomed to rental living need to develop a new attitude of participation in management decisions. Ownership by the unit owner of a share of the lobbies, elevators, halls and other common elements has posed complex, new legal problems, including legal liability for accidents. Insuring against fire in an apartment unit that consists of "air space" has been a nightmare to insurance companies and unit owners alike. The unit owner who fails to pay his monthly assessment creates new legal problems for his neighbors. Unscrupulous developers have "sweetheart" management contracts unfair to unit owners. In short, a host of thorny new problems has surfaced.

To protect themselves, prospective condo purchasers must do some homework. And with prices at all-time highs and going up, up, up, the need for reliable information is great. This is what our book seeks to provide.

A companion volume, *Buying, Owning and Selling a Home in the 1980s*, was published by Prentice-Hall in 1981. Some of the material in this earlier book is quite relevant to condo ownership, for example, the extensive material on protecting your property where fire occurs, and the income tax aspects of ownership. Those who enjoy reading this book will profit by reading its companion volume.

**Buying, Owning and Selling  
a Condominium  
in the  
1980s**

# Contents

Preface XIII

**1** Your Apartment  
in the Sky 1

**2** The Future  
of Condos 5

**3** Advantages  
of Condos 10



<b>4</b>	Documents of Condos	12
<b>5</b>	Board of Directors, Officers, Committees and Homeowners Association (HOA)	15
<b>6</b>	Management	21
<b>7</b>	Assessments – the Annual Budget	23
<b>8</b>	Conversion to Condo	28
<b>9</b>	The Developer's Viewpoint	33

<b>10</b>	Buy or Rent – Affordability	37
<b>11</b>	Inspecting before Purchasing	41
<b>12</b>	Brokers	48
<b>13</b>	Mechanics of Buying and Selling	51
<b>14</b>	Financing Problems	54
<b>15</b>	Creative Financing – Financing without Borrowing from Lending Institutions	66

**16** Lawyers 76

**17** Appliances 79

**18** Living  
in a Condo 81

**19** Family  
Problems 85

**20** Building  
and Housing Codes –  
Fire Hazards 89

**21** Insurance  
of the Condo 91

**22** Taxes  
and  
Mechanic's Liens 99

<b>23</b>	Tenant and Renting Problems	102
<b>24</b>	The Building to Be Built	105
<b>25</b>	Low-Rise Buildings – Planned Unit Developments – Town Houses	109
<b>26</b>	Co-ops as an Alternative	114
<b>27</b>	Co-op Leases	119
<b>28</b>	The New Uniform Condo Law – Time Sharing Condos	120

## 29

Commercial  
Condos 125

## 30

Federal  
Law 127

## APPENDICES

### Appendix I

FNMA Conventional  
Home Mortgage Rules 131

### Appendix II

The Condo  
Declaration 155

### Appendix III

The Condo  
Bylaws 187



# 1 Your Apartment in the Sky

**QUESTION:** What exactly is a condo?

**ANSWER:** Since we are going to talk mainly about condos in apartment buildings, let's take a look at an apartment building. It consists of (1) apartments, and (2) halls, a lobby, a roof, building walls, grounds surrounding the building, a common parking lot or facility, walks, etc. As is evident, the items listed under (2) are shared, in one way or another, by all occupants. The apartment is the private domain of one family. It is not shared.

When the switch was made from tenant *occupancy* to condo *ownership* it was thought best to have the private apartment (the "unit" in condo language) owned solely by its purchaser, but to have the ownership of the other items listed under (2) shared by the unit owners.

**EXAMPLE:** In an apartment building having 100 identical apartments or units, when I buy one apartment (unit) I become the sole owner of that apartment. But I also acquire the ownership of 1% (1/100th) of the roof, building walls, lobby, halls, etc.

In speaking of the apartment, one has in mind basically the *space* bounded by the apartment floor, ceiling, and walls. It is, basically, the space a tenant would rent from a landlord in a rental apartment.

The shared elements are called *common elements* in condo terminology.

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QUESTION: If I buy a condo apartment, I'm buying something up in the sky, am I not?

ANSWER: Quite true. But if you went out today and rented an apartment in an elevator building, you would be renting something up in the sky also, wouldn't you? And yet when we talk about *owning* instead of *renting*, people become wary. There's no need at all for alarm. Courts generally require precise descriptions where land is bought and sold, but it's really a simple matter for a surveyor to describe an apartment in an elevator building.

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QUESTION: I suppose the surveyor measures from the ground up in order to locate the floor and ceiling of a given apartment. Right?

ANSWER: Wrong. You are right in assuming that the horizontal boundaries of an apartment will be its floor and ceiling. But you don't measure from the ground. Stop and think. What is the first thing a construction crew does when it arrives at a new building site? It levels the ground. Ground level is something that is constantly changing. Some more permanent and stable reference point is needed.

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QUESTION: What kind of reference point do you have in mind?

ANSWER: Surveyors call it a *datum*. Take the City of Chicago as an example. By ordinance, Chicago City Datum is defined as that point on the surface of the earth where the waters of Lake Michigan have their surface in calm weather, where there is no wave action. Of course, this is a highly artificial sort of point. But scattered at hundreds of places throughout the city are markers on the city sidewalk. Each marker tells how many feet that particular marker stands above Chicago City Datum. Any surveyor can locate the datum marker nearest the building to be erected. As the building goes up according to blueprints he prepares, the proper distances above the city datum are marked on the structure, and each apartment is located with its floors and ceilings at the various datum points thus marked off.

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QUESTION: But how are the walls of the apartment measured?

ANSWER: The surveyor begins by making a survey of the lot or parcel of land on which the building will stand. This, of course, is strictly routine. Then he depicts on a blueprint the distance of each apartment wall's inner surface from the outer boundaries of the lot. The surveyor's instruments enable him to project these lines upward indefinitely. Thus you have a series of planes, some running horizontally and marking the floors and ceilings. The other planes run vertically and mark off the walls of the apartment.

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QUESTION: But once the building is built it doesn't stay put. Doesn't it settle?

ANSWER: All buildings settle. As a result, the new apartment you buy and occupy in 1982 will settle perhaps a small fraction of an inch in 1983. The result is that you are occupying a small fraction of an inch of space that you don't own. But the condominium declaration takes care of that. It gives you a right called an *easement* to occupy that fraction of space.

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QUESTION: Is the swaying of a tall building also an invasion of space I do not own?

ANSWER: Yes. All tall buildings sway. If you own an apartment in the John Hancock Building in Chicago, you can watch the sway. Fill your wash bowl in anticipation of washing. Now watch the water. It will slosh back and forth ever so slightly because of the sway. But the condo declaration gives you an easement right to sway. So sway away and enjoy it!

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QUESTION: How do I know that the condo I buy is legally established?

ANSWER: Your lawyer will tell you. Beyond that, he will urge you to buy title insurance which insures the legality of the development. This is available country-wide.

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QUESTION: I'm thinking of buying a condo unit. The developer is experienced and has another development in the vicinity. What bothers me is that he added two buildings after the first one was built. Their outdoor pool is overcrowded. Could that happen to me?

ANSWER: Yes. Developers like to build *add-on* condominiums. They develop one area, but may have options to buy and build on adjoining land if sales are good in the initial phase. Then pools and other recreational areas will be shared. This must be provided for in the condo declaration. Better let your lawyer check it.

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QUESTION: I am thinking of buying an apartment in a condo unit that has stores on the first floor. Is this a legal condo?

ANSWER: Yes. There is nothing illegal about commercial condos. Indeed, professional buildings for doctors, for example, have existed for some time. Both commercial and industrial condos are part of the wave of the future.

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QUESTION: I've heard that a good many condo apartments are owned by absentee landlords. Anything to this?

ANSWER: Yes. About 1 out of 5 condo apartments is owned by an investor who rents it to a tenant. Since tenants usually have the first right to buy the apartment, these figures show that at least 20% of the tenants in a converted condo either will not or cannot buy the unit.

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*SOURCE:* U.S. Department of Housing.

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QUESTION: I'm surprised at these figures. If 1 out of 5 condo apartments is tenant occupied, does that have special significance for the future of the condo?

ANSWER: Possibly. For the foreseeable future, mortgage money will be in short supply. Certainly for all of the 1980s. This means that mortgage lenders will try to sell their mortgages to FHLMC (Federal Home Loan Mortgage Corporation) and FNMA (Federal National Mortgage Association), the huge institutions that buy home and condo mortgage loans. But both of them dislike high tenant occupancy in condo apartments. A tenant occupancy of 20% is about the limit they will tolerate. The result? FHLMC and FNMA will keep the damper on condo apartment conversion and construction where a high proportion of tenant occupancy is expected. Condo documents will reflect their views.

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QUESTION: Can I own my condo apartment in joint tenancy with my wife?

ANSWER: Yes. In joint tenancy, in tenancy in common, in tenancy by the entireties, as community property—in any way your state law permits a home to be owned.

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