



Q&A: 52 YEARS OF CONDOMINIUM OWNERSHIP IN THE SWISS CIVIL CODE | 52 QUESTIONS & ANSWERS

Dr. Lucien W. Valloni | Romina Brogini

It has been 52 years since condominium ownership was established by law in Switzerland. As an alternative to buying one's own house, it has since then become an institution in Switzerland. Nevertheless, there are still many questions concerning condominium ownership that often give rise to disputes between condominium owners.

In contrast to the owner of a house, a condominium owner is not allowed to do anything that he or she wishes, but rather has to take into account the other condominium owners - at least if the exterior appearance of the building is affected.

This Q&A is designed to provide a good overview of condominium ownership and the rights and obligations of individual condominium owners and to provide tips on buying condominium property.

We have covered the following points for you in the Q&A:

- A. General information on condominiums
- B. Rights and obligations of condominium owners
- C. The organisation of condominium owners
- D. Costs of the condominium owners' association
- E. The renovation fund
- F. Liability and assurance
- G. Dissolution of the condominium owners' association
- H. Sale of condominiums

I. General

1. What is condominium ownership?

Condominium ownership refers to the co-ownership of a small portion of a property that gives the condominium owner the **exclusive right** to certain parts of a building (usually an apartment).

2. What is the exclusive right?

The exclusive right enables the owner of the condominium to lock, use and enhance his or her home. It is also possible to combine several flats or rooms into one condominium unit.

3. Which parts of the building does the exclusive right consist of?

The exclusive right of the condominium consists of all lockable parts of the building, which have an independent access and were assigned to a condominium owner for exclusive use. In addition to the condominium itself, this also includes the inner area of the balcony, ancillary rooms such as cellar or attic compartments and lockable garages. Finally, certain common parts of buildings, such as windows or sun blinds, can be declared exclusive rights by a corresponding entry in the regulations.

As a **rule of thumb**, if a certain part of the building is not expressly declared as an exclusive right, it is deemed to be common and the entire condominium owners' association must pay for its replacement.

4. Which parts of the building are considered common property?

Those parts of a building which cannot be exempted as part of an exclusive right form part of the condominium owners' association joint ownership.

This includes the **ground** on which the building was built, car parking space, a children's playground, as well as **fundamental parts of the building**, such as the foundation, the load-bearing walls and the roof - meaning all components that are responsible for the structure and the strength of the building (i.e. also the window facades, provided that they replace the masonry and are decisive for the construction of the building). Finally, all communal facilities and equipment, such as the staircase, the main entry doors, the laundry room and the elevator are considered common property.

5. What is an exclusive right of use?

Through an exclusive right of use, condominium owners can be granted the right to use certain jointly used parts of the property exclusively in the context of the intended purpose.

6. Where is the scope of the exclusive right of use defined?

The respective configuration options of a condominium owner with an exclusive right of use are defined through the condominium ownership regulations. The basic rule is that the condominium owners' association can always act against a particular use or design if the external appearance of the property is affected.

7. Which uses of the exclusive right of use require the consent of the condominium owner's association?

Despite the granting of an exclusive right of use, the following uses, for example, may not be carried out without the clear consent of the condominium owners' association:

- Setting up an animal enclosure, a garden shed or a trampoline,
- Installing playground equipment or a fixed barbecue,
- Changing the seating capacity,
- Creation of flower or vegetable beds,
- Planting or eliminating shrubs or trees,
- Replacing the lawn with another surface,
- Creation of a biotope,
- Installing a satellite dish, or
- Fencing in the garden seating area.

8. What types of condominium ownership exist?

The purposes of condominium ownership are basically unlimited. In addition to a residential building, condominium ownership can also include commercial buildings, a shopping centre, an office building, a hotel or an industrial building. Condominium ownership can also extend to one or more buildings.

9. What is a share in the property?

A share in the property expresses the **individual condominium owner's share** of the entire building in fractions.

The share in the property is decisive for the calculation of **the share of costs of the individual condominium owners** (if no other cost-sharing rule has been agreed upon) and for determining the **voting power** of the individual members of the condominium owners' association.

Changes in the shares in the property require the consent of all parties directly concerned and the approval of the condominium owners' association. In addition, they are to be publicly notarised and entered into the land register.

A. Rights and obligations of condominium owners

10. What rights and obligations do condominium owners have?

The rights and obligations of condominium owners are determined by law (i.e. the condominium ownership rules in Art. 712 et seq. ZGB, as well as the provisions regarding co-ownership in Art. 646 et seq. ZGB and the law on associations in Art. 64 et seq. ZGB), the deed of constitution, the condominium ownership regulations, the house rules and the resolutions passed by the condominium owners.

Every condominium owner has an irrevocable entitlement to his or her exclusive right, which in particular gives rise to the **right** of free use of his condominium unit (within the limits of the law and community order) and the right to lease his condominium unit for a limited or indefinite duration.

In contrast, each condominium owner has the **duty** resulting from condominium ownership to refrain from uses that cause excessive impacts, such as noise, smell, light pollution or non-material impairments. In addition, there is an obligation to maintain the premises and facilities used in the exclusive right at one's own expense, to preserve the good appearance of the building and

to maintain it in perfect structural condition, as well as an obligation to share the costs (i.e. to contribute to community costs and, where appropriate, to the renovation fund).

11. Is it possible for a condominium owner to modify his or her exclusive rights section in any way that is desired?

Provided that the other condominium owners are not hindered in exercising their rights and that the common components, installations and facilities are not damaged in any way and their function and external appearance are not impaired, an exclusive right may be modified without the consent of the condominium owners' association.

This is the case, for example, if non-load-bearing walls are removed or rooms are divided, or if other floor, wall or ceiling coverings are installed or a new kitchen is installed.

12. Can a single condominium owner install a balcony glazing on his balcony without the consent of the condominium owners' association?

No. Attaching a balcony glazing changes the external appearance of the building, which requires the approval of the condominium owners' association.

B. The organisation of the condominium owners

13. How are condominium owners organised amongst themselves?

The condominium owners form a community by law, the so-called **condominium owners' association**. The supreme body of the condominium owners' association is the **condominium owners' assembly**, which as a rule elects an **administrator** to manage its day-to-day business.

In the case of larger condominium owners' associations, it is customary to order, in addition to the administrator, **deputies** or a **committee**, which serve as the link between the condominium owners and the administrator.

14. What powers does the condominium owners' assembly have?

The condominium owners' assembly has the following powers:

- Decision on all administrative matters that have not been entrusted to the administrator,
- Appointment, supervision and dismissal of organs (i.e. administrator, committee, deputies, etc.),
- Approval of the annual budget, annual financial statements and distribution of costs among condominium owners,
- Decision to create a renovation fund for maintenance activities and renovation work,
- Change of regulations,
- Granting of process authority to the administrator, and
- Conclusion of insurance agreements.

15. When is the condominium owners' assembly able to make decisions, (i.e. quorate)?

The condominium owners' assembly is quorate when half of all condominium owners who are together entitled to half of the shares, with a minimum of at least two condominium owners, are present or represented.

In the event of insufficient participation, a second assembly shall be held at the earliest after the passage of 10 days, which constitutes a quorum if one third of all condominium owners, but at least two condominium owners, are present or represented.

16. What decisions of the condominium owners' assembly require a simple majority?

Unless otherwise agreed, a simple majority of present voting condominium owners is sufficient for decisions of the condominium owners' assembly, such as a decision on necessary measures (see question 25 below).

17. What decisions of the condominium owners' assembly require a qualified majority?

In order to prevent a minority of condominium owners from deciding on important matters, the law stipulates that a qualified majority is required for certain resolutions. Such decisions only come about when the majority of all condominium owners agree, which at the same time holds the majority of all condominium shares.

This applies, for example, to decisions on important administrative acts, useful structural measures (see question 25 below) or the preparation and amendment of the condominium owner's regulations, unless the consent of all is required.

However, the condominium owners have the right to subject further decisions to the qualified majority in the regulations.

18. What decisions of the condominium owners' assembly require unanimity?

The agreement of all condominium owners is required for the following decisions:

- Amendments to the regulations, insofar as they concern requirements that deviate from the statutory regulations,
- Changes in the spatial distribution (classification as a community part or as an exclusive right),
- Establishment and termination of pre-emption and appeal rights,
- Implementation of luxurious structural measures (see question 26 below),
- Termination of condominium ownership.

The condominium owners have the right to make further decisions subject to unanimity requirements in the regulations. However, this is often inappropriate, as it significantly restricts the association's ability to act.

19. What can be done against decisions of the condominium owners' assembly that violate the law or the regulations?

Decisions that violate the law or regulations are typically not automatically null and void, but can be challenged.

Void, i.e. ineffective, decisions only exist if they concern formally faulty decisions (for example, decisions of an assembly without quorum or decisions in disregard of the quorum requirements) or materially erroneous decisions (for example, a decision prohibiting the sale of a portion of a condominium, the definitive withdrawal of the voting rights, exclusion of an action for annulment, etc.).

20. Can the condominium owners' assembly appoint an administrator?

Yes. As a rule, the condominium owners' assembly appoints an administrator to carry out its day-to-day business.

The appointment of the administrator takes place in a two-stage procedure: (1) election by the condominium owners' assembly and acceptance by the administrator and (2) conclusion of an administration agreement which regulates the individual duties of the administrator (as well as further provisions, such as remuneration of the administrator etc.).

21. What are the duties of the administrator of the condominium owners' association?

The administrator carries out all actions of the collective administration in accordance with the provisions of the law and the regulations as well as the decisions of the condominium owners' association and takes the necessary measures to prevent or remedy damage.

The administrator is responsible for the execution of the legal and transactional orders, such as the calling of the condominium owners' assembly or the execution of the decisions of the condominium owners' assembly.

The administrator is also responsible for the financial management and external representation of the condominium owners' association in the affairs of the collective administration.

22. How can an administrator be dismissed?

The administrator can be dismissed at any time by decision of the condominium owners' assembly. If the assembly rejects the dismissal in disregarding important reasons, each condominium owner may independently demand the judicial dismissal of the administrator within a period of one month.

An important reason for the judicial dismissal of the administrator is when the trust of the condominium owners in the administrator has been destroyed due to his or her behaviour.

23. Can independent decisions of the administrator be challenged?

The condominium owners concerned may lodge an appeal against independent decisions of the administrator, such as the order of urgent measures to prevent or remedy damage, within 14 days to the condominium owners' assembly, which then makes a final decision.

C. Costs of the condominium owners' association

24. What contributions do condominium owners have to pay to the condominium owners' association?

As a rule, condominium owners pay contributions to the community costs in advance, depending on their shares in the property, in accordance with the budget approved by the condominium owners' assembly.

These contributions are used in particular to cover the following costs:

- Ongoing maintenance and cleaning of the communal components
- Operation costs of the facilities
- Management and caretaker fees
- Taxes and contributions to be paid by the community
- Insurance premiums for building insurance, liability insurance, etc.

For larger maintenance or renovation works, but not for day-to-day maintenance, the funds of the renovation fund (if established) are usually used (see below E. Questions 32 et seq.).

25. What are necessary and useful measures or investments?

One speaks of a necessary measure if it is essential for preserving the value of the property. One example of this would be the renovation of a roof or the maintenance of elevator cables.

In contrast, useful measures are not absolutely necessary, but they increase the value or usability of something, for example by installing better facade insulation or a new washing machine.

26. What are luxurious measures or investments?

Finally, luxurious measures are measures that primarily serve beautification or convenience, or only a single or a few owners, such as the installation of a swimming pool or the construction of a new garden.

27. How are the costs of the condominium owners' association distributed among the condominium owners?

Costs and charges resulting from joint ownership are borne jointly by all condominium owners in accordance with their shares in the property. The exclusive use costs are borne by each condominium owner alone.

Community costs can be allocated to the individual condominium owners within the framework of the statutory distribution key (that is, in accordance with the shares in the property) or - as a result of a nonmandatory law - criteria used by the condominium owners themselves, such as the "polluter pays" principle, according to residential areas or space-cubage.

28. Who decides upon what investments to make?

Necessary, useful and luxurious measures are generally decided upon by the condominium owners' assembly (with the applicable quorums). If urgent measures have to be taken, the administrator will take them directly. If the administrator fails to comply with this obligation, the condominium owners themselves can order measures.

29. What can be done if certain condominium owners are unable to raise the needed financial resources in the event of a necessary renovation?

The costs of refurbishing common parts of buildings represent community costs which can in principle be recovered by way of forced sale. In other words, defaulting condominium owners can be held liable for outstanding maintenance contributions.

In addition, the other condominium owners can take the following safeguarding measures:

(1) Establishment of a legal lien on the share of the defaulting condominium owner, or (2) exercise of the legal right of retention of the movable property located in the premises of the condominium owner and belonging to its establishment or use.

Both of these hedging instruments can in turn be utilised in debt recovery proceedings.

If nothing can be obtained from the defaulting condominium owners, the remaining condominium owners must pay for the uncollectable contributions, as the condominium owners' association is responsible for the fulfilment of the community's obligations as a whole.

30. Can an individual condominium owner commission craftsmen himself/herself?

Yes, in an emergency situation, when urgent administrative actions (e. g. broken windows, a leaking roof, a defective heating system in winter, etc.) are required, and if the administrator remains inactive or is absent for a longer period of time.

31. Can ancillary costs of condominium ownership be passed on to the tenant?

It depends. Usage-related costs such as general electricity, heating and hot water, maintenance of the garden, and elevator service can be passed on to the tenant as ancillary costs. Property-related costs, such as taxes, maintenance or repair costs as well as expenses in connection with the renovation fund, cannot, however, be passed on to the tenant as these are not considered ancillary costs.

D. The renovation fund**32. What is the purpose of the renovation fund?**

The renovation fund is a financial precautionary measure in case renovation works of the building or parts of the common property go beyond the coverage of current administrative and maintenance costs.

33. Is a renovation fund required by law?

No, but it is very recommendable, because renovation or renewal works can unexpectedly become necessary.

34. How can a renovation fund be set up?

Each condominium owner may make a corresponding application for the establishment of a renovation fund at a condominium owner's assembly. Insofar as the establishment of a renovation fund requires an adjustment of the regulations, the necessary quorums must be complied with (i.e. qualified majority or, if necessary, unanimity).

35. How much money should be raised in the renovation fund?

According to the Swiss Association of Condominium Owners, the renovation fund should amount to at least 5 percent of the building insurance value (total value of the building without land) 20 years after the building was constructed.

36. Can a condominium owner refuse to pay into the renovation fund?

No. As a rule, the establishment of and the obligation to accumulate the renovation fund are based on a decision of the condominium owners' assembly. The losing minority must abide by the majority decision and therefore cannot refuse to pay.

If a condominium owner refuses to pay his contribution, he may be pursued by the association or the association may have a legal lien over real property registered at the expense of this co-owner or may assert its legal right of retention.

37. Can a new purchaser of a condominium unit refuse to pay into the renovation fund?

No. With the purchase of the condominium ownership unit (i.e. the apartment), the new buyer automatically becomes a member of the condominium owners' association. As a result, not only property rights are acquired but also obligations towards the condominium owners' association are assumed. If the regulations provide for the supply of the renovation fund or if the condominium owners' association has adopted a corresponding resolution in the past, the new owner must participate in the renovation fund within the framework of his or her share of the property.

38. Can contributions to the renovation fund be claimed retroactively?

Insofar as the regulations provide for a renovation fund and the amount of contributions, the contributions of each condominium owner can be claimed back up to a maximum of five years.

39. Will contributions paid into the renovation fund be returned after the sale of the condominium unit?

No. By law, the renovation fund is part of the community assets, which is why the contributions made therein are inseparably linked to condominium ownership and cannot be paid out.

If a condominium unit is sold, the share of the assets in the renovation fund, together with the condominium ownership, is automatically transferred to the buyer.

For this reason, the amount of the renovation fund or the contributions paid in over the years to the renovation fund should be reflected in the purchase price accordingly.

E. Liability and assurance

40. Are individual condominium owners liable to third parties for the obligations of the condominium owners' association?

The condominium owners' association as a whole is liable for the obligations entered into under the communal administration. The communal assets form the liability substrate. There is no direct liability of the individual condominium owners.

41. Who is liable for loss of contributions of the condominium owners' association?

The loss of the condominium owners' association's contributions is a community loss for which all other condominium owners are jointly liable according to their shares in the property. Condominium owners may also be liable to pay a contribution margin.

42. Is there by law a joint and several liability of the individual condominium owners?

No, the individual condominium owners are in principle not jointly and severally liable for the obligations entered into by the condominium owners' association, unless the joint liability has been expressly agreed upon.

43. Can the administrator of the condominium owners' association be held liable if, in deviation from a decision of the condominium owner's assembly, a more expensive renovation option is implemented?

In external relationships, only the condominium owners' association or the assets of the same are liable for legal acts of the administrator.

If an administrator does not adhere to his duties assigned in good faith within the framework of the administration of the condominium owners' association, i.e. if he or she fails to observe his or her instructions and implements a more expensive renovation option, this constitutes an inadequate performance of his or her administration mandate. If the condominium owners' association is liable for any damage resulting from this, the administrator may be held responsible for its compensation.

44. Can a condominium owner encumber his condominium ownership unit with mortgages or easements?

In principle, this is possible provided that such an encumbrance does not impair the legal position of the other condominium owners in the common property and that the share of condominium ownership is not devalued as a liability substrate for the statutory right of lien of the other condominium owners. However, the establishment of a mortgage upon acquisition of a condominium ownership unit should be allowed and possible without further ado.

In this sense, usufructuaries, residential rights and transmission rights can be established.

However, the establishment of an independent and permanent building right would be impermissible.

F. Dissolution of the condominium owners' association

45. How can condominium ownership be dissolved?

Condominium ownership may be revoked by a declaration of consent of all condominium owners (i.e. through a cancellation agreement and subsequent entry in the land register).

Each condominium owner has a claim to cancellation of the condominium ownership if (1) more than half of the building has been destroyed and reconstruction cannot be carried out without a burden that is difficult for him or her to bear, or (2) the building has been divided into condominiums for more than 50 years and cannot be used as intended due to the poor state of the building.

In addition, condominium ownership ends with the destruction of the property. A total loss of value is required, but this will be very rare in practice.

46. Can individual condominium owners defend themselves against the dissolution of the condominium owners' association?

Yes, those condominium owners who wish to continue the association can prevent the cancellation of the condominium ownership association by paying financial compensation to the other condominium owners and taking over their condominium ownership units.

47. Can individual condominium owners be excluded from the association?

Yes, if a condominium owner violates his obligations towards all or individual members of the condominium owners' association to such an extent that they can no longer reasonably be expected to continue the association with this condominium owner, the exclusion of this condominium owner can be brought to court.

G. Sale of condominiums

48. Can condominiums be sold?

In principle, every condominium owner is free to sell and encumber his or her share of the condominium ownership, as in the case with ordinary property.

49. Which rooms cannot be sold or rented?

Rooms that are meant to serve all condominium owners cannot be sold or rented.

50. How can condominium units be transferred?

The transfer of condominium ownership shares, like all property transfers, requires public notarisation (incl. a corresponding land register entry).

51. Do condominium owners have a legal right of first refusal?

No. However, a contractual right of first refusal may be entered in the land register either in the deed of constitution or by unanimous written agreement of all condominium owners.

52. Which documents are to be checked before purchasing a condominium property unit?

In addition to the contract for the purchase of the condominium unit and the deed of constitution, it is recommended that the condominium owner regulations, the previous minutes of resolutions from condominium owners' assemblies and all documents relating to the operation, maintenance and renovation costs incurred be examined.

Special attention should be paid to the contributions of the selling condominium owner (current contributions as well as contributions to the restoration fund).

If these contributions have not always been paid in full, this should be taken into account when calculating the purchase price, as when ownership changes, the person who is entered in the land register at the time of settlement or invoicing is responsible for community costs (also for contributions arising from the time of the previous owner).

Since the condominium owners' association is entitled to the establishment of a statutory lien over real property for unpaid contributions of the last three (!) years to the co-ownership share of each condominium owner, the entry in the land register should also be checked.

Dr. Lucien W. Valloni



lvalloni@froriep.ch | +41 44 386 60 00

Romina Brogini



rbrogini@froriep.ch | +41 44 386 60 00

WHO IS FRORIEP?

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ZURICH

Bellerivestrasse 201
CH-8034 Zurich
Tel. +41 44 386 60 00
Fax +41 44 383 60 50
zurich@froriep.ch

GENEVA

4 Rue Charles-Bonnet
CH-1211 Geneva 12
Tel. +41 22 839 63 00
Fax +41 22 347 71 59
geneva@froriep.ch

ZUG

Grafenastrasse 5
CH-6302 Zug
Tel. +41 41 710 60 00
Fax +41 41 710 60 01
zug@froriep.ch

LONDON

17 Godliman Street
GB-London EC4V 5BD
Tel. +44 20 7236 6000
Fax +44 20 7248 0209
london@froriep.ch

MADRID

Antonio Maura 10
ES-28014 Madrid
Tel. +34 91 523 77 90
Fax +34 91 531 36 62
madrid@froriep.ch
