



Bob Aaron bob@aaron.ca

March 10, 2001

Condo or co-op?

Co-op units cheaper but with few safeguards

A client called me last week to say that her son was leaving the family nest and looking for a place of his own.

Since condominiums were beyond the family budget, their agent had been showing them co-op apartments.

The apartment my client's son was interested in was being offered at less than \$100,000. By comparison, the identical unit in a condominium building would be worth 40 to 50 per cent more. So why, my client wanted to know, were co-ops so much cheaper, and what were the advantages and disadvantages?

A co-operative apartment project is created and governed by its own incorporation documents, bylaws, rules and regulations, and the private contractual agreements among the corporation and its members or shareholders. By contrast, a condominium is a creature of statute and exists within the framework of the Condominium Act.

Co-ops enjoy few, if any, of the statutory protections and safeguards enjoyed by condo owners. Typically, the co-op building is owned by a corporation, and each purchaser receives a share certificate for one or more common shares in the corporation, and the right to vote at meetings of the shareholder owners.

In addition, each owner signs an occupancy agreement, which entitles him or her to long-term exclusive possession of a particular unit. This agreement also sets out owner obligations, including the requirement to pay a proportionate share of the building's mortgage, operating expenses (such as a condominium's common expenses) and part of the bulk property tax bill for the building.

In a co-op building, there is usually only one mortgage on the whole building (if there is a mortgage at all) and one tax bill. In a condominium, by contrast, each owner has an individual property tax bill, and the option to have an individual mortgage on the title to the unit.

Since responsibility for payment of taxes and mortgage in a co-op is joint, if one owner goes into default, the other owners must make up the shortfall or risk losing their own equity.

Many older co-ops have no mortgage, and purchasers must pay all cash, since most banks are reluctant to finance a share certificate. In the event an owner defaults, the lender does not enjoy the same rights as a mortgagee of a condominium unit. A bank cannot foreclose if there is no deed and mortgage.

In most co-op buildings, the governing contracts provide for the board of directors to approve the sale of the shares or assignment of the occupancy rights to new owners. This slows down the sale process, and significantly interferes with the freedom of a co-op owner to sell.

When buying and selling co-ops, it is important to remember that since they are not governed by the Condominium Act, the standard form Toronto Real Estate Board condominium agreement of purchase and sale has no relevance to the transaction. Too many times, I have seen agreements for co-ops written on condominium offer forms, with a brief notation that the unit is a co-op not a condo.

Not only is this inappropriate, but it is wrong in law. It is an invitation to disaster, and potential litigation. Since each co-op is different, they can only be properly bought and sold using a customized offer, tailored for each particular building and its governing agreements.

As a result of all these factors, reselling a co-op is more difficult than selling a condominium, and the market takes these factors into consideration with lower values across the board.

On the plus side, a well-managed co-operative building can run just as smoothly and efficiently as any condominium, but the cost to be an owner is usually significantly less. For the thousands of Torontonians who own co-ops, that is a major plus.

What might be helpful to the thousands of Ontarians who own co-ops is legislation to retroactively standardize the way they are governed, or to permit their speedy and cost-effective conversion to condominium status.

Bob Aaron is a leading Toronto real estate lawyer.

Please send your inquiries and questions to bob@aaron.ca or call 416-364-9366.

Bob Aaron is a Toronto real estate lawyer. www.aaron.ca ©Aaron & Aaron. All Rights Reserved.