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TURNING A DUPLEX INTO A "TWINDOMINIUM"

Some duplex owners have considered converting their properties into two unit condominiums, known as "twindominiums". There are several legal steps and quite a bit of paperwork that must be completed in order to accomplish the conversion.

In order to create a condominium, the owner, with the assistance of an attorney and a surveyor, must prepare and file documents with the Register of Deeds. They include:

- A condominium declaration (the legal document establishing the condominium form of ownership for the property)
- A condominium plat or survey of the property showing all improvements

In addition, every condominium must have an owner's association, to which all unit owners must belong. The association operates and manages the condominium and oversees the property. The association for a twindominium has only the unit owners as members.

There are additional disclosure documents that must be prepared and provided to every potential purchaser before closing. Wisconsin law has strict timelines about what information must be given and when, so an attorney should get involved early in the process to be sure everything is in order.

If one of the duplex units is rented, the owner must provide the tenant with notice of the conversion at least 120 days before they need to vacate the property. In addition, the tenant has a first right to purchase the unit for a period of 60 days from the date of the notice.

There are several other issues an owner should consider before converting a duplex. If both units are sold, then the former owner has no further involvement with the property. If the duplex owner decides to live in one of the units, the prospect of next-door renters becoming permanent property owning neighbors needs to be carefully examined.
It's very important that purchasers have a very clear understanding of how a condominium is operated. There is no longer a landlord to make any needed repairs upon demand. The owner who creates a condominium must completely understand the way it will be operated in order to explain the respective rights and obligations to the unit new owners.

The responsibilities for repairs are established in the condominium declaration. The declaration, the plat, and other disclosure materials are needed whether there are two units

or two hundred units. Under condominium law, maintenance and repair of a “unit,” which is the space owned and occupied exclusively by the owner, is that unit owner’s obligation. The rest of the property is either “common element” or “limited common element.” Each unit owner owns part of the common element, which is that portion of the property jointly owned and used by both unit owners.

Where a unit ends and the common element begins determines who is responsible for maintenance, repair, replacement, if needed, and insurance. Exterior walls, the roof, a shared garage, and a common driveway are all common elements.

Limited common elements are those parts of the condominium owned by everyone, but only used by the owner of a particular unit. Examples of limited common elements would be attached balconies, patios, decks, garage spaces, or the like. Since a limited common element is still a common element, all owners share in the maintenance, repair and replacement of those portions of the condominium, even though not everyone may use them. A successful duplex conversion will probably include limited common elements for each unit, if possible, so each owner can enjoy the same amenities.

Wisconsin law requires each condominium to have an owners’ association, organized to maintain repair and replace the common elements when they are damaged or worn out. The association also carries fire and casualty insurance for the entire property, other than the units, and a liability insurance policy to protect all of the owners from personal injury claims, such as a guest’s slip and fall on common element areas such as porch steps. The association can be either incorporated or unincorporated and includes all owners as members.

The costs incurred by the association in performing these duties and carrying the insurance are assessed, usually monthly, to each unit owner. In a twindominium, the two owners must work together to take care of the property and share those costs. The monthly assessment is an additional expense for each unit owner in addition to taxes, mortgage payments and insurance for the unit itself.

The thing to remember is that the duties of repair, maintenance, and the like are based on the definitions of unit and common element. Those definitions are established by the duplex owner in the condominium declaration. The duplex owner, working with his or her attorney, has the opportunity to establish these definitions, thereby creating the rights and obligations under which the unit owners must live. The duplex owner decides who owns what and how the costs are to be shared.

This is very important to the owner who will continue to live in one of the units after the other is sold, since the duplex owner then becomes a unit owner, subject to the provisions of the declaration and the association rules. After the documents are recorded and a unit is sold, the former duplex owner is no longer in charge of the property.

With this as background, here are answers to frequently asked questions about twindominiums

Q: *Who will be in charge of the Association?*

A: Each unit owner must be a member of the association. Membership is automatic when a unit is purchased. The association can be a nonstock, not for profit corporation or a not for profit unincorporated association. In either case, the attorney preparing the declaration will also prepare the needed association documents, including bylaws. The bylaws outline how the association is operated and sets the rules under which it will control the common elements and levy assessments. All association decisions are made jointly by the owners. The association may have to file income tax returns, depending on how the assessments are handled.

Q: *What if owners cannot agree on what needs to be done by the Association?*

A: Because of the possibility of a deadlock, the Wisconsin condominium statutes provide a procedure for resolving disputes through arbitration. By accepting a deed to a unit, the owner automatically agrees to submit disagreements to arbitration, the cost for which is shared equally by the owners. The added costs of an arbitration proceeding should provide incentive for owners to settle their disagreements.

Q: *Are unit owners assessed differently if the entire roof needs to be replaced versus a leak repair in only one spot?*

A: No. The assessment procedure is the same in both cases. All owners must contribute to the cost of repairing or replacing a common element. The roof is almost always a common element. Although the leak may only affect one unit, all units must contribute to the cost of the repair since each unit owner owns a percentage interest in the common element. The declaration may provide for assessments for reserves to accumulate funds for major replacements, such as a new roof or gutters. In effect, the reserve fund assessment is a forced savings program to handle future capital expenses, such as a new roof.

Q: *Who maintains and paints the exterior?*

A: Exterior walls are common element, and the association has control of them. The association (the unit owners in a twindominium) will maintain the exterior. Usually the colors for walls, trim, gutters, and downspouts will be uniform, so the unit owners must agree on those decisions. All costs are assessed proportionately to the unit owners.

Q: *Who is responsible for repairs to exterior doors and the windows?*

A: In many declarations, the doors and windows are defined as being part of the unit, so the

unit owner must take care of them, replacing them when needed. However, if a uniform appearance for the duplex is desired, the association will pick the design/color of the doors and windows.

Q: *Who repairs the garage?*

A: Typically a garage is designated a common element. All owners contribute to the cost of upkeep and repair. The parking spaces in the garage are usually limited common element. One space is assigned to each unit in the case of a two-car garage. A unit owner should be responsible for repairing any damage caused by his or her car.

Q: *Who can use the attic or the basement?*

A: The attic and basement may each be common element, allowing every owner to have access for storage, washers, dryers, and the like. They could be divided in some fashion, creating two limited common elements. Then each owner has separate space for his or her exclusive use. In either case, all owners share in any costs.

Q: *Who mows and maintains the lawn, shovels the snow, plants trees, flowers and bushes?*

A: Lawns, sidewalks and driveways are either common elements or limited common elements. As such, the association is technically responsible for maintenance, mowing, snow removal and the like. These services could be contracted out to third parties or the unit owners could divide the work between themselves. The declaration should provide for these alternatives. Provisions can be added to the declaration to allow unit owners to garden and plant flowers and bushes in certain areas. Those costs would be paid by the unit owner who does the planting. Major landscaping, such as new trees, or tree trimming, should be agreed upon by the owners. The association would have the trees planted or trimmed and assess the owners proportionately for such expenses. Unit owners must understand that they share the yard and are not entitled to plant whatever they want without first getting consent of the other owner.

Q: *How are utilities paid?*

A: As part of a duplex conversion, separate gas and electric meters should be installed, one set for each unit. Depending on the plumbing layout, separate water meters could also be installed. If there is only one water meter, the water/sewer bill would be paid by the association and assessed to the owners. This could raise complaints about excessive water usage by an owner. The cost of outside lighting would be shared in the same manner as other assessments.

Q: *How is insurance handled?*

A: The association buys the fire/casualty and liability insurance for the condominium and the premium is paid by the unit owners. Each unit owner purchases a separate condominium unit policy which insures against damage to the unit and its contents, and includes liability insurance for the individual owner. The association and the unit owners should buy their respective policies from the same insurer. This eliminates the potential dispute between two insurers as to whether the damage or the accident occurred in the unit (unit owner's insurer is responsible) or in the common element (association's insurer is responsible). Insuring with the same company eliminates coverage questions.