



## How to Avoid Buying a Bad Condo (or Co-op)

A Special Report From Real Estate Expert Bob Bruss

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Report #03350

If you are thinking about buying a condominium, or a cooperative apartment, you've come to the right place. Buying a condo or co-op is much different than buying a single-family house. As the current owner of a second-home condo, which has been in my family over 25 years (I am also a past owner of another condo which I sold to buy my current principal residence house), I highly recommend the right condos and townhouses as personal residences. *However, just as there is no perfect house, there is no perfect condominium (or co-op). Condo and co-op buyers can't be too careful because of the additional considerations, as compared to buying a house.*

**EXAMPLE:** Just last week, I received an e-mail for my newspaper syndicated "Real Estate Mailbag" column from a *very* unhappy condo owner. He bought a brand new condo in a small complex of just seven condos. However, the builder only sold three units. He kept four units. The result is the builder controls the homeowner's association (HOA) and treats those three "sucker" buyers very badly. Because the builder controls the HOA, he has been able to raise the monthly fees and runs the place as if he owns the entire property. Frankly, I am shocked the e-mail writer's mortgage company allowed him to close on his purchase when only three condos were sold. To prevent such problems, most lenders require at least 75% of the condo sales be ready to close before they will fund a mortgage. This bad situation shows what can go wrong when a condo buyer purchases in a new development where at least 75% of the units are not sold and ready to close.

**WHY BUY A CONDOMINIUM (OR A CO-OP) INSTEAD OF A SINGLE FAMILY HOUSE?** The primary benefits of buying a condo (or co-op) include (1) condos are usually less expensive than equivalent size houses, (2) lack of exterior maintenance responsibility and worry, (3) the security of just turning the key in the door (called "lock and leave") while being gone for an extended time period without worry, (4) virtually the same home owner tax deduction benefits as for houses, (5) pride of ownership, and (6) resale profit potential as a long term investment.

But the potential drawbacks include (1) having the HOA board of directors determining how your monthly assessment fees will be spent, (2) encountering unexpected increased monthly fees and/or special assessments for major expenses, such

as a new roof or other expensive repairs if the reserves are not adequate, (3) rules and policies you don't like (such as no-pet rules, rental limitations, and parking restrictions), (4) poor-quality management and/or maintenance which hurts condo enjoyment and resale values, (5) noise from adjoining units (the #1 complaint of condo residents), (6) lack of freedom, such as the ability to turn up your TV as loud as you want, or to have noisy parties, and (7) adjacent neighbors you don't like, or who don't like you.

**CONDOMINIUMS, TOWNHOUSES, COOPERATIVE APARTMENTS, AND P.U.D. (PLANNED UNIT DEVELOPMENT) – WHAT IS THE**

**DIFFERENCE?** The earliest condominiums originated about 2,000 B.C. in Babylonia. A document found there reports the sale of the first floor unit in a house where the seller retained title to the second floor unit (obviously a very smart seller who knew the benefits of being the owner of a top floor unit with nobody making noise above you). In the Brooklyn Museum, you'll find a condominium deed from 434 B.C. that describes a condo apartment, its boundaries, the right of sale, and even an early version of title insurance. Condominium references have also been found in Roman Times, the Middle Ages, and during an early European condominium boom in Spain, Belgium, Germany and England.

Puerto Rico had the first U.S. condominiums. In 1962, the Federal Housing Administration (FHA) enacted condominium lending rules. Within the next five years, all 50 states passed condominium statutes. Many of the early U.S. condominiums were conversions of luxury apartment buildings with each renter becoming the owner of their unit. By 1970, there were over 300,000 U.S. condominiums. Today, more than 30 million residents live in U.S. condominiums.

There are also a few condominium business parks and office buildings. But commercial condos have not proven to be very popular because of finance and resale difficulties. To illustrate, if you own a business condo, but you want to expand or move your business, you probably don't want the added burden of selling your business condominium. Because few mortgage lenders will make mortgage loans on business condos, they can be very difficult to finance.

**Condominiums are just airspace within the unit surfaces.** Legally known as "vertical subdivisions," condominium owners own just the expensive airspace between their floor, ceiling, and walls to the inner surfaces. *The building structure is owned by the HOA, including the plumbing and wiring. The HOA usually also owns the common areas, such as hallways, elevators, land, and parking areas.* However, sometimes the common areas are owned by the individual condo owners, as tenants in common, with the HOA responsible for maintaining the common areas.

Condominium owners often have the exclusive use of a specific additional area, such as a patio, balcony, storage area, and/or garage parking space. But the HOA usually has maintenance responsibility for those exclusive control areas that are part of the common area.

**Townhouses and P.U.D.s (planned unit developments) are slightly different.**

Townhouses are usually two-story condominiums with common walls shared with the adjoining townhouses. A few townhouses include ownership of the land beneath each townhouse, but many do not include the land that is owned as a common area by the HOA. However, if the townhouse is part of a PUD, then the homeowner usually owns the land beneath their unit. Either way, the HOA is responsible for the townhouse exterior maintenance, just as it is for traditional condominiums. Of course, individual townhouse and PUD owners are responsible for their interior maintenance, such as a dripping faucet or a plugged toilet.

**Cooperative (co-op) apartments are in buildings owned by a non-profit corporation with each stockholder holding a proprietary lease for their apartment.**

*Co-ops* involve the sale of personal property that is the co-op stock certificate with its attached proprietary lease rights to occupy a specific unit. But *condominiums* involve the sale of real property because the condo owner actually owns the air space within their condo unit. *However, Congress has made co-op ownership tax deduction benefits virtually the same as for condos.* Most co-ops are located in New York, Florida, Georgia, California, Illinois, and Washington, DC. A prime reason some potential condo conversion buildings became co-ops instead of condos is condos are usually subject to tough subdivision laws whereas co-ops are much easier to create because they often don't require tough government approvals.

**EXAMPLE:** About 35 years ago, visionary real estate developer Gerson Baker built the 1,000-unit "Woodlake Apartments" in San Mateo, California. This was one of the first large "garden style" apartment complexes, with lush landscaping, amenities such as swimming pools, tennis courts, meeting rooms, adjacent shopping center, and other extras apartment dwellers didn't expect. But in the mid-1970s, Baker realized he could earn another fortune by converting his apartments into condominiums. *However, there were a few little problems!* One was opposition from his older tenants who didn't want to buy their apartments. Another problem was the complex didn't exactly meet the city's condominium subdivision requirements (although variances could probably be obtained). Because a condo subdivision required city council approval, Baker didn't want to risk a confrontation with those elderly opposition tenants. Then he came up with the brilliant idea of converting Woodlake apartments into a cooperative apartment complex, which did not require city council approval. Baker arranged a multi-million dollar co-op master mortgage from New England Mutual Life Insurance Co. To sooth his elderly tenants, he promised them they could continue renting and he would own their apartments. Those tenants who wanted to buy their co-op apartments could purchase on very favorable terms. All went well for about 10 years. But the co-op owners had increasing difficulty reselling their units because co-op financing was not easily available for their growing equity. At that point, Baker proposed converting Woodlake to condominiums, which allow individual mortgages on each unit. Again, Baker promised his elderly tenants he would own their condo units and they could continue paying market rent as long as they wish. There was no opposition to the conversion from co-op to condo (although the

condo conversion required city zoning variances). Everyone was happy, especially Gerson Baker! Equally important, owners of the individual condos could now obtain individual mortgages to refinance or sell their units. Overnight, the market value of these co-ops that were converted to condos skyrocketed because of their easy salability. To this day, Woodlake is a very desirable, well-maintained condo development with market values many times higher than when it was converted to co-ops, and later into condominiums.

**CONDOMINIUM OR CO-OP – WHICH IS BEST?** Financing a condo purchase is almost as easy as financing a single-family home purchase. An individual mortgage or deed of trust is recorded as the security device to pledge the condo for repayment of the home loan.

But co-op financing is much different and more difficult. When a co-op building is new, there is usually one master mortgage on the entire property. For income tax purposes, each co-op owner is allocated a portion of the mortgage interest and the property tax deductions. Original co-op buyers usually pay 10% to 20% cash down payments, with the master mortgage financing the 80% to 90% balance.

However, as the master mortgage principal balance gets slowly paid down and, hopefully, as the market value of each co-op unit goes up, each co-op owner's equity grows. That sounds good. But it can be bad! *When a co-op owner decides to sell, because an individual mortgage can't be recorded against a co-op corporate share, financing the sale can be very difficult. The reason is real estate lenders want to be secured by a mortgage or a deed of trust pledging the property as security, but this isn't possible with a co-op because there is only one master mortgage on the entire property.*

However, co-op financing is usually no problem in areas with many co-ops because lenders have accommodated "the co-op problem." For example, in New York City where there are thousands of co-ops, the New York banks routinely make loans to co-op buyers, secured by their co-op shares. But in areas without many co-ops, most banks don't want to be bothered with co-op loans. To illustrate, in California the few remaining co-ops (which haven't been converted to condos) can be extremely difficult to resell unless (a) the buyer pays all cash, or (b) the seller will finance the co-op buyer's purchase. At the moment, I don't know of any institutional lender willing to finance the sale of a California co-op apartment.

Due to the difficulty of financing co-op sales, many existing co-ops have wisely converted to condominiums so each unit can have its individual mortgage or deed of trust financing. Converting to condominiums usually increases a co-op's market value by at least 25%, often more. Yes, there are co-op conversion expenses, such as hiring an attorney to prepare the legal paperwork and hiring an engineer or surveyor to create legal descriptions for each condo unit. But these initial expenses are usually repaid many times over when the converted condo is sold or refinanced at increased market value.

Another major co-op problem is co-op buyers are subject to the dreaded approval by the co-op board of directors. Some co-ops make approval of prospective buyers easy and painless. But other co-op boards of directors make buyer approval seem like an inquisition. For example, there are many horror-story examples of well-known personalities who were refused approval, such as Rush Limbaugh who was rejected for a co-op purchase (perhaps he tried to buy in a New York City co-op filled with liberal Democrats whereas he is a conservative Republican!). Maybe you remember ex-President Nixon who was rejected by a New York City co-op board that said he “wouldn’t fit in.” However, a co-op board need not give any reason for rejection of an applicant. The unpleasant result is sometimes subtle discrimination – the result is some New York City co-op buildings are virtually 100% Jewish and others are almost 100% non-Jewish.

The alleged reason co-op boards scrutinize a prospective buyer’s finances so carefully is if a co-op buyer can’t pay their monthly fees, plus any special assessments, the other co-op owners must make up the missing payment or risk default on the master mortgage. Because so many prospective co-op buyers refuse to bear their financial souls to co-op directors, most buyers prefer buying comparable condos even though they cost more – most condo HOA directors don’t have the right to approve or disapprove prospective condo buyers. However, some condo HOAs have a “right of first refusal” to match any purchase offer received by a condo seller – but this right is rarely used because the HOA usually doesn’t have the funds to buy a unit which comes up for sale.

**IS AN OLD OR NEW CONDO BEST?** Brand new condos have the widest appeal to condo buyers. However, buyers of new condos usually discover construction defects. The best builders and developers quickly correct any construction problems. However, if the defects aren’t corrected, homeowner association lawsuits often develop. Reportedly, over 80% of California condo HOAs have brought construction defect lawsuits against their builders or developers.

Unfortunately, when a HOA sues the builder or developer that usually stops sales in the condo complex because mortgage lenders won’t make new mortgage loans if there is a pending lawsuit against the builder or developer.

*A major problem with many new condo complexes is the developer sets the initial monthly fees very low to encourage sales, often barely enough to pay the operating expenses for the HOA. After all the condos have been sold, and the developer departs, the HOA now run by the condo owners realizes it is underfunded and the monthly owner fees must be raised substantially to pay expenses and to establish replacement reserves.*

In contrast, a primary advantage of buying an older resale condo is most of the initial problems with the builder or developer have been resolved and prospective condo buyers can talk with current owners to ask the key question **“What do you like best and least about living here?”**

Condo owners are usually very friendly and willing to share their likes and dislikes. *Another advantage of buying an existing condo, rather than a brand new unit, is potential buyers can check with the HOA as to the current monthly fees and any planned increases or special assessments.*

Prospective buyers should also obtain a “resale package” from the condo seller or the listing real estate agent to review the condo CC&Rs (conditions, covenants and restrictions), by-laws, and rules. Be sure to check for restrictions on pets and rentals, plus anything else that especially interests you. *Although you might disagree, I recommend condos which prohibit or restrict pets, and which make rentals very troublesome and expensive for the condo owners.* Too many pets and too many rentals are not good for condo market value appreciation.

**EXAMPLE:** I own a second-home condo in a 63-unit complex. Our by-laws prohibit pets, so we have no problems with dogs or cats. But we do allow limited rentals, with *prior* lease approval of the HOA board of directors. The condo owner is responsible for conduct of their tenants. At the moment, we have only two rentals (due to health reasons of the condo owners who expect to eventually return to owner-occupancy of their condos). The HOA now requires a one-time lease approval fee of 60% of the monthly condo assessment. The obvious purpose is to strongly discourage rentals. The result is we have a waiting list of prospective buyers in our desirable complex.

To answer the question whether a new or resale condo is best, I favor resale condos because the buyers can see how the complex is managed and operated. Also, prospective buyers can see if the complex is mostly owner-occupied or if there are a large number of renters. *In a brand new condo complex, although everything is new and smells fresh, there are many uncertainties, especially about the quality of construction.*

**CUT YOUR RISK BY OBTAINING A MORTGAGE.** Even if you are a multi-zillionaire, *please* get a mortgage for at least 75% of the purchase price to buy your condo. The primary reason is you don't want to tie up a large portion of your assets in a condo until you know it is a solid investment.

**EXAMPLE:** If there are over 20% rentals in the condo complex, that is a very bad signal. Most mortgage lenders stop lending on condos in a complex when the renter-to-owner-occupant ratio rises above 25%. Condo buyers who pay all-cash for their condos often learn, too late, they can't sell to get out of an undesirable condo complex which is becoming or already is occupied primarily by renters. The big drawbacks of too many renters are (1) their absentee landlords usually vote against adequate monthly assessments to properly maintain the complex and build replacement reserves, and (2) renters often don't care about maintaining the complex and they frequently drive away good quality owner-occupants.

## **10 KEY QUESTIONS TO ASK TO AVOID BUYING A BAD CONDO.**

Although condo buyers should feel free to ask lots of questions before purchasing, here is a checklist of key questions to ask the condo seller and the real estate agent(s).

**1 – IS THE CONDO HOMEOWNER’S ASSOCIATION PROFESSIONALLY MANAGED?** If not, why not? *Hiring outside professional condo management usually pays for itself.* To illustrate, I’ve lost count of how much the 25-year professional condo management company where I currently own a second-home condo has saved our HOA.

**EXAMPLE:** Each year our HOA prepares a budget for capital improvements and replacements. This year our “big project” was replacing the hall carpets and installing new entrance tile. The committee spent several months inspecting other quality condos and obtaining bids for the carpet replacement and tile. The lowest bid was \$75,000, which was included in our annual budget. However, before the contract was signed, our professional condo management company submitted the bid specifications to three flooring companies. The low bid was \$63,000! The work was beautifully completed about three months ago. The result is our professional property management company saved us almost their entire annual management fee!

Unless you are considering purchase of a condo in a very small complex, perhaps four to six units, be sure the complex is professionally managed. *Do-it-yourself management by the HOA usually leads to problems and even corruption if the directors take over management. Kickbacks from suppliers are also a potential problem.*

**2 – WHAT IS THE FINANCIAL CONDITION OF THE HOMEOWNER’S ASSOCIATION?** Condo buyers should make their purchase offers contingent on approval of the latest HOA financial statement (including replacement reserves), by-laws, CC&Rs (conditions, covenants and restrictions), and condo HOA meeting reports. *Don’t hesitate to ask lots of questions, such as “Are any monthly association fee increases planned or been recently discussed?” “How many special assessments have been levied against condo owners in the last five years?” “Is the HOA involved in any lawsuits?” “Does the HOA carry adequate liability and fire insurance (at least \$3 million liability insurance is recommended)?”*

Be sure to look especially closely at the replacement reserves. There is no absolute minimum reserve guideline. But two standards are (a) at least \$2,000 to \$3,000 per unit, and/or (b) 25% of the annual gross income for the homeowner’s association should be in the replacement reserve account.

**3 – HOW DO THE MONTHLY HOMEOWNER FEES COMPARE WITH SIMILAR NEARBY CONDO COMPLEXES?** Before buying a condo, be sure to compare its monthly fees with those at nearby competitive complexes. If you are working with a buyer’s real estate agent (as you should), he or she can quickly obtain this information for you.

Ask what is included in the monthly condo fee? To illustrate, my monthly condo fee of \$271 (just raised 5% to increase our replacement reserves) includes water and heat (heat is a BIG DEAL during cold Minnesota winters!). But each unit has its own individual air conditioning, which is not included in our monthly fee – some nearby HOAs include central air conditioning. When comparing fees with competitive nearby condo complexes, be sure to inquire what services are included in their fees.

**4 – ARE THERE ANY SPECIAL DEVELOPER CONTRACTS OR LEASES?** Before making a condo purchase offer, inquire if there are any special contracts or leases made with the developer. *Florida condos are notorious for “sweetheart leases” with the condo developers for recreation areas, parking areas, and other special arrangements with escalating payments that the HOA must pay.* Some sweetheart deals even require the HOA to hire the developer as the professional property manager!

Fortunately, state laws now prohibit most such insider contracts, but it won't hurt to ask. *If the developer still owns a significant number of the condos, be sure to inquire if the developer is current on the monthly payments and if the developer has any significant control over the HOA.* However, if the developer lives in the complex, that is a very good sign.

**5 – INSIST ON A PROFESSIONAL INSPECTION CONTINGENCY IN YOUR PURCHASE OFFER.** *Whether you are buying a brand new or a resale condo, just as if you were buying a detached single-family house, be sure your purchase offer contains a professional inspection contingency clause.* I recommend selecting a member of the American Society of Home Inspectors (ASHI) because of their tough membership requirements. You can find local ASHI members at [www.ashi.com](http://www.ashi.com) or 1-800-743-2744. Be sure to accompany your ASHI inspector on the two-hour inspection to discuss any defects discovered which the condo seller didn't previously disclose to you.

What looks like a serious problem, such as a crack in a fireplace, might turn out to be insignificant after discussing the repairs with the inspector. *However, be wary of any inspector who is also in the home repair business – that is a definite conflict of interest.* If you hire an ASHI inspector, you need not worry about such problems.

You shouldn't encounter a refusal of the seller of a resale condo allowing a professional inspection after your purchase offer has been accepted by the seller. *But some builders of brand new condos will resent your hiring a professional inspector. Be very wary of such builders.* The best builders will gladly welcome your inspector. However, when a condo builder resents your inspection contingency in the purchase contract, perhaps you shouldn't buy in that new condo complex.

**6 – WHAT IS THE PERCENTAGE OF RENTERS IN THE CONDO COMPLEX?** As explained earlier, if you discover the percentage of renters is 20% or greater, it's best not to buy in that complex. The key reason is, when the percentage goes

over 25%, many mortgage lenders will refuse to make new loans there, thus hurting resales and the market value of each condo.

Equally important, if you are buying the condo for owner-occupancy, you don't want to be surrounded by non-owner renter occupants who don't share the same pride of ownership that owner-occupants have. However, if you inspect a condo complex with just 5% or even 10% renters, that's a good sign. Of course, inquire about HOA rental restrictions and ask if renters are discouraged. *This is a very important topic that should not be overlooked.*

**7 – HOW GOOD IS THE SOUNDPROOFING?** The number one complaint of condominium dwellers is poor soundproofing, both with adjoining units and with the upstairs and downstairs neighbors. *As a general rule, the best condo units are on the top floor (although sound can transmit from the condo below).*

The second best condo location is usually on the ground floor because these units just have an upstairs neighbor and they often include a patio or small garden area. Other desirable units are the "end units" because they don't have adjoining neighbors on both sides.

**8 – HAS THE SELLER PROVIDED A WRITTEN DEFECT DISCLOSURE STATEMENT?** Many states now require home sellers (both house and condo) to provide written defect disclosure statements to buyers. California was the first state to require such disclosures. Even in states which do not yet require them, the best real estate agents ask their house and condo sellers to fill out disclosure statements and the realty agents add any defects they observe which the seller "forgot" to note. *In addition to alerting buyers about known defects, a major secondary purpose is to prevent after-sale lawsuits if the buyer discovers a real or alleged defect.*

Even when the condo seller and the realty agent have provided a defect disclosure statement, if a serious defect becomes apparent after the sale closes, the buyer's difficulty is proving the seller knew about the defect but failed to disclose it to the buyer. To illustrate, suppose after you move into your condo, you discover the upstairs neighbor is very noisy. Should the seller have disclosed that information? Probably. However, maybe the noise didn't bother the seller or the seller got used to the noise. Or, perhaps you formerly lived in a very quiet house so you are especially sensitive to noise.

**9 – HAS THE SELLER COMPLIED WITH APPLICABLE STATUTES?** Although the risk of buying a "sick house" is much greater than buying a "sick condo" (because the HOA is responsible for maintaining the condo common areas), it is possible to buy a sick condo such as one with toxic mold. *A buyer's real estate agent can be invaluable in knowing the right questions to ask before purchase.*

To illustrate, a potentially serious problem with condos built before 1978 is flaking lead-based paint, which can harm small children. Federal law requires sellers of pre-1978 houses and condos to provide home buyers and tenants with (a) a federal

booklet about lead-based paint dangers and (b) a disclosure form if the seller or landlord had any lead-based paint tests made. Buyers have 10 days to have a lead inspection test made, at their expense, if desired.

Other disclosures which condo buyers might wish include checking for moisture and mold (a good book on this topic is **What Every Home Owner Needs to Know About Mold** by Vicki Lankarge (McGraw-Hill, New York), 2003, \$12.95), radon, asbestos, formaldehyde, carbon monoxide (if there is forced air heat, a carbon monoxide detector is highly recommended), and water quality tests if the condo complex is not connected to a public water system.

### **10 – ARE THERE ANY NEGATIVE INFLUENCES TO CONSIDER?**

Because it is virtually impossible to provide a complete condo purchase checklist, condo buyers should consider if there are any negative influences that affect the desirability of a condo under serious consideration for purchase. Possible negative influences to review include construction quality and workmanship, parking (the best condo complexes have two assigned spaces per unit, but older complexes usually have only one per unit), density and landscaping (many condos are beautiful inside but there is little outside open space because so many units are jammed together), school quality (even if you don't have children, local public school quality affects future market value appreciation), recreational/meeting facilities (if you want a pool, tennis courts, golf, physical fitness center, etc., the condo price will be higher than for a less elaborate condo complex), and outside influences such as a nearby noisy freeway, noisy airport, smelly sewer works, railroad, busy street, poor location, lack of public transportation, high crime rate, or other adverse influence.

As mentioned earlier, the best way to discover these negative influences, which might not be obvious when inspecting a condo, is to ask the current condo residents **“What do you like best and what do you like least about living here?”**

Then shut up! Listen *very* carefully. After a few minutes, most condo dwellers will eagerly share both the good and bad aspects of their condo complex.

**GET ALL CONDO SELLER PROMISES AND REPRESENTATIONS IN WRITING TO PREVENT MISUNDERSTANDINGS.** As with any real estate transaction, be sure to get any seller or sales agent promises and representations in writing.

To illustrate, if a condo builder's salesman promises the adjoining open space will remain that way, and will be planted with trees and sod grass, get that promise in writing as part of the sales contract signed by the developer. Similarly, when a seller promises a decorating allowance, or other credit to the buyer, be sure to get the seller's promise in writing to prevent misunderstandings.

Whether buying a new or resale condo, be sure all promises and representations have been met or at least put in writing before you sign any closing papers. Before the buyer takes title, the buyer is king! After the buyer takes title, the seller is king.

**CONCLUSION.** Condominiums can be excellent personal residences. But they require much more buyer diligence before purchase to avoid buying a “bad condo.” Be sure to investigate it carefully, asking at least the 10 key questions (plus any others you want answered. An excellent new book to read is **Make Money with Condominiums and Townhouses** by Gary W. Eldred (John Wiley and Sons, New York), 2003, \$19.95, 283 pages; available in stock or by special order at local bookstores, public libraries, and [www.amazon.com](http://www.amazon.com).

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