Public Policy Blind Spots Are Putting Condominiums as a Housing Model—And Their Owners—At Risk

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by Karen Black, Principal

MAY 8 CONSULTING

INTRODUCTION

Fifty years after condominiums became a popular housing model, policy makers are encouraging more condominium construction to provide needed affordable housing and entryways into homeownership…

…but several inherent weaknesses in the condominium model must be addressed to provide affordable and long-term viable ownership opportunities.

Since condos became popular in the 1970s, more than 11 million condominiums have been built, spurred by the idea that buyers can purchase a condominium for less than the cost of a single-family house while enjoying low maintenance living. The apparent affordability that makes condos attractive to first-time homebuyers and retirees alike is made possible by buyers sharing ownership of the land and common areas from roofs to furnaces, while owning a unit typically smaller than a single-family home.[1] The low-maintenance lifestyle is courtesy of a condominium association (COA) run by an elected board of owners that manage all common areas in the community and pays for needed maintenance, repairs and services by assessing a monthly fee and when needed special assessments from owners.

Housing policy leaders, cities and even chambers of commerce are calling for the construction of more condos to open up homeownership to a new generation.[2] Yet condominiums have some inherent weaknesses that must be resolved before any leader should call for their expansion.

- Condominiums' fees are increasing as condos' building system repair needs increase with age and insurance rates rise, endangering long-term affordability.
- Where an owner cannot pay the assessed fees, the COA has the power to foreclose on the condo unit and sell it at public auction to recover that fee. The owner may lose their home even after diligently paying their mortgage and property taxes.
- When multiple owners are unable to pay, condominium developments can fall into financial distress, which may lead lenders to stop offering mortgages to prospective condo buyers.[3]

In the last year several states have passed new laws to make condos more physically and fiscally safe and healthy. Some of this legislation helps to make the condo model more resilient, while other laws present a cautionary tale as they destabilize condo markets and make condo ownership more vulnerable.

This policy brief explores the important role condos play in providing affordable homeownership to first time homeowners and retirees, the risks to those owners and their communities, and potential solutions to strengthen the model.

Condominiums play an important role in providing affordable homeownership to first time homeowners and retirees.

Although condo construction slowed to a crawl after the foreclosure crisis and currently makes up just 2% of total construction starts, condos provide homeownership to two critical demographic groups – first time homeowners under age 35 and seniors over age 65.[4] These younger and older homebuyers have lower median incomes than other homeowners.[5] First time homeowners with a government-backed mortgage bought 60% of condos compared to just 40% of single-family homes.[6] Senior retirees also rely on condominium ownership to locate in desirable areas with high amenities. In most large U.S. metro areas, condominiums are less expensive to buy than single family homes. For example, in Atlanta, in 2022 the median price of a condo was $286,000 while the median price for a single-family home was $396,000. However, buying a condo requires automatic mandatory membership in the condominium association (COA) and membership comes with a contractual obligation to pay lien-based assessments to cover the care and repair of common elements regardless of the price tag or the owners' capacity to pay.

Fees are increasing and endangering the affordability of condos as well as current owners' equity.

When lenders qualify condo buyers for mortgages they factor in the cost of their mortgage, taxes and fees, but those fees are now skyrocketing as a majority of condos reach age thirty and insurance fees climb precipitously. Over the past five years, in Southern Florida monthly condo fees have increased 60% and many COAs have levied five and six figure special assessments to cover tens of millions of dollars in deferred repairs.[7] A 2024 Redfin study of monthly condo fees in 43 Metro areas found that even where condos are priced affordably, fees have increased sufficiently to put affordable ownership at risk. For example, in Fort Worth TX fees have increased almost 15% in the last year to $424 monthly for a median priced condo of $217,000. In Atlanta GA fees increased in the last year over 12% to $379 monthly on median priced condos with sales price of $295,000. While in Minneapolis fees have increased 5.4% to $548 a month with a median condo sales price of just $212,000.[8] In Detroit, COA fees for buildings along the east riverfront and in the central business district can exceed an owner's monthly mortgage payment.[9] Aging buildings with greater expenses to repair and replace building systems are the primary cause of increasing fees but poor fiscal management, building defects, increasing insurance costs and new government regulation are driving up costs as well. For example, in Florida, condo property insurance rates have increased by102% due to increased storm activity.[10]

Even in parts of the country without frequent natural disasters, multifamily insurance rates have seen double digit increases.[11] Many condominium associations over age thirty are imposing eye-popping special assessments. Champlain Towers in Surfside's Association is the most well-known example given that the building collapsed before the board could collect a $15 million assessment for structural repairs that imposed special assessments of between $80,000 to $200,000 on owners. In Summer 2024, unit owners at Mediterranean Village in Miami-Dade County Florida are facing special assessments as high as $400,000 to repair the 1989 complex.[12]

Condominium associations (COAs) are governed by state law, yet few states mandate best practices such as transparent disclosure to prospective buyers, reserve studies to anticipate future costs and reserve funds that act as savings accounts to pay for repairs and rising costs.

Under state laws, COAs are typically set up as nonprofit corporations run by a volunteer board of owners who hires outside experts like property managers to serve as day-to-day staff and reserve study experts to define funding needed to pay for anticipated maintenance, repairs and replacements to the common elements. COAs do not own any real estate – the individual owners own a percentage of all shared property based upon the size of their unit. The elected board manages the condominium community's finances, oversees maintenance of the common areas from elevators to building façade and sets and enforces community rules. Expenses are paid through monthly assessments and special assessments to meet extraordinary expenses. The COA Board tends to be controlled by the developer during its early years who keeps fees low to encourage sales and once all units are sold, board control is passed to volunteer owners, often with no specialized knowledge for managing finances or maintaining properties, who are resistant to raising fees and may instead kick the can down the road and defer maintenance for years. COA best practices include being transparent with buyers as to the condition of the building, need for future repairs and the potential for fees to rise and maintaining an adequate reserve fund that acts as a savings account to pay for future needs and unexpected costs. The adequacy of a reserve fund is determined by a reserve study where expert professionals inspect the status of building systems and anticipate future repairs and replacement needs. Only twelve states, however, require that a COA maintain a reserve fund.[13] As a result, the majority of COAs do not save the funds needed for planned and unexpected repair projects or other rising costs and instead impose large special assessments that owners can not anticipate or budget for when critical issues arise.[14]

COAs have the power to foreclose on condo units for delinquent fees and force their sale.

When an owner cannot pay levied fees, the COA has the power to place a lien on the owner's home, foreclose on the lien and put the condo unit up for auction to obtain payment of the delinquent fees. The reason most states give COAs foreclose authority is to protect residents from paying for the mistakes of delinquent neighbors. If only half of 100 condo owners who must shoulder a $10 million repair to a façade pay, then the financial obligation of the remaining owners would double, leaving more owners vulnerable to foreclosure for nonpayment. In some states the COA's powers exceed those of lenders, and the association has a super-lien giving them priority over all creditors including the first mortgage lender.[15] Few states require COAs who forcibly sell the unit to sell it for its market value and in some states COAs commonly sell it for just enough to cover delinquent fees, leaving the owner with nothing. After a 2023 Supreme Court decision holding that local governments cannot foreclose on a property and retain the excess value of a home above the tax debt owed, the courts will have to decide if this is legal, but from a policy point of view, it leaves condo owners with no capital to fund alternative housing.[16]

COAs are also empowered in many states to add interest, attorneys' fees and penalties transforming just a couple hundred dollars owed into a large debt.

While there is very little data showing the frequency of condo foreclosures, in Georgia COAs can foreclosure on a property owner if they have more than $2000 in past due fees. A 2024 law attempts to protect owners from losing their homes by requiring the COA to provide at least 10 days written notice to the owner prior to imposing fees but these fees still contribute to the hundreds of foreclosures being filed against condominium owners.[17] In Colorado, homeowners' associations with similar powers to COAs have filed roughly 3,000 foreclosure cases since 2018, more than 250 of which—or roughly 8%—resulted in properties being auctioned off, most for well below market value.[18] In some states, the Board can rent, as well as sell, the unit to collect fees. For example, in Illinois, the Illinois Condominium Property Act gives the Board power to evict the owner and rent the unit to collect a past due assessment balance.[19] In addition, in states like Georgia, the COA can garnish an owner's wages to pay the full amount of the special assessment.[20]

Once a condo complex falls into distress, it can harm the surrounding community.

When a COA is unable to afford major repairs because they cannot raise assessment fees high enough to bankroll projects and keep them within the means of owners, and they have difficulty accessing credit themselves, the physical property and basic service provision suffer. Condo buildings with multiple vacancies and insufficient revenue to pay for needed capital expenses can become "troubled buildings". Without adequate funding, and with lenders unwilling to offer mortgages to prospective buyers, the condominium complex begins to slowly deteriorate as there is insufficient money to pay for essential services such as utilities, trash collection or basic upkeep.[21] Chicago has condemned condominium buildings that could not make city-mandated life safety repairs to prevent these buildings from becoming dangerous to residents and neighbors.[22] The fate of the condominium development is often tied to the strength of the housing market. In stronger market communities, developers will buy up a condominium building's units to convert to rental or owners can vote to terminate the condominium and allow the property to be sold free and clear of ownership interests which makes it more attractive to a developer who wants to redevelop the entire property. In weaker markets, the city may be left with a problem property that endangers owners and the surrounding neighborhood.

Significant new state legislation aims to make condos more fiscally and physically safe, but some reforms have created significant risks for owners.

New Jersey passed legislation in January 2024 that requires structural inspections, reserve studies every five years and phased increases to the reserve fund over ten years to ensure it is eventually adequate to meet the development's needs. Where inspectors find structural defects, the COA board can levy assessments or secure loans even without owner approval to avoid delays.[23] In 2023, Tennessee passed a law that requires associations to conduct reserve studies, but does not mandate that they make necessary repairs or keep a reserve fund adequately funded.[24] Maryland similarly requires periodic reserve studies and requires that resale certificates state whether there is a reserve fund and how it will be used.[25] Meanwhile, Florida, a state with high numbers of condos, has taken the most dramatic legal steps to ensure all condominium properties are safe and have sufficient money in reserve to pay for all needed maintenance and repair. In reaction to the 2021 condo collapse in Surfside that killed 98 people, Florida passed a requirement in May 2022 to bring communities up to code and repair aging structures. State lawmakers banned associations from waiving reserve contributions and delaying structural repairs. Now, condo associations with buildings three stories or higher must perform a reserve study by January 2025. Condo buildings over three stories and more than 30 years old must have an inspection by an architect or engineer by December 2024 and must start repairs within a year of receiving the report. The result has put the sizable Florida condo market in a tailspin with record high numbers of units listed for sale and plunging prices.[26] It has raised fees so high that some Florida retirees have had to walk away from their houses or return to work to pay the unexpected assessment.

States and cities can take 10 actions to support and stabilize the condominium model to create more sustainable condo ownership.

1. Require Education and Training of Board

Many owners volunteer to serve on a COA board with little or no training believing main duty is to attend monthly meetings when in fact they are responsible for the collection and allocation of millions of dollars. Providing those owners with foundational knowledge about financial planning, reserve fund studies and the need to anticipate major expenses before they arise will allow them to do their job more effectively. Few states or local governments currently mandate any training although Montgomery County Council in Maryland requires members of condo boards to complete an online course detailing their financial and administrative responsibilities.[27]

2. Require Transparent Disclosure to Prospective Buyers Including Anticipated Repairs and Current Reserve Fund Amounts

Many owners buy condos under the false assumption that associations have adequately funded reserves to address whatever needs it has or that fees will never increase substantially because they are just covering staff and basic operations. Information about the financial and physical condition of a condominium association is critical to a buyer's understanding of potential risks. Unlike buying a single-family home where a prospective buyer can obtain an inspection of the roof and structure, a condo buyer's inspection only includes the unit. Buyers do not have the opportunity to inspect the whole building and assess what the repair needs are. Hawaii's Act 62 effective January 1, 2023, requires that prospective condominium buyers receive a budget, a financial estimate of future maintenance fees and an estimate of each owner's anticipated reserve contributions.

3. Mandate Reserve Studies and Reserve Funds

Requiring COAs to perform periodic reserve studies and maintain an adequate reserve fund will help to stop boards from kicking repairs down the road to keep fees artificially low. There is however a lesson to be learned from Florida here. Requiring COAs to immediately fund all repairs identified in the reserve study risks raising the cost of condo housing out of reach of many prospective buyers and displacing current residents, so it is important to rank repair priorities and allow for phased contributions to the reserve fund as New Jersey has done.[28]

4. Enhance Government Oversight of Administrative, Management and Financial Practices

Adding new oversight of COA management and financial practices will help to ensure the board is responsibly managing funds and planning for future expenses. The goal is not just to avoid illegal practices or fraud but to deliver budget stability and sustainability. Virginia created the Virginia Common Interest Community Board in 2008. It is an eleven-member citizen board that oversees community associations and has the power to assess a fine up to $1000 and to put a receiver in place where a property manager is not fulfilling their fiduciary duty.[29] North Carolina is currently considering legislation that would establish state oversight of community associations.[30]

5. Perform Regular Façade Inspections

New York City and Philadelphia mandate building façade inspections to ensure façades of buildings over six stories are structurally sound. Laws requiring regular inspections are needed because over time, the exteriors of buildings—especially older ones—can deteriorate due to weather and lack of maintenance. Regular inspections allow owners to make repairs before structures become unstable and loose bricks, crumbling concrete, or unsecured elements fall and injure pedestrians.[31]

6. Provide Low Interest Loans to Owners at Risk of Losing Their Home:

State and local governments can provide low interest financing to help long-time lower income condo owners stabilize their buildings. Miami Dade County provides 0% interest loans up to $50,000 with a repayment term of 40 years to condo owners who meet eligibility requirements. The County has a $9 million cap for the project, however, so it can only help a fraction of condo owners who may need financial assistance.[32] In Hawaii, a law signed into law in May 2024 enables condo associations to obtain low-cost financing to pay for deferred maintenance.[33] Chicago created a $5 million pilot program in 2022 to provide grants and low-interest loans to long-term moderate-income South Shore condo owners "to rehabilitate and stabilize distressed co-op and condo buildings." Funding is provided through fees developers pay in lieu of building affordable housing units in their residential developments.[34]

7. Restrict COAs Right to Foreclose for Relatively Low Levels of Unpaid Assessments, Limit Attorney's Fees and Fines and Require COAs to Obtain a Reasonable Value for Foreclosed Units at Auction

Placing minimum thresholds on delinquent fees before a COA can begin foreclosure proceedings like Georgia has done can prevent an owner from losing their home for a relatively modest debt. States can also limit the fees and penalties that are tacked onto the assessment amount owed. Finally, states can require a COA to obtain some percentage of market value at auction to protect the owner's equity. Colorado is considering a bill to require the minimum bid to be 60% of the property's market value for all homeowner associations that include COAs.[35]

8. Provide Property Tax Abatements for Major Rehabilitation of Properties

Where condominiums need a multi-million repair, public disclosure of a large upcoming special assessment dramatically lowers the value of that property. Some cities like Philadelphia have tax abatement programs designed to encourage owners to improve their property by agreeing not to tax them on the increased value created or restored by the rehabilitation and repairs for some period of years.[36]

9. Help Condo Associations Establish a Temporary Financial Hardship Accommodation for Payment of Common Expense Assessments

The Board must treat all owners the same, but this does not mean that they cannot assist owners for whom an assessment presents a serious financial hardship. Boards can provide longer payment periods and temporary deferments. The State of Maryland created a resolution template for condo boards to give some leeway to owners who faced financial hardship due to the consequences of the COVID pandemic in 2020 where the board agreed not to foreclose where owners agreed to a repayment plan.[37]

10. Provide Free Foreclosure Prevention Counseling to Owners

Financial counseling can prevent foreclosure.[38] This is true whether the home at risk of being foreclosed upon is a condo or a single-family home and whether the entity foreclosing on the property is a lender or a COA. Providing owners with expert advice and an understanding of their financial situation can help them avoid the loss of their home.

CONCLUSION

Condominiums provide important affordable housing, but condo ownership is not sustainable without government regulation and support.

Moderate income owners, many on fixed incomes, do not have the cash to double their monthly fees or pay a six-figure share of major capital expenses. Yet the condominium model gives them sole responsibility for paying their share of costs regardless of the price tag. Deteriorating conditions and insufficient financial resources for owners to address them are rendering our condominium housing stock at risk. Preserving our existing condo housing is far cheaper than building new affordable homeownership opportunities, so we are better off extending the life of our older condo buildings. Most importantly, preserving our condominium buildings prevents displacement and loss of wealth of homeowners who have steadfastly made all mortgage payments and tax payments required. Creatively helping owners to fill the resource gap is essential to creating a healthier condo market and keep condos viable as a form of affordable owner-occupied housing.

ENDNOTES

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