

NEWS & INSIGHTS

The Impact of Choosing the Right Type of Community

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This is the final installment in our four-part series, “An Introduction to Pennsylvania Common Interest Ownership Communities.” In this series, we explore the legal background of condominiums and planned communities, the two most common types of communities in Pennsylvania and explain why choosing the right type for your project has a significant impact. To view the previous article in the series, [click here](#).

One of the most important choices a developer makes is whether to use a condominium or planned community form of ownership for a project. While the Uniform Condominium Act (UCA) and the Uniform Planned Community Act

(UPCA) seem like vehicles that can get you to the same place, in practice there are distinct differences to be considered before making a decision. For most residential projects in Pennsylvania, it is much more desirable to create a community under the UPCA than the UCA.

Mortgage-backed Securities and the Resale of Mortgages

The biggest factor in the trend towards planned communities is the continued growth of mortgage-backed securities and the resale of mortgages. Government-created entities, most notably the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac), purchase and resell mortgages in the form of packaged securities. To be eligible for purchase by these entities, mortgages must comply with their respective Selling Guides. For example, the Fannie Mae Guide, which is almost 1,300 pages in length and updated regularly, sets forth its requirements for projects in which Fannie Mae will purchase and guaranty mortgages.

Both Fannie Mae and Freddie Mac have historically distinguished between condominium projects and planned unit developments (PUDs) in their Selling Guides. Traditionally, most, but not all, planned communities qualify as PUDs. After the real estate crash and subprime mortgage crisis of 2008, this distinction became more pronounced, making it much more difficult for condominium projects to meet the requirements of both entities. While mortgages for unapproved condominium projects are available, their rates tend to be higher than those that can be sold on the secondary market.

PUDs, on the other hand, do not need pre-approval and more easily satisfy requirements for resale. As a result, mortgages for PUD projects tend to be easier to obtain at lower rates. The problem is significant enough that even some existing condominium communities opted to convert to planned communities. While both Fannie Mae and Freddie Mac have scaled back some of the more harsh requirements they imposed on condominiums following the 2008 crash, for most projects a planned community is still the best option if it can meet the definition of a PUD.

Community Management

In addition to financing, the UPCA offers additional tools to manage a community more effectively. As covered in the [third article](#) of this series, the controlled facility concept in planned communities provides greater flexibility for community management. Furthermore, the UPCA allows, in certain circumstances, “limited” planned communities that reduce both the administrative overhead of an association as well as the document preparation and disclosure requirements on a developer.

When is a condominium appropriate? For a high-rise or buildings with “stacked” units, a condominium is still the preferred form of ownership due to industry familiarity. A condominium is sometimes preferred for commercial projects, as many of the rules that govern residential communities do not apply to purely commercial developments. For residential projects, however, the trends are strongly in favor of planned communities.

Contact [Erik Hume](#) to further discuss the laws governing condominiums and planned communities and how Saxton & Stump’s [Real Estate Law Group](#) can help devise an appropriate strategy for your development project.

The Full Series on Pennsylvania Common Interest Ownership Communities

[Article 1: An Introduction to Common Interest Ownership Communities](#)

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[Article 4: The Impact of Choosing the Right Type of Community](#)

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