

PUD vs. Condo, what's the difference?

1. Condominiums and PUDs are two different animals. Different rules/laws apply to each.
2. Condos are a legal fiction and created by statute (Indiana's Horizontal Property Law, IC 32-251 et seq.) - fictional because the statute declares condo units to be real estate even if units are on second floors and higher and don't have ground directly beneath them (thus, "horizontal property"). The statute is very detailed about what must be done to create a condo and how condos operate. Among the provisions is the requirement that the real estate being turned into a condo must be created by a "declaration" and that the declaration must consist of certain specific provisions and must have as a part of it bylaws of the association of the various unit owners, a plat showing how the building or buildings containing the units are situated, and a copy of the plans showing the size (depth, width & HEIGHT) and location of each unit. The declaration must contain any CCRs. So, for condos (only), all the relevant documents **MUST** be contained in the declaration. Having said that, most declarations (and bylaws) contain general provisions allowing the board of directors to come up with rules and regulations. Often these are implemented at board meetings and documented in the form of minutes. These do not have to be recorded because the declaration usually says the board has this power, so everyone is on constructive notice of the board's powers. Lastly, the legal description of a condo unit contains the words "horizontal property regime".
3. PUDs are not created by statute but are controlled by planning and zoning rules. In Indiana, there's no requirement that PUD bylaws, plats, CCRs, minutes, or other rules and regulations be contained in any single document or that they must appear in separate documents, although to add to the confusion many PUDs are created by a "declaration". The condo statute does NOT apply to PUDs. Of course, CCRs must be recorded to be enforceable against third parties. Typically, the CCRs will cover whether there is a HOA (there doesn't have to be) and whether it's a nonprofit corporation (it doesn't have to be). If it is a nonprofit corporation, there must be bylaws (but not necessarily recorded) because Indiana's corporation law says so. If the HOA is not a nonprofit corporation, no bylaws are needed (but would be prudent). In other words, PUDs are loose and not governed by statute, although city or county planners may dictate provisions and how they're put together. Significantly, the plat showing the various lots in a PUD are 2-dimensional (depth & width ONLY), contrasted with condo plans which are 3-dimensional (depth, width & HEIGHT), meaning a PUD does not qualify as a condo or "horizontal property regime".

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