

Randy K. Lippert

# CONDO CONQUEST

Urban Governance,  
Law, and Condoization  
in New York City and Toronto



UBC Press · Vancouver · Toronto

Sample Material © UBC Press 2018

Tables / viii

Acknowledgments / ix

## **Contents**

- 1 Introduction / 1
- 2 Condo Owners and Boards / 35
- 3 Assembling the Condo: Processes, Agents,  
and Knowledges / 57
- 4 Governing Condo Renters / 107
- 5 Condo Governance, Legal Knowledges,  
and Surveillance / 130
- 6 Policing Condo Nuisance / 153
- 7 Ups and Downs of Urban Governance:  
High-Rise Condo Elevators / 188
- 8 Conclusion: Law Reform, Assemblages,  
and Condo Futures / 210

Notes / 239

References / 245

Index / 264

# 1

## Introduction

Condominiums are like sausages: they are made, sold, consumed everywhere in cities, and, with little fanfare or sophistication, promise to efficiently satisfy a need. But, like sausages, little is known about condo innards, and the less one knows, the better off one may feel. The inner workings and governance of condos remains either a distasteful topic (due to imagined conflict, acrimony, or dreariness) or a minor urban mystery easily left unexplored among weightier urban issues such as severely limited affordable housing, crumbling infrastructure, physical insecurity, crime, local government corruption, and unequal power and property relations. Yet these familiar urban issues – as well as others, such as nuisance – are closely tethered to condo governance. As more and more people are becoming its subjects and agents through “condoization,” there is little appreciation of how condo governance works, the knowledge it requires, or of how it is mutating and might be set free from its conquerors. This rising, perhaps even accelerating, condoization is a special way of governing urbanites and urban space comprising various elements – processes, agents, logics, technology, and forms of knowledge – assembled and working in concert. Exploring condo governance and condoization promises to reveal much about urban governance and life and its possible futures, the condo’s role in the fluctuating urban imaginary, and the value of

theoretical concepts when it comes to rendering these matters intelligible. But despite its apparent import, there is little study of condo governance and how it is changing, theoretically or otherwise. Like the innards of sausages tightly assembled in casings and covered with condiments, condo governance's complex, occasionally unseemly ingredients remain masked by slick developer and other forms of commercial marketing, and perpetually promising government statutory reviews and reforms. And, like eating too many sausages, unless one dissects the innards of condo casings (if only to conceive of alternative recipes) too much condoization may be placing the long-term well-being of urban life at risk.

Few people would deny knowing what a condo is. Yet in everyday parlance “condo” and “condominium” are used without qualification to refer *both* to a unit within a residential multi-unit building and to the entire building (e.g., “I live in a condo”); both to the apartment and to the complex in which it is located. The importance of the emergence of this dual meaning of “condo” should not be overlooked since it speaks to the presumed self-evidence of the assembled elements that constitute it. “Condominium” properly refers to a legally defined, unique form of property and tenure that combines cooperative ownership (as found in cooperatively owned housing [i.e., “cooperatives” or “co-ops”]) and more traditional individual ownership (as found in detached dwellings, the staple of North American housing). Owning a “condo” thus means owning both a unit and a common share of the building in which it is situated. In *Condo Conquest* “the condo” is shorthand for this specific legally defined form of ownership and the special governing arrangements it entails in North America and beyond. This book seeks to elaborate upon and to render intelligible this form of ownership. Accordingly, in what follows “condo” is used to refer to buildings, units, and practices operating under these arrangements as well as to the increasingly specialized agents and organizations (e.g., condo lawyers, condo property management firms, condo boards, etc.) they enlist.<sup>1</sup>

The urban imagination presumes limited residential living space and thus a need to share it, and this is precisely what, from the outset, the condo proposed to accomplish. The condo's common ownership capacity, governing board, and bylaws and rules promised the sharing of space, related resources, and responsibility for their governance. These arrangements depended on enabling legislation (Risk 1968), and the condo ascended through special state and provincial statutes passed in the 1960s in North America. These statutes have undergone continuous reform ever since. The condo's uncommon

marriage of common and individual ownership, and the ostensibly private governing arrangements to oversee this union, however, comprise not only its ongoing potential but also its perpetual frailty and its source of scholarly intrigue.

Presently the condo dominates growing swathes of the North American urban landscape and is found, albeit in slightly varying form and ranging proportion, in cities the world over, including those in Australia and Asia (see Easthope et al. 2014; Huong and Sajor 2010; Pow 2009; Zhang 2008; McKenzie 2006). One of the most under-recognized and discussed aspects of urban China, for example, is that it undoubtedly already has more condos – is more condoized – than the rest of the world combined due to conversions from public housing and new-builds during its rapid capitalist economic growth in recent decades. Indeed, authors of a rare study of condo governance in China recently observed that “the conclusion that the condominium is the principle housing feature of urban China is inescapable” (Chen and Kielsingard 2014, 22n). Limited residential land has been maximized by extending condo buildings vertically with more and more floors – verticality being a rarely noted feature of much condo governance and life – as well as by further increasing the number and often decreasing the size of units. Consonant with apparent efficiencies stemming from sharing space and elements, the condo has been touted at various junctures and by diverse sources as a solution to urban problems. This may be one reason this form of property has relentlessly converted and carved out urban spaces by horizontally and vertically displacing older forms and their inhabitants, including private and publicly owned rental complexes and industrial workplaces the world over.

Used first in the 1970s, the term “condoization” meant converting and dividing rental apartment complexes into multi-owned condo units and common elements for private sale and purchase. This is the conversion process undergone by a rental apartment building “going condo.” Beginning in 1977, this has been particularly prevalent not only in American cities like New York (Lees, Slater, and Wylly 2008, 28; see also Chambers 2006) and Chicago, which led the United States in conversions in the 1970s (Gallun 2006), but also, over the past thirty-five years (Steele 1993), in Toronto and smaller Canadian cities like Winnipeg (Hildebrand 2013). These “condo conversions” of existing rental housing are often used by building owners to avoid municipal or other local taxes as well as to engage in profiteering, and by other developers as opportunities to transform older, relatively affordable rental housing into luxury units that are for sale.<sup>2</sup> While this process is relevant to

what follows, this book expands “condoization” to mean a governing,<sup>3</sup> constitutive process in cities that enlists a wide but mutually supporting array of agents, processes, knowledges, and other elements. Thus, condoization includes building-specific condo governance – the inner ordering of condo complexes – as well as condo conversions and “new-build” development. Much of this book is about this inner ordering; but, upon closer inspection, it shows that any inner-outer distinction, or any distinction between condo governance and development, based upon the varied governing agents and knowledges brought to bear on condo governance, becomes blurred. “Condoization” is thus a summary term referring to all the agents, knowledges, logics, and processes that have arisen, been repurposed, or continue to emerge and are assembled in spaces and times to make the condo and its governance possible.

Upon passage of the first North American condo statutes, the condo was to be governed by a volunteer board of unit owners residing in a condo building. At this juncture, there was little to no anticipation of the role,<sup>4</sup> for example, of property management, security, or law firms in managing condo affairs. But since then condo governance has been slowly, almost imperceptibly conquered by these and other commercial agents and knowledges that now profoundly influence how any given condo building and unit is governed and, arguably, what statutory reforms that seek greater accountability and transparency of condo governance are possible. This gradual shift means, too, that the common knowledge of residents informing condo governance is increasingly being supplemented or displaced by expert, commodified knowledges and technologies. Concurrently, since its arrival in North America, the condo is becoming more and more an investment commodity and less and less an urban residential community in which to live, with units being increasingly purchased to rent to others rather than to use as a residence. This contrasts with provincial/state and federal levels of governments’ imaginings of condo corporations and buildings, which, by and large, were meant to be communities. As McKenzie (2011, 37) writes, mostly about the United States, condo arrangements “are viewed by many as having the potential to create strong communities” and, when compared to municipal governments, to have “greater flexibility to do the things that might promote community.”<sup>5</sup> This is a crucial assertion for following chapters and requires further elaboration.<sup>6</sup>

This community emphasis is evident, for example, in the 1977 statutory review preceding a revised Ontario Condo Act the following year: “*Community life* is an integral part of condominium living. Since the condominium concept is based on common property ownership, it involves owners in the problems

as well as the rewards *inherent in community life*” (Ontario 1977, 9; emphasis added). Later this review foresees condo living enlisting residents “interested in a high level of *community* involvement ... [and] relying on formalized cooperation” (Ontario 1977, 105; emphasis added). The federal Canada Mortgage and Housing Corporation’s (2017) *Condominium Buyers’ Guide* suggests to would-be condo owners: “Whether it’s compulsory or not, you have a responsibility to yourself and to other owners to become involved in your condominium *community*” (emphasis added). A prominent Toronto condo lawyer and one of the architects of Ontario’s 1998 revised condo statute explained during the latest statutory review that there was a “condominium *community* environment that government originally anticipated would be there when condominium *communities* were built. Condominium *communities* were intended to have people of like mind who shared the running of their home” (Miller Thomson LLP 2012, 324; emphasis added). And this latest Ontario statutory review process explains: “To say the [condo] corporation is a *community* implies that its members share common interests and the relationship among them is essential to promoting those interests. In short, they need one another” (Canada’s Public Policy Forum 2013c, 14; emphasis added). This review further reports that “a central challenge” “is to find ways of encouraging condo owners to look on their homes as part of self-governing *communities*” (Canada’s Public Policy Forum 2013c, 6; emphasis added; see also 2013c, 10).

Like “community,” this notion of “self-governing” contrasts sharply with the current character of condo governance that surfaced in the accounts of often isolated resident owners interviewed in this book. This governance is evinced as operating instead through an assemblage of agents, forms of knowledge (hereinafter “knowledges”), and technologies, mostly from beyond and outside a given building, rather than primarily from owners and board members residing within it. The assumption that a condo building and its governing corporation is a viable urban form that *fosters* or at least *promises community* due to the communal aspects and knowledge upon which it relies, including but not limited to shared property ownership and board participation, is revealed as increasingly dubious, though perhaps not yet beyond hope.

*Condo Conquest* is about how condo arrangements are governed and changing. It attends to varied elements that converge to make possible, shape, and police seemingly separate private condo worlds hidden to all but those implicated in them. In adopting a distinctive sociology of governance approach to the subject matter, this book insists that condo governance be viewed as a loose collection of governing agents, knowledges, logics, technologies,

and processes – that is, as an “assemblage.” One underlying aim of this approach is to render the familiar condo strange. The seemingly self-evident condo of everyday discourse that is built or converted, priced, bought, sold, rented, occupied, insured, secured, surveilled, measured, renovated, repaired, and managed nearly everywhere in cities, is revealed to be more an unfamiliar, shifting, contingent, tenuous accomplishment than a permanent, fixed edifice or space therein. The following chapters reveal the condo as less a physical structure built or converted by developers and more a mutating, assembled set of legal, social, and (often vertical) spatial relationships among various elements and a form of urban governance. To study condo assemblages and how their seemingly disparate elements work together is to begin to understand how property is born and continuously reconstituted.

The condo, as a special set of relationships, is also deemed to have a capacity to solve perpetual urban problems. Through this study the condo will begin to look a little familiar to scholars since, as a rich realm of governance awash with law and knowledge, they will recognize that analytical concepts with purchase elsewhere are also relevant to the workings of the condo. For example, this book demonstrates that risk management and surveillance are growing perhaps as much in the condo world as in municipal and other realms of public government. Given this and the condo’s influential and proliferating urban presence, it is inadequate to merely use empirical research to describe condo governance and how it might be changing, however expertly governments (e.g., Ontario 1977) and scholars (e.g., Easthope et al. 2014) may conduct that research. The study of condo governance promises to extend, refine, or underscore the value of key analytical concepts from overlapping governance, urban, socio-legal, and surveillance literatures and to itself assemble these literatures into a common thought space. What is needed is to relate condo governance, where possible, to analytical concepts informed in some manner by social theory, especially but not exclusively by the multidisciplinary literature inspired by the writings and ideas of French philosopher and historian Michel Foucault. To neglect to nurture the fertile empirical ground (and air) of the condo in this way would waste a fruitful opportunity. However, consistent with Foucault’s spirit, the aim here is not to introduce a new universal theory of condo governance or condoization but, rather, to introduce a modest but conceptually engaged intervention to trouble what has arrived in such an apparently self-evident form in our urban present. *Condo Conquest* seeks to make the condo and its governance intelligible by deploying concepts rather than by merely describing the condo, however valuable description might be



for the immediate concerns of policy makers, industry practitioners, and some condo owners.<sup>7</sup> It is especially for this reason that I pay attention to these concepts here before proceeding to explore condoization and condo governance. The following analysis avoids detailed prescription,<sup>8</sup> but it can nonetheless inform condo governance policies and practices in North American cities. While this book is not intended as a condemnation of the condo, in studying its governance, I discover troubling trends pertaining to how it has become arranged, conjoined, and constituted, and I discuss some of the effects thereof. Thus, condo governance has been mutating, not spectacularly, but gradually in ways discernable through detailed study. The condo is becoming less and less controlled by an elected board of owners representing, residing in, and acting in the interest of the long-term well-being of a residential community and is more and more being conquered by external commercial and private agents. These agents include non-resident investors, property managers, lawyers, security providers, and real estate agents who often operate to the detriment and/or literally at the expense of resident owners and largely excluded urbanites who are able only to rent a roof overhead (but who nonetheless foot the mounting bill) and perhaps also municipal governments if, in coming years, many condo corporations should become financially unsustainable or declare bankruptcy.

*Condo Conquest* draws on extensive empirical research conducted over several years. This research entailed numerous interviews with condo residents and industry representatives, and the collection and analysis of myriad documents from condo buildings (e.g., rules and contracts) as well as condo owner advocacy websites, professional trade magazines, developer marketing materials, formal submissions from owners and industry representatives to statutory reviews, mass media accounts, legislation and case law, and many other items related to condo governance. The empirical focus is on condo governance in Toronto and, to a lesser extent, New York. Toronto is Canada's most populous city, a dense and diverse urban centre. The metropolitan Greater Toronto Area, which includes the cities of Brampton and Mississauga, has over 6 million people. New York is the most densely populated city in the United States, with more than 8 million people distributed across five "boroughs" – Manhattan, Brooklyn, the Bronx, Queens, and Staten Island. These two metropolitan areas have among the largest condo concentrations in North America. Toronto and New York are also both economically "polarized" (Walks 2014) or "divided" (Florida 2014) cities, with shocking and rising inequality in income and wealth distribution. This inequality is reflected in, among other

shared features, the severe lack of affordable housing and the need for millions to rent a space in which to live while condo high-rises for purchase are erected all around, especially in downtown Toronto and Manhattan. As such, these cities provide two urban locales for the study of condo governance, with populations of slightly differing ethnic diversity and legal cultures but with unmistakable similarities in legislation, agents, and issues related to this distinctive form of governance.

The condo form is concentrated in these cities, but elements of its governance and condoization are largely applicable to other North American cities as well as to cities being condoized elsewhere. For example, condo buildings in Belgium and Australia predate their appearance in North American cities, and there are now far greater numbers of them in China than in North America. Yet all of them have somewhat similar specialized legislation, governing arrangements, agents, and knowledges. *Condo Conquest's* major topics, including legal knowledge, elevators, and nuisances, are relevant to condo governance and condoization the world over. Indeed, what has been happening regarding condo governance and condoization in Toronto and New York, and the focus of this book, might best be termed “condo conquest.”

## CONDO CONQUEST

*Condo Conquest*, the title of this book, looks at the extension of condoization – an extension that takes the form of a conquest, a take-over of condo governance and the condo by commercial or profit-seeking agents, especially representatives of condo law, real estate, insurance, security, and property management firms, and growing legions of non-resident owners who purchase condo units exclusively as commodities. It also explores the affiliated processes and knowledges that accompany this conquest. *Condo Conquest* offers a summary assessment of these conditions. Although the elements to which condoization and condo conquest refer have become aligned and, at numerous points in an assemblage, are mutually supporting, I do not suggest a grand conspiracy among the various identified agents, much less the other elements mentioned. I chose the term “conquest” because it presumes a quest for a reward using this collection of elements rather than another and thus connotes that there is much at stake for cities and urbanites. But, like all conquered territory, including the air space far above condo high-rises, it is never permanently and wholly captured. Rather, conquests must be continuously assembled, governed, and maintained, and there are perpetually emerging cracks and

holes through, and ways around, the physical walls and increasingly surveilled barriers of condo buildings as well as through and around unending house rules and statutory reforms that seek to at once provide for and control condo life. Certainly, the elevator emerges as one space where this resistance grows and becomes evident, while conduct deemed to be a nuisance in the way it defies space and rules is another. And whether the condo can be or is worth sustaining in the urban is not a given.

Condo development in Toronto and New York and the remarkable rise to dominance of the condo form has not occurred without some organized opposition. The politics of condo development is complex and differs in the two cities. Yet, like all organized resistance predating the conquering of a realm, in retrospect it seems limited in scope and aim. Often it has entailed opposition to the imagined effects of the erection of a specific building on the part of adjacent neighbours, businesses, or renters, sometimes appearing as NIMBY reactions (e.g., Powell 2017) rather than as being generalized across sites. In Toronto there has been growing organized resistance from several sources concerning the effects of rapid condo growth, including its mounting pressure on public infrastructure to the benefit of developers and to the detriment of local taxpayers, not to mention its gentrification effects (O’Neil 2017). But the results of this resistance have been limited. In New York resistance was especially significant in the 1970s, when rental buildings were increasingly converted, which was often claimed as gentrification and which saw long-standing renters fight back, with some success, to prevent the conversion of their buildings. To mention one example, in New York in the 1970s, in an estimated 10 to 15 percent of cases condo (and co-op) conversions were effectively resisted by long-term renters who were preoccupied less with decentralization issues and more with keeping a place in which to live (Lasner 2012, 267). Not everyone has seen the condo as worth embracing, nor has it been seamlessly imposed. However, no “anti-condo” organizations have emerged in either city during the condo’s ascendancy.

The elements of condoization and this conquest increasingly constitute the fabric of condo life in ways that may threaten the condo’s long-term viability and that are mostly inconsistent with the notions of community that governments and some early advocates (e.g., Teaford 1969) intended to accompany the condo and other cooperative forms of residential housing.<sup>9</sup> The title *Condo Conquest* also highlights the way the condo promised to conquer various urban problems (e.g., Risk 1968), the notion of urban governance *through* the condo. Thus, from its outset, agents ranging from municipal and

other political authorities, to local businesspersons in urban retail strips, to low-income urban housing advocates thought the condo possessed the capacity to respond to issues inherent to the urban world, the foremost of which was lack of housing space and affordability. This justification for the condo is plainly evident, for example, in the first legislative debate and discussion about enacting condo statutes in Ontario and New York State in the 1960s. As well, when condo conversions increased, particularly in New York but also in other US cities like Chicago, Denver, and Houston in the late 1970s (United States Congress 1981), the condo was a way of helping to solve the US urban problem of “decentralization” (see Fine 1980, 314) and related urban decay. That problem entailed the creation of a spatial “doughnut,” the hollowing out of populations and wealth in the centres of major US cities, and the movement of middle-class and upper-class (often white) families to the suburbs, leaving a residential hole in the city with a corresponding tax base vacuum. Through the 1980s and 1990s, the economic decline of urban areas and reduced public funding for municipal infrastructure and services due to major reductions in federal, provincial/state, and municipal government taxation and spending emerged as a problem. In North America, the condo promised either to offer its own services/infrastructure in place of municipal arrangements or to stand as high-density housing to reduce municipal service delivery costs (Nelson 2005; Warner 2011). At this juncture new-build condo complexes also promised to enhance consumption, especially in declining retail zones and downtowns increasingly overseen by business improvement associations (Lippert 2012). This was because they ensure the arrival of many new consumers in a targeted area and even, if condo developers’ marketing is to be believed, function to reduce carbon emissions through more efficient energy use (Tridel 2017). More recently, as discussed in Chapter 8, the condo has been deployed to house lower-income city residents (Mah and Hackworth 2011, 72) in Toronto and New York. The condo’s common, shared elements and spaces promise to reduce demands for horizontal residential space (as they often expand vertically into urban skies) as well as reliance on state expenditures for urban public housing and residential services. These two senses of “condo conquest” overlap and intermingle in practice. For example, juridification that entails increasing the influence of condo law firms, lawyers, and various forms of legal knowledge regarding the condo world as well as the influence of condo developers on governance – both examples of the conquest of condo governance – are not easily separable from using the condo to solve urban problems. One entails the other.

## CONDO GOVERNANCE RESEARCH

Seldom taken up as a topic in its own right,<sup>10</sup> condo governance is usually a subject – when remarked upon at all – within a broader but somewhat mottled collection of legal, socio-legal, and urban studies. In these otherwise insightful literatures, condo governance is typically approached obliquely or subsumed in discussions of “homeowner associations” (e.g., Chen and Webster 2005), “co-operative homeownership” (e.g., Lasner 2012), “property owner associations” (e.g., Kress 1995), “common interest communities” (e.g., Barton and Silverman 1994; McKenzie 2003, 2011), “multi-owned properties” (Sherry 2017), as well as “gated communities” in the US (e.g., Kennedy 1995; Low 2003, 2013), Canada (Grant 2005), the United Kingdom (Atkinson and Flint 2004), and globally (Atkinson and Blandy 2013). These various, somewhat poorly delineated (see Levi 2009) forms and spaces of private governance have been proliferating since the early 1970s. Significant works focusing more on condo governance are Barton and Silverman (1994) in the US and a recent significant collection about condo governance in Australia (Sherry 2017). Both move beyond describing the emergence, legal details, and requirements of condo statutes for governance to empirically discover further characteristics and consequences in practice. Barton and Silverman offer an account of condo life and governance in California. They ultimately argue that the condo is flawed because it creates conflict between the notion of private property as commodity and property as community. They assert that condo owners’ low participation in governance and conflict results “from contradiction between the complex reality, in which private and public life are interrelated, and people’s privatized understanding of their individual rights” (Barton and Silverman 1994, 130). Sherry’s work, which is more recent, concentrates on the financial, political, and social consequences of condo law arrangements in Australia, especially relating to how bylaws must be enforced against a diverse set of owners. This account has broader relevance since the Australian condo statutes influenced those developed elsewhere, including in British Columbia. While neither work engages with social theory to any extent (though Sherry [2017, 229] draws on legal theorist Joseph Singer’s democratic theory of property law to consider how condo governance is undemocratic), these significant studies are nonetheless relevant to Toronto and New York condo contexts and vice versa. For example, the revision and enforcement of bylaws in condo buildings in both Toronto and New York have encountered the economic and political barriers described in these two books. As in California and Australia, so in Toronto

and New York a lack of participation on condo boards is evident. Indeed, this suggests the following chapters may be of relevance to condo buildings and governing arrangements well beyond Toronto and New York.

Besides periodic provincial statutory reviews (Canada's Public Policy Forum 2013a) and market studies (Skaburskis 1984), most existing Canadian scholarly research on condo buildings is written by urban geographers: it deals with complex issues of condo development (see Kern 2010a; Lehrer, Keil, and Kipfer 2010; Rosen and Walks 2013; Webb and Webber 2017) and only obliquely with condo governance,<sup>11</sup> if at all. Condo development is the process of investing to convert existing, or to build new, residential structures as condos. For Toronto, municipal- and provincial-level planning, land-use, and zoning laws and policies increasingly encourage such forms of development (see Lehrer 2008) and discourage others, such as homeless shelters (Ranasinghe and Valverde 2006) and subsidized rental apartment buildings (Kern 2010a, 34, 62). What is understood as development is part of the condo story in major cities like Toronto and New York, but it is only part. Neglected in urban geography is condo governance and its significance in ordering urban space and life (but see Kern 2010a; Rosen and Walks 2013). Some recent theoretically engaged research on the condo in Canada centring on new-build condo development has emerged concerning Toronto (Kern 2007, 2010a, 2010b; Rosen and Walks 2013, 2015a, 2015b; Rosen 2016, 2017; Webb and Webber 2017) and, to a lesser extent, Vancouver (Harris 2011), where, in the past decade or so, condo growth, mostly of high-rises, has burst upward and across skylines. This theoretically engaged work on the condo provides keen insights into the mutating political economy of the expanding condo world. It includes attention to powerful private interests – mostly developers (Rosen 2017) – which condo development represents, as well as to the legal aspects that fuel it (Harris 2011).

The rapid expansion of the condo is sometimes asserted to reflect accelerating privatization consistent with the onset of urban neoliberalism (e.g., Kern 2007; see also McKenzie 2011, 3) and “gentrification” (Lehrer and Wieditz 2009; Ley 1996, 70). Neoliberalism is generally understood to entail “the embrace of public-private partnerships, deregulation, fiscal austerity, cross-subsidies and market solutions” (Blomley 2004, 29–74; see also Brady and Lippert 2016). The neoliberal roll-back of Keynesian welfarism (Peck and Tickell 2002; Hackworth 2008) means that, as urban space is increasingly redeveloped, it results in the expulsion of low-income and homeless persons

(see Catungal and Leslie 2009). This gentrification entails increasing class inequality through exclusion and displacement (Brash 2011; Atkinson 2004; Smith 1996, 2002) or socio-spatial polarization (Walks 2014). With regard to Toronto's condo growth specifically, Kern (2010a, 2) discusses "condo development as an expression of neo-liberal ideology," and Lehrer and Wieditz (2009, 4) use the term "condoification" to describe condo development "as the latest phase of gentrification in Toronto" (see also Smith [2002, 441] on a condo development in New York). In the same vein, Kern (2010a, 2010b) cogently examines gender dynamics within Toronto's neoliberal-oriented condo development. She explores how women are targeted by developers and sold not only condo units but also a contrived, impoverished, commodified urban lifestyle thought to befit their gender. This account includes limited attention to governance (Kern 2010a, 118–24) by drawing on twenty-one interviews with women condo owners.

This insightful, small body of work tends to view the condo as an economic and cultural force of urban development, an argument perhaps most persuasively articulated by Rosen and Walks (2013; see also Rosen and Walks 2015a; 2015b) drawing on innovative research in Toronto. Rosen and Walks (2013) introduced "condo-ism" into the urban studies lexicon to help explain Toronto's condo growth. For Rosen and Walks (2013), condo-ism, beyond involving condo development in the form of new high-rise buildings in Toronto, is "a new way of urban life" (Rosen and Walks 2015a) that accompanies a penchant for privatization of public services consistent with neoliberal sentiments and, more broadly, with a collection of forces, logics, and ways of life (Rosen and Walks 2015a, 2015b). Clearly, condo-ism complements condoization. They are not conflicting concepts but, rather, mutually reinforce a focus on different but vital aspects of the condo (i.e., development and governance). Condoization underscores a *constitutive process* that, in the spirit of Foucault, relies upon various processes, agents, technologies – and especially knowledges – to bring governing relations, and thus the condo itself, into being.

While informative and critical, these various accounts of development are perhaps less helpful in illuminating condo governance within and across the boundaries that supposedly demarcate the inside and the outside of the purview of condo buildings and corporations, though admittedly this is not their stated aim. For example, it is almost never noted in these or other accounts that condo buildings have internal forms of inequality that are represented foremost by the condo renter's presence. And, indeed, the suggestion

that condoization might be equivalent to gentrification belies the fact that many condo units are now rented (see Chapter 4). This book seeks to extend and complement rather than to critique the mostly insightful and critical work detailing condo development in urban geography, which often, but not exclusively (e.g., Rosen and Walks 2013), presumes the influence of neoliberal ideology.<sup>12</sup> To this end, Chapter 3 shows how condo development and inner governance are not easily separable, that the latter is more relevant to understanding development than might first appear, and that development entails elements of inner condo governance.

Other work by legal scholars in Canada tends to outline the development and details of condo statutes (see Risk 1968; Harris 2011). Similar scholarship in the US usually suggests that condo governing arrangements entail excessive rule making on the part of boards and conflict between boards and owners (e.g., McCabe 2005; McKenzie 2011; Low 2003; Elberg 2001; Kim 1998; Kress 1995; McKenzie 1994; Mittelbach and Ebin 1975; see also McLellan 1978; Blandy, Dixon, and Dupuis 2006). While relevant, these accounts neglect some key features of condo governance. Condo boards and other owners are especially vital governing agents, but previous scholarship neglects to examine not only increasingly influential commercial and other private agents beyond boards but also related knowledges, technologies, processes, and logics. In other words, it neglects to explore and problematize the full range of elements that make condo governance possible. Examination of knowledges in urban governance, following Foucault's influence, is essential (Valverde 2005). As a form of urban governance, condoization relies fundamentally on knowledges from diverse sources, including the multiple processes enlisting legal, real estate, insurance, property management, and security agents – processes that, themselves, are heterogeneously constructed. These agents, and the related role of knowledge, have been missing in previous accounts of condo governance.

More broadly, almost no scholarly work has explored condo governance in North America in a theoretically engaged manner. None has approached condo governance as an assemblage of multiple agents, knowledges, processes such as commodification and securitization, and related governing logics, nor has any recognized the benefit of doing so. *Condo Conquest* seeks to begin to encourage further research along these channels and, ultimately, to bridge the gap between urban geography's focus on development and socio-legal studies' focus on legal and related private urban governance.



## SOCIOLOGY OF GOVERNANCE

The chapters that follow examine condo governance using a sociology of governance approach that is loosely based upon and overlaps with the voluminous, multi-disciplinary, Foucault-inspired “governmentality” literature and its concepts, which includes a focus on knowledges and technologies (for overviews, see Hunt and Wickham 1994; Rose, O’Malley, and Valverde 2006; Dean 2010; Lippert and Stenson 2010; Walters 2012; Brady and Lippert 2016).<sup>13</sup> In this literature, which spans several disciplines, governance (or “government”) is conceived variously as “act[ion] upon action” (Rose 1999, 4) or, more broadly, as “any attempt to control or manage any known object” (Hunt and Wickham 1994, 78).<sup>14</sup> Governance includes laws, policies, and strategies of public and private agents, and it targets and involves both conduct and things. Governing is not easily distinguishable from “policing,” and for this reason the terms are sometimes used interchangeably (see Chapter 6). Overall, this body of research focuses on detailed practices of state governance as well as of governance by private (Rose and Miller 1992) and hybrid agents that lie beyond the state and that are neither exclusively public nor exclusively private. Many persons quoted in the following chapters – owners, board members, lawyers, and property managers – are precisely such agents. Governance is constitutive: it brings its agents and targets into being as it operates (Hunt and Wickham 1994). Governing and constituting happen at once. Governance also always involves power relations and resistance at each site of connection (Hunt and Wickham 1994, 80) among elements. And, as is shown, there are multiple forms of resistance in relation to these elements. Thus, owners have resisted some condo governance arrangements by joining associations beyond their building – typically during times of statutory reform (see Chapter 2) – and, based on interviews, do so within condo corporations and in relation to specific rules and bylaws or board actions. But inanimate objects also resist. For example, tobacco smoke can “resist” condo rules and spatial divisions when it travels through floors and walls, and its ugly remnants – cigarette butts – jump from balcony to balcony outside both the condo building envelope and the house rules (see Chapter 6); technologies such as elevators, that aid condo governance, can acquire new purposes in ways that resist the plans of boards and property managers (see Chapter 7); and condo owners – often isolated from one another and their boards – can form resistant condo owner associations across condo buildings to share common knowledge

of their experiences and to encourage statutory reforms pertaining to condo governance (albeit not especially effectively) (see Chapter 8).

### Assemblages, Knowledges, Logics, Technologies, and Law

Beyond condo, condoization, and governance, five other sociology of governance concepts require elaboration. Readers familiar with them may wish to proceed directly to the research procedures and data sources section. For those unfamiliar with them, it is vital to understand them before proceeding since a key aim of this book is to move beyond mere description.

The first concept is “assemblage,” a fancy term that refers to a loose assortment of elements that hang together. As Hunt (2013, 71) suggests, such “elements do not necessarily constitute a system.” Rather, their conjunction is presumed to be contingent and temporary. The concept of assemblage is used in sociology of governance and overlapping socio-legal (see Brady and Lippert 2016; Hunt 2013; Dean 1996), urban (Valverde 2016; Murakami Wood 2013; Farias and Bender 2010), and surveillance (Haggerty and Ericson 2000; Lyon 2007; Lippert 2009) literatures.<sup>15</sup> In adopting this concept, the chapters that follow gather these literatures into a space that permits a closer conversation between and among them. Assemblage is used in relation to a range of substantive areas such as urban infrastructure (Valverde 2016), forest management (Li 2007), and immigrant settlement (Lippert and Pyykkönen 2012). In urban studies the notion of assemblage permits the “study of the heterogeneous connections between objects, spaces, materials, machines, bodies, subjectivities ... that ‘assemble’ the city in multiple ways” (Farias 2010, 14). Similarly, regarding the topic of urban infrastructure, Valverde (2016, 200) uses “assemblage” “to dynamically study the shifting, ever-changing articulations of heterogeneous participants and interests that one finds in all governance.” One distinguishing feature of assemblage is “that it links directly to a practice, to assemble” (Li 2007, 264). This book does not seek to discern and analyze all assembling practices of condo governance and condoization. Rather, its more modest aim is to identify several vital current elements, how they shift and work in concert and provide each other with mutual support, including the knowledges (especially legal knowledges) shaping and linking them; how contestation among some elements manifests itself; and how several rudiments are excluded. The concept of assemblage is chosen based on what is revealed by the empirical study of condo governance. For Valverde “assemblage” refers to “the *only partially planned combinations* of capabilities and resources that do the work of governing” (2015, 51; emphasis added). Thus, assemblages are not tantamount

to grand conspiracies: they can also entail amalgams of governing logics (often called “rationalities”), such as “precautionary logic” and its obsession with catastrophic private property loss (Chapter 5) and “police” with its peculiar fixation on details of space and time (Chapter 6). Finally, assemblages can also enlist private agents and rules exemplified by condo governance. Thus, Valverde (2011, 292) notes that to fully understand urban governance *private* realms must also be considered:

Public laws and rules did not have a monopoly on regulation, because such private actors as insurance companies also imposed rules ... lenders as well as realtors also imposed their own private but nevertheless compelling regulations ... A full genealogy of urban governance would have to include the myriad private ... regulatory structures that converged on different kinds of property owners and different kinds of properties.

This notion can be extended to condo governance, to the practices that constitute private property (see Chapter 2), and, crucially, to various other private governing agents discussed throughout this book.

A second vital concept of the sociology of governance is “knowledges.” Following Foucault, governance is anticipated to be at once informed by and dependent upon types of knowledge, including legal knowledge (Rose and Valverde 1998; Hunt and Wickham 1994; see also Lippert and Walby 2014a). Knowledge is necessary to shape and inform governance, and governance carves out opportunities for knowledge production, transfer, and use. One entails the other. As noted, explicit attention to knowledges is absent in nearly all previous work on condo governance and development. Of interest here is the relation of knowledges to governing practices and how they aid the formation of assemblages. Research reveals the wide range of this relation, from real estate value assessments and myriad property manager-run software and digitized reports (Chapter 3), to images from surveillance cameras and numbers from audits that identify rule-breaking (Chapter 5), to decibel levels from devices to measure noise nuisance to settle disputes (Chapter 6) – all related to condo buildings and the conduct of residents and boards. Bruno Latour’s studies of science (e.g., Latour 1993) complement the sociology of governance in their attention to knowledges (see, among others, Williams 2012; Lippert 2007; Moore 2007; Rose, O’Malley, and Valverde 2006; Rose and Miller 1992) and embrace the concept of assemblage (e.g., Brown 2006), too. These tools can enhance the study of “knowledge flows” (Valverde 2005, 422).

Analysts are thus encouraged to focus on “*process and flow*” and “how actors pick through documents or discourses” (Valverde 2005, 420; emphasis in original) for their own purposes. In this way the Latourian notion of “excerpting” or reducing knowledge is valuable (see Chapter 4), as is the notion of “inscription devices” that permit material things to be represented and then more easily governed (see Chapter 3). These conceptual tools help provide insights into the role of knowledge and of external private agents in condo governance, from whom knowledge is transferred, associated, and/or produced. They help reveal how knowledge can, for long periods or only for moments, assemble disparate rudiments in pursuit of common governmental aims, including during statutory law reform hearings (see Chapter 8). In addition, Latour shows, somewhat controversially, that inanimate objects are among the agents operating within assemblages and, thus, are also agents of the condo world. Examples of these things are numerous, but cigarette butts are perhaps exemplary when they manifest as nuisances requiring policing.

The third concept is law, and I give it considerable attention. But interest here, following Foucault’s influence, is mostly in legal knowledge and how it emerges and flows in relation to governance and surveillance of condo inhabitants, conduct, and spaces, and less in analyzing details of fixed black-letter legal texts like Ontario’s and New York State’s condo statutes per se. Legal knowledge is also deemed pluralistic (see Walby 2007) and is assumed to pertain to condo building-specific house rules as well as to municipal law and to newer forms of law such as provincial human rights codes and information privacy statutes. Thus, legal knowledge refers to everyday aspects of condo governance – for example, wearing certain religious attire in common recreational areas (human rights codes) or circulating board meeting minutes that identify owners (information privacy law) (Jaglowitz 2008). Attention here is on how legal knowledge from various sources is adopted, reduced, and repurposed across assemblages, mostly using long-term renters of condo units as an example. Legal knowledge is constantly mutating, coupling with and disconnecting from other forms of governance and knowledge. It perpetually enlists and delists non-legal strategies and ways of knowing (Rose and Valverde 1998).

One specific emergent form of law in condo governance, discussed in Chapter 5 in relation to surveillance, is “counter-law” (Ericson 2007, 207; see also Levi 2009). This is a concept adapted from Foucault (1977) and that is associated with “precautionary logic” (explained below). According to Ericson

(2007), counter-law appears in two forms: counter-law I and counter-law II. The former are “laws that counter ... traditional principles, standards, and procedures” (Ericson 2007, 207). Counter-law I entails the creation of new laws or the increased use of existing legal provisions against established law to diminish those traditional principles and procedures deemed to restrict preempting causes of harm – in this case to the condo corporation – consistent with precaution (Ericson 2007, 24). Exemplars of such “laws” in the condo world are (1) statutory provisions for courts to assign an emergency administrator to replace a demonstrably incompetent condo board and (2) a board’s “special assessments,” which are imposed on owners to cover repairs to salvage a building’s integrity and to quickly compensate for acute funding shortfalls. These are condo world examples of counter-law, and they are distinguished by the often drastic, exceptional (i.e., special or emergency) nature of their deployment. In recent years, the notion of the “exception” has received greater attention in socio-legal studies and beyond but not in relation to more mundane or ostensibly private realms such as condo governance (Lippert and Williams 2012). As discussed in Chapter 5, counter-law II, the deployment of surveillant assemblages, is even more relevant than counter-law I. Counter-law II “involves broader and deeper surveillant assemblages that cast widely for signs of threat in the hope of pre-empting disasters waiting to happen” (Ericson 2007, 207). More generally, the increasing influence of legal knowledge (along with condo law firms and lawyers) in condo governance as part of condoization is termed “juridification.”

The fourth concept, “rationality,” or “governing logic,” refers to a methodical way of enacting and conceiving of governance, a broad discourse that makes governmental practices possible. Governance is seen to be shaped by logic and to take a discernible discursive form; thus, there is a focus on discourse as constitutive, though not to the neglect of actual governmental practices (Lippert and Stenson 2010). Several logics have been elaborated in overlapping governance, socio-legal, urban studies, and surveillance literatures, with by far the most work attending to variants of neoliberalism (e.g., Barry, Osborne, and Rose 1996; Larner 2000; Rose, O’Malley, and Valverde 2006; Ericson 2007; Kern 2010a; Brash 2011; Brady and Lippert 2016). This rationality concerns shifting responsibility for the governance of all aspects of urban daily life, from public authorities to private agents and an associated market of commodified solutions. This certainly resonates with the shift from public municipal government to private governance represented by condo growth (Kern 2010a),

particularly when viewed from outside. Yet there is good reason to be cautious about blithely applying neoliberalism as a rationality (or even as an ideology<sup>16</sup>) to condoization and related trends. Thus, the influential governmentality scholar, Pat O'Malley (2017, vi), has recently remarked that the

master variable “neoliberalism” ... was used to explain almost every disliked political change since 1970 and which has turned out to be, at best, a kind of greasy, portmanteau term: hard to pin down and carrying a lot of hidden baggage. Such broad concepts and visions may be useful at first, when certain changes need highlighting and outlining, but they become a hindrance once it becomes necessary to focus analysis to gain theoretical and political traction with specific developments. (See also Lippert and Brady 2016)

The notion of neoliberalism may well be initially useful, but one such “specific development” concerns mutation in condo governance, and, in closely examining it, this book argues that the more mundane, older “police” logic is also relevant. “Police” is a rationality, or governing logic, highlighted both in Foucault’s writings and in the sociology of governance literature that draws from them. In the latter, “police” often appears as the expired antecedent of early liberalism (e.g., Hunt and Wickham 1994; Miller and Rose 2008, 33), thus acting as a foil to Foucault’s account of liberal governmentality (see Walters 2012, 28) and as a type of state power (Novak 1996). The exploration of “police” in condo arrangements shows that this logic is present not only in municipal or other state forms but also in the nominally private condo world. Earlier versions of “police” in Europe embraced the “utopian dream that all regions of the social body could be penetrated, known and directed by political authorities,” but they were “abandoned” with the rise of liberalism, which backed away from such direct intervention (Miller and Rose 2008, 33). However, based upon the discovery of how nuisances are policed in condo spaces, that dream is plainly not dead, no matter how often one is awakened after 11:00 p.m. by a condo neighbour’s noise. Foucault notes an early tether between “police” and the urban. Thus, he remarks in his “Security, Territory, Population” lectures, reflecting on the eighteenth-century writings of Domat, that “to police and to urbanize is the same thing” (Foucault 2007, 336). These Foucauldian reflections are suggestive for urban governance assemblages because they hint that if “police” is decidedly urban, and the condo is saturated with this logic, then so is the condo. “Police,” in Foucault’s sense, may be an integral part of condo

governance and condoization (see also Rosen and Walks 2013), and what can be discerned through its study may be revealing of contemporary urban governance arrangements and urban futures more broadly.

Another specific development related to notions of “counter-law” is the newer “precautionary logic” (Ericson 2007). Risk avoidance is discussed in relation to private insurance in condo governance and has neoliberal variants, but precautionary logic carries this emphasis further. This latter logic presumes “worst case scenarios and form[s] ... around merely imagined disasters” (O’Malley 2017, v). It is a logic of uncertainty that presupposes a limit on the ability of science and technology to produce reliable knowledge about risk, and it may be emerging in the condo world. Precautionary logic and risk avoidance are associated with neoliberalism. But again, there is more uncovered about condo governance in this book than can be made intelligible by invoking neoliberalism. Put simply, neoliberalism in the condo world is “just one thing among other things” (Collier 2012, 191).

The fifth and final concept is “technology of government” (see Rose, O’Malley, and Valverde 2006; Lippert 2010; Dean 1996). Such technologies may range from “inscription devices,” such as mundane maps (Blomley 2004), statistics (Hacking 1991), signage (Hermer and Hunt 1996; Lippert 2009), and digitized reports, to elaborate mobile spatial technologies such as high-rise elevators. As a key element of urban life, the mundane elevator has received only limited scholarly attention (see, e.g., Hirschauer 2005; Graham and Hewitt 2012; Bernard 2014). Little is known, for example, about how the elevator is governed and its functions within “skyscraper geography” (McNeill 2005). The elevator may have been overlooked because, as Graham and Hewitt (2012, 72) remark, urban studies has tended to deploy an “overly flat discourse” that neglects verticality. There remains a need to critically examine technologies of this “Z axis” in urban governance (Skayannis 2010), including in condo high-rises – vertically arranged complexes that entail unique governing arrangements.

These technologies are presumed to articulate with logics but are not permanently tethered to them on a one-to-one basis (Valverde 1996). A technology can articulate with different governing logics, depending on time and place, to activate and make governable subjects and spaces amenable to programming of one kind or another. With little justification, technologies of government have often been neglected in the sociology of governance (Lippert 2010), and the condo provides an excellent opportunity to explore the role of the elevator in urban governance.

## RESEARCH PROCEDURES AND DATA SOURCES

*Condo Conquest* adopts a triangulation research strategy (see Singleton and Straits 2010, 431–34; Moran-Ellis et al. 2006; Miles and Huberman 1994) involving various methods, data sources, and data types compatible with the interrogation of governing assemblages (see Lippert and Stenson 2010; Valverde 2005; Hunt and Wickham 1994). While much research effort centred on interviews with owners and board members in two major North American cities and, to a lesser extent, condo industry representatives, triangulation meant that other methods were necessarily employed and other sources and data types generated and drawn upon. To investigate condo governance, beginning in 2006, intensive empirical research was conducted in the Greater Toronto Area (which includes the cities of Mississauga and Brampton and other immediate suburbs) and, much more extensively, from 2012 to 2016, both there and in Ontario as well as in New York City and New York State. Interviewees included current or former condo board members, property managers contracted to manage condo buildings, and other industry representatives in Toronto and owners and board members in New York. Because these condo buildings and owners are known to vary, beginning in 2012 I sought to interview owners and board members from buildings of varying sizes (those with fewer than 150 units, and those with more than 150 units) and units of varying values (some units valued at more and some less than CDN\$600,000 in Toronto and units valued at more and some less than US\$800,000 in New York, as reported by owners) to ensure inclusion of a variety of condo owners and buildings. Most interviews were generated through letters mailed to owners and board members from thirty-two such condo buildings identified through tax rolls in Toronto and via snowball sampling for other owners, board members, and industry representatives (or service providers), which resulted in 160 interviews in total. Industry representatives included condo lawyers, accountants, architects, property managers, security personnel, and real estate agents. It was discovered that these are not mutually exclusive categories: owners are of course sometimes board members and both are not infrequently also key agents of the condo industry. Owners, board members, and industry representatives are not homogenous groups and thus it is important to note that interviewees included men and women more or less equally and reflected Toronto's, and to a lesser extent New York's, ethnic diversity. Interviewees also varied by age, sexual orientation, and, to a lesser extent (since property ownership tends to exclude



lower-income groups), class. These wide-ranging, open-focused (or semi-structured) interviews revealed numerous aspects of condo governance and living, such as reasons for purchasing a condo unit, relations with board members and other residents, use of legal knowledge, and everyday problems in buildings (such as nuisances). Together they provide an intimate look at condo governance and living that is unavailable through documents or other sources. What emerged as key topics, including renters, surveillance, and elevators, were not specifically targeted in interviews; rather, they emerged during the analysis of interviews and other textual data obtained from owners and board members. To be properly researched, some of these topics (e.g., surveillance and elevators) required the use of other documentary sources. Interviews with condo industry representatives, including insurance, property management, security, and law firm representatives, focused on their roles and associated knowledges in condo governance. To ensure anonymity and mask condo building locations and names of specific commercial firms and condo industry representatives throughout, interviewees are designated with pseudonyms. They are further designated by city (“TO” or “NYC”) and by whether they are a board member (“Board”), resident owner (“Res.”), or have condo-specific expertise (“Real Estate,” “Lawyer,” “Architect,” “Manager”). These designations reveal interviewees’ locations in condo assemblages.

As important as interviews to understanding condo governance was the collection and analysis of a wide array and sizable volume of documents. Included are documents from condo buildings, such as declarations, bylaws, rules, newsletters, and meeting minutes. Other documents are more broadly focused on condo governance and particular aspects of condoization, such as those from condo owner association or advocacy websites, condo newsletters, legal decisions, developers, condo insurance, property management, developer firm marketing materials and publications, condo law newsletters, condo law review submissions, broader condo industry publications (such as *Condo Business*), media accounts, statutes, case law, and numerous items produced by and relevant to condo governance mostly in Toronto but also in New York. These documents provided detailed insight into condo governance and overlapping processes involving property management, law, real estate, insurance, and security firms and agents. I also went to two major annual condo industry conferences attended by lawyers, insurance personnel, property managers, and a few owners. Additionally, I examined media coverage of lawmakers’ debates over Ontario’s first condo legislation in the 1960s and non-governmental groups and individuals’ submissions and debates (i.e.,

the written record of the Ontario legislature known as *Hansard*) concerning the earliest (1977) and latest (2013) statutory reforms as well as accompanying reviews. These reviews are the distillation of discourses about condo governance; in governance terms they are “programmatically” (Rose and Miller 1992) and not parochial. The submissions were acquired through a Freedom of Information (FOI) request of the Ontario government ministry overseeing the review of the province’s condo statute, yielding more than a thousand pages of owner, board member, and industry representatives’ submissions to Ontario’s legal review processes. Not normally released to the public or researchers, FOI requests have recently proven to be a valuable qualitative research method (e.g., Walby and Lippert 2011, 2015; Lippert and Walby 2014b).

I also acquired and analyzed the “bill jackets” that accompanied condo law reforms in New York State at various junctures since that statute’s inception in 1964 as well as the current bill (A6941) to introduce a condo ombudsperson (New York Senate 2012). Further, I collected and thematically categorized a major condo industry organization’s member internet “discussion board” and “condo advice” columns in Toronto’s two major daily newspapers featuring experts’ responses to governance questions from board members and unit owners from 2005 onward. The same was done for a major condo owner association’s “discussion board” (comprising owner and board member postings from condo buildings in Toronto from 2008 to 2012) and an anonymous “board talk” discussion board, which collected owner and board member postings from New York during 2014 and 2015. I organized and thematically coded the interviews and documents using N-vivo analysis software. While I did not use N-vivo analysis exclusively, it provided an efficient means of organizing what became a small mountain of qualitative data from diverse sources and aided the ability to discern commonalities and trends across data sources and types consistent with triangulation.

Though these research procedures were undertaken for both Toronto and New York, it is vital to underscore at the outset that condo governance in the two cities is not systematically compared in what follows, as laudable as such an effort might be. Rather, my aim is to explore condo governance by drawing on relevant data from at least two major North American cities. Owing partially to the high cost and challenging logistics of securing interviews in New York,<sup>17</sup> more interviews were conducted and far more industry information was collected in Toronto. Thus, Toronto should be understood as the primary context of the research and New York as a significant supplemental context. The provincial or state statute overseeing condo governance

in each city developed slightly differently. The inquiry in Ontario included provincial statutes and the wider condo industry in addition to municipal law and local condo building governance, whereas the inquiry in New York was limited primarily to the municipal and condo building level, along with limited attention to the content and reform of New York State's condo statute. The analyses that follow reflect these different foci. Yet remarkably similar issues and elements of condo governance were identified in both cities. *Condo Conquest* focuses on these similarities and draws on owners' and board members' rich accounts of condo living from both cities. In doing so, the book suggests a wider relevance to the condo world beyond Toronto and New York.

Having discussed the approach, key concepts, methods, and data sources deployed in this book, it is now time to turn to condo statute emergence and condo growth in Toronto and Ontario and in New York City and New York State.

## **CONDO EMERGENCE AND GROWTH**

The condo continues to grow in numbers and significance in major North American cities. This section describes the emergence of condo statutes and increasing prevalence of the condo in Canada and the United States and, specifically, in Toronto/Ontario and New York City/State.

### **Canada: Ontario and Toronto**

In Canada, the first provincial condo legislation, the Strata Property Act, appeared in British Columbia in 1966, and this is also likely where the first condo building in Canada was constructed. By 1969, the most populated Canadian provinces had condo statutes in place, and, in 1977, with its introduction in Prince Edward Island, this was true of all provinces (see Table 1.1).

Canada has seen recent rapid condoization (see Table 1.2). In Canada, by 1996 there were half a million condo units (Canada Mortgage and Housing Corporation 2012), and by 2016 this had almost quadrupled to nearly 1.9 million units (Statistics Canada 2017a). Condo units are also growing as a proportion of all Canadian housing. In 1996, condo units represented 5 percent and in 2016 more than 13 percent of all housing units. Condo units as a proportion of all housing in Canadian cities increased by almost 17 percent in the last five years alone (Statistics Canada 2017a). Of the major Canadian cities, Toronto (445,650) and Vancouver (293,765) are now the most condoized,

**TABLE 1.1 Provincial condo statutes**

Canadian province	Year
British Columbia (Strata Property Act)	1966
Alberta (Condominium Property Act)	1966
Ontario (Condominium Act)	1967
Manitoba (Condominium Act)	1968
Saskatchewan (Condominium Property Act)	1968
New Brunswick (Condominium Property Act)	1969
Quebec (Code Civil du Québec)	1969
Nova Scotia (Condominium Act)	1971
Newfoundland and Labrador (Condominium Act)	1975
Prince Edward Island (Condominium Act)	1977

Note: The Canadian territories also now have condo statutes.

**TABLE 1.2 Condo units in Canada in millions, selected years**

	Total housing units	Total condo units
1996	10.8 (100%)	0.51 (4.8%)
2001	11.6 (100%)	0.67 (6.0%)
2011	13.3 (100%)	1.6 (12.1%)
2016	14.1 (100%)	1.9 (13.3%)

Sources: Statistics Canada (2011); Canada Mortgage and Housing Corporation (2012).

closely followed by Montreal (276,455) and then Calgary (113,055), Edmonton (99,590), and Ottawa (74,830) (Statistics Canada 2017a).

Ontario borrowed heavily from US condo legislation in drafting its first condo statute, passed in 1967 (Skaburskis 1984). Like several other major North American cities in the 1960s, Toronto was experiencing an affordable housing shortage, and condo legislation was thought to encourage “empty nesters” to purchase condo units and to exit single-family detached dwellings so that the latter could be bought and occupied by younger families. This rationale is evident in media accounts at the time (see *Toronto Star* 1967; Wills 1967; Farrell 1966). The assumption, too, was that, as the urban population “greyed” and affordable urban space dwindled, more elderly Ontarians would seek condo units over larger detached dwellings. Condo buildings were thus assumed to be a more efficient use of urban space (Nelson 2005, 40).

There was a sense of urgency in the debate about the first condo statute in the Ontario legislature. James Renwick (elected member for Riverdale) remarked:

So far as I can tell from the reading of the law on condominium ... there is very little difference in the proposed law of condominium than there was in the law which was introduced in one or two other provinces in Canada and elsewhere in the world ... We cannot wait ... eight or nine years ... for ... the Law Reform Commission ... or wherever the studies have taken place, to bring themselves up to date in matters of law which are well known and well established and functioning efficiently in a jurisdiction such as New York State across the lake. (Ontario 1967a, 1725–26)

At the time, in the Ontario legislature the doubtful opposition member also asked whether the sitting government had evidence of the condo's success in responding to urban housing shortages: "Or have we begun to adopt willy-nilly whatever particular *fad and fashion* has begun to seep through the common law jurisdictions by way of adaptation ... in ... the faint hope that it will in some way assist in solving the immediate crisis in the province of Ontario?" (Ontario 1967b, 1928; emphasis added). Whatever the effects, the condo was soon to far surpass a "fad and fashion." It could scarcely be imagined that, fifty years later, the condo would comprise nearly *one-quarter* of all residential housing in Canada's largest city, enjoy a new dominance in New York (partially at the expense of the long-established cooperative), and have an expanding industry comprising myriad condo-specific firms rising around or, perhaps more accurately, growing deep inside the condo's workings and traversing its exterior walls.

In 1967, as Renwick suggested in the Ontario legislature, the New York State condo statute was deemed successful "across the lake" (i.e., Lake Ontario). But a remaining area of concern in Ontario was whether the Canadian federal government, via the Canada Mortgage and Housing Corporation, would provide insurance for condo mortgages (i.e., whether the state would backstop condo developers and, as time went on, indirectly backstop the emerging condo industry too). Noteworthy at the birth of Ontario's statute is the fact that the burgeoning cooperative housing alternative (see Schill, Voicu, and Miller 2007) to individual detached housing, popular in New York, was framed in media and legislative discussion as the condo's ability to justify reassigning some financial risk from a collectively owned arrangement to individual owners (e.g., *Toronto Star* 1967; Wills 1967; Farrell 1966). Thus, the condo was claimed to be less financially risky for Ontario owners than the cooperative, and this was especially vital because, at this point, the federal government's Canada

Mortgage and Housing Corporation decided to mimic the US Federal Housing Administration’s mortgage insurance provision (see below) for condo purchases in Canada (see Romney 1974; Rosenberg 1972; Risk 1968; Ferrer and Stecher 1967). Condo law’s emergence in Canada in the 1960s was fuelled by this transfer of the financial risk posed by this new form of private ownership to governments and individual owners. Ontario’s first condo statute was a short piece of legislation, numbering but a few standard pages. Shortly after passage, the first Ontario condo arrangement, a modest townhouse complex, was erected in Brampton (a Toronto suburb) in January 1968 (Davies 1969). On its fortieth birthday in 2008 it was celebrated in an article in the *Toronto Star*: “The 37 two-story townhouses built by Bramalea Consolidated Developments comprising Peel Condominium 1, were registered on Dec. 27, 1967 with the first owners moving in a month later. Monthly maintenance fees were \$27” (Hanes 2008). By 2013 there were some 600,000 condo units in which 1.3 million Ontarians resided, the majority in Toronto (Canada’s Public Policy Forum 2013c).

Due to their supposed more efficient use of space, condo buildings have since become particularly useful with regard to densifying urban areas like Toronto. Lehrer, Keil, and Kipfer (2010, 84) explain that condo development befits Ontario’s provincial plan to intensify urban areas throughout Toronto so as to reduce urban sprawl. Here condo development, and especially the condo high-rise, is seen as positively contributing to densification.

Toronto has experienced an explosion of condo development over the past two decades (Kern 2010a; Rosen and Walks 2013) (see Table 1.3). In 1996, Toronto had slightly over 86,000 condo units, or 9.5 percent of total city housing, and by 2016 this had grown to a staggering 445,650 units, representing a remarkable 21 percent of all housing in the city. The development between 2001 and 2016 shows rapid proliferation and, if trends continue, suggests

**TABLE 1.3 Condo units in Toronto in thousands, selected years**

	Total housing units	Total condo units
1996	903.5 (100%)	86.3 (9.5%)
2001	943.1 (100%)	108.3 (11.5%)
2011	1,989.7 (100%)	371.8 (18.7%)
2016	2,135.9 (100%)	445.7 (20.9%)

Sources: Statistics Canada (2011, 2017a); Canada Mortgage and Housing Corporation (2012).

the condo's even greater future significance (see Statistics Canada 2017a). Lehrer, Keil, and Kipfer (2010, 84) assert that condo growth in Toronto underwent two spurts, one of which was from 1970 to about 1980, the other of which commenced at the end of the 1990s and continued through 2010, a year during which *at least* 240 new condo high-rises were under construction (McMahon 2014). This surge has continued. Toronto's downtown core and adjacent areas are now not inappropriately labelled "Condo Land" (Preville 2014). But this is not a term of endearment since rapid growth has accompanied media exposés of questionable condo building construction and, to a lesser extent, governance issues related to newer high-rise condo buildings (McMahon 2014; Preville 2014). Simultaneously, the comparative volume of affordable housing available in Toronto continues to dwindle (Florida 2014), with little or no new public or social or regular rental housing emerging in the past two decades.

The size of condo complexes has been rising in Toronto as well.<sup>18</sup> As one Toronto property manager involved with condo buildings since 1993 related: "Now you are getting new condos with twelve hundred people or more. So the idea of large has changed. My definition of large would be three hundred to four hundred [units]" (TO Manager 5). Based upon systematic quantitative analysis of a major condo real estate website that provides information about size and building date of condo buildings and units in Toronto (condos.ca), from 1996 to 2016 the number of condo units per building based on year of construction has been consistently mounting. Thus, in buildings erected in 1996, the average number of units was slightly more than one hundred (already nearly three times the number found in the 1968 condo townhouse in Brampton noted above). By 2006, the number of units per buildings from that year was a bit more than two hundred, and buildings built in 2016 averaged almost three hundred units, almost triple the number in only twenty years. This analysis also revealed, perhaps unsurprisingly, that the average square footage of units has been consistently decreasing. This change to more smaller units per building over time is discussed in later chapters, but suffice to say here that this developmental shift is connected not only to new developer and densification strategies but also to a concurrent growth in the capacity of governing agents and knowledges beyond boards to govern the expanding number of condo inhabitants and spaces. This essential capacity, what Foucault would call a "condition of possibility," is almost never acknowledged in accounts of condo development, which tend to grant agency in fueling condoization almost exclusively to developers and public governments.

## United States: New York State and New York City

In the US, Keith Romney (later called the “father of condominiums”) helped draft the first continental US legislation in Utah in 1960 and served as the developer’s lawyer for its first offspring, a condo complex adapted from a planned cooperative called “Graystone Manor” in Salt Lake City (Benson 2012). In 1961, the US Federal Housing Administration (FHA) used a 1958 condo statute from Puerto Rico to draft model legislation for adoption by US states (see Nelson 2005, 40). Puerto Rico had earlier encountered a shortage of housing, high housing costs, and land scarcity. The first two of these trends was emerging in several US cities. But as vital for the condo’s spread in the US were the lobbying efforts of Puerto Rican businesspersons and professionals during US Congressional hearings (Christensen and Levinson 2003). Despite condo legislation enacted in Puerto Rico, a bank mortgage for a condo unit was still difficult for average Puerto Ricans to obtain (Berger 1963). The delegation therefore encouraged Congress to arrange for the US federal government to insure mortgages for would-be condo owners (Christensen and Levinson 2003). Congress passed section 234 of the National Housing Act to insure loans for condo units (Nelson 2005, 40), meaning the US government would now backstop the financial risk created by this largely unproven form of property. This helped fuel condoization.

Following model condo legislation and the insuring of mortgages by the FHA, the condo proliferated across the US at a breathtaking rate. Condo legislation had been introduced in almost all US states by 1967 (Nelson 2005, 40). By 1980, the number of condo units in the US had reached 2.1 million (Adams 1987). By 2011, the number had more than quadrupled to 9.4 million units (ten times the number of “cooperatives” in the US). Between 1991 and 2013, the number had increased by over 5.5 million (United States Census Bureau 1991a, 2013a). In 2013, condo units represented over 7.6 percent of all housing units in the US (US Census Bureau 2013a) (see Table 1.4). New York is among the major US cities with the most condo units (270,900 units), ranking third behind Miami (585,900) and Chicago (415,700). These three are followed by other metropolitan areas like Detroit (144,800), Seattle (131,800), and Houston (87,300) (United States Census Bureau 2013a).

New York State’s first condo statute was passed in the state legislature in 1964, three years before Ontario’s (*Chapter 82, An Act to Amend the Real Property law or Condominium Act as Article 9-B*). But, like Ontario’s statute, it was a pithy sixteen standard pages in the “Laws of New York, 1964” and similarly mostly laid out definitions (section 339e), such as what constitutes



**TABLE 1.4 Condo units in the United States in millions, selected years**

	Total housing units	Total condo units
1996	105.7 (100%)	4.5 (4.2%)
2001	119.1 (100%)	5.9 (5.0%)
2011	132.4 (100%)	9.4 (7.1%)
2013	132.8 (100%)	10.1 (7.6%)

Source: US Census Bureau (2004, 2013a).

“common elements” (section 339e, 3), the potential content of bylaws (including provisions for election and removal of board members), and potential responses to owners who fail to comply with bylaws and rules (section 339j). Almost immediately amendments commenced. One of the first enacted was an exception to condo bylaws and rules concerning flying a specific *size* of American flag, suggestive of the attention condo governance paid to detail (in this instance to a building’s aesthetics). This gradual growth in detail of condo statutes is evident in other jurisdictions too; for example, Florida’s first statute was only six pages in 1963, but, by 2005, it had increased almost eight times to forty-seven pages (Nelson 2005, 44).

Even by December 1965, a year after passage of New York State’s first condo statute, mortgage financing for condo units was still via “conventional loans” provided by a bank in Brooklyn, despite available FHA insurance elsewhere (Ennis 1965). But New York City, like Toronto, nonetheless experienced significant condoization after 1965 when FHA insurance began to be adopted. Manhattan’s first condo complex was, “the Saint-Tropez ... built in 1965 at 340 East 64 Street. It was not well received and took a while to sell (because people felt much more comfortable with the cooperative housing form)” (Schill, Voicu, and Miller 2007, 278). The Saint-Tropez was the first high-rise in its area, with three hundred units. Broadly speaking, it mirrored the size and style of condo buildings that emerged in the 2000s and 2010s in both Toronto and New York more than it did New York condo buildings that eventually became such – many through conversions rather than “new-build” – through the 1970s and 1980s (Schill, Voicu, and Miller 2007). While many condo buildings in New York are a result of conversion, a condo owner recently remarked: “Now you see more and more buildings that are built as condos right from the beginning” (NYC Res. 11). While New York was associated more with the cooperative than with the condo, and the former predated the latter’s growth, by 2007 it was already being claimed that “the primacy of the cooperative apartment in New York has shown some signs of erosion in recent years ...

From 1998 to 2001, 9,743 condo units were built compared to only 349 cooperative apartments” (Schill et al. 2007, 280). More than a thousand rental housing and cooperative units also converted to condo arrangements during that period (Schill et al. 2007, 280n). By 2007, there had emerged a “dominance of condos ... in New York City in new construction” (Schill et al. 2007, 280). Schill et al. (2007, 281) suggest why this shift occurred in New York:

The different legal status of condominiums and cooperatives (fee simple ownership v. ownership of shares in a corporation) is accompanied by different financing structures. The purchaser of a condominium unit typically borrows money to finance the acquisition and grants its lender a mortgage secured by the real property ... [But] the owner of a cooperative apartment typically makes periodic payments on two separate debt obligations – her own mortgage and her ratable share of the building’s mortgage, whereas the condominium owner pays only one mortgage loan. Interest on all of the mortgage loans ... is deductible from income taxes under the Internal Revenue Code.

A condo owner in New York, however, suggested that his choice of a condo unit over a cooperative unit had partially to do with governing arrangements and that a condo board had less rather than more power over the investment, thus making a condo unit more attractive:

In a condo you can sell the unit without a co-op approval so you’re not dependent on the ... board to sell your unit in case you need to sell it. So, you feel a little more in control of your finances. Also, if you want to be financed, the board and the condo doesn’t have control. So [regarding] the problems between me and the board in this building, at least I don’t think it affects that part of my investment. (NYC Res. 12)

This also means it is easier and faster for owners to purchase and sell their units, which is not necessarily conducive to forming a longer-term sense of community. By 2015, the long-standing dominance of the cooperative over the condo in New York had ended, with the condo now representing 6.7 percent and the cooperative only representing 6.3 percent of residential dwellings in this city (United States Census Bureau 2018). While previously the proportion of condo units had been well below the US national average in New York, by 2015, with the proportion of condo units at 6.7 percent, this was no longer

**TABLE 1.5 Condo units in New York in thousands, selected years**

	Total housing units	Total condo units
1991	4,158.1 (100%)	118.7 (2.9%)
2004	4,849.8 (100%)	217.4 (4.5%)
2015	7,351.2 (100%)	493.2 (6.7%)

Note: The American Housing Survey statistics for 2013 for New York are not directly comparable with 2015 due to addition of urban areas to the New York category. For this reason, 2013 was left out of the table.

Source: US Census Bureau (1991b, 2004, 2013b, 2018).

the case (United States Census Bureau 2018). In New York, the number of condo units increased by 200,000 between 1991 and 2013. In 2015, of the more than 7 million total housing units in the New York metro area, 493,000 were condo units. These represented 6.7 percent of all housing compared to 4.5 percent in 2004 and 2.9 percent in 1991 (United States Census Bureau, 1991b, 2004, 2013b) (see Table 1.5).

## SCOPE, SECESSION, AND COMPLEXITY

As significant as the mounting number of condo complexes in Toronto, New York, and beyond is the scope of the condo's governance of urban life. As the size of condo buildings has grown, so too has the scope of condo governance. Buildings now variously include provision of physical security, concierge services, water, electricity, waste disposal, recreation (tennis and basketball courts, party rooms, libraries, swimming pools), and transportation, traditionally associated with municipal governments,<sup>19</sup> as well as intensive rule-making and enforcement, financial management, and related planning for future infrastructure repair, modification, and replacement of commonly owned elements. This remarkable scope led two of the few scholars who have studied condo governance in North America to suggest, already twenty years ago, that it was something of a separate "level" of governance (Barton and Silverman 1994). Yet this book shows how condo governance draws on an emergent private condo industry and attendant knowledges and technologies as well as on forms of public law and court enforcement. Condo governance is constitutive of developments far beyond condo edifices themselves. In showing this, *Condo Conquest* complicates understanding condo governance as merely a "level" of governance. The scope of condo governance in providing services that are normally the realm of municipal governments raises the spectre of

secession – that is, whether these private governments can secede from municipal governments entirely or, at least, whether they have been granted too much leeway to displace public government and service delivery. There is some evidence of a secessionist tendency in the US regarding gated communities (see Levi 2009), which often entail condo arrangements, but it can also be glimpsed in a tentative move in a Toronto suburb where condo owners are decrying what they call “double taxation” (see Chapter 8) as they are being asked to pay both condo common fees and municipal taxes for services.

## CONCLUSION

Given the growing importance of the condo and its governance to the contemporary urban imaginary and their connection to issues spanning several research literatures it is perhaps surprising that they have received so little scholarly attention. *Condo Conquest* takes up this challenge by examining condo governance in Toronto and New York, two cities with among the highest condo proportions on the continent and that continue to experience significant condo growth. The book uses a sociology of governance approach, which, as its name suggests, is first and foremost about governance. Yet it considers governance broadly to include the role of agents and knowledges not always associated with it (or even located in a condo building) as well as the vital roles of other interconnected elements that ultimately form an assemblage.

© UBC Press 2019

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

---

**Library and Archives Canada Cataloguing in Publication**

Lippert, Randy K., author

Condo conquest: urban governance, law, and condoization in New York City and Toronto / Randy K. Lippert.

(Law and society)

Includes bibliographical references and index.

Issued in print and electronic formats.

ISBN 978-0-7748-6035-2 (hardcover). – ISBN 978-0-7748-6037-6 (PDF).

ISBN 978-0-7748-6038-3 (EPUB). – ISBN 978-07748-6039-0 (Kindle).

1. Condominiums – Law and legislation – Ontario – Toronto. 2. Condominiums – Law and legislation – New York (State) – New York. 3. Real estate management – Law and legislation – Ontario – Toronto. 4. Real estate management – Law and legislation – New York (State) – New York. I. Title. II. Series: Law and society series (Vancouver, B.C.)

KEO240.L57 2019

346.713'5410433

C2018-905870-6

KF581 L57 2019

C2018-905871-4

---

**Canada**

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

UBC Press

The University of British Columbia

2029 West Mall

Vancouver, BC V6T 1Z2

[www.ubcpres.ca](http://www.ubcpres.ca)