**CONDOS, CO-OPS & HOAS… OH MY!**

**BY: WILLIAM G. MORRIS, ESQ.**

Florida offers residential purchasers a wide variety of options. Residences with amenities managed by an association are popular as they often provide something extra in the form of pool, tennis courts, golf, clubhouse, social room and even a greater opportunity to commune with one’s neighbors.

Most residences within an association are subject to rules enforced by the association and assessments. For those reasons, Florida’s legislature mandates disclosure to buyers of property within such associations. The purpose of the disclosure is to make sure a buyer understands that buying into a property within an association brings with it what could be hidden restrictions and expenses in addition to the open and obvious amenities.

Florida’s Condominium Act was the State’s first effort to mandate disclosure. To help bring stability to condominium sales and comfort buyers of this relatively new product in Florida, the state required developers of new residential condominiums provide buyers with a prospectus including substantial disclosure and mandatory contract provisions. Residential purchasers from developers have 15 days to terminate a contract after receiving all of the required information.

After some experience with developer disclosure, the legislature decided it would be a good idea to also require disclosure on resale by non-developers. Non-developer disclosure is much simpler and buyers only have 3 days to terminate after they get all of the required disclosure. What does that disclosure look like you ask?

Non-developer residential condominium sellers must meet the requirements of Section 503 of Florida’s Condominium Act. That section requires contracts include warning language in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or
2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER’S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER’S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

If the contract does not include the mandatory warning, it is voidable at the option of the buyer prior to closing.

The mandatory disclosure cannot be waived by a buyer, other than by closing. That makes it important a seller make sure the buyer gets all of the required documents as soon as possible. Buyers have 3 days to terminate contract and the time does not start until the buyer gets all of the required documents, unless the buyer signs a receipt acknowledging all were received. Signing that receipt is binding on the buyer, even if it is incorrect.

The mandatory disclosure requirements under the Condominium Act can be used to terminate the contract any time a buyer decides not to buy. The contract termination does not have to be related to disclosure documents. Shortfall in providing documents, even inadvertent, makes the purchase contract an option for the buyer.

Some condominium associations do not provide the most recent year-end financial information. Instead, they provide the budget. Some do not provide all amendments to the declaration of condominium, some fail to provide a complete set of rules and a few fail to provide the form known as frequently asked questions and answers. If the buyer’s attorney finds any of these deficiencies, it is a ticket for the buyer to cancel, unless the buyer signed a receipt acknowledging receipt of all required disclosure.

The legislature adopted an almost identical approach in the Florida Cooperative Act. The difference between a co-op and a condominium is in the nature of ownership. In a co-op, the owner buys shareholder stock in the cooperative which allows the owner exclusive right to occupy a portion of the cooperative property. One’s interest in a co-op can be separately mortgaged and is eligible for homestead tax benefits, but there is some question about whether co-ops qualify for other homestead benefits.

Mandatory disclosure in resale of a co-op is limited to articles of incorporation, bylaws and question and answer sheet. A co-op buyer has the same 3 days to terminate as do buyers of a condominium.

Homeowners associations are a different animal. They are addressed in their own set of statutes under Florida’s Homeowners Association Act. The legislature did not require disclosure for residential property within a homeowners association until 20 years after mandating disclosure for condominiums and co-ops. When the legislature did mandate disclosure, it made no difference between developers and resales.

Mandatory disclosure for sellers in a homeowners association must be in a disclosure summary form substantially similar to one promulgated by statute and is limited to disclosing assessments and applicable fees for rent or land use fees of recreation or commonly used facilities. Contracts for property within a homeowners association must include warning language that the buyer is entitled to the disclosure summary and has 3 days after receipt of the summary to terminate the contract. If the disclosure summary is provided before buyer signs the contract, the buyer does not have a termination right.

Mistakes or omissions when providing mandatory disclosure can mean the buyer’s 3 days to terminate never starts or ends. The biggest mistake in homeowners association disclosure is made by adding non- association expenses to the disclosure form to give a buyer even more information. In that case, the good deed does not go unpunished. Including anything on the disclosure other than assessments for the particular association invalidates it.

The legislature has made a sincere effort to make sure buyers get information to help their buying decision in residential condominiums, co-ops and homeowners associations. The disclosures serve that purpose well, but when mistakes are made in meeting the disclosure requirements, the mistakes can allow a buyer to terminate a contract. That means sellers should take an active role in making sure complete and correct disclosure is provided to residential buyers of these properties. Otherwise, the buyer has an option to terminate all the way to closing.

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