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SELLING CONDOS AND TOWNHOMES

Chicago Association of Realtors ®
Member Profitability Program
Fall 2007

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THIS OUTLINE LIKELY INCLUDES MORE MATERIAL THAN CAN BE DISCUSSED DURING THE ALLOTTED TIME. THE REMAINING PORTIONS SHOULD PROVIDE SOME GUIDANCE ABOUT ASSOCIATION MATTERS EVEN IF NOT COVERED. PLEASE KEEP IN MIND THAT THE SESSION IS INTENDED TO AND WILL PROVIDE GENERAL INFORMATION FOR YOU, NOT LEGAL ADVICE.

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I. IDENTIFYING THE PRODUCT

It is not the building structure but the language of the legal documents and the operation of applicable law that establishes whether or not a development is a condominium. Townhomes and single-family homes can be condominium units if that is what was established by the developer through the recorded documents. Due to common facilities, however, vertically stacked residences must be condominium units if sold separately.

A. Declaration / By-Laws / Plat / PUD Ordinance

1. Condominium Association
2. Townhouse Association
3. Master Association
4. Common Interest Community
5. Cooperative

B. Corporate Documents

1. Articles of Incorporation
2. By-Laws

notes

II. OVERVIEW OF GOVERNING AUTHORITY

In addition to requirements imposed by municipal ordinances (such as the Planned Unit Development Ordinances which create many developments) and codes (such as those covering zoning and building requirements), state and federal laws apply to community associations. Further, the covenants and rules of each association establish the governing structure for the administration of the property as well as the rights and obligations of the property owners and residents of the community. There may be more than one association with jurisdiction.

A. Statutory Provisions (State of Illinois)

1. Illinois Condominium Property Act
2. Illinois General Not For Profit Corporation Act
3. Illinois Code of Civil Procedure

B. Federal Authority

1. Telecommunications Act and OTARD Regulations
2. Fair Housing Act Amendments
3. Americans with Disabilities Act

C. Covenants / Rules

1. Types of Covenants
 - a. Assessments
 - b. Architectural Control
 - c. Use Restrictions
 - i. Pets
 - ii. Nuisance
 - iii. Business Restrictions
 - d. Property Damage
 - e. Parking
 - f. Sale and Leasing Restrictions
 - g. Health, Safety and Welfare

notes

2. Rules and Regulations
 - a. Adoption Procedures
 - b. Enforcement (Due Process Requirements)
 - i. Notice of Violation
 - ii. Opportunity for Hearing
 - iii. Sanctions

III. FIRST OPTION (a/k/a RIGHT OF FIRST REFUSAL)

Some documents vest in the association a first option to purchase or lease a residence. This option (sometimes called a “right of first refusal”) is not a means to approve or disapprove the transaction or the person who would be the new resident. Rather, it is an opportunity for the association to take action to become the purchaser or tenant in the anticipated transaction or to decline to do so by explicit action or lack of a timely response.

Procedures for asserting the option generally include the requirement that seller or landlord submit transaction information to the association for consideration. Difficulties can arise if character and financial references are required. Within a specified number of days, the association must act to opt into the transaction. Often, owner approval is required to consummate the deal.

In the 1983 Illinois case of Wolinsky v. Kadison, the appellate court found that board members could be subject to personal liability for willful and wanton misconduct. By not following the condominium instruments and applying the association’s right of first refusal in a discriminatory manner, the board members and the association were exposed to that liability.

IV. DISCLOSURE REQUIREMENTS

When residences are subject to association covenants, certain information is to be given or made available to prospective purchasers. In some communities, a Property Report must be provided relative to the initial sale of a

notes

residence. For resales, purchaser can request and seller must provide information about the association as specified in the statute. A letter from the association will be needed for title clearance at closing to waive the first option or right of first refusal (or state that no such option or right exists) and indicate that all assessments and other charges have been paid through the closing date (or state what balance remains due and owing).

A. Disclosure Requirements

1. Local Ordinances (Property Report)
2. Section 22.1 [condos]
3. Section 18.5(g) [master associations / non-condominiums / common interest communities]

B. Examination of Records / Requested Copies

1. Section 19 [condos]
2. Section 18.5(d) [master associations / non-condominiums / common interest communities]

V. BROKER / SALESPERSON LIABILITY

Those who represent parties in a real estate transaction risk becoming the target of a damage claim. Allegations of “consumer fraud” or other causes of action may be asserted if a party feels that the representative failed to act properly or that he or she is responsible as the agent for a developer or seller who caused damages. The situation becomes even more acute because such a claim can lead to consideration of license revocation due to the requirement to be licensed when serving the public as a real estate broker or salesperson.

Care must be taken to minimize the opportunities for circumstances to give rise to those consequences. Acting properly within professional regulations and applicable laws and creating distance from the bad acts of others will go a long way toward avoiding liability.