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The Complexities of Condo Transactions

Most consumers and virtually all real estate brokers are aware of the dramatic rise of new condo construction and condo conversion of existing buildings occurring in the last 5 years. One need only drive through Northwest Portland to understand the increasing presence and popularity of condominiums in that area.

Consumers and brokers may underestimate the complexities involved in condominium transactions. This article will address particular issues that may arise in condo transactions, and how real estate brokers can protect clients who may be considering purchasing a condo.

Condominiums are governed by rules and regulations, which buyers should obtain and review prior to purchasing a condo, including the declaration and any supplemental or amended declarations, the condo bylaws, disclosure statement, reserve study and maintenance plan, and association records such as meeting minutes, financial statements and budgets, and newsletters. Further, the management and financial health of the condo association must be closely scrutinized by buyers. Because these documents will significantly impact a condo owner's use and occupancy of a condo, it is crucial that buyers adequately review such documents. Brokers should not review the documents on behalf of their clients. Rather, brokers would be well advised to recommend that their clients seek counsel as to the significance of the documents. As with all documents in a transaction, brokers should ensure that their clients receive these documents.

Inadequate reviews of these documents have the potential to lead to unhappy buyers, and ultimately unhappy brokers. Declarations, drafted by the developer or condo converter (the "declarant"), are statutorily required under Oregon Revised Statutes 100.105 to contain a description of common elements in the building, allocation of ownership interests in the common elements, liability for common expenses, voting rights allocated to each condo unit, annexation plans, special rights of the declarant, and turnover of control of the condo association to condo owners. A buyer's careful review of the declaration may reveal that the declarant has limited the right of the condo owners to amend the bylaws. Unaware buyers may experience remorse when they learn that a use or maintenance restriction contained in the bylaws cannot easily be changed by a majority of the condo owners.

Some condo developers may restrict resale of units during the first one or more years to protect themselves from competition from buyers interested in immediate resale. In addition, condo associations may restrict rental of units so as to maintain the owner-occupied character of the building. Furthermore, some condominium projects have had construction defect and maintenance issues which have resulted in large assessments to condo owners. Information regarding resale or rental restrictions will be contained in condo bylaws. However, despite general assessment language contained in bylaws, buyers and their brokers would be well advised to research whether there are outstanding or expected future assessments, which can be accomplished by reviewing meeting minutes or other association records, by speaking with the association board, or by asking a title company in the case of outstanding liens for past assessments. Under Oregon Revised Statutes 100.415, condo bylaws must address a number of issues, including but not limited to restrictions and requirements for condo maintenance and use, how condo owners can create or alter bylaws or other regulations, and how common elements of a building are maintained and who pays for them. Other issues that buyers should consider include what percentage of owners constitute a quorum for voting purposes, what the condo association insurance will cover for water intrusion, smoke damage, and other damage issues that may arise, and whether the reserve study/maintenance plan and reserve account are sufficient to cover possible future assessments. Furthermore, buyers should determine whether there are exceptions to restrictions on renting condos or selling within a specified period of time for incidents such as injuries, required career moves, and so on.

Buyers should closely review the disclosure statement, which will include information as to how reserve amounts and condo liability for assessments are calculated, a list of documents by which buyers may be bound, a statement of condo use restrictions, and any possible warranty disclaimers by a developer for defects such as water intrusion.

Furthermore, brokers should advise their buyers to review meeting minutes, newsletters, websites, and other condo association records, as they may contain information about construction defects, major repairs that must be completed, financial troubles, and condo owner and condo association board relationships.

A buyer's full review of all documents relating to a potential condo purchase will ensure that the buyer is entering into a transaction with his or her eyes wide open. Although brokers should not review these documents on behalf of their clients, they should have a general understanding of the importance of these documents, and advise their clients to seek counsel should they require assistance in understanding the documents. A diligent broker would be wise to document this advice in writing, so as to avoid any misunderstanding about the broker's role in the transaction.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.