

**CONTRACT AND BUSINESS ISSUES FOR
CONDOMINIUMS AND HOMEOWNERS ASSOCIATIONS**

2012 Community Association Law Seminar & Expo

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I. WHAT IS IT THAT MY CLIENT IS BUYING OR SELLING

- A.** A condominium unit in a residential condominium
 - 1. One layer of covenants
- B.** A condominium unit in a mixed-use master condominium
 - 1. Two layers of covenants
- C.** A condominium unit in a residential condominium that is part of a planned community
 - 1. Two layers of covenants
- D.** A condominium in an age restricted condominium
 - 1. Limits on occupancy to either
 - a.** Everyone must be 62 years of age or older; or
 - b.** 80% of the units must be occupied by at least 1 person over the age of 55
- E.** A fee simple townhome in a residential townhome community
 - 1. One layer of covenants
- F.** A fee simple townhome development that is part of a master planned community
 - 1. Two layers of covenants
- G.** An age restricted fee simple townhome project
 - 1. Everyone must be 62 years of age or older; or
 - 2. 80% of the units must be occupied by at least one person over the age of 55
- H.** Single family home in a community with covenants and a mandatory membership association
- I.** Single family home in a community with covenants and a voluntary membership association

II. CAN THE COVENANTS BE CHANGED WITHOUT MY BUYER'S CONSENT?

- A. Condominium
 - 1. Yes, except for assessment obligations, unit boundaries and voting
- B. Homeowners Associations
 - 1. Depends if the property is submitted to the Georgia Property Owners Association Act
 - a. If yes, the covenants can change
 - b. If no, then 44-5-60(d)(4) applies – “notwithstanding any other provision of this code section or of any covenants with respect to the land, no change in the covenants which imposes a greater restriction on the use or development of the land will be enforced unless agreed to in writing by the owner of the affected property at the time such change is made.”

III. IS LEASING PERMITTED?

- A. Condominiums
 - 1. Leasing is almost always restricted to qualify to mortgage financing
- B. Homeowners Associations
 - 1. Leasing is usually not restricted

IV. WHO CONTROLS THE ASSOCIATION?

- A. Declarant or Board of Directors
- B. Condominium
 - 1. If phased condominium, 7 years or when 80% of the ownership interests in condominium have been conveyed
 - 2. If single phase condominium, 3 years or when 80% of the ownership interests in the condominium are sold
- C. Homeowners Association
 - 1. Depends on what documents provide
- D. If Declarant Controlled, Who is the Declarant?
 - 1. Must read documents to determine
 - 2. Normally, you cannot be the Declarant if you own no property
 - 3. The lender is not necessarily the Declarant just because they foreclosed

V. WHO CONTROLS THE ARCHITECTURAL REVIEW COMMITTEE?

- A. An owner controlled association
- B. A lender
- C. The original developer

VI. WHAT AUTHORITY DOES THE ARCHITECTURAL REVIEW COMMITTEE HAVE?

- A. Exteriors Only
- B. Interiors and Exteriors
- C. Price

VII. CAN ADDITIONAL PHASES OF THE COMMUNITY BE BUILT?

- A. Condominiums
 - 1. Expansion rights - 7 years for identified additional property to be added to the condominium provided right to expand exists in Declaration
 - a. Must state maximum number of units that may be created on the condominium
 - b. Must state whether they will all be residential
 - c. Must state whether they will be compatible with regards to architectural style
 - 2. Zoning issue when expansion right ends
- B. Homeowners Associations
 - 1. Expansion rights - only limited by the covenants themselves.
 - a. Covenants should identify the additional property

VIII. ARE THERE OTHER OBJECTIONABLE PROVISIONS?

- A. Number of Cars
 - 1. Motorcycles, Motor homes
- B. Type / Number of Pets
- C. Business Use of Units

IX. CAN INITIATION OR TRANSFER FEES BE CHARGED?

- A. Depends on Language in Covenants
 - 1. May violate assessment provision of Declaration if not initially contemplated in legal documents and passed by the Board of Directors by rule

X. CAN I REVIEW THE MINUTES AND BOOKS AND RECORDS OF THE ASSOCIATION?

- A. All Members of the Association Have This Right
- B. Stipulation to Obtain Books & Records

“Within _____ days from the Binding Agreement Date, Seller shall provide Buyer with the following:

1. The current approved budget for the Association;
2. The most recent Profit and Loss Statement of the Association;
3. The minutes of the Board of Directors for the previous _____ months;
4. The minutes of all meetings of the Association for calendar year _____.

XI. CAN I GET OUT OF THE DEAL IF I CANNOT GET MORTGAGE FINANCING BECAUSE THE PROJECT IS INELIGIBLE?

A. Special Stipulation

“Notwithstanding any provision to the contrary contained herein, in the event Buyer cannot obtain mortgage financing due to the condominium not having received required project approval from FNMA, FHLMC, VA or FHA, Buyer may terminate this Agreement without penalty and receive a full refund of Buyer’s earnest money. It is intended that this provision shall remain in full force and effect through the date of closing and not be terminated by the removal of any other financing contingency to which this Agreement is subject.”

XII. ARE THERE OCCUPANCY RESTRICTIONS?

- A. Difference Between a Spouse, Roommate, Significant Other, Partner and Tenant
- B. Limitation on Heads or Beds

XIII. HOW DO I CONTACT THE ASSOCIATION REGARDING LIENS AND MONIES OWED?

A. Condominiums

1. Automatic liens
2. Contract purchaser may request a statement from the Association or its managing agent regarding past due amounts
 - a. Must be in writing, delivered to the registered office of the Association and include an address
 - b. Association may charge \$10 fee
 - c. Association must respond within 5 business days

- B.** Homeowners Associations
 - 1. Associations not subject to POAA
 - a. Physical lien must be filed
 - b. No requirements regarding who to contact and length of time to respond except if in documents
 - 2. Associations Subject to POAA
 - a. Automatic lien
 - b. Contract purchaser may request statement of account – same requirements in a condominium

XIV. WHICH CONTRACT DO I USE IN BUYING OR SELLING HOME?

- A.** A Previously Unsold Condominium Unit
 - 1. Must use contract with statutorily required disclosure
 - a. Must include Statement of Condition of Property if condominium conversion
 - b. Must give bound Seller's Property Disclosure Statement
 - 1. Declaration of Condominium
 - 2. Bylaws
 - 3. Articles of Incorporation
 - 4. Condo Floor Plans
 - 5. Budget
 - 6. Acknowledgement of Receipt of Same
 - 7. Must give Buyer 7 day right of rescission
- B.** Existing Condominium
 - 1. Condominium Purchase and Sale Agreement
- C.** Fee Simple Townhome
 - 1. Purchase and Sale Agreement
- D.** Home in Community with Covenants
 - 1. Purchase and Sale Agreement

XV. SPECIAL CONSIDERATIONS

- A. Size of Amenity Package Relative to Number of Homes Built
- B. Obligation to Complete Common Area Improvements
- C. Obligation to Build Amenities
- D. Quality and Reputation of Builder
- E. Risks Involved in Buying in “As-Is” Condition

XVI. UNDERSTAND HOW TO FILL OUT THE COMMUNITY ASSOCIATION DISCLOSURE

COMMUNITY ASSOCIATION DISCLOSURE
EXHIBIT " _____ "



2012 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____

A. TYPE OF ASSOCIATION.

Seller hereby discloses to Buyer that, in purchasing the Property, Buyer will either become a mandatory member or have the opportunity to become a voluntary member in the following type of community association ("Association"):
[Select all which apply. The section not checked shall not be a part of this Exhibit.]

- Mandatory Membership Condominium Association
- Mandatory Membership Homeowners Association
- Voluntary Membership Homeowners Association

B. EXISTENCE OF MASTER ASSOCIATION

Seller also discloses to Buyer that in addition to the Association referenced above, there is is not a master association of which Buyer shall become a member or in which the Association is already a member.

C. CONTACT INFORMATION FOR ASSOCIATION:

(Name, Address, Telephone Number, etc., where Association Dues are Sent by Seller)

D. ANNUAL ASSOCIATION ASSESSMENTS:

[Select all which apply. The sections not checked shall not be a part of this Agreement.]

- 1. Mandatory Membership Association.** Buyer acknowledges that Buyer will have to pay annual assessments to the Association so long as Buyer owns the Property to cover the Buyer's share of common expenses. The estimated total annual assessment paid by the owner of the Property to the Association is currently _____ and is paid in _____ installments.
- 2. Voluntary Membership Association.** If Buyer becomes a member of Association, Buyer shall be responsible for paying an annual assessment estimated to be _____ and paid in _____ installments.
- 3. Master Association.** If the owner of the Property will also be obligated to pay an annual assessment to a master association, the annual assessment is estimated to be _____ and shall be paid in _____ installments.

E. INITIATION FEE.

Any Association initiation fee, membership fee, transfer fee or other similar fee or charge (hereinafter collectively referred to as "Initiation Fee") shall be paid by the Buyer. To the best of Seller's knowledge, there is is not an Initiation Fee. If there is an Initiation Fee, the estimated amount of the Initiation Fee is \$ _____ and is due _____.

F. ACCOUNT STATEMENT LETTER.

Any letter from the Association confirming whether assessments or other amounts are owed on the Property shall be paid by the Buyer Seller. If Seller is paying for the Account Statement Letter, the payment shall be in addition to the Items Paid by Seller at Closing set forth in the Agreement.

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G. SPECIAL ASSESSMENTS. [Select all which apply. The sections not checked shall not be a part of this Agreement.]

To the best of Seller's knowledge there is OR is not a special assessment owing to or under consideration by the Association or any Master Association. If a special assessment is owing to or under consideration by the Association or any Master Association, it is [Select all which apply. The sections not checked shall not be a part of this Agreement]:

- already passed by the Association in the estimated amount of \$ _____;
- already passed by the Master Association in the estimated amount of \$ _____;
- under consideration by the Association in the estimated amount of \$ _____; or
- under consideration by the Master Association in the estimated amount of \$ _____.

H. ASSESSMENTS PAY FOR FOLLOWING SERVICES AND AMENITIES:

[Select all which apply. The sections not checked shall not be a part of this Agreement.]

The following services and amenities are paid for by the Association from the annual assessment:

Utilities for Property

- Gas
- Water
- Electric
- Heating
- Sewer

Services

- Concierge
- Gate Attendant
- Trash Pickup
- Road Maintenance
- Maintenance of Property
 - Grounds
 - Dwelling Exterior
- Common Area Maintenance

Amenities

- Pool
- Tennis
- Golf
- Clubhouse
- Playground
- Exercise Facility
- Equestrian Facility
- Marina/Boat Storage

Other

- Cable
- Pest and Termite Control
- Fire Insurance on Property
- Common Area Insurance

I. ADDITIONAL FEES FOR SERVICES AND FACILITIES.

If any of the above-referenced services and amenities require the payment of an additional fee to receive the service or use the amenity, please specify the service and / or amenity below and the fee for using (or receiving) the same:

J. NO WARRANTY.

The information in this exhibit is deemed accurate but not guaranteed. Buyer should contact the Association to confirm what assessments and fees Buyer will owe if Buyer purchases the Property and the services and amenities that will be available to Buyer in living in the community.

Buyer's Initials: _____ / _____

Seller's Initials: _____ / _____

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