

Condominiums - Gateway to the Good Life?

The origins of the condominium concept stretch back two thousand years to the Roman empire.¹ Condominiums involve individual ownership of units (living spaces) and joint ownership of common areas (such as siding, roofs, and recreational areas).² This form of ownership is currently popular with individuals on either end of the adult age spectrum because condominiums are generally less expensive than single-family homes, allow people to live in more desirable areas, and greatly reduce owners' direct role in maintenance and repair work.

Persons interested in buying a condominium unit should conduct a thorough inquiry to make sure that they understand what kind of community they are joining and what their obligations will be once they are a member of that community. Condominium owners are responsible for common expenses and must comply with the restrictions contained in the association's governing documents.³ It is therefore important for potential purchasers to evaluate a condominium association's financial health and the types of rules that it expects owners to follow.

People considering condominiums should know how to spot warning signs that this is not the place to call home. Paying close attention to four key R's - resale certificates, reserves, records, and residents - can help buyers make the best choices and savor condominium life.

Resale Certificates

A resale certificate must be given to a prospective purchaser of a condominium unit.⁴ The owner of the unit is legally obligated to provide such a document before the sale.⁵ An officer or agent of the condominium association is legally required to sign that document based upon actual knowledge.⁶

Resale certificates contain a plethora of useful information. If delinquent assessments are owed by the current owner, this must be disclosed.⁷ If repair work is anticipated that will cost more than 5% of the annual budget, this must be disclosed.⁸ If any alteration or improvement of the unit or limited common area violates the declaration, this must be disclosed.⁹ A statement of the association's reserves must be disclosed, along with

¹ Jacobus, Charles. Real Estate Principles (11th Ed.). South-Western Educational Pub., 2009, page 397.

² RCW 64.34.020(9).

³ RCW 64.34.304(k) and RCW 64.360(2).

⁴ RCW 64.34.425(1).

⁵ Id.

⁶ Id.

⁷ RCW 64.34.425(1)(b).

⁸ RCW 64.34.425(1)(f).

⁹ RCW 64.34.425(1)(m).

financial statements, balance sheets, and operating budgets.¹⁰ It is important to review historical financial data as well as current reports. A reserve study must be provided or a mandatory disclosure about the lack of a reserve study must be given.¹¹ Most importantly, a copy of the declaration, bylaws, and rules must be provided.¹² These governing documents contain the rules by which a condominium buyer must live.

One broad entitlement to information in resale certificates that should not be overlooked is “any other information reasonably requested by mortgagees of prospective purchasers of units.”¹³ The Act states that information typically requested by entities like the federal national mortgage association and the department of housing and urban development is reasonable (and therefore discoverable in a resale certificate) if it is reasonably available to the association.¹⁴ Fannie Mae and HUD have recently begun requesting much more information about condominium associations, including owner occupancy rates and delinquency rates.¹⁵ Obtaining this type of information can help prospective purchasers make informed decisions.

Reserve Studies

Reserve studies have been legally required for most Washington condominium associations since June 12, 2008.¹⁶ If funded, reserve studies ensure that major common expenses will be collected in small increments over time. The alternative is paying for major repairs with loans and/or special assessments, and that approach tends to result in foreclosures and strife. Associations that have not obtained reserve studies pose an increased risk of financial disruption that should be taken into account when condominium shopping. Any potential buyer of a condominium unit should find out if the association in question has its financial life in order.

A closely related issue is the amount of money that is in an association’s reserve account. Washington law does not require condominium associations to place any money in reserve accounts.¹⁷ As a result, some associations have a reserve study but have not set aside enough funds to fully or even mostly fund the expenses described in that study. This raises the risk of a future special assessment on the owners to make up the difference.

¹⁰ RCW 64.34.425(1)(g), (h), (i), and (j).

¹¹ RCW 64.34.380(2) and RCW 64.34.425(1)(s).

¹² RCW 64.34.425(q).

¹³ Id.

¹⁴ Id.

¹⁵ Fannie Mae Announcement 08-34 (December 16, 2008) and U.S. Department of Housing and Urban Development Mortgagee Letter 2009-46B.

¹⁶ RCW 64.34.380(2).

¹⁷ RCW 64.34.380(1).

Records

Association records reflect important events in the life of a condominium. Minutes of the meetings of the board and the owners provide a particularly revealing window into the affairs of an association. It is prudent to obtain and review (at some length) the association's governing documents and meeting minutes before pulling the trigger on a transaction. This can help identify sources of future conflict.

The governing documents of a condominium are usually long and difficult to understand, but taking the time to evaluate their contents can prevent major headaches down the road. A few associations ban smoking in units and/or the common areas. Some associations ban pets or place severe restrictions on their behavior. Some associations restrict the ability of owners to lease their units or run businesses out of them. Most associations limit what can be placed on windows, doors, and porches to preserve a uniform exterior appearance. Almost all associations have the general authority to punish behavior that an owner's neighbors reasonably find annoying, and this can lead to heated disputes over noise and odors. The severity of fines for violations of the governing documents varies greatly. If people want to live in a condominium, they must be willing to subject themselves to the restrictions contained in the governing documents and the board's reasonable elaborations on those restrictions.

Residents

Perhaps the most overlooked method to learn about a condominium is to speak with residents. Conversations with several board members and several other owners can provide a glimpse of the challenges facing the association and the general philosophy of those in power. This is often a valuable way to discover what life is like in that community.

Assessing condominiums' strengths and weaknesses is difficult and time-consuming work, and many people seek out professionals that can guide them through this process. In light of the misery that can ensue if the wrong choice is made, this is time and money well spent.

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