



Assessments Concern Prospective Buyer

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Q: Now that the real estate market has adjusted, I see an opportunity to invest in some condominium units which are for sale at significantly reduced prices from a few years ago. Even if prices continue to go down for a while, it seems to me there are many bargains on the market now. However, I am aware that many of these lower prices are due to the fact that several units within a single condominium association are in foreclosure or have already been taken by a bank. Since a new owner of a condominium unit will need to pay condominium assessments, I am concerned that the assessments on these bargain units may increase substantially in the coming months and years and my investment strategy might be affected. Can you tell me what information is available to me as a purchaser of a condo unit to investigate the financial condition of the condominium association? **D.T. (via e-mail)**

A: I commend you for doing your homework to understand all of your rights and obligations as a new condominium unit owner. The Florida Condominium Act contains several provisions that will help you to gather important information.

First, any person who has executed a contract to purchase a unit may make a written request to the association concerning all assessments and other monies owed to the association by the seller.

Within fifteen (15) days after receiving that request, the association shall provide a certificate containing the required information signed by an officer or agent. The association is permitted to charge a reasonable fee for the preparation of that certificate, if authorized by board resolution or provided in an agreement with a management company or bookkeeping firm. Clearly, this provision allows a purchaser an opportunity to avoid assuming liabilities previously incurred by the seller. You should be certain that your purchase agreement with the seller clearly provides that the seller will be responsible for paying all existing liabilities to the association either prior to or at the closing of the sale of the unit.

In addition, the seller is obligated to provide a prospective purchaser with several relevant documents, including current copies of the declaration of condominium, articles of incorporation of the association, bylaws, and rules and regulations of the association. In addition, the prospective purchaser is entitled to receive the most recent annual financial reports of the association and a document maintained by the association entitled "Frequently Asked Questions and Answers", which provides a summary of important provisions affecting the condominium unit, including voting rights, unit use and leasing restrictions, whether there is any obligation to pay rent for the use of recreational or other common

use facilities, a statement of the amount of the assessment owing on each type of unit and whether those assessments are due monthly or quarterly, and whether the association is currently a party to a court case where liability may exceed \$100,000.00. This disclosure sheet also notes whether there is mandatory membership in any recreational facilities and related fees.

Not only must the seller provide all of this information to the prospective purchaser, but any contract for the resale of a residential condominium unit must contain language that acknowledges that the buyer has received all of this information at least three (3) days prior to executing the contract, or a provision giving the buyer a right to terminate the purchase contract within three (3) days after receipt of all of the required information. Any purchase contract that does not include one of these provisions is voidable at the option of the purchaser prior to closing.

In addition, you can make a request of the association to provide additional information, but the Condominium Act does not require the association to respond. The association may respond, and limit its liability for making any disclosures by stating that it is responding in good faith to the best of its ability. If the association were to elect to respond to your specific questions, it may charge \$150.00, the cost of photocopying and the cost of any attorney's fees incurred in connection with any response. Obviously, if you are going to make any specific requests for information to an association, you should confirm up front what costs and fees you would be liable for in the event the association elects to respond.

However, as a practical matter, you can negotiate with the seller and require him to obtain and provide any information that you require. You may know that the Condominium Act provisions concerning current unit owner access to association records is very favorable to unit owners. While the seller is not legally entitled to review all documents concerning specific, pending foreclosure actions that are held in the association

records, the seller is entitled to up-to-date financial records showing unpaid assessments and other relevant information concerning specific units. Moreover, there are considerable materials available online through the county clerk's website and the tax collector's and property appraiser's websites which will allow you to do research and find relevant information concerning pending liens, foreclosures and title transfers in the community.

Q: We have scheduled a special meeting of our members for the end of this month. We are voting on keeping a board with two year terms, as is required by the new law. Since many of our residents have still not returned from their northern homes, we are concerned about getting a quorum for the meeting. What are our options? **K.F. (via e-mail)**

A: First, the association should open and log in the limited proxies as they are received in the office. Contrary to the misperception of some people, there is nothing illegal about opening and pre-tabulating the proxies as they come in (only envelopes used in the election of directors are required to be kept sealed until the time of the meeting).

If you have the volunteers or staff to do so, I would then call people who have not sent in proxies and ask them to please vote. This issue is not controversial nor even very interesting to most unit owners, so it is easy for them to set the materials aside and forget about them.

A common question that I am asked is whether it is acceptable to have proxies sent to the association by facsimile (fax), or sent as a scanned document (such as a "pdf" file). Unfortunately, there is no clear answer to this question in the law, it is not addressed in the condominium law. Most attorneys I have spoken with on the issue take the position that if the bylaws permit fax or pdf proxies, that is a valid provision. Conversely, some bylaws require the original proxy to be delivered at the time of the meeting, in which case, only originals would suffice. If the bylaws are silent, it is an open question.

When the meeting is called to order, the first thing that must be done is to determine whether there is a quorum present. In most condominiums, a quorum is a majority of the voting interests (there is usually one voting interest assigned to each unit). If there is a quorum, you can proceed with the vote. If there is not a quorum, then the only lawful action that can be taken is to adjourn the meeting to a set date, time and place, which should be voted upon by those who are at the meeting (in person or by proxy). Those who are at the meeting in person should be asked to fill out a proxy for the adjourned meeting in the event they cannot make it to the rescheduled meeting.

The proxies received for the original meeting are valid for up to 90 days, which would give the association time to call those who did not send in proxies and ask them to do so. Notice of the adjourned meeting does not have to be mailed out or posted, although posting is often a good idea. It is not uncommon for associations to have to adjourn meetings to obtain sufficient voter participation to pass a measure. As to this item, it will be necessary for the association to complete this process before your upcoming annual meeting. Good luck.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.