



Condos Aren't For Everyone

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: My husband and I are considering the purchase of a condominium in the near future when he retires. My question is this, from all that I've read regarding condominium owners' problems with lack of knowledge of bylaws and, at times, surprise at being hit with liens and lawsuits as a result, how can a potential buyer educate themselves on condominium issues during the purchase process so that down the road there are no surprises? S.D. (via e-mail)

A: First, allow me to note that according to the Community Association Institute there are over 57 million individuals living in some form of co-ownership housing in the United States today, the overwhelming number of whom enjoy the benefits of shared amenities without any problems. However, co-ownership housing is not for everyone. One appellate court noted that since condominium owners are living in such close proximity and using facilities in common, that each owner must give up a certain degree of freedom of choice which he might otherwise enjoy in a separate, privately owned property, and that condominium unit owners comprise a little democratic sub-society which by necessity is more restrictive regarding the use of condominium property than may be existent outside the condominium organization. Some may find it

difficult to live so close to their neighbors and with such restrictions, although others may thrive in such an environment.

There are several types of community association type housing structures, and the three most common are condominium associations, cooperatives, and homeowners' associations.

In a condominium, individual living spaces (units) are owned by the unit owners, who also own, as an appurtenance to their units, an undivided interest in shared property (common elements). The unit, coupled with the share in the common elements, is known as the condominium parcel. By virtue of his or her unit ownership, the unit owner automatically becomes a member of the condominium association, which is the entity responsible for the operation of the condominium property and enforcement of the covenants and restrictions.

In a cooperative, title to all property is owned by the cooperative association. The unit owners are actually shareholders in the corporation. The owner's right to occupy a particular unit is granted through some type of document recognizing the owner's right of possession to a unit, which often times is a proprietary lease. Because the

cooperative unit owner does not own a direct interest in the real estate, the ability to obtain financing on the full value of the cooperative unit may be more difficult than on a condominium unit where the unit owner owns fee title to the real estate. There are typically restrictions governing the use of the cooperative property, and the cooperative association is the entity charged with enforcing those restrictions.

In a homeowners' association, individuals own fee title to their individual lots, including the homes built thereon, which are subject to underlying deed restrictions which are commonly referred to as covenants, conditions and restrictions (CC&R's). Homeowners are automatically members of the homeowners' association, and the association is charged with enforcing all of the restrictions.

Condominiums are regulated by Chapter 718, Florida Statutes, cooperatives by Chapter 719, Florida Statutes, and homeowners' associations by Chapter 720, Florida Statutes. In addition, condominiums and cooperatives are also regulated by the Division of Florida Land Sales, Condominiums and Mobile Homes, which oversee all aspects of the creation, sale and operation of the communities. There is no similar agency regulating homeowners' associations. There are also various provisions contained in the Florida Administrative Code that govern these types of communities.

After reviewing and selecting the housing format that best suits your needs, you need to choose between a re-sale or a newly constructed home or unit. When you purchase the former, what you see is what you get - or do you? Are there adequate reserves? Is there pending litigation by or against the association?

When buying a new unit, you will receive certain statutory warranties in a condominium setting, but there is no assurance that all promised amenities will be completed if an economic downturn causes the developer to abandon the project.

In either case, it's absolutely essential that you read the offering circular and/or declaration of condominium, cooperative documents, or covenants conditions and restrictions, as well as articles of incorporation, bylaws, and rules and regulations, which will tell you whether you can move in with your family pet, how many individuals can occupy the unit, whether there are any restrictions on resale or leasing, who is responsible for maintaining certain items such as sliding glass doors, balconies, screened patios, and so on. You should also know the difference between "retirement communities" and those which allow families. Retirement communities are often referred to as "55 and over" communities. In a "55 and over" community there must be at least one permanent occupant who is 55 years old, or older, and children under the age of 18 are not entitled to reside in the unit (although can visit as guests). This will obviously make a big difference depending on your age and the makeup of your immediate family.

There are a sufficient variety of community associations to satisfy every appetite and budget. If you do your homework, read all the documents that govern the community, and ask plenty of questions before you buy, you should be able to find the right community for you.

Q: I live in a great condominium community. My neighbors are wonderful and the property is very well kept. However, lately we have been having problems with parking. Every unit has a two car garage, but many people cannot fit their cars in because their garages are used for storage. And because some driveways are short and some people have more than two cars, people are parking to block the sidewalk and sometimes in the street, the latter of which is clearly prohibited by the declaration for overnight parking. What do you suggest we do to address this parking issue? B.M. (via e-mail)

A: First, I suggest you very carefully review your governing documents, including any rules and regulations, that were initially created by the developer. Developers often include various

provisions, some very specific and some that are more broadly written, to provide the association with the necessary authority to enforce restrictions to keep the community nice for everyone. Your association may already have adequate authority to address the parking problem.

If not, you should look to see if the documents give the board of directors rule-making authority. Florida law permits a board to make and enforce reasonable rules and regulations as long as the board's authority to make rules is clearly set out in the documents and the rules do not conflict with any provision or right contained in, or inferable from, the condominium documents. While you may get some debate on the point, I generally believe rules prohibiting parked cars that block the sidewalks are reasonable. You stated that the prohibition on parking in the street overnight is already in the declaration. That is good, because a properly adopted restriction in a declaration is not

subject to a reasonableness test, and as long as a restriction in a declaration does not illegally discriminate against a protected class of persons or otherwise violate the law it will be upheld. If your association is concerned about the reasonableness of a rule prohibiting blocking the sidewalk, the board could propose a declaration amendment to add such a restriction, and if properly adopted by the members, there can be no argument about the enforceability of such a prohibition.

One final piece of advice is that the board must consistently enforce all restrictions. If there is currently a prohibition in the declaration on overnight parking in the street, and the board allows this to continue without taking action to enforce the restriction, the association may find itself unable to enforce the restriction without taking some remedial steps, such as notifying all of the members in writing that the restrictions will be enforced going forward.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, cooperative, 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.