

A few years ago, it was hard for some sellers to give away their condominium units. My, how times have changed! In many parts of Georgia, the market for condominiums is red-hot with demand out-stripping supply and prices rising rapidly.

Why has there been such a turn-around in the condominium market? First, the price of condominiums hit bottom just as single-family home prices were reaching new highs. Condominium units simply became too much of a bargain to resist any longer, particularly relative to other types of housing. Changing demographics and consumer preferences also favor condominiums. Many buyers relocating to Georgia lived in condominiums elsewhere and look for this type of housing when moving here. More buyers, both young and old, are also seeking a lifestyle free from the chores normally associated with traditional single-family home ownership. Condominiums fit the bill for these buyers since in most cases, the condominium association performs exterior maintenance.

When the condominium market was down and out, many REALTORS® shied away from trying to sell condominiums, fearing that the effort needed to sell units simply did not justify the return. With the condominium market now being so active, many REALTORS® are brushing up on their skills when it comes to condominiums.

This article is deigned as a refresher course for those seeking to quickly get up to speed on this subject.

What is a Condominium?

A condominium is a form of property ownership where buyers own their units in fee simple and share in the ownership of certain common property (such as roads, pools, landscaping, etc) referred to as "common elements." All different types of housing, including townhomes, mid-rise buildings, and even single-family detached housing can be developed and sold as condominiums.

In Georgia, condominiums are creatures of state statute and can be created only by following certain state law requirements. Included in these is the filing in the land records office of what is known as a declaration of condominium, which submits the property to the condominium form of ownership.

How is a condominium unit defined?

A condominium unit is required to be described as a cube of space with both vertical and horizontal boundaries (both upper and lower.). So, for example, if the vertical boundaries of a condominium unit are the exterior walls of the building in which the unit is located, this means that the exterior walls of the building are a part of the condominium unit. To the extent that the unit boundaries are defined through the use of the phrase "walls, floors, and ceilings," this is a legal term of art which incorporates a more specific definition set forth in the Georgia Condominium Act.

What are common elements?

Under the Georgia Condominium Act, all of the property which is not part of a unit is part of the

common elements. The common elements in a typical residential condominium include the building exteriors, the grounds, and any recreational facilities. The common elements are normally managed and operated by the condominium association. However, the unit owners, rather than the condominium association, usually own the common elements. Each unit's ownership share of the common elements is spelled out in the declaration of condominium.

What are limited common elements?

Limited common elements are a part of the common elements that are assigned to and reserved for the exclusive use of one or more units. Limited common elements often include such items as decks, patios, parking spaces, and air conditioning units that are physically located outside of the cube of space comprising the condominium unit. Limited common elements cannot be reassigned by the association without the unit owner's written consent. So, for example, if a parking space is assigned to a unit, it cannot be reassigned or given to another unit without the consent of the unit owner. Limited common elements travel with the unit. There is no need to prepare a separate deed for the transfer of limited common elements when a unit is sold.

What is the buyer obligated to maintain and insure?

Generally, a unit owner has the responsibility to maintain the unit and the limited common elements. This is not always the case, however. Ownership and maintenance do not have to follow one another in a condominium and can be separately assigned in the legal documents. So, for example, the roof or building exterior can be the maintenance responsibility of the condominium association yet owned by the buyer. Similarly, a balcony assigned as a limited common element can be the maintenance responsibility of the owner of the unit it serves yet owned by all of the Unit owners (since it is a part of the common elements). Therefore, when reviewing the legal documents for a condominium, it is important to determine both who owns and who maintains the different parts of the condominium.

Insurance in a condominium works as follows. The condominium association is required under the Georgia Condominium Act to obtain a casualty insurance policy for the full replacement value of all of the structures in the community. So, for example, if a condominium unit is destroyed by fire, a properly written condominium association insurance policy should normally cover the loss. Unit owners usually obtain what is known as an HO6 insurance policy covering their personal property and any improvements and betterments made to their units.

What power does a condominium association have?

A condominium association is like a mini-government for the condominium. It operates through an elected board of directors whose role is similar to that of a town council. The association is responsible for enforcing the covenants or private laws of the condominium contained in the declaration of condominium and the bylaws of the condominium association. To carry out its duties, condominium associations generally have a variety of powers, including (a) the power to tax unit owners in the form of annual and special assessments; (b) the power to adopt reasonable rules and regulations regarding use of the units and common elements; (c) the power to fine owners for violation of the covenants or rules or regulations of the association; (d) the power to

institute legal action to enforce the obligations set forth in the legal documents; and (e) the power to approve changes or alterations to the exterior of units or to the common elements. Each unit is assigned a vote in the condominium association, which may be equal or weighted. The concept of "one person, one vote" is not required in a condominium.

What are a buyer's financial obligations?

Each unit owner is obligated to support the condominium association financially through assessments against the unit. Each owner's share of expenses of the association is set forth in the declaration of condominium. There is no statutory requirement that all owners be assessed equally and it is not unusual for the declaration of condominium to require owners of larger units to pay higher assessments than owners of smaller units. Once the expense allocations for each unit are set out in the declaration, they cannot be changed except with the unanimous consent of the unit owners.

Most condominium legal documents provide that the board of directors sets the annual assessment subject to a veto right by the membership. While this is obviously a system with some degree of checks and balances, there is not statutory requirement that the annual assessment be adopted in this manner. In some communities, the board of directors has total authority to set the annual assessment. If the assessment is inadequate, most legal documents include a procedure by which the association can specially assess the owners for the deficiency. Buyers should always inquire whether the condominium association has sufficient monies set aside in a reserve account since this is usually the best way to prevent a special assessment.

Are the restrictions in the declaration of condominium enforceable?

Georgia courts have shown a great willingness to enforce the regulations in a declaration of condominium, even when such regulations are added to the declaration later by amendment. Buyers should review the declaration carefully to make sure that they can live with whatever regulations exist on such things as parking, pets, leasing of units, business use of units, and architectural control. Most condominium owners see the regulation in a declaration of condominium as protections rather than restrictions. However, an owner's perspective may vary depending on whether the regulations are being enforced against the owner's neighbor (in which case they are usually seen as protections) or against the owner (in which case they are, not surprisingly, sometimes seen as restrictions).

A condominium association also has strong powers to collect condominium assessments. Assessments cannot be withheld even if the owner believes the association is not performing its duties. Failing to pay assessments typically results in the imposition of an automatic lien against the condominium unit. The lien also normally includes a late fee for each assessment installment, interest, and the cost of collection (including reasonable attorneys' fees actually incurred).

How long does the developer control the association?

The condominium association is created with the initial recording of the declaration of condominium. While the units are being sold, the developer (or declarant) has the right to appoint and remove directors of the association and, therefore, has the power to control its

affairs. Under the Georgia Condominium Act, the period of developer control lasts until 80% of the ownership interests in the common elements have been transferred to unit purchasers or three years from the date the declaration was recorded, whichever occurs first. However, if the legal documents allow the condominium to be expanded to include an additional phase, the developer can control the association for up to seven years. Upon control passing from the developer to the unit owners, a "turnover" meeting is called, and the owners elect their own representatives to the board of directors to operate the community.

Why are condominium contracts different from other real estate contracts?

The Georgia Condominium Act requires certain disclosures and warnings in all contracts for the initial sale of a condominium unit. The contract must state, among other things, whether the condominium is a conversion, is expandable, is subject to a lease, or is subject to a lien for rent of a recreational facility. Additionally, the contract must state that oral or verbal statements of the seller cannot be relied on by the buyer. Not only must the written disclosures be made verbatim as set forth in the Georgia Condominium Act, there are also rules regarding the size and boldness of the type.

Can buyers rescind their condominium purchase contracts?

The only statute giving buyers a right to rescind a real estate sales contract in Georgia is our condominium act. Specifically, the first buyer of a condominium unit may rescind his or her contract for seven days. The rescission rights do not apply to condominium resales.

The seven-day rescission period begins to run from the date the buyer receives from the developer a mandatory disclosure package (which must meet certain requirements set forth in the Georgia Condominium Act). Often, the disclosure package is received with a purchase and sale agreement. However, if a buyer, for example, signs a contract in May and does not receive the full disclosure package until a few days before closing in July, the buyer's seven-day right of rescission begins in July upon the receipt of the package.

What must be included in a disclosure package?

The disclosure package, which must be provided to the initial buyer of the unit, includes copies of documents such as the declaration, bylaws of the association, articles of incorporation of the association, a copy of all association contracts having a term in excess of one year, a statement of the declarant's commitment to build and submit additional units and recreational facilities, and the estimated or actual operating budget for the condo association. Buyers should be required to sign a written acknowledgment that they have received the entire disclosure statement to eliminate any disputes regarding when the rescission period begins to run.

Conclusion

The condominium market is back. Hopefully, armed with knowledge about condominium, REALTORS® will be more successful with condominium sales.

Questions to Consider When Buyer a Condominium:

- If the condominium unit is being sold for the first time, have all developer/listing broker promises been incorporated into the contract, including promises regarding completion of recreational amenities?
- Have I reviewed any warranty which might be given on the condominium unit?
- Do I know the boundaries of the condominium unit?
- Do I know what limited common elements, if any (i.e., decks, balconies, stoops, storage lockers, parking spaces), are assigned to the condominium?
- Do I know whether any architectural changes were made to the unit which the unit owner is responsible to maintain?
- Do I know whether the condominium association or the unit owners pay for utilities serving the condominium unit?
- Have I inspected the common elements as well as the condominium unit?
- How long will any period of developer ("declarant") control last?
- Can the developer include additional phases in the condominium?
- Have I determined the monthly condominium assessment?
- Have I inquired of the condominium association whether there are any pending special assessments?
- Have I inquired whether there are any outstanding violations of the declaration of condominium?
- Have I determined the amount of money the condominium association has in capital reserves?
- Have I inquired generally regarding the percentage of leased units?
- Have I inquired generally about the dollar amount of unpaid condominium assessments in the condominium?
- Have I reviewed the declaration of condominium?
- Am I comfortable with the use restrictions in the declaration (i.e., restrictions on parking, pets, businesses, and leasing)?
- Do I know how annual and special assessments are determined?
- Can the declaration be amended to meet changing conditions?

Must condominium managers be licensed real estate agents?

In January 1997, a new law went into effect requiring condominium managers to be licensed by the Georgia Real Estate Commission. Interestingly, the law created a new license category for "community association managers" or "CAM's." In order to obtain a CAM license, the manager has to meet certain requirements similar to those which exist for licensed salespersons, but with a greater concentration on condominium and homeowner association issues. As with all real estate brokerage, the license of a CAM must be held by a real estate broker who supervises the manager's activities. Real estate sales agents with sales licenses are also allowed to be community association managers. However, managers with just a community association manager's license are not allowed to sell or lease property.

Among the more notable exemptions to the new law is for managers who are employed by only one on a full-time basis. In other words, a community association can still go out and hire an unlicensed manager to work directly for the association. The exemption does not apply, however, to management companies that place a manager on-site at a particular community, where the manager is employed by the management company.