

A GUIDE TO PURCHASING A CONDOMINIUM

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION *Division of Florida Condominiums, Timeshares, and Mobile Homes*

INTRODUCTION

Condominiums are a significant segment of the housing market in Florida. However, many prospective condominium purchasers are unaware of condominium concepts or the provisions of Chapter 718, Florida Statutes, the Condominium Act. The purpose of this pamphlet is to provide prospective purchasers with important information that should be considered prior to making a purchase.

PART ONE: THINGS TO CONSIDER BEFORE PURCHASING A UNIT

A condominium is a form of real property consisting of condominium units and common elements. Units are the parts of the condominium property which are subject to exclusive ownership. Common elements are the portions of the condominium property not included in the units. Proportionate ownership of the common elements is an appurtenance to a unit, meaning that it comes with the purchase of a unit and cannot be divided from the unit. Each unit's share of ownership in the common elements is the same proportion by which the unit owner will share in the cost of operating the condominium. The condominium form of ownership, usually associated with high-rise buildings, may also be found in garden-style apartment buildings, row structures, semi-detached structures, single-family homes, mobile home parks, and recreational vehicle parks. A condominium may be residential, commercial, or a mixture of both.

The Condominium Act provides that an association, usually a not for profit corporation, is responsible for operating the condominium. The association's responsibilities include maintaining, repairing, and protecting the land and the facilities in the condominium such as swimming pools, tennis courts, elevators, etc. The condominium association is run by a board of directors, initially appointed by the developer, but ultimately turned over to unit owner elected directors.

The **declaration of condominium** is a document that describes the condominium property, the unit boundaries, the common elements, and other improvements. Reading this document will help you to understand what you will own when you purchase a condominium unit. A purchaser usually obtains ownership and exclusive possession of everything inside the unfinished interior surfaces of the walls, floors, and ceilings of the unit, including the interior partitions, cabinets, appliances, and fixtures. The land and structural parts of the building are usually common elements. The declaration will also provide for the maintenance responsibilities of the unit owners and the association.

Condominium life may require that you live in close proximity to your neighbors, abide by restrictions on the use of your unit and common elements, and that you be personally involved in the operation of your condominium association. In order to protect your investment, it is

important to attend meetings to keep informed on the issues pertaining to the operation of the condominium.

You may purchase a condominium unit from a developer or from a private party. The Division does not regulate private parties. Keep the following in mind when purchasing a condominium unit from either a developer or a private party:

- What will be your ownership and voting rights in the association?
- What will be your percentage share of the common expenses?
- What are the restrictions on the use of the common elements and the unit?
- Are there any leases or contracts associated with the condominium association? If so, what are their terms?
- Do you understand all of the provisions of the documents?
- Exactly what items will you be personally responsible for maintaining?
- Is the condominium development completed? If not, how many units will eventually be added to the condominium development and what impact will they have on the use of the recreational amenities?
- What is the proposed schedule for adding units or amenities to the condominium?
- Does the developer have the option of not completing certain facilities or amenities?
- Does the association have a history of complaints by residents of the condominium?
- Is the association currently involved in litigation?
- Does the association carry adequate insurance?
- Is the condominium property well maintained?
- Has the association established reserve funds for future capital expenditures and deferred maintenance projects?
- If the condominium being created is by converting a previously occupied residential structure, what is the condition of the property and will major repairs be required in the near future?
- What is the history and reputation of the developer?
- What is the association's pet policy?
- Are there any restrictions on the selling or renting units?
- Are there any restrictions on the number of family members or guests who may occupy a unit?

Answers to many of these questions can be found in the "condominium documents." These documents include the **declaration of condominium, articles of incorporation of the association, bylaws of the association, and the Frequently Asked Questions and Answers Sheet.** The developer is required to file these documents with the Division of Florida Condominiums, Timeshares, and Mobile Homes, prior to offering units for sale. The developer is required to give each purchaser a complete set of the condominium documents. Once you sign a purchase agreement and receive the documents from the developer, you have 15 days in which to cancel your purchase. **Read these documents thoroughly before you purchase a condominium unit, and not later than the expiration of the 15 day cancellation period.** It is for your protection and to your advantage to carefully read and understand the condominium documents. If you are purchasing from a private party rather than a developer, the cancellation period expires three days from the date you sign the purchase agreement.

PART TWO: THE PURCHASE

Reservation Deposits

A reservation program allows a developer to “test the market” in order to make a decision to construct a condominium project. Prior to construction, the developer may enter into a reservation agreement with prospective purchasers. The reservation agreement is not a binding contract since it allows either the developer or the purchaser to back out at any time. The developer is not required to construct the property. Any reservation deposit must be fully refunded upon the written request of the purchaser or the developer.

Sales Deposits

If you are purchasing a condominium unit in which the construction, furnishing, or landscaping of the property is not substantially complete, The Condominium Act requires that deposits up to 10 percent of the sales price must remain in an escrow account with an independent escrow agent. Deposits in excess of 10 percent of the purchase price may be used in the actual construction of the condominium, **if so provided by the purchase contract**. For example, in the sale of a condominium unit priced at \$100,000, only \$10,000 of the sales deposit must remain in the escrow account. The remainder of the sales deposit may be used in the actual construction of the property. You should check your purchase contract to determine whether your complete sales deposit is protected.

Listed below are key condominium documents, along with a brief explanation of what these documents should address:

- **Declaration of Condominium**

The declaration of condominium is one of the most important condominium documents as it is the document that creates the condominium (when it is recorded in the official records of the county in which the condominium is located). Some of the issues addressed in the declaration include: membership and voting rights of unit owners; the manner of sharing in the common expenses, common surplus, and ownership of the common elements; the maintenance responsibilities of the association and of the unit owners; identification of the units; use restrictions; the manner in which alterations may occur within the condominium; insurance requirements of the association and of the unit owners; rights of the developer during the period of construction and the sale of units; and procedures for amending the declaration.

- **Articles of Incorporation**

The association's articles of incorporation address: the purpose of the articles, the powers granted to the association, the rights of members, the number of directors and officers, an indemnification clause for directors and officers, and procedures for amending the articles.

- **Bylaws**

The association bylaws address items such as: the type, frequency, and location of meetings; meeting notice requirements; powers and duties of the association; duties of

officers and directors; procedures for amending the bylaws; use restrictions; financial reporting and other pertinent information.

- **Estimated Operating Budget**

The estimated operating budget provides detailed estimates of various common expenses that are to be shared by the unit owners. The budget also includes significant information regarding future capital expenditures and deferred maintenance projects such as: roof replacement, building painting, pavement resurfacing, and other future expenditures in excess of \$10,000.

- **Receipt for Condominium Documents**

Remember that your **purchase agreement with the developer may be cancelled up to 15 days after the date that the purchase agreement is executed and the date you receive the condominium documents, whichever is later.** The developer will ask you to sign a receipt for condominium documents. Be sure you have actually received all the documents listed on the receipt. If you are purchasing from a private party, you are entitled to copies of the declaration of condominium, the articles of incorporation, the bylaws, the most recent financial reporting information and the condominium governance form, at the seller's expense. (The governance form can also be found on the Division's web page at <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoGovernanceFormMaster06252010.pdf>)

- **Frequently Asked Questions and Answers Sheet**

This document provides a summary of any leases or other covenants and restrictions, affecting the operation of the condominium and association.

- **Prospectus**

A developer is required to provide purchasers a prospectus if the condominium consists of more than 20 residential units, or is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 units. The prospectus summarizes some of the major points detailed in the condominium documents. Read the required disclosure documents to make sure that all the obligations and restrictions contained in the documents are understood.

AVAILABLE FROM THE DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES

Chapter 718, Florida Statutes, the Condominium Act

Chapters 61B-15 through 61B-24, Florida Administrative Code

OTHER INFORMATIONAL BROCHURES

Condominium Unit Owner Rights and Responsibilities

Condominium Living in Florida

Election Brochure for Condominium and Cooperative Associations

You may obtain these materials (free of charge) from the Division of Florida Condominiums, Timeshares, and Mobile Homes at: Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030 or by calling 850-488-1122 or toll free (Florida only) 800-226-9101.

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