

SENIOR CONDO PURCHASES, PART ONE: A WORLD OF HIDDEN RISK, LIABILITY AND ABUSE

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"Well kept grounds, beautiful trees, blooming flowers, blue pools, jacuzzis, shuffleboard courts and walking trails. Not a dandelion in sight. All this can be yours for the payment of one small monthly fee. You'll never have to lift a bag of fertilizer or mow your lawn again," the salesperson explains. "These amenities would cost you a fortune if you had to pay for it all yourself, but here, it's so simple because everyone shares in the cost. Simply buy a condominium unit in our homeowner association and all this can be yours."

Without understanding the ramifications of their advice, well-meaning family and friends all too often take this sales pitch on good faith and unwittingly convince retired or soon to retire loved ones to "buy a condo and make only one payment a month."

The rationalization of course, is that the tedious chores and upkeep most often equated with ownership of a traditional home do not exist when a condo in what is technically known as a common interest development is purchased. However, with a condo purchase, although many chores and upkeep are reduced to a "monthly fee," unexpected and incalculable risk and liability await those who are unaware.

Most new owners don't realize they have little or no control over their living environment because their board of directors makes all the decisions. Often these boards are incompetent and have little or no business experience, yet they can use their positions to squander money and victimize homeowners. In California they can do this with impunity, as the law provides no penalties for errant boards. More often than not, boards are prime targets for manipulation by the management companies, advisors, and vendors they hire, whose main motivation is profit and contract renewal, thus influencing a board's agenda.

Adding to the problems of seniors when buying into this type of home ownership is the amount of paperwork involved, not only during purchase, but after one moves in. Often decisions are made under intense pressure, and this requires an ability to absorb information quickly that even an experienced lawyer might find daunting. Not to mention that, for most, growing older can mean one's coping skills in these areas are to some degree going to be impaired.

CONDO LAWS IN A NUTSHELL

Since condominiums are located in common interest developments, they are subject to governance by a homeowner association and a board of directors. Some developments have more than one homeowner association, which means they have more than one board of directors and more than one monthly fee. Documents signed at escrow will include some type of statement that the buyer is aware and has notice that the property they are purchasing has a homeowner association and board of directors, and that the buyer is responsible for all costs associated with that purchase.

In California, residential common interest developments have mandatory deed restrictions recorded on the title of your home whether it is a condo, detached dwelling, or stock

cooperative. The California Civil Code Section 784 describes a deed restriction as "a limitation on, or provision affecting, the use of real property in a deed, declaration, or other instrument, whether in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction."

What this means is that serious conditions with potentially far reaching consequences are imposed on your use of your own home, conditions that you may have no control over.

Remember those blue pools and walking trails? In a common interest development, those amenities can suddenly turn into risks and liabilities. For example, seniors who purchase condominiums will be in for a shock when all of a sudden, for no apparent reason and with no warning, a lawsuit is filed and monthly fees go up, and up, and up. They are shocked again when they learn their board has signed a contract they never knew existed but must now pay, causing fees to rise yet again. The shocks continue when roads are repaved, pools resurfaced, tennis courts updated, clubhouses refurbished, structures painted, and new landscape installed, each with its own high dollar sticker shock.

LIFE IN A CORPORATE NIGHTMARE

Because a condo, as defined by the California Civil Code, is both a business and a residence, its governance is dominated mostly by corporate laws. Seniors often fail to realize they are not just buying a place to live, but are buying a business run by third parties they have either never met, or have met but don't trust. The result is that a condo owner virtually has no say in how the "business" where they live, will be run.

Through that supposedly simple condo purchase, the owner instantly becomes a member of the association. That means they are responsible for funding the business bank accounts, and paying for repair and maintenance of all corporate property. The owner becomes responsible for paying association expenses and liable for all the association's risks and liabilities. This means, if the board chooses to overspend, or if they slander or libel someone, the owners are responsible for rectifying both actions, even if the board is insured.

For instance, many laws mandate that associations carry insurance, but that does not mean they do. Even though California Civil Code Section 1364(e)(4) states that "Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies," owners who have requested copies and proof that association insurance policies exist have been informed by the California Department of Insurance that "The Department does not regulate, nor have jurisdiction or authority over your homeowners association. Therefore, we are unable to force them to provide you with a copy of your insurance policies. You may wish to consult with an attorney for advice and guidance."

Revealing an Alice in Wonderland world of non-existent responsibility, the Department also notified owners who complained about management companies and other third-party vendors who were transacting insurance without a license that the Department has "no jurisdiction over unlicensed transactors." Owners who asked where to file a complaint against management and vendors transacting insurance without a license reported that the Department would not answer the question.

GRIM REALITY

So, although owners complain they are prevented from unrestrained access to books, records and accounts, they still remain liable for all debts incurred by their board and association. Owners are required to pay because the law states that if they do not, their home can be foreclosed upon.

There is no other type of home ownership where anyone must pay what they are told to pay, and not be able to confirm the validity of the amount demanded without being forced to sue. In essence, the law compels those in a weakened position and least able to afford to protect themselves, which in many if not most cases means seniors, to sue. The senior may be paying for non-existent insurance policies yet is not allowed to question the actions of a board that allows this to occur, or question the management company who sold them insurance or caused the cancellation of existing policies, all without a license. Happening in California at an alarming rate, situations like these pose grave risks for all condominium owners, and for seniors in particular.

THE FORGOTTEN CITIZENS

Most government agencies overlook the severity and scope of actions against seniors that occur in homeowner associations. As one longtime enforcement agency employee once told me, "Look, it's only a homeowner association, we are after real corporate crime with big bucks." This was followed by, "Why don't they move?" However, with approximately 47 million homeowners living in common interest developments throughout America, this deceptively simple lifestyle can cost seniors billions of dollars nationwide. To give you an idea of just how big the financial impact of these residential deed-restricted purchases are, assume the regular dues of each homeowner averages \$200 per month (in reality monthly averages are much higher).

This conservative estimate creates an industry with an estimated value of \$9.4 billion Continued on page 10 per month, or more than \$100 billion a year. And asking why seniors don't just move reveals a further lack of understanding on the part of law enforcement.

For seniors, with their frequently limited options due to age and limited financial resources, moving out of a bad condo situation might not be possible. Not to mention that, in a homeowner association, nothing is quick, nothing is easy, and everything costs more.

What happens when a seemingly affordable, simple, and uncomplicated condo purchase, morphs into the ugly reality of, "We bought a nightmare," or, "We bought a lawsuit"? Along with the buyer's anxiety level, up goes the "For Sale" sign and a game of beat-the-escrow-clock starts to tick, and the rule of law is invoked.

SO YOU WANT TO SELL YOUR CONDO

Each state has its own statutes and laws that govern deed-restricted development purchases. While there are laws on the books to protect consumers, the laws in this area often lead to a maze of yet other laws that are complicated, confusing, and often detrimental to consumers trying to make informed choices. Nearly all such laws will require an attorney to interpret or to recommend a course of action.

It should surprise no one that, due to the complexity and uncertain nature of these laws, seniors and other owners can receive wrong or bad advice. Unfortunately, in this environment, owners

on a fixed income or sparse allowance cannot afford a mistake in judgment at this stage of the game.

Whereas at one time a condo purchase used to be simple and uncomplicated, it is no more. To enforce their rights, buyers must learn quickly what disclosures they are entitled to before they sign the purchase agreement because by the time they get into escrow they will not be able to accomplish much of anything.

In the business of selling residential deed-restricted property, an art form teeming with insiders' buzzwords and sophisticated age profiling, buyers learn too late that disclosure laws are either poorly written or difficult and costly to enforce. Because homeowner associations, boards of directors, management and vendors have injected themselves into the sales process, present disclosure laws are inadequate and do not fully protect consumers. As if they were fair game to the unscrupulous, buyers are allowed to know only what those in control of the information wish them to know.