

SENIOR CONDO PURCHASES, PART TWO: A WORLD OF HIDDEN PROBLEMS

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By Donie Vanitzian, BA, JD, Arbitrator
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"I had no idea what all those papers meant when I bought this condo. I've meager means and little energy for this homeowner association nonsense and I can't keep up with it. It just wears me out," David - Encino, California.

There is more to buying a condo than agreeing to pay a monthly fee. On top of mortgage payments and regular maintenance fees, the speed with which special assessments are charged to owners exacts a ruthless reality, particularly on seniors who never expected to be hit with rapid motion bank withdrawals from their account and into the association's coffers. Without meaningful consumer protections and readily verifiable accountability of these items, the equity in your home is at risk.

Condo buyers must agree to all terms in piles of paperwork presented to them during escrow whether they like it or not, or they can't buy. Paperwork can be a foot thick, taking competent lawyers weeks to research, yet most buyers agree to terms without ever reading them, that is, if they are provided copies at all. Many buyers don't realize that everything they agree to, including monthly fees, can change overnight without their knowledge or consent, and the law permits it. These purchases are convoluted and buyers cannot afford to be intimidated.

For each master and sub-association where the property is located, buyers must:

1. Learn of any lawsuits.
2. Demand copies of covenants, conditions, and restrictions; articles of incorporation; bylaws; rules and regulations; association insurance policies; financial records, and board meeting minutes for several years.
3. Read and understand everything. If you have problems getting any information, or if documents look suspicious, don't buy.

A common misconception about homeowner associations is that they are a democracy. They aren't. Instead, this type of purchase makes a mockery of the concept of choice.

POWER OF THE BOARD OF DIRECTORS

"Our budget is \$80 million a year. The management company commandeers our board of directors' election procedure, which is a 'conflict of interest.' This violates our bylaws election process 'secrecy and integrity' rule. Elections should never be in the hands of a management company employed by the board." Alice, owner, Leisure World, Laguna Woods.

Election of a board of directors is an election for control of money, contracts, foreclosure, and titleholders. Make no mistake directors have political and social control of the association and run it as they see fit. Unfortunately, too many seniors will automatically reelect existing board members because they fail to understand this is a business not a popularity contest.

POWER OVER MEETINGS, MOTIONS AND LIVES

"If I ask a question the board doesn't like, they tell me, 'sit down you're out of order!'" fumes co-op owner Helen Schroeder of Torrance. "Boards treat seniors as if we are senile, dumb and not knowledgeable."

In addition to creative accounting methods, often boards will alter the way "notice" is delivered to owners by hiding it in announcements, bulletins, or newsletters. When monthly fees go up and you complain, a board's typical response is, "we put notice in the flyer we sent out, if you didn't get it or read it, that's your problem."

All motions and rules passed by the board, even if owners disagree, bind everyone. Challenging board actions means inevitably that owners must sue and pay for their own lawsuit. In homeowner associations, nothing is "free" and nearly every avenue an owner chooses to pursue requires money, time, attorney advice, or the filing of a lawsuit. Arbitration is no better. Much time is wasted on the process itself and because boards receive legal advice and retain lawyers, seniors need to hire an attorney.

---Problems arise because association funds or insurance policies pay board attorney fees, yet owners can't utilize that attorney or access invoices they pay for

---When a board sues an owner, that lawsuit becomes an association expense, meaning all owners pay for costs, but owners finance their own lawsuits. Owners wanting to stop an existing lawsuit against the board's wishes . can't. All owners must continue to pay for it and the lawyers. If the association loses, owners may have to pay the judgment award and also risk paying attorney fees for the other side.

POWER TO DENY HEIRS

Real Estate Broker and Personal Financial Planner Thomas Foster warns seniors, "Be aware that even if you don't have a mortgage and don't owe taxes, boards have the power to lien and nonjudicially foreclose for money they allege is owed."

---Boards have the power to make arbitrary demands on individual owners, raise monthly fees, sell property, enter into contracts, fine, penalize, charge interest, lien, foreclose, and keep owners mired in debt they won't live long enough to pay off.

---If the owner doesn't pay, when they die, their estate will pay.

Such unrestrained actions can prevent or hold up a person's purchase or sale, increasing escrow costs and chances of litigation. An association can prevent the purchase or sale of your property, and some include an "option to buy" clause or "right of first refusal" in their governing documents. Others exercise rights to decide whether they "like" the prospective buyer or not, before allowing them to move into the community. Some boards have prevented heirs from occupying the unit until they have been interviewed and approved by the board, and only after the board receives proof the heir has a right to inherit the unit. Deciding whether the association will exercise such options could take months. If none of these options sound fair or equitable, they don't have to be. Purchasers voluntarily buy into private communities and are free to contract regardless of the terms.

"I won't let my mother buy a condo, it's too risky," Foster cautions. "Owners are nothing more than cash dispensers for associations."

WARNING: THOSE "PAPERS" ARE "LEGAL DOCUMENTS"

Many owners do not know the difference between petitions, proxies or ballots, and this can be dangerous. Depending on the printed language, once signed you have voted, often you cannot revoke your signature. Unfortunately, seniors usually comply with board requests for their signed proxy. Not understanding the consequences of signing any of those documents without prior legal advice can be devastating.

Your signature on any one of those "papers" could allow the association to do just about anything including amending its governing documents giving it more control over money, owner assets and quality of life. You may have unwittingly agreed to pay more or allow the board to charge higher assessments. Or, it can cause the assets of the association to be sold out from under the owners with the money going to third parties; elect a board of directors which has conflicting interests; allow the board to hire a management company without consent of owners; and a host of other actions that will seriously impact, if not destroy, the living environment. This can be done in numerous ways.

Owners refusing to cooperate, or give the board their votes and proxies, can be targeted, portrayed as non-team players, and easily retaliated against. Examples include doorbells ringing mysteriously in the middle of the night, phantom phone calls, sudden disappearance of pets, additional charges, veiled threats, disregarded letters and maintenance requests, all geared to inconvenience, silence, and frighten owners into compliance.

The American Psychological Association (APA) describes emotional or psychological abuse as ranging from name-calling or being given the "silent treatment," intimidating, insulting, and threatening the individual. By APA standards, isolating or preventing the owner from partaking in their regular activities or seeing their friends, either by force, threats or through manipulation, is also abuse. Since there are no statutory penalties for errant boards, democracy fails.

REPAIRS AND MAINTENANCE PROBLEMS

While funding the association business and paying for repairs and maintenance of common property, each owner is also responsible for their own home's upkeep. This means instead of paying for only one roof (your roof), you may have to share the cost of paying for 100 or 1,000 roofs. You cannot pick your roof vendor, the board does. If the board and management keep the association mired in unnecessary or costly perpetual maintenance schemes, all owners must pay for those schemes, even if they disagree with the board's decision.

AMENITIES ARE LIABILITIES

Louise, owner in an age-restricted association, complains that the trust foundation at her leisure community, "is supposed to hold all our amenities in 'trust' for owners here, but they just sold one of our buildings without owner vote. That's against the law, but they know we can't afford to hire an attorney to stop them, so they do whatever they please. They tell us, 'when you pay your dues, you have no say on where they go. So, once it leaves your hands, we do what we want.'"

Many buyers do not realize that amenities are costly liabilities. Once all units in a complex are sold, the very amenities luring buyers to purchase, can be sold out from under them at any time, not unlike "corporate raiding" of assets. Brochures boasting fancy amenities not yet built, may never be built. Existing amenities may be in such poor condition that, soon after purchase, buyers are saddled with thousands of dollars in special assessments for insurance, maintenance, repair or replacement costs. Failure to pay can result in foreclosure. If the board sells common assets, there is no guarantee that proceeds will be shared amongst the owners who sunk their money into that association. The board decides what to do with the money.

SENIORS MUST HAVE A GUARANTEED GROWING INCOME

"I can't afford to stay, and I can't afford to move," cries a Santa Monica octogenarian, and Dennis Hlavaty of San Pedro, agrees, "I'd leave here in a New York minute if I could only afford it."

All the cash capital in the association's operating funds is generated from owners. Just because you can afford to move in does not mean you can afford to stay, or that you can afford to move out.

Prior to buying a deed-restricted property, most owners are not advised that they must have a steadily increasing income to keep their home and pay trumped up fees to close escrow or refinance. Owners who cannot afford to pay their association's demands for increased fees and instant assessments that can cost thousands of dollars per owner, cannot stay (one association specially assessed each owner \$1 million). Whether \$1 or \$1 million, seniors who cannot pay, must sell and move. Those who cannot sell quickly enough may face foreclosure, or simply have to leave their homes behind.