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NEWSLETTER

NOTE: If you think your colleagues would benefit from this TIP, please forward it to them and ask them to reply to me by email for inclusion in this free Newsletter.

Also, if you have a topic you would like me to analyze and discuss, please email me and I would be glad to consider it in a future Newsletter

APRIL 2016 EDITION – THE “12-UNIT OR LESS” CONDOMINIUM COMMUNITY

We all know that attention to the small details is extremely important to the success of both realtors and lawyers when preparing and reviewing contracts and carrying out the terms of those contracts. **Awareness of a small detail such as the number of units in a condominium community can pay tremendous dividends as you go to contract and closing.**

Why is this so?

It is generally accepted that a sale involving a condominium unit requires specific disclosures in addition to the UPCD required by the State and the Lead-Paint disclosures required by the Federal government (if the house or unit was built prior to 1978). However, there is a little known EXCEPTION to the obligation to provide condominium resale certificates and other condominium documents when the sale involves a condominium unit in a community of 12 or less units! I believe we are going to see the occurrence of this exception more frequently as sales of units in

condominium communities containing 12 units or less become more common. Owners are increasingly turning multifamily houses into condominiums to maximize the property's value. In such cases, what we are about to discuss will become increasingly important.

The Connecticut condominium law was enacted in part to protect purchasers by requiring certain disclosures be given to them (condominium declarations, resale certificates, budgets etc). However, there is a glaring **exception** to this rule. It is so unusual and so illogical given the law's interest in protecting purchasers that we had to confirm our understanding of the law with several lawyers whose specialty is only condominium law! Here is the consensus of our opinions:

The Connecticut condominium law states that if the unit being sold is in a condominium community of 12 units or less and there are no development rights remaining with the developer* and there is no master condominium association , then the SELLER IS NOT OBLIGATED TO GIVE THE BUYER ANY CONDOMINIUM DOCUMENTS INCLUDING A RESALE CERTIFICATE! Thus the Buyer has no legal right to cancel the contract and no legal right to receive any condominium documents!**

*** meaning that the condominium is fully built out and all units are formally declared by the developer.**

**** meaning that the unit being sold is not part of a 12-unit or smaller condominium community which is itself part of a larger group of condominiums communities [this is very rare].**

What do you do if you are the Seller's realtor or if you are the Buyer's realtor and you learn that the condominium unit for sale is in a community of, let's say, eight units? There are many answers to this question.

SELLER'S POSITION

If you are the Seller's agent, one school of thought is to provide voluntarily as many documents as you can. In a small condominium community that is self-managed, the information normally contained in a resale certificate can be gathered and given to the Buyer.

Another school says if you don't have to give the Buyer any condominium information, then don't.

Our opinion is that fairness dictates that you give as much condominium information as you can gather. However, the Buyer's agent or lawyer must be made aware that dissatisfaction with the information contained in the documents is not sufficient to void the contract since if the documents are not required to be provided **THERE IS NO LEGAL 5-DAY RIGHT TO CANCEL IN THESE SITUATIONS!!**

BUYER'S POSITION

If you are the Buyer's realtor and you know that the unit is part of a condominium community of 12 or fewer units thus not requiring the Seller's agent to supply condominium documents by law, you do have the ability to not only compel the Seller to provide them but also to incorporate a right to cancel into the contract. To do so, you must add an Addendum to the contract obliging the Seller to provide the condominium documents and creating a right to cancel after inspection of those documents. Thus, you can create by contract what the law took away from the Buyer because the unit being sold is in a community of 12 units or less! Here is a sample contract clause:

The Seller, in further consideration of the payment of the purchase price, agrees to provide the Buyer the following documents within _____ calendar after the date this contract is signed by the Seller days [YOU, THE REALTOR, SUPPLY THE NUMBER OF DAYS IN YOUR OWN JUDGMENT]:

- 1. the condominium declaration;***
- 2. the By-laws and rules and regulation of the Association; and***
- 3. A certificate signed by the Seller containing the statements and disclosures required to be set forth in Resale Certificates as described in CGSA §47-270(a).***

This contract shall be voidable at the option of the Buyer until (1) the expiration of five days, excluding Saturday, Sunday and legal holidays, after the certificate and documents have been delivered to the Buyer or the Buyer's attorney, or seven days, excluding Saturday, Sunday and legal holidays, after the certificate and documents have been sent by registered or certified mail of mail evidenced by a certificate of mailing to the Buyer or the Buyer's attorney, or (2) conveyance, whichever occurs first.

We are attaching to this email a copy of the two statutes that pertain to resale certificates, condominium documents and the Buyer's right to cancel. You can give these statutes to the other realtor so that he or she will know what has to go in the certificate. We want to emphasize that the information disclosed in the certificate is extremely important to a Buyer. We have supplied the emphases you see in the statutes so that the important points will stand out.

I would like to thank attorneys John Cipriano and Bill Gambardella for their insight and contributions in helping me prepare this Edition and, as always, I hope you find the information contained in it to be helpful to you.