

Minnesota Community Associations

*Top Ten Things That Real Estate Agents Should Know
About Representing Buyers & Sellers of Property in
Community Associations*

Phaedra J. Howard | September 3, 2019



HELLMUTH & JOHNSON

COMMUNITY ASSOCIATIONS

MAINTENANCE

- Being in a Community Association DOES NOT mean maintenance-free living
- Depending on the type of community, the Association will have different levels of maintenance obligations for common areas and potentially for portions of the exterior of the owner's unit.
- Owners will still be responsible for maintaining all parts of their unit other than those that are maintained by the association.
- Owners may also be assessed for the cost of maintenance of limited common elements.
- If an owner fails to properly maintain his/her property, the association can come in and perform the needed maintenance/repairs and assess the cost back.



DOCUMENTATION



- All sellers should provide and all buyers should obtain a disclosure statement (if new construction) or a resale disclosure certificate and related documents at the time of the purchase agreement
- Except for commercial associations and most single family associations, sellers are required by law to provide a disclosure or resale disclosure certificate to the buyer. The certificate is completed by the association for a fee and includes attachments such as budgets, financial statements and the governing documents.
- Buyers have a 10-day right of rescission to cancel the purchase agreement after receiving this. The disclosure will provide info regarding assessments, reserves, insurance and other restrictions on the use of the property. Buyers should make sure to review this during that 10 days for any red flags or restrictions that are of concern.

GOVERNING DOCUMENTS

- Make sure to provide/obtain a complete set of the most current governing documents for the association
- Oftentimes associations will amend their governing documents over time by adding or changing certain provisions.
- Make sure you are providing/getting a complete set of the governing documents including all amendments. Be wary of any documents that appear hand-typed or where someone has inserted by hand or electronically verbage from an amendment into the original. Demand to get original, recorded (where applicable) copies of everything.



EASEMENT RIGHTS

- Associations have easement rights to access and enter an owner's property
- Many owners that are new to association living do not understand that their property is subject to easement rights and that the Association and its agents have an absolute right to enter the unit for certain reasons. Owners who attempt to keep the association out or to deny it access that is needed for maintenance or repairs or other similar reasons will usually end up being assessed legal fees when the Association has to involve its attorney to gain access.

PROPERTY CHANGES



**UNDER
CONSTRUCTION**

- Associations have architectural control over the appearance of the property and any changes need Board approval
- Whether it is a condo, townhome, single family or cooperative association, nearly all community associations have some level of architectural control over the appearance of the property and restrictions against owners making any changes to the appearance of the property without approval from the board or a committee. Associations can vary greatly as to what kind of exterior changes they will allow as well as what the procedure is to request them. Owners who make unapproved changes can be subject to fines or even to having the Association restore the property at the Owner's expense.

INSURANCE

- Do not rely on the Association's master insurance policy. Get an HO6 policy with proper loss assessment coverage.
- Some lenders do not require an owner to get an HO6 policy if the Association has a master insurance policy. However, master policies can vary greatly as far as what is and is not actually covered. Additionally, many associations have moved to large deductibles in the last few years. Most associations have authority to assess back to a unit owner the cost of insurance repairs up to the amount of the Association's deductible. If an owner does not have an HO6 policy with appropriate loss assessment coverage, he/she could be facing costs in excess of \$20,000 before the Association's insurance would kick in.



MORTGAGE FORCLOSURES/LIENS

- If the property was involved in a mortgage foreclosure, the Association may still have a lien for unpaid assessments and charges.
- For associations governed under the Minnesota Common Interest Ownership Act, the Association maintains a lien against the property even in the case of a mortgage foreclosure for certain amounts that became due prior to the end of the owner's redemption period. If these amounts are not paid by the foreclosing lender, the lien will stay with the property and can create big problems for the buyer. Banks often neglect to request a resale disclosure certificate any may try to close a sale without paying the Association. Buyers agents should make sure this is addressed.

FORCLOSING ON A LIEN

- Associations can foreclose their lien if assessments are not being paid.
- Just like a mortgage, an association has a lien against the property and can foreclose that lien if assessments and other charges are not paid. As with any other secured debt, the association assessments should be a high priority and should be paid on time to avoid late charges, legal fees and possible foreclosure. Buyers sometimes think that the assessments are being escrowed and paid by their mortgage company but this is very rarely the case. Information on the assessments and how to pay them is often sent by the association after it receives the closing information and a copy of the deed. However, it is the buyer's responsibility to make sure the assessments are paid regardless of whether the association sends out this "welcome packet" or any statements or coupons or not.

MASTER ASSOCIATION VS. PROFESSIONALLY MANAGED

- Find out if the Association is subject to a Master association and if it is professionally managed.
- There are often layers of associations governing a property and each one may have its own set of rules and levy its own assessments against a property. Buyers and sellers should make sure that they know if there are any master associations governing the property and get copies of all applicable governing documents. It is also important to know if the association is self-managed or professionally managed. Self-managed boards are often harder to get hold of to get documents or information needed for closing, so you may need to give yourself some extra time. They are also less likely to know and comply with all the legal requirements that they need to follow, so buyers should beware and make absolutely certain that they have all the disclosures and governing documents before purchasing in a self-managed association.

COOPERATIVES

ARE A COMPLETELY DIFFERENT CRITTER!

INTEREST IS PERSONAL PROPERTY AND NOT REAL ESTATE

- Members purchase a share in the cooperative in exchange for a proprietary lease to a unit. They do not own any real estate and cannot get a mortgage. Most title companies will not close these purchases because they are not real estate transactions. Often the board or management company will conduct the closing.

COOPERATIVE HAS A RIGHT OF FIRST OFFER

- Under MN law, an owner of a share in a cooperative must offer to sell that share back to the cooperative before they can sell it to a third party. Some coops routinely repurchase the shares so that they can manage the process and any wait list. Others do not repurchase.



NO MORTGAGES, BUT MEMBERS MAY HAVE SHARE LOANS

- Because members do not own real estate, they cannot get a mortgage to purchase an interest in a cooperative. They may be able to get a share loan, though, which is still a secured loan that is secured by the shares in the cooperative. There are limited lenders who offer share loans. Foreclosure of a share loan is much different than foreclosure of a mortgage.



MEMBERSHIP

- Members must be approved for membership by the Board and can have their membership terminated for cause
- A buyer interested in purchasing into a cooperative must go through a membership approval process with the coop's board of directors. The board should have objective criteria that they use to determine if a person is qualified. Boards must follow the same guidelines as rental property as far as processing applications in the order that they were received and approving or denying the first applicant before moving on to the next one. Under cooperative corporate law, if a member engages in repeated and/or serious violations of the governing documents, the board can terminate their membership for cause (after proper due process is given) and then evict them from the property.

COOPS MAY BE LIMITED OR ZERO EQUITY

- If properly set up in the governing documents, a cooperative may be limited or zero equity. This means that the coop sets limits on how much a member can sell his/her share for and how much equity the share can accumulate over time. This is done to keep the memberships affordable, particularly for low income and senior housing cooperatives.



MAJORITY OF COOPS IN MN ARE 55+ COMMUNITIES

- Minnesota leads the nation in senior housing cooperatives, so most of the cooperatives you are likely to run into will probably fall into this category. However, there are all kinds of other cooperatives, including student housing, artist coops, low income and even manufactured housing cooperatives.

HUD (DEPT. OF HOUSING AND URBAN DEVELOPMENT)

- Coops are often subject to a HUD master mortgage and additional HUD regulations
- A large number of coops are built using HUD-insured financing. HUD then has a master mortgage on the entire cooperative property. This is very typical of senior and low-income cooperatives. If there is a HUD master mortgage, the monthly assessments (or carrying charges) paid by the members will include their share of the monthly mortgage payment. Additionally, HUD will likely have required the cooperative to sign a regulatory agreement giving HUD certain oversight authority over the cooperative for the life of the mortgage.

VOTING PROCEDURES AND REMOVAL OF OFFICERS AND DIRECTORS



- Coop corporate laws are different regarding voting procedures and removal of officers and directors
- Under the nonprofit corporations act, which governs most other types of homeowners associations, members can vote by proxy at member meetings. But coops are governed under the cooperative corporations act. Under this act, voting by proxies is not permitted, but members can vote by absentee ballot. This sometimes creates a conflict if the cooperative is subject to the Minnesota Common Interest Ownership Act. Coop law also allows a spouse to vote the member's share in all cases unless the member has previously indicated to the board that they do not want their spouse voting for them.
- Also, under coop law, a director or officer of the coop may only be removed by a vote of the membership and only for cause related to their duties as a director or officer. Contrast to most condo and townhome association documents that allow removal of a director or officer with or without cause and also allow the board to remove an officer without a vote of the membership.

SUBLEASING

- Most coops do not allow subleasing. For those that do allow it, the subtenant is also subject to approval by the board.
- Under the cooperative principal, cooperative housing is intended to provide a place for the member to live and is not intended to be investment property, so the vast majority of cooperative documents do not allow a member to sublease his or her unit to someone else. For those that do permit subleasing, the lease and tenant are also subject to approval by the board based on the same membership criteria that the member was subject to.





QUESTIONS?

Phaedra J. Howard | phoward@hjlawfirm.com



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