



HindmanSanchez

WHAT REALTORS NEED TO KNOW ABOUT HOMEOWNERS ASSOCIATIONS

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"No one told me I'd have to pay assessments....."

"My realtor said I could have three great danes in my one bedroom condo....."

"My realtor said I didn't have to read those documents....."

"The title company insured that I could have a satellite antenna dish....."

BUYER'S/REALTORS CHECKLISTS FOR SALES IN COMMON INTEREST COMMUNITIES

A. Buyer's checklist for the purchase of a condominium, townhome or home in a common interest community

Sales of homes in a common interest community, where the buyer will be obligated to pay assessments to a community or homeowners association, can appear to be simple residential sales. These sales often go under contract and then close without the buyer knowing what they have agreed to in the covenants and other governing legal documents for the community. Successful realtors have found that educating buyers on all or most of the relevant aspects of the community results in a higher level of satisfaction by the buyer and fewer problems with the community or homeowners association. With a view towards assisting a prospective buyer of a condominium, townhome or planned community property, this checklist is offered to provide a starting point for both the experienced agent and buyer, as well as the new agent and first time buyers. This checklist is not all inclusive, but raises several items which should generally be considered.

1. Read the Documents/Find out what the restrictions are. When purchasing a condominium, townhome or home in a community with covenants, make purchase offers contingent upon inspection and approval of the legal documents for the community. Upon the buyers request, by law these documents must be provided by the seller or the seller must authorize the association to provide the document directly to the buyer. These legal documents may include the following:
 - a Declaration of Covenants, Conditions, and Restrictions
 - a map or plat of the community
 - Articles of Incorporation of the Homeowners Association
 - Bylaws for the Homeowners Association
 - Rules and Regulations adopted by the Homeowners Association
 - Resolutions adopted by the Homeowners Association governing the use and occupancy of properties in the community
 - Financial records of the Homeowners Association

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These documents are not all recorded, and so are not referenced in the title insurance commitment. In any event, the documents referenced in the title insurance commitment should all be obtained and reviewed.

After all documents are collected they should be reviewed. The documents may be lengthy and boring but they are important. The documents provide for a structured system of restrictions that will govern and control the lifestyle of buyers. These documents will also provide for maintenance and operation of the community, through assessments or payments to be made by buyers. The documents will also specify what portions of the property are to be maintained by buyers.

The legal documents often contain surprises (such as a covenant or rule absolutely prohibiting pets, or a covenant granting a right of first refusal to others) which you might not be expecting.

2. **Financial Stability of the Homeowners Association.** It is important to consider the financial stability of the homeowners association. At a minimum, financial statements and income and expense reports of the association should be obtained and reviewed. Ideally, these financial statements should have been prepared and audited by an independent financial consultant of the Association, preferably a CPA. In decreasing priority from an independent audit, a review or compilation of the Association's financial statements by a CPA, are next most acceptable. In any event, get copies of the most recent independent financial review of the Association (whether an audit, review or compilation) and the current or last month's unaudited financial statements. Look closely at the reserve funds held by the association. These funds should be adequate for repairs to the items maintained by the homeowners association (this could include the roofs, painting, and other major items). Additionally, if the homeowners association has had its financial statements audited, review the notes of the auditor carefully. Inquire about any current or prospective lawsuits involving the association and any possible special assessments.

If the purchase is in a new development, it is difficult to check the financial stability of the homeowners association by reviewing the budget. Perhaps the best way to assure yourself that the homeowners association is properly funded is to compare the amount of the monthly fees with that of nearby comparable communities.

3. **Assessments.** Obtain specific information as to the amount of the monthly homeowners' fee, including the items covered by the fee. Some developments are structured such that some of a homeowner's individual liability and casualty insurance is provided for by the homeowners association. Buyers might then only need to purchase insurance on the personal property within their home and for general liability within the home. To make these determinations, check the documents governing the community.
4. **Location.** It has been said that there are just three factors to guide any real estate purchase: location, location, and location. What is the status of the larger neighborhood? Is there shopping nearby? Where are the schools, cultural attractions, and recreational facilities?

Like any other real estate investment, location of the project and location of a home within the project can be vital. Poorly located developments do not benefit from appreciation in resale value and may even depreciate in value. In addition to a good location, special amenities of a community association often add value, such as extensive greenbelts or a recreation center or facility.

5. **Check Professional Management.** If there is a homeowners association, check to see who manages the association. Most homeowners associations hire professional managers to handle day-to-day operations, maintenance, hiring and firing of personnel, and financial management. Community Association management is a specialized skill. Inquire as to

how long the management company has been handling the project so that you may obtain an indication as to management stability. Consider interviewing or talking to the manager.

6. **The Owner/Renter Mix.** It seems that the most successful residential communities are primarily occupied by owners rather than renters. On the other hand, a resort property may be valuable for short term rentals. Find out what percentage of the community is comprised of owner occupants. Renters often do not take as much interest in a community as owners. To keep renters out, many homeowners associations have restrictions on rentals. If you plan on renting your property, check for rental restrictions and on the rental management companies that operate in the community.
7. **Financing Contingencies.** If financing is to be used to purchase the property, it is important to specify the terms of the new loan in the offer/contract. This will include specification of an interest rate, the term of the loan, the points to be paid, assumability features and other items. A typical financing contingency clause may read, "This offer is contingent upon the buyer and the property qualifying for a new _____-year amortized first mortgage of at least \$ _____ at an interest rate not to exceed ____% with a monthly payment not more than _____, with loan fees of not more than _____ point(s)."
8. **Determine Whether There is a Secondary Market for Lenders to Resell Their Loans.** You should determine if FHA insured or VA guaranteed loans can be made on homes in the community. Other agencies may also be able to assist in providing loans in the community. These agencies include the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). You may also inquire as to whether the state housing authority, Colorado Housing & Financing Authority (CHFA) has approved the project and whether CHFA or other special financing is available.
9. **Obtain Personal Knowledge About the Development.** If the homeowners association or its professional management company publishes a periodic newsletter, obtain copies of several back issues and briefly review them. Ask questions about the community, and remember to address your questions to the seller, the developer, the listing agent, neighbors, and others.
10. **Parking.** Inquire as to whether the exclusive right to one or more parking spaces may be obtained by the buyer. If assigned parking spaces are available, obtain those parking spaces which are most convenient to the location of the home being purchase. Also verify that you do not plan to park vehicles that are prohibited by the Declaration, such as trucks or commercial vehicles.
11. **Visual Image and Appearance.** Does the home have a satisfying appearance? Is the architecture harmonious with the environment?
12. **How are other homes in the community selling? Are there many homes on the market? How long do they stay on the market? What are your prospects when you want to resell?**
13. **Adjacent Properties.** Are adjacent properties to be developed as condominiums, a planned community, apartments, office buildings, a shopping center, or a major road or highway? Check local zoning maps to see what is permitted. Ask the local municipal or county land planner or zoning officer what the master plan is for the area and for any vacant adjoining properties.
14. **Price and Value.** Is the purchase from a developer, or is the home a resale? Whatever the case, obtain a market analysis to find out what prices other homes have been selling for. If a resale, find out what the home originally sold for and what it has resold for. Consider making the purchase offer contingent on an appraisal of the home (to determine its value).

- 15. How is the home laid out? Both the interior layout of your home and the layout of common facilities and the community are important.
- 16. Construction Quality. If the Community is new, ask the developer about their construction warranty. If the home is older, consider having a professional inspection service review the property before you are committed to purchase the home. In communities with homes that share common walls, inadequate soundproofing can be a problem. You might consider questioning current owners about any construction quality problems.
- 17. Conversions. If a buyer is considering purchasing a condominium or a unit in a converted apartment house, townhome project or a loft, try to obtain an engineering and/or architectural report which may have been prepared by the developer. It may also be prudent to obtain your own engineering and architectural consultant to check the structure and condition of the building and the project before the purchase. An inspection contingency in the contract is advisable.
- 18. Title Insurance. Ask the seller to provide title insurance with one of the following special endorsements:
 - a. a condominium endorsement known as ALTA Endorsement Form No. 115.1; or
 - b. a townhome or planned community endorsement known as ALTA Endorsement Form Nos. 115.2 or 100.20; or
 - c. an endorsement covering the recorded covenants.

B. Checklist for sales in common interest communities

Name of Community _____ ("Community")
 Name of Community _____ ("Association")
 Unit No. _____
 Address of Unit _____
 City/State/Zip Code _____
 Name of Unit _____ ("Unit Owner")

This Checklist is provided to you, a recent purchaser of a unit at _____ for your information and to assist you in understanding the governing documents of this Community. We encourage you to read all of the governing documents for the Community in their entirety. The purpose of this Checklist is to assist you in identifying specific provisions of the governing documents which may affect your intended use of your Unit.

- 1. Description of the Common Interest Community.
 _____ Village is a condominium.
 _____ Village lies on a tract of land of approximately _____ acres located on the south side of _____ Street in _____.

a) TYPES AND NUMBER OF BUILDINGS AND AMENITIES:

The Common Interest Community consists of one residential building and one garage building and may consist of up to two residential buildings and two garage buildings.

The recreation amenities consist of a paved and fenced tennis court.

Uncovered parking will consist of approximately twenty spaces. A right has been reserved in the Declaration to assign these spaces as Limited Common Elements.

b) Number of Units:

_____ Village, as described in the Declaration, contains nine Residential Units and five Garage Units. Ultimately, there may be up to eighteen Residential Units and ten Garage Units.

2. Restrictions. There are several documents which restrict what you can and cannot do at the property. We point out a few of these for your convenience. We ask that you carefully review all of the governing legal documents of the community on your own to assure yourself of all restrictions.

a) Use Restrictions. The use of each Unit is restricted to that of a single family residence and accessory uses.

b) Each Unit Owner shall keep his Unit clean and well maintained. No storage of trash will be permitted in or outside any Unit in a manner which permits the spread of fire, odors or seepage or encourages vermin.

c) No animals, birds or reptiles of any kind shall be raised, bred or kept in a Unit, except for (1) a maximum of one dog, cat or other common household pets.

d) Restraints on Alienation. There is no right of first refusal or restraint on free alienability of a unit in the Common Interest Community except as follows:

- _____ Right of First Refusal
- _____ Lease Restrictions

A unit may not be leased or rented for a term of less than _____ days. All leases and rental agreements must be in writing and subject to the requirements of the Documents and the Association.

3. Common Expenses. The amount of the current monthly Common Expense assessment for the Unit is as follows:

\$_____ per month based on the current annual budget. Other charges in the amount of \$_____ per month may be due for special services.

The amount of unpaid Common Expenses currently due and payable as of this date for the Unit is \$_____.

Common Expenses are assessed annually and payable in monthly installments which are due on the first of each month in advance. Default in the payment of a monthly installment may permit the Association to accelerate the remainder of the annual assessment.

4. Other Fees. Other fees payable by the Unit Owner are currently \$_____. Additional fees may become payable when due. These fees are for _____.

5. Capital Expenditures. Capital expenditures anticipated by the Association for the current and next two fiscal years are:

Item	Date Anticipated	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Current Capital Reserves. The Association's reserves for capital expenditures were \$_____ as of _____. Those portions of the reserves designated by the Association for a specific purpose are as follows:

Item: _____

Amount: _____

7. Balance Sheet and Income and Expense Statement. The most recent regularly prepared balance sheet and income and expense statement of the Association are attached as Exhibit D.

8. Current Operating Budget. The current operating budget for the Association is attached as Exhibit E.

9. Unsatisfied Judgments and Suits. Unsatisfied judgments and pending suits against the Association are as follows: Sidewalk fall by _____; Suit filed against the Association in the District Court of _____ County, Case No. _____. Pleadings are closed; awaiting trial. Defense of the action has been undertaken by the insurance company which provides the Association's insurance coverage.

10. Associations Master Insurance Policy.

(a) Hazard Coverage. The Property coverage on the master policy covers the Property that was originally obtained from the developer (e.g., exterior walls, roofs, interior walls, partitions, ceilings, floors, rugs, etc.).

(i) Agreed Amount. There is no coinsurance (an obligation to contribute for any loss if you are under insured) in the event of loss. There is a \$_____ deductible per occurrence.

(ii) Full Insurable Replacement Cost. Buildings are insured at 100% of their insurable cost.

(iii) Replacement Cost. Losses are adjusted without depreciation, provided the buildings are repaired or replaced to their original condition.

(iv) Broad Form Covered Causes of Loss. The master policy covers normal risks of loss formerly considered "all risk" coverage, with some common exclusions as listed below:

- (1) Personal property of an individual owner.
- (2) Damage caused by earthquake and flood.
- (3) Water which backs up through sewers and drains.
- (4) Other common exclusions in such policies.

THE ASSOCIATION DOES NOT PROVIDE LIABILITY COVERAGE FOR ACCIDENTS OR OCCURRENCES THAT OCCUR WITHIN THAT PORTION OF THE PREMISES WHICH IS RESERVED FOR AN OWNER'S EXCLUSIVE USE AND OCCUPANCY.

In addition to the coverage listed above, the master policy provides the following coverage for the Association:

- (i) Comprehensive General Liability.
- (ii) Bodily Injury & Property Damage Liability-- \$1,000,000 combined single limit per occurrence.
- (iii) Personal Injury Liability & Advertising Injury Liability-- \$___.
- (iv) Fire Damage Legal Liability-- \$___.
- (v) Medical Payment \$___ per person; \$___ per accident.
- (vi) Nonowned Auto-- \$___ single limit.
- (vii) Fidelity Coverage-- \$___ Employee Dishonesty.
- (viii) Directors and Officers' Liability-- \$___ with a \$___ deductible per occurrence.

Because of the exclusions in the master policy, you should consult with your own attorney and/or agent and consider purchasing a policy to cover the following exposures:

- (i) Value of household and personal property.
- (ii) Additional living expense.
- (iii) Personal injury.
- (iv) Loss assessment coverage.
- (v) Value of jewelry, furs, silverware, fine art.
- (vi) Business interruptions.
- (vi)i Value of additions and alterations made or acquired at the expense of an individual Unit Owner.

Should a situation occur where you would like to present a claim under the Association's master policy, or if you have any questions regarding your insurance coverage, please contact the Association.

11. Alterations or Improvements in Violation of the Declaration. Based on an examination of the official records of the Association, the Executive Board has knowledge of the following violations of the Declaration with respect to the Unit and the Limited Common Elements assigned to it: ___.

No assurance is given that these are the sole violations which might exist.

12. Violations of Codes and Other Laws, Ordinances and Regulations. Based on an examination of the official records of the Association, the Executive Board has knowledge of the following violations of health, safety, fire or building codes or other laws, ordinances or regulations: ____.

No assurance is given that these are the sole violations which might exist.

Portion of Common Interest Community: ____

Type of Violation: ____

Unit: ____

Limited Common Element: ____

Other: ____

13. Copies of Documents. The following Exhibits are certified to include all amendments and to be current as of ____, 20--:

(a) Declaration dated ____, 19-- with the current amendments, the most recent dated ____, 19--. See Exhibit A.

(b) Map or plat dated _____, with current amendments, the most recent dated _____. See Exhibit A-1.

(c) Bylaws of the Association dated ____, 19-- with the current amendments, the most recent dated _____. See Exhibit B.

(d) The current Rules of the Association. See Exhibit C.

(e) Balance Sheet and Income and Expense Statement of the Association dated _____. See Exhibit D.

(f) Current Operating Budget. See Exhibit E.

Sincerely,

Telephone:

ACKNOWLEDGEMENT OF RECEIPT OF CHECKLIST

The undersigned, the owner of Unit _____, does hereby acknowledge receipt of the following documents:

1. A copy of the Declaration.
2. A copy of the map or plat.
3. The Bylaws.
4. The Rules and Regulations of the Association.
5. The Balance Sheet and Income and Expense Statement.
6. Current Operating Budget.

Date _____