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The Springtime Real Estate Boom: What Community Associations Should Keep in Mind

After a long, dreary winter, it's springtime again. Because curb appeal is at its peak, many homeowners list their homes for sale during this season. When a home is listed in a community association, the sale could have an effect on the community association. Below are three items an association should keep in mind once aware of a home or condominium unit for sale in their community:

Existing Delinquency

If a delinquent homeowner has listed their property for sale, the association will want to ensure there is notice of the lien for the delinquency in the land records.

If the association is a condominium under the Georgia Condominium Act ("GCA"), or a homeowners association submitted to the Georgia Property Owners' Association Act ("POAA"), the association does not need to file a lien evidencing the delinquency since the recording of the association's declaration, or amendment submitting the association to the POAA, serves as record notice

of the lien. If the association is a homeowners association not submitted to the POAA, the Association should ensure that it has a paper lien filed in the land records indicating the amount owed.

Once a property is under contract, the closing attorney or title examiner will review the chain of title to the property. If there is a filed lien or the property is located in a GCA or POAA community, the closing attorney will contact the association, typically through its managing agent or attorney, for a payoff letter including all amounts owed in connection with the property. The payoff letter can include the cost of preparing the payoff letter itself. Note that the association must provide the payoff letter to the requester within five (5) business days of receipt of the request otherwise, under Georgia law, the lien is extinguished. Since the lien attaches to the property and not the person, if the lien is extinguished the association can technically pursue the delinquent seller/former owner for the pre-closing amounts, but the legal expenses to do so could be cost-prohibitive. If the association learns that the closing attorney did not obtain the required proceeds from the sale per the payoff letter, the buyer is liable for the total owed.

Existing Covenant Violation

Similar to an existing delinquency, an association will want to ensure that a potential buyer is aware of an existing covenant violation at an individual lot or condominium unit. This information is often disclosed at the same time that an association provides a payoff to a closing attorney. If a covenant violation is not resolved before the sale, a buyer could inherit a dispute with the association. This is why it is important for the association to disclose the covenant violation to all parties involved in the transaction. A seller that has previously refused to correct a covenant violation may be more inclined to finally resolve the issue if the violation has the potential to prevent the sale. This additional leverage for an association is almost never mentioned in any governing document.

If, for whatever reason, a buyer decides to move forward with purchasing a property with an existing covenant violation, the association can proceed with all available enforcement remedies against the new owner. Please be aware, however, that the new owner most likely did not receive formal notice of the violation as prescribed by the association's governing documents. This means that any fining and/or suspension procedure may have to start over once the new owner takes title to the property. In most cases, buyers have no interest in starting off in a new community at odds with the association, so property sales usually effectuate the correction of covenant violations.

Initiation Fee

Closing attorneys should also request confirmation of whether the association

has an initiation fee requirement for buyers. Most community association documents require buyers to pay an initiation fee (also commonly referred to as a capital contribution fee) upon the sale or transfer of a lot or unit, sometimes with certain exceptions (e.g., sale to a family member, transfer to a decedent after death, etc.). For many associations, the initiation fee is capped or tied to a formula based on the current annual assessment.

Some governing documents only provide for an initiation fee upon the first transfer of the property from the developer/declarant to a new owner. If this is the case, the association should consider amending its governing documents to provide for an initiation fee upon any sale or transfer, since these fees are an easy, reasonable way for associations to increase revenue or add to their reserve fund.

Coulter & Sierra, LLC specializes in community association law. We represent communities of all types and sizes throughout metro Atlanta and Georgia. We believe in providing expert, efficient and cost-effective services to our clients. Let us know how we can help you!

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