

Condominium Documents **for Buyer's Review**

Sellers of residential real estate in Hawaii are subject to certain legal disclosure requirements. The sales contract may delineate further what some of these requirements are. Residential Condominiums are a unique type of property and have distinctive disclosure requirements. Paragraph C-64 in the Deposit Receipt, Offer and Acceptance (DROA) includes many of the condominium documents necessary for disclosure. In some cases, certain documents may not be available or relevant to a particular transaction. When the documents are received from the Seller, the Buyer's Agent would be well advised to review the documents for completeness and check the items received against the transmittal letter and those requested in paragraph C-64 of the DROA. This handout describes some of the disclosures which may be made and will guide the Buyer and Buyer's Agent towards information that each document may provide.

Minutes of Board Meetings

- ❖ Request current minutes
 - Generally minutes of last three meetings
 - Were there any special meetings?
 - Purpose or reason for meeting?
- ❖ Minutes show what Board is doing
 - Are there continuing project problems?
 - Impact on Owners?
 - Is there friction or disagreement within Board?
 - Between Board and Managing Agent?
 - Between Board and one or more Owners
 - How will this impact Owners and Association operations?
 - Are there financial or money issues?
 - What is severity?
 - Is any litigation pending?
 - What is extent, cost and impact?
- ❖ Minutes document Board's decisions

Association Articles of Incorporation

- ❖ Creates legal entity out of "the Association"
 - May protect Board and Owners
- ❖ Not all Associations are incorporated
- ❖ How many Associations are there?
 - How is each defined?
 - Are there limitations on Board's liability?
 - Who is a member of each?
 - Do Associations cover contiguous increments or phases?
 - Are they subject to merger?

- Is there a provision for merger?
 - What type and when?
- Is there an umbrella Association?

By-Laws and Amendments

- ❖ Covers Project's Governance
- ❖ What is make up of governing body?
 - When and how often do they meet?
- ❖ What are the duties of the officers and directors?
- ❖ Is project older?
 - Have the By-laws been "restated" to conform with current laws?
- ❖ Are there special use restrictions that may affect governance
- ❖ Are there amendments?
 - How many?
 - What is reason for each?
- ❖ Are all documents including amendments recorded?
 - Get file stamped copies

Pending Litigation

- ❖ Provides insight on how lawsuit may affect project and its owners
 - What is issue?
 - What is disputed amount or financial impact?
 - What may be possible exposure or costs?
- ❖ Will this require a special assessment?
- ❖ What is covered by insurance?
 - How will a claim affect insurance coverage?

Financial Statements, Current Budget and Proposed Budget

- ❖ Shows where your money is going and the financial position of the Association
 - Look for major expenses
 - Compare budget and actual
 - Are there significant variances?
 - Why?
 - What are the changes from year to year?
 - On the balance sheet are there significant accounts receivable?
 - Why?
 - Are they all collectible?
 - Will there be legal costs?
 - On the income statement
 - Is there a surplus or deficit?
 - How much?
 - Are Audited statements available?

- Current?
- What significant comments or notes are there?
- Any causes for concern?
- Were management letter comments presented to Board?
- On proposed budget (if available)
 - What is going up?
 - Why?
 - How much?
 - Impact of fees or assessments?

House Rules

- ❖ They govern daily living
- ❖ Read them carefully!
- ❖ Date?
 - Is this the most current version?
 - How often are they amended?
 - Some projects do it frequently
- ❖ Common topics and rules
 - What you can and can't do
 - Bikes, skates, skate boards
 - Barbecuing
 - Car washing
 - Water beds and water filled furniture
 - Guests
 - Music, TV, Radio
 - Noise and quiet time
 - Pets
 - Are they permitted?
 - Are there limitations?
 - Cleaning of lanais
 - Laundry chutes
 - Curtains and window treatment
 - Limitations if visible from exterior
 - Jalousies and screens
 - Shopping carts
 - Fines, warnings
 - Parking
 - Things on lanai visible from exterior
- ❖ Are House Rules consistent with client's needs e.g. 'No pets'?
- ❖ House Rules should be consistent with By-laws

Declaration and Amendments

- ❖ The Declaration describes the project

- Defines and describes:
 - Common element
 - Limited common element
 - Units or apartments
 - Parking stalls
 - Storage
- Is the description of parking accurate?
 - Same number of stalls?
 - Stalls now assigned to unit the same as that described in Declaration?
 - Be wary of “unofficial trades” from prior owners
- Is the description of the unit in question accurate
 - What is in document should be same as actual unit
 - An enclosed lanai may not be permitted or may be illegal
- Unit’s percent of common interest is included in Declaration

Insurance Summary

- ❖ Describes coverage purchased by Association
- ❖ Helps Owner decide what additional coverage to purchase
 - Makes it easier to fill the gaps
- ❖ If coverage overlaps, which policy is primary
- ❖ What percentage of budget is insurance
 - Can be a significant cost
- ❖ Is carrier “admitted carrier” or surplus lines
 - Condominium coverage is increasingly difficult to purchase
 - Association may be at risk to lose some or all of coverage
- ❖ Is loss of rents/loss of use included
 - Is it available at all?
- ❖ Is Hurricane coverage included?
 - Is it available
- ❖ What is claims history?

Minutes of prior annual meetings

- ❖ Request current minutes
 - Get last two years if available
 - If last minutes not “approved” request draft copy
- ❖ Includes election of directors
 - Who are they, and what is experience and longevity?
- ❖ Appointment of auditor
- ❖ Approval of prior minutes
- ❖ May have topics of concern to Owners or significant action
 - What if any?

Form rr105-c

- ❖ This is managing agent's disclosure
- ❖ Usually covers issues of general project concern and not individual units
 - Unless individual unit affects common element
 - Common area problems
 - Termites
 - Dry Rot
 - Mold
 - Leaking roof
 - Leaking or broken plumbing
 - Sink holes
 - Cesspools and Sewage treatment facilities
- ❖ Pending repairs and major capital expenditures
- ❖ Speak to manager for more information
- ❖ Gives some clues
 - Do not rely solely on this disclosure
- ❖ Check date of preparation
 - Should be current

Reserve Study or Summary

- ❖ Projection of upcoming major expenses
- ❖ Are "rainy day" funds sufficient?
- ❖ Age of physical plant
 - Older buildings may have unanticipated repairs
- ❖ Law requires minimum of fifty percent of required funds held in reserve
- ❖ Or Replacement reserves based upon cash flow funding
- ❖ Managing Agent usually "books" annual funding requirement based upon recent study prepared by a property maintenance expert or engineer
- ❖ Request complete reserve study
 - Some managing agents will not provide complete study
 - Second choice is request summary of reserve study
 - Sometimes you get nothing
- ❖ Smaller projects cannot afford expert
 - These studies often based upon good faith estimate by board
- ❖ Date prepared?
 - Should be relatively recent
- ❖ General rule:
 - The larger the balances, the better for buyer
 - 100% funding means future special assessments are less likely

Other

- ❖ Condominium Public Report
 - If project is relatively new this is good additional disclosure

- It describes the project and discloses facts which were “material” at time of original sale
- If unit is still owned by Developer, this may be a required document even if it is several years since the condominium was created
- Some content may be relevant years later

- ❖ Condominium Map or File Plan
 - Often available in condensed form
 - Good additional disclosure document
 - This “depicts” what the Declaration “describes”
 - Shows project plot plan
 - Also shows elevations and floor plans
- ❖ Lease Conversion Documents
 - Important if project undergoing “lease to fee” conversion
 - Leased fee interest may already be available if conversion completed or soon after closing

This handout is a basic explanation of some certain condominium documents which may be used for disclosure during a sale of a condominium unit located in the State of Hawaii. The information provided should only be used to familiarize individuals with the nature and basic content of documents these documents and should not replace the advice and counsel of an attorney or the guidance of a Principal Broker or Broker-in-Charge who is responsible for the engagement.