
CONDOMINIUMS

Question: An agent is preparing to list a property and has not yet obtained a title report or listing package. The subject property is connected by a common wall and the seller has title to the land, but none of the homeowners pay association dues. Is the project a condominium, townhouse, zero lot line development, or PUD?

Answer: "Condominium" refers to a legal form of ownership -- not a physical characteristic. Therefore, it is impossible to determine whether an improvement is a condominium simply by looking.

If the seller does not know whether the property is a condominium, then the listing agent should obtain a legal description from a title company, which would indicate whether the property is a condominium.

Question: What recourse do the purchasers have if the sellers fail to deliver a condominium resale certificate? The sale is about to close and the sellers claim to have requested one, but the association has not yet delivered it.

Answer: The purchasers have a shield, but not a sword. As to the sellers, the purchasers can withdraw from the transaction without liability, but have no other recourse. The right of cancellation is the purchasers' sole remedy. As to the association, the purchasers are not liable for any undisclosed, unpaid assessment against the unit, if the association fails to deliver a resale certificate within 10 days after request by the sellers. RCW 64.34.425(3) provides as follows:

"A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first."

Question: Does the Washington Condominium Act apply to cooperative apartments? Is a resale certificate required on a coop sale?

Answer: No. A cooperative apartment is a different form of ownership, in which the unit "owner" holds (1) shares of stock or a membership in the association, and (2) a long-term, proprietary lease on the unit. The unit owner has no real property. The association owns the land and building, and pays the real estate taxes. However, the unit owner generally can deduct his or her prorata share of the taxes and interest paid by the association, for federal income tax purposes. The transfer of a cooperative apartment is accomplished by assigning the lease and issuing new stock certificates to the purchaser. Because no real estate is conveyed, there is no real estate excise tax due on the transfer of a coop. However, financing is more difficult to find for a coop. Cooperative apartments are far more common on the east coast than here.

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