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## CONSIDERATIONS IN PURCHASING A FLORIDA CONDOMINIUM UNIT

There are incredible bargains in purchasing Florida real estate these days, particularly condominiums. There is an abundance of new condominiums on the market which are being offered at prices unheard of for this region. For investors and second home buyers, this creates an opportunity that may not come around for decades, but there are issues that you need to consider in purchasing a condominium unit in Florida.

A condominium, purchased under Florida law, is a completely different "beast" from what you may be used to outside of Florida. It starts with the ownership concept which is a form of communal living. An apartment is considered a unit under Florida condominium law. All the rest of the condominium is typically referred to as common elements, which would include things like parking garage, storage areas, and recreational facilities. You do have exclusive ownership of your unit and you share in the ownership of common elements. Your governing documents and the Florida Condominium Act say that you have undivided ownership interests in the common elements. This means that every unit owner has the right to enjoy the common elements and the obligation to maintain them.

As you may guess, this arrangement, without guidelines and management, could result in rather chaotic living. Each unit owner would assert his or her own personal and selfish preferences. Because of close proximity of your neighbors, to regulate the use of common elements and necessities, insuring, maintaining, and repairing of common elements, certain rules and regulations must exist and do in your governing documents. A brief outline of the documents is as follows:

**Declaration of Condominium.** This is the main document for the Condominium. The Declaration creates the condominium. It describes the units, common elements and limited common elements, if applicable. It also authorizes the creation of the Association which regulates the operation and maintenance of obligations at the Condominium.

Every Condominium Declaration has use restrictions. You must review them to determine if there is anything there that creates a problem or impairs your lifestyle, you may want to flag it and discuss it with the realtor regarding the current status of provisions like the restrictions on minors, leasing, pets and the like.

The Condominium Act allows for the developer to guarantee limiting quarterly assessments that the unit owner pays. The developer, in theory, locks in the assessment amount for the owner

for a stated time period and the developer is then obligated to pay any expenses of the Association beyond the guarantee.

There is an obligation for all unit owners to pay proportionately the expenses of the Association through the payment of regular assessments. If you do not make the payments, the Association has lien rights and can, after appropriate notice, foreclose on your unit.

There are limited common elements which may include items such as parking spaces, storage units, balconies, terraces and limited common elements. Limited common element means and is comprised of subcomponents of the common element which are reserved for the exclusive use of certain units and are typically an expense to that unit.

**Articles of Incorporation of the Association.** The Articles create the Condominium Association. They are filed with the Florida Department of State.

**Bylaws of the Association.** These are the guidelines for the day to day operations of the Association. Bylaws set forth the number of directors, prescribes the procedures of unit owner and board of director meetings, financial obligations, budgets and voting.

**Current Operating Budget.** This document describes the budget that was voted on each year and the anticipated common expenses of the Association, which are divided among the owners in the same proportion of ownership interest in the common elements. The Condominium Act permits the waiver of reserves by the developer voting units they own for the first two years from the date the Declaration of Condominium is recorded and, thereafter, by the unit owners.

**Rules and Regulations.** These are enacted by the Board of Directors of the Association and generally consist of restrictions pertaining to the use of the common elements. The Rules and Regulations cannot be inconsistent with the Bylaws or the Declaration.

**Purchase Process.** If you decided that purchasing a condominium unit here in Florida is appropriate for you, the purchase of a condominium unit involves many of the same considerations that you would make in purchasing a home, however, because of the unique nature of condominiums, there are several factors you should consider.

The Florida Condominium Act has provisions to make sure you are informed in your purchase agreement that you were provided together with their prospectus. Every developer of residential condominiums is required to submit condominium documents to the Division of Florida Condominiums, Timeshares and Mobile Homes for review. A developer may not enter into contracts for purchase and sale until the condominium project has been submitted and approved by the Division. The Developer is likely a single asset entity so it is a good idea to do some due diligence on the Developer's reputation.

**Purchase and Sale Agreement.** The Purchase and Sale Agreement, which is also approved by the Division, is part of the developer's disclosure documents. From the date you sign the contract or the date you receive the disclosure documents, Florida law gives you fifteen (15) days to rescind the contract. If, for any reason, during those fifteen (15) days you decide not to purchase the unit, you may inform the developer in writing and the contract will be canceled and your deposit fully refunded. The review period for non-developer contracts is three (3) days. Most non-developer contract forms have been prepared by the Bar and Realtor Associations but

have not been reviewed or approved by the Division. This period is designed to provide you with an opportunity to thoroughly review the disclosure documents.

**Receipt of Condominium Documents.** When you receive the condominium prospectus documents, the developer will ask you to sign a receipt of condominium documents. This form is required by the Division to verify the date on which you received the disclosure documents. You should make sure that you actually receive all of the documents indicated on the receipt. If so, then you sign the receipt and write the date where indicated. It is very important to accurately post the date, as it will mark the beginning of the fifteen (15) day rescission period.

The author, John D. Humphreville, has been practicing law in Florida for over 25 years, and has assisted many clients in their real estate needs from his office in Naples. His contact information is below.

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