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Buyers, check condo status certificates carefully

In the course of my real estate law practice in Toronto, I often review condominium status certificates for purchasers. Usually this is a fairly routine function, where the lawyer looks for arrears in common expense payments, underfunded reserve funds, litigation by or against the condominium corporation, special assessments and similar items which could impact on the purchaser or her bank account.

Unfortunately, the contents of about four or five out of every 10 status certificates I examine are at odds with the advertised real estate listing, the agreement of purchase and sale or the seller's registered title.

The areas where the certificates differ from the other documents fall under several headings:

Common expenses

More than half of the status certificates I review show common expenses, which disagree with the advertised figures. This is often caused by sellers who advise their listing agents of the wrong amounts, and by real estate agents who fail to verify the numbers with property managers.

Sometimes, when a real estate listing runs through the condominium corporation's year-end, and the common expenses are increased, the listings are not updated with the new figures.

When the discrepancy is revealed, there is often a tug-of-war as to who will absorb the difference, which may be just a few dollars a month, or occasionally, as much as \$50 or \$100.

Special assessments

The same thing happens with special assessments. In Ontario, the standard form Ontario Real Estate Association (OREA) condominium agreement of purchase and sale contains a warranty that there are no special assessments contemplated by the condominium corporation.

Unfortunately, with the aging condominium stock in Ontario, special assessments are becoming increasingly commonplace.

The problem is that a unit owner may not know that a special assessment is under consideration by the board at the time an offer is accepted.

In cases like this, the seller or the real estate agent often winds up eating the cost.

Parking and locker mix-ups

For some unexplained reasons, many Ontario condominiums have numbers posted on parking and locker units which differ from the numbers on the registered deeds.

For example, a parking or locker space with a painted number 99 may be shown on the registered title as unit 53 level A.

Unit mix-ups: the ultimate headache

Every so often I come across buildings where two or more owners are actually living in units they don't own. This usually happens at the time of title transfer from the developer to the first owners, and is not discovered for years.

Nobody wants to have a deed to the unit next door. It becomes very difficult to sell your condominium, when the time comes, if you don't have a deed to it.

This actually happened on closing day in 2005 for 124 units in a downtown Toronto highrise on Jarvis St., but was corrected at the very last second.

The moral of the story: Never purchase a condominium unit new or used without cross-checking the unit numbers on the deeds with the floor plans. A few dollars invested in the floor plans are cheap protection to avoid a disaster.

Several lessons emerge from all of this:

- Sellers and listing agents should be careful to advertise the correct common expenses and to amend them during the listing period if a new budget is passed.
- Unit and level numbers for parking and locker spaces can and do get mixed up. Posted numbers don't always match the deeds. Sellers, buyers and agents should take care to verify unit numbers and location at the time the offer is signed.
- When special assessments are being contemplated, they should be disclosed to owners at the earliest opportunity, and sellers should disclose this to their listing agents. Sellers should also check with the condominium board or management to see if any assessments are being considered.
- Deeded numbers for condo units should always be compared with the registered survey plans for the condominium levels. They're not always right.