What to Consider When Buying a Home in a Condominium

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This brochure was prepared courtesy of the Georgia Association of REALTORS® to help buyers with the condominium home buying process. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in buying a home in a condominium.

Condominium living is a great lifestyle choice for many buyers. Exterior maintenance is normally performed by the condominium association allowing owners the freedom to focus on other pursuits. Since owners can leave their homes for extended periods of time, condominiums are often referred to as "lock and leave" homes. Condominiums also typically offer recreational amenities not found in many single-family homes and the opportunity for a built-in community of other owners. Many condominiums are located in high density residential areas where residents can enjoy a more "walkable" lifestyle. This brochure will answer some of the more commonly asked questions about condominiums so that buyers can make a more informed decision when purchasing a condominium unit.

What is a Condominium? A condominium is a form of property ownership rather than a particular type of housing. Townhomes, midrise, high-rise and mixed-use buildings are all regularly organized as condominiums. In a condominium, each owner owns his or her home or unit and a percentage of commonly owned property known as the common elements. The common elements consist of all parts of the condominium other than the units and typically includes things like recreational amenities, driveways, landscaping and building exteriors. The Condominium is normally created by filing certain legal documents in the land records office including a Declaration of Condominium, a condominium plat and floor plans.

What is a Condominium Association? A condominium association is a corporation composed of all of the owners of units in the condominium. All owners are required to be members of the condominium association. The association is typically responsible for the overall administration of the Condominium, the maintenance of the common elements and the enforcement of covenants designed to protect property values and preserve harmony within the community.

The Board of Directors is the governing body of a condominium association. This means that the Board is responsible for making all decisions on behalf of the condominium except for certain important decisions reserved to the members. So, for example, under the Georgia Condominium Act, the condominium Declaration can only be amended upon the approval of 2/3 of the total vote in the Association. Until a large percentage of units have been sold or a specified number of years, the developer or declarant of the condominium can appoint and remove the officers and directors of the association and thus control its affairs. After that time, the owners get to elect their own officers and directors. Every owner has a vote in the condominium association (except typically when the owner is delinquent in paying assessments to the condominium association). Many condominium associations hire professional property managers to manage the property and act as the "arms and legs" of the Board of Directors. In addition to the Declaration of Condominium, the legal documents for a condominium include a Bylaws (which sets out the procedures for the operation of the Association) and an Articles of Incorporation (which creates the condominium association). Most condominiums also have rules and regulations adopted by the Board of Directors. In some cases, the condominium association may also be a member of a master condominium association. A master condominium is typically how mixed-use developments are organized. Each of the major land uses in the development are typically one or more master condominium units.

What is it that a Buyer Owns when Buying a Condominium Home? The buyer of a condominium home owns his or her unit plus a pro rata interest in common elements serving all of the owners in the condominium. The boundaries of the unit are normally described three dimensionally with both vertical and horizontal boundaries. So, for example, the outer surface of the sheetrock walls enclosing the unit might be the vertical boundaries of the unit. Similarly, the outer surface of the sheetrock constituting the ceiling of the unit and the middle of a concrete slab constituting the floor of the unit might be the upper and lower horizontal boundaries of the unit. The unit itself is then also shown on recorded floor plans for the condominium. Since the developer has flexibility in defining the boundaries of the unit, the exact boundaries as set out in the Declaration of Condominium should be reviewed by the buyer.

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What are Limited Common Elements? A limited common element is a part of the common elements reserved for the exclusive use of one or less than all of the owners. So, for example, parking spaces, storage areas and balconies are often assigned as limited common elements to specific units the owners of which have an exclusive right to use them. Similarly, a hallway on a residential floor in a high-rise building may be assigned as a limited common element only to those owners on the floor with the hallway. Once a limited common element is assigned to a unit owner or owners, it cannot be reassigned or taken away from the owner or owners without their written consent. The limited common element also travels with the unit when it is sold. Therefore, while a limited common element is technically a part of the common elements, an owner assigned a limited common element enjoys many of the same benefits relative to the limited common element as if he or she owned it.

How Do Property Taxes Work in a Condominium? A condominium unit is taxed in the same way as any other piece of real estate. The only difference is that the unit being taxed includes a pro rata interest in the common elements. Since the fair market value of the unit includes the owner's interest in the common elements, the pro rata value of the common elements should not be separately calculated for tax purposes. The condominium association normally pays no property taxes since while it administers the condominium, it normally owns no real property.

What Type of Insurance Does a Buyer Need in Purchasing a Condominium? As one of its many functions, the condominium association is required under state law to insure the condominium (including the condominium units) against certain types of risks. In closing on the purchase of a condominium unit, most lenders will simply want to obtain a copy of the association's insurance policy or a certificate of insurance showing that the association has the required coverages in place. Of course, this does not mean that buyers should not also obtain their own insurance. Buyers of condominium units typically get what is known as a HO-6 policy covering the owner's personal property in the unit, improvements and betterments made to the unit not covered under the association's policy and liability insurance to protect owners against personal injury claims arising in the unit. Buyers should contact their insurance agent for advice regarding their specific condominium insurance needs.

What are Condominium Assessments? In order for the association to maintain the common elements, insure the property and pay for its other expenses, each unit owner pays monetary assessments to the association. Typically, each owner pays a pro rata portion of the total cost of operating the condominium based upon a formula set forth in the Declaration of Condominium. In most cases, assessments are paid on a monthly basis. In addition to assessments, it is common for owners buying the unit the first time it is put into use to pay a capital contribution to the association. This amount is often equal to two months of regular assessments. In the event an Association has an unexpected or costly expense not covered by financial reserves, condominium associations normally have a right to specially assess each member a portion of that expense. This one-time charge raises the funds necessary for a specific purpose or improvement within the complex. If a special assessment is being considered, reference to it is often found in the minutes of meetings of the Board of Directors. Condominium associations have strong legal rights to collect unpaid regular and special assessments from unit owners.

What is a Condominium "Clearance Letter"? Under the Georgia Condominium Act, a condominium association has an automatic lien against any unit the owner of which owes money to the association. Since this lien is not typically filed in the land records of the county in which the property is located, the attorney closing the sale of the unit must check with the association to see if any monies are owed. The closing attorney will also normally obtain from the association what is commonly referred to as a unit clearance letter stating if any monies are owed. Buyers have a right to rely on the information contained in these letters. So, for example, if the unit clearance letter states that $100 is owed through a particular date the association cannot go back against the new buyer and claim that $1,000 in assessments is owed for the same time period.

Do Buyers of Condominium Homes Have a Right to Rescind or Cancel Their Purchase and Sale Agreement? Georgia law gives the first buyer of a condominium unit a seven day right to rescind or terminate his or her purchase and sale agreement without penalty. The seven-day period begins to run when the buyer acknowledges receipt of a condominium disclosure package provided by the declarant which contains, among other things, the condominium legal documents, the budget of the condominium association and the floor plan of the unit being purchased by the buyer. This rescission right is unique in Georgia law and is designed to protect buyers by giving them the opportunity to review all of the various legal documents relating to the condominium. The right of rescission only applies to the first sale of the condominium unit. Buyers do not have a right of rescission when they purchase a resale condominium.

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What is the Difference between a Condominium Conversion and a New Construction Condominium? A condominium conversion is one where all or part of the building being sold as a condominium was previously occupied by persons for some other use. Many condominium conversions were previously apartments. One benefit of a condominium conversion is that buildings with historic character or architectural interest can often be adaptively reused for residential purposes. In some cases, units in a condominium conversion may be sold at a lower price because they were not necessarily built at today's construction prices. The first buyer of a unit in a condominium conversion receives certain additional disclosures from the developer including a report on the condition of the major systems and components in the building.

Is It Common for Buyers to Contract to Buy a Condominium Home Before It Is Actually Built? The answer to this question is yes. Most construction lenders will only lend money to a developer to build a new condominium if the developer has presold a sufficient number of units to confirm that the condominium development will likely be a success. The purchase and sale agreement is made contingent upon a certain number of other units also being sold by a particular date. During the presale period, the earnest money of the buyer should be held in escrow. If the presale contingency is met, the condominium development goes forward. If it is not met, the buyer's earnest money is typically returned. Most construction lenders now require buyers to deposit larger amounts of earnest money than in the past to discourage buyers from walking away from their contracts if they change their minds about buying before the condominium is finished. Buying prior to the construction of the condominium has both risks and advantages for the buyer. First, the price of the unit prior to construction is often less than what the developer intends to charge for the unit upon the completion of the condominium. Second, there is sometimes the opportunity to customize the layout of a unit since construction has not yet begun. Of course, if the condominium is not successful, the value of the buyer's unit could go down.

Are There any Potential Issues in Obtaining a Mortgage Loan on a Condominium Home? Obtaining a mortgage loan on a condominium unit can be more difficult than obtaining financing on a detached single-family home. With a new condominium development or a condominium conversion, the developer will often arrange for financing with particular lenders to make it easier for buyers to purchase units. With an existing condominium, buyers are encouraged to work with a mortgage lender with experience in making condominium loans. Even if the buyer is well-qualified to buy the unit, it can sometimes be difficult to obtain a mortgage loan on a condominium unit if, for example, the condominium has too many leased units or units where owners have not paid their assessments. Buyers are encouraged to meet with a mortgage lender with condominium expertise early in the process to learn more about financing options and limitations.

How Does a Buyer Learn More About a Particular Condominium? If the condominium is an existing development, asking residents about their experiences in living in the condominium is a good way to learn more about the community and any issues it may be facing. Similarly, reviewing minutes of meetings of the Board of Directors and the members of the association and financial records is another good way to learn about the condominium. In this regard, determining whether the association has had a capital reserve study done and is building up sufficient capital reserves to eventually replace items maintained by the association can be a good predictor of whether or not there will be a future special assessment. Finally, reading the condominium legal documents is a great way for a buyer to better understand his or her rights and obligations as a unit owner. Since buyers cannot normally obtain financial or corporate records of a condominium association, buyers may have to get this information from their sellers.

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