



CAMPBELL & BRANNON

Condos 101

Continuing Education Class

AGENDA

Section 1 – Intro

Section 2 – Under Contract

Section 3 – Mortgage Considerations

Section 4 – Condo Living

Which of these is a Condo?



Which of these is a Condo?

A condo is not a style of property but a style of ownership.

In a condo you have exclusive ownership of your unit and an undivided percentage of the condo's common elements.

The common elements are further divided into common elements and limited common elements.

Even if a property is called a townhouse, it still may be a condo. The legal description is your key to find out!

The legal description for a property will always reference a Declaration of Condominium.

If in doubt, ask a CB attorney!

What's the difference?

Single Family

A form of ownership where the owner owns not only the structure but also the land underneath. If the property is part of an HOA and depending on the covenants the owner may or may not be responsible for the roof, deck, patio, landscaping, etc.

Condominium

A form of ownership where the owner owns only their unit and a shared interest in common areas. Typically, the walls, ceiling and floor are the boundaries to each unit and the owner does not own the land beneath their unit.

How do I know what I have?

Legal Description

The legal description references a declaration of condominium.

Parcel ID:	17 009300090096
Property Location:	14 JEFFERSON HILL PL
Unit:	
City:	ATLANTA
Neighborhood:	9617
Improvement Strata:	R1
Property Class:	R1
Land Use Code:	106-Single Family Residential Condominium
Living Units:	1
Acres:	0.248
Zoning:	RG2C
Location:	5
Fronting:	5 - 9
Parking Type:	3-ON AND OFF STREET
Parking Quantity:	2
Street 1/Street 2:	1-Paved/-
Topo 1/Topo2/Topo3:	1-LEVEL/-
Util1/Util2/Util3:	1-ALL PUBLIC/

All that tract or parcel of land lying and being in Land Lots 95 and 96 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

Condominium Unit 14, Cluster E of Rosewood Plantation Condominiums, as more particularly described and delineated in the Amended and Restated **Declaration of Condominium** for Rosewood Plantation Condominium, recorded in in Deed Book 15562, Page 83, et seq., Fulton County, Georgia records, as the same may be amended, together with all right, title and interest in the common elements as set forth in said Declaration.

This conveyance is made subject to the Declaration and all matters referenced therein and all matters shown on the plat recorded in Condominium Plat Book 5, Page 78, Fulton County, Georgia records, as the same may be amended and the floor plans recorded in Condominium File Cabinet 2, Folder #54, aforesaid records, as the same may be amended.

Tax Assessor

Tax assessor's records will show the property type.

Title

Common Elements: “all portions of the condominium other than the units.”* Common elements are owned by all unit owners as tenants in common.

i.e. building exteriors, roads, general parking facilities, pool, gym, etc.

Limited Common Elements: “a portion of the common elements reserved for the exclusive use of those entitle to use one or more, but less than all, of the units.”* Limited common elements are assigned to unit owners through the Declaration of Condominium

i.e. balconies, patios, entrance stoops, etc.

Unit: “a portion of the condominium intended for any type of independent ownership and use.”* Units are defined by horizontal and vertical boundaries.



*O.C.G.A. § 44-3-70

An undivided interest in what now?

What does it actually mean to have undivided ownership in the common elements?

All unit owners own the common elements as tenants in common. The percentage of their share of ownership is set out in the declaration. This is typically determined by the square footage of the units.

Unit owners typically share association expenses at a rate proportionate to the ownership percentage. i.e. two bedroom and three bedroom units have different monthly assessments.



Undivided means that although you have a percentage of ownership in the common elements, your percentage of ownership cannot be subdivided. For example, you can't say this corner of the pool is my 1% of ownership in the common elements so no one else can swim in this corner – everyone has equal access.

What about parking spaces and storage units?

They are limited common elements assigned through the declaration or an amendment to the declaration.

Upon sale the limited common elements automatically transfer to the new unit owner.

Limited common elements are most often NOT included in the legal description but incorporated by reference through the declaration.

Example: All that tract or parcel of land lying and being in Land Lot 99 of the 17th District of Fulton County, Georgia, and being more particularly described as follows: Condominium Unit No. 1805 of Ovation, a Condominium, as more particularly described and delineated in the Declaration of Condominium for Ovation, a Condominium, recorded in Deed Book 41978, Page 476, et seq., Fulton County, Georgia records, as the same may be amended. This conveyance is made subject to the Declaration and all matters referenced therein, and all matters shown on the plat recorded in Condominium Plat Book 17, Pages 13-16, Fulton County, Georgia records, as the same may be amended, and the floor plans recorded in Condominium Floor Plans Book 32, Pages 497-528, aforesaid records, as the same may be amended.

If unit owners want to “sell” their limited common elements to a neighbor they must go through the association. The association will draft an amendment to the declaration to make the change official. The unit owners are responsible for the fees associated with drafting and recording the amendment.

Under Contract



Under Contract - Brochures



GAR provides a consumer brochure (CB19) – “What to Consider When Buying a Home in a Condominium.”

Explains condo ownership, assessments, initiation fees, the role of the association, etc.

Under Contract

New Construction: buyers have some statutory protections. The earlier you go under contract the more you can customize your unit – but beware this will often increase your earnest money or construction deposit!

Conversion: an existing building that was previously used for another purpose is converted to condo units. This is most common in older historic apartment buildings or warehouse space converted to condos. The developer provides the purchaser with a report on the condition of the existing systems in the building.

Resale: The sale of an existing condo unit. There are no additional protections – remember Georgia is a Buyer beware state!

A condo can be a resale, converted property, or new construction!

Sometimes the contract rights of the parties will vary depending on the sale type.

Under Contract – New Condos

The first purchaser of a condo unit has 7 days to rescind the contract without penalty.

The 7 days begin to run from the time the buyer receives the condo disclosure package.

A new condo may go under contract before the developer breaks ground and/or be contingent upon a certain amount of pre-sales.

This right does not apply to a resale or purchasing a new condo for investment purposes.

Initial monthly assessments may be low in new construction – until the condo is in full operation it is hard to ascertain the true running cost.



Under Contract – Conversion

A condo created from an existing building.

Most common conversions are historic apartment buildings, schools, warehouses, or factories.

Existing tenants must be given 120 day notice of the conversion and be offered the opportunity to purchase their unit at a set price and term – during this time they have a right of first refusal to match any offer presented by any other buyer.

Buyers must be given the condo disclosure package, but the disclosure must also contain information about the condition and life expectancy of existing systems in the building.



Under Contract – Resale Exhibit (F204)

Resale exhibit covers info specific to condos that isn't included in F201 including:

1. Fill in the blank legal description that includes a reference to the Declaration of Condominium;
2. Responsibility for assessments; and
3. That because the seller cannot repair defects in the common elements the condo's common elements are sold "as-is".
 - a. This also protects sellers if the association makes a change to the common elements after going binding – the buyer does not have an out just because the common elements are not the same as of the binding agreement date.
 - b. If the unit is being sold with the right to request repairs the common elements are not subject to that right.

CONDOMINIUM RESALE PURCHASE AND SALE
EXHIBIT " _____ "
(not to be used on initial sale of unit)


2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____

1. **Legal Description.** The full legal description of the Property is:
Unit _____ of _____ Condominium ("Condominium"), located in Land Lot _____ of the _____ District of the _____ County, Georgia, together with its percentage interest in the common elements of the Condominium, and any limited common elements assigned to the unit ("Unit"). The Condominium was created by the Declaration of Condominium for any Condominium ("Declaration"), recorded in Deed Book _____ Page _____, et seq. of the above county records ("Declaration"), and shown on the plat of survey filed in Condominium Plat Book _____ Page _____, of the land records of the above county, and on the floor plans filed in Condominium Floor Plan Book _____ Page _____ of the above county.

2. **Common Expense Assessments.** Seller shall pay his or her share of assessments and other common expenses assessed against and owing on Unit, as provided for in the Declaration. Such assessments and other common expenses shall be prorated through the date of the closing. Buyer shall pay all common expenses assessed against and owing on the Unit after the date of closing in accordance with the terms and provisions of the Declaration.

3. **Common Elements Sold "As-Is."** Since the seller of a condominium Unit cannot normally repair and/or replace defects in the common elements of the condominium, the common elements of the Condominium, including any limited common elements assigned to Unit in the Declaration, are being sold "as is" with all faults including but not limited to lead-based paint, lead-based paint hazards and damage from termites and other wood-destroying organisms. Seller shall have no obligation to make repairs to the common elements of the Condominium. Buyer acknowledges that Buyer has evaluated the condition of the common elements of the Condominium prior to entering into this Agreement. The term "Unit" as used in this Inspections Paragraph, notwithstanding and other definition of "Unit" contained in the Agreement to the contrary shall mean the Unit excluding the common elements and any limited common elements assigned to Unit in the Declaration.

Under Contract – Condo Disclosure Exhibit (F304)

**SELLER'S PROPERTY DISCLOSURE STATEMENT
(CONDOMINIUM) EXHIBIT "F304"**



2020 Printing

This Seller's Property Disclosure Statement ("Statement") is an exhibit to the Purchase and Sale Agreement with an Other State of Georgia for the Property known as and located at:

Georgia,

This Statement is intended to make it easier for Seller to fulfill Seller's legal duty to disclose hidden defects in the Property of which Seller is aware. Seller is obligated to disclose such defects even when the Property is being sold "as is."

A. INSTRUCTIONS TO SELLER IN COMPLETING THIS STATEMENT.

- In completing this Statement, Seller agrees to:
- (1) answer all questions as requested in this form and the supplemental questions;
 - (2) answer all questions fully, accurately and to the best of Seller's knowledge and belief of all Sellers;
 - (3) provide additional explanations to all "yes" answers on the corresponding supplemental questions by attaching a group of questions (including providing to Buyer any additional documentation in Seller's possession), unless that "yes" answer is self-explanatory;
 - (4) promptly review the Statement if there are any material changes in the answers to any of the questions prior to closing and provide a copy of the same to the Buyer and any broker involved in the transaction;
 - (5) also complete F302, Community Association Disclosure Exhibit.

B. HOW THIS STATEMENT SHOULD BE USED BY BUYER. Careful attention or "buyer beware" is the law in Georgia. Buyer should conduct a thorough inspection of the Property. If Seller has not occupied the Property recently, Seller's knowledge of the Property's condition may be limited. Buyer is expected to use reasonable care to inspect the Property and confirm that it is suitable for Buyer's purposes. If an inspection of the Property reveals problems or areas of concern that would cause a reasonable Buyer to avoid sale unless they should proceed with the purchase, Buyer should exercise reasonable care to inspect the Property and confirm that it is suitable for Buyer's purposes. Buyer should proceed with the purchase only if they are satisfied with the results of their inspection and are willing to accept the Property "as is."

For the purposes of this Disclosure Statement, the term "Unit" shall not include any interest in the common elements (including limited common elements) assigned to Unit in the Declaration. The term "Association" shall mean the condominium or Unit owners' association for the above referenced condominiums. The term "Property" shall refer to all property made a part of the condominium in which Unit is located.

C. SELLER DISCLOSURES

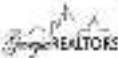
1. GENERAL:		YES	NO
(a)	What year was the building in which the Unit is located originally built?		
(b)	What year was the Declaration of Condominium first recorded?		
(c)	Is the Unit vacant?		
	If yes, how long has it been since the Unit has been occupied?		
(d)	Is the Unit or any portion thereof leased?		
EXPLANATION:			

Only covers the unit and not the common elements – but if you have info about the common elements it is always better to disclose!

Questions differ from the other disclosures to include concerns specific to a condo (parking, storage, etc.). For example, the building may significantly predate the condo itself.

Under Contract – Community Association Disclosure (F322)

COMMUNITY ASSOCIATION DISCLOSURE
EXHIBIT "_____"



2015 Printing

The purpose of this agreement is to disclose to the buyer the following information:

Disclosures Regarding Certain Community Associations (HOAs or Condos): To ensure you receive the most accurate information regarding the community, this disclosure is required by the state and is subject to change. It is important that you read this disclosure carefully and understand its contents. It also contains information that may be helpful in making the purchase decision. This disclosure is not intended to constitute an offer of real estate services or to constitute an offer of insurance or any other financial product. It is not intended to constitute an offer of any other financial product. It is not intended to constitute an offer of any other financial product.

Buyer's Acknowledgment: I have read this disclosure and I understand the information about the community and the associated costs. I have read this disclosure and I understand all the information contained in this disclosure. I have read this disclosure and I understand all the information contained in this disclosure. I have read this disclosure and I understand all the information contained in this disclosure. I have read this disclosure and I understand all the information contained in this disclosure.

A. BUYER'S ACKNOWLEDGMENT

1. TYPE OF COMMUNITY ASSOCIATION: (Check all that apply)

Homeowners Association (HOA) Condominium Association (Condo) Other (Specify): _____

Master/Developer/Builder Association Other (Specify): _____

Other (Specify): _____

2. CONTACT INFORMATION FOR ASSOCIATION:

A. HOMEOWNERS ASSOCIATION:
 Contact Person Title: _____
 Association Management Company: _____
 Telephone Number: _____ Local Address: _____
 Mailing Address: _____ State: _____

B. CONDOMINIUM ASSOCIATION:
 Contact Person Title: _____
 Association Management Company: _____
 Telephone Number: _____ Local Address: _____
 Mailing Address: _____ State: _____

3. GOVERNANCE:
 The association is governed by a board of directors (Board) consisting of _____ members.
 Board Board Board Board Board

4. FINANCIAL INFORMATION:
 a. Budget for the past 12 months is available for review at the association's office.
 b. Monthly fee for the past 12 months is available for review at the association's office.
 c. Association's financial statements for the past 12 months are available for review at the association's office.
 d. Association's financial statements for the past 12 months are available for review at the association's office.

THIS DOCUMENT IS A LEGAL INSTRUMENT AND SHOULD BE KEPT IN A SAFE PLACE. IT IS THE PROPERTY OF THE REALTOR AND SHOULD BE RETURNED TO THE REALTOR IMMEDIATELY UPON REQUEST. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. © 2015 REALTORS OF GEORGIA. ALL RIGHTS RESERVED.

Under Contract – Community Association Disclosure (F322)

Even if assessments are paid monthly the CAD asks you to disclose the total annual cost and how that payment is split.

3. ASSESSMENTS

The total annual assessments paid to all the above selected Association(s) is \$ _____ per year and paid as follows: (Select all of that apply. The boxes not selected shall not be a part of this Agreement)

Monthly Quarterly Semi-Annually Annually Other: _____

Be aware, dues change over time!

- a. **Disclosure Regarding Fees.** Owners of property in communities where there is a Mandatory Membership Community Association are obligated to pay certain recurring fees, charges, and assessments (collectively "Fee") to the Association. Fees can and do increase over time and, on occasion, there may be the need for a special assessment. **The risk of paying increased Fees is assumed by the Buyer in living in a community with a Mandatory Membership Community Association.**

The seller isn't responsible for higher assessments. However, if you know they've increased, update your CAD. This is especially relevant at the beginning of the year.

Under Contract – Community Association Disclosure (F322)

Special Assessments

4. SPECIAL ASSESSMENTS

- a. Buyer's total portion of all special assessments Under Consideration is \$ _____.
- b. Buyer's total portion of all approved special assessments is \$ _____.
- c. Approved Special Assessments shall be paid as follows: (Select all that apply. The boxes not selected shall not be a part of this Agreement) Monthly Quarterly Semi-Annually Annually Other: _____.
- d. Notwithstanding the above, if the Buyer's portion of any and all special assessment(s) that are passed or Under Consideration after the Binding Agreement Date is \$ _____ or more, Buyer shall have the right, but not the obligation to terminate the Agreement upon notice to Seller, provided that Buyer terminates the Agreement within five (5) days from being notified of the above, after which Buyer's right to terminate shall be deemed waived.

4. SPECIAL ASSESSMENTS

- a. **Under Consideration:** For all purposes herein, the term "Under Consideration" with reference to a special assessment shall mean that a notice of a meeting at which a special assessment will be voted upon, has been sent to the members of the Association. If a special assessment(s) has been voted upon and rejected by the members of the Association, it shall not be deemed to be Under Consideration by the Association. Seller warrants that Seller has accurately and fully disclosed all special assessment(s) passed or Under Consideration to Buyer. **This warranty shall survive the Closing.**
- b. **Liability for Undisclosed Special Assessments:** With respect to special assessment(s) Under Consideration or approved before Binding Agreement Date that are either not disclosed or are not disclosed accurately by Seller to Buyer, Seller shall be liable for and shall reimburse Buyer for that portion of the special assessment(s) that was either not disclosed or was not disclosed accurately.
- c. **Who Pays for Disclosed Special Assessments:** With respect to special assessments, Under Consideration or approved and accurately disclosed above, if an unpaid special assessment is due but may be paid in installments, it shall be deemed to be due in installments for purposes of determining whether it is to be paid by Buyer or Seller. If the special assessment(s) is adopted and due in whole or being paid by installment, installment payments due prior to or on Closing shall be paid by the Seller, and installment payments due subsequent to Closing shall be paid by the Buyer.
- d. **Special Assessments Arising after Binding Agreement Date:** With respect to special assessments that are only Under Consideration after the Binding Agreement Date and are promptly disclosed by Seller to Buyer:
 - i. If the special assessment(s) is adopted and due, in whole or in part, prior to or on Closing, that portion due prior to or on Closing shall be paid by the Seller, and
 - ii. If the special assessment(s) is adopted and due in whole or in part subsequent to Closing, that portion due subsequent to Closing shall be paid by Buyer.

Don't forget to disclose pending special assessments!

Even if the special assessment is due in installments and it is properly disclosed, an HOA may accelerate the payments when the property is sold. In that case the total balance of the special assessment is the responsibility of the Seller.

What about rumored special assessments that don't yet meet the definition of "under consideration"?

Under Contract – Community Association Disclosure (F322)

"Under Consideration" is defined as notice of a meeting at which a special assessment will be voted on has been sent to the members. Assessment could be discussed in meetings but not yet "under consideration."

- This is why it is so important to ask for copies of meeting minutes – they will reveal important community information and possible special assessments which are not yet “under consideration.”
- Before listing, seller should ask the association if they will allow the buyer to assume future special assessment installments or if seller will be required to pay them in full at closing.

Under Contract – Community Association Disclosure (F322)

Closing Letter: Seller must pay all fees required to obtain the letter in advance of closing.

- d. **Account Statement or Clearance Letter.** Seller shall pay the cost of any Association account statement or clearance letter ("Closing Letter") including all amounts required by the Association or management company to be pre-paid in order to obtain such Closing Letter. Seller shall not be reimbursed at Closing for any amounts prepaid in order to obtain the Closing Letter. Within two (2) days of notice from the closing attorney, Seller shall pay for the Closing Letter as instructed by the closing attorney. Seller's failure to follow the instructions of the closing attorney may cause a delay in Closing and/or result in additional fees being charged to Seller.

Transfer and Initiation Fees

5. TRANSFER, INITIATION, AND ADMINISTRATIVE FEES

To the extent Transfer, Initiation, and Administrative Fees are fully and accurately disclosed by Seller, Buyer shall pay \$ _____ for all Transfer, Initiation, and Administrative Fees.

5. TRANSFER, INITIATION, AND ADMINISTRATIVE FEES

- a. **Buyer Pays:** Buyer shall pay any initial fee, capital contribution, new member fee, transfer fee, new account set-up fee, fees similar to the above but which are referenced by a different name, one-time fees associated with closing of the transaction and fees to transfer keys, gate openers, fobs and other similar equipment (collective, "Transfer, Initiation, and Administrative Fees) to the extent the total amount due is accurately disclosed above. Advance assessments due at Closing for a period of time after Closing, shall not be Transfer, Initiation, and Administrative Fees and shall be paid by Buyer.
- b. **Seller Pays:** Seller shall pay any amount in excess of the sum disclosed in Section A(5), even in the event of any later disclosures made by the Seller of increase in such Transfer, Initiation, and Administrative Fees. In the event Seller fills in the above blank with "N/A", or anything other than a dollar amount, or is left empty, it shall be the same as Seller filling in the above blank with \$0.00.
- c. **Fees Defined:** All Transfer, Initiation, and Administrative Fees paid by Seller pursuant to this section are considered actual Seller fees and are not a Seller concession or contribution to the Buyer's cost to close.

Under Contract – Community Association Disclosure (F322)

Tips when completing the CAD:

1. Have your sellers call their management company before listing to get a copy of ALL fees paid at closing – if they don't ask for all fees management companies will often quote them the cost of only the letter.
2. Do NOT complete the CAD for your seller!
3. NEVER leave the Transfer, Initiation, and Administrative Fees section blank. It must be filled in with a number – it can't say "all" or "100%". It is never a bad idea to pad the amount disclosed
4. If you ever had any violations on the property, even if they have been fixed, make sure they were closed out with the management company!

Under Contract – Community Association Disclosure (F322)

Closing Letter Fee	Seller Pays	
Prepaid Initiation Fee - Required to obtain the Closing Letter	Seller Pays	
Initiation Fee	Buyer Pays	Seller Warranty
Regular Assessments - Includes Prepaid Assessments	Buyer Pays	No Warranty
Special Assessments - Approved	Buyer and/or Seller pays depending on when payment of the Special Assessment is due.	Seller Warranty
Special Assessments - Under Consideration	Buyer and/or Seller pays depending on when payment of the Special Assessment is due.	Seller Warranty If the amount exceeds the maximum listed, Buyer has 5 days to terminate the contract

Questions to Consider in Due Diligence

What services and amenities are provided through the association?

Are high assessments an indication of poor money management or the high level of service and amenities provided?

Does an inspector need special instructions or permission to access any systems during the inspection?

Although a common element may need repair and not be in the seller's power to repair, will the association confirm in writing their responsibility for maintaining that common element?

Ask for copies of all rule and regulations – not just the covenants!

Review the master insurance policy.



Questions to Consider in Due Diligence

The association is not a party to the contract so any stipulations requesting documents should put the obligation on the seller.

Consider requesting:

- Declaration
- By-laws
- Rules & Regulations
- Article of Incorporation
 - You can also look this up with the Georgia Secretary of State
- Operating budget
- Reserve study
- Board meeting and annual meeting minutes



Reading Board Meeting Minutes and Financials

Ask for copies of meeting minutes – this will give you a behind the scenes look of the concerns and thoughts of other unit owners.

i.e. there might be talk of a possible future assessment which hasn't yet reached the level of “under consideration” or maybe a committee was recently created to develop new parking rules



Reading Board Meeting Minutes and Financials

Review the last few annual budgets. Did any line items significantly increase or decrease? If so, why? How stable has the budget been over the last few years?

when you compare
your goals and your budget



What are the reserves? What anticipated expenditures are covered by the reserves? Think of the reserves as the community's safety net- is the net big enough for the community?

When was the last capital reserve study?

Mortgage Considerations



Mortgage Considerations

With condos there is typically extra scrutiny from lenders because decisions of the association can impact your property value. You are buying part of the community!

Future association decisions can also impact your ability to afford the property.

Rates on condos will almost always be higher than on a single-family residence.

The down payment will impact the rate and the level of scrutiny by underwriters – Talk to your lender!

Mortgage Considerations

Condos must be warrantable to qualify for a conventional loan. Underwriters evaluate matters such as:

1. The rate of delinquency;
2. Percentage of investor owners;
3. In a non-established condo they will often review governing docs;
4. Budget;
5. Reserves;
6. Pending lawsuits; and
7. The master insurance policy.

FHA and VA loans also require condo approval but may consider additional factors.

Mortgage Considerations

Reasons why a condo might not be FHA or VA approved:

1. Inadequate reserves;
2. Insurance;
3. Rates of delinquency;
4. Litigation; or
5. Too much commercial space



Mortgage Considerations

Conventional – higher interest rate may be reduced with a down payment of at least 25%

FHA – Check for FHA condo approval at <https://entp.hud.gov/idapp/html/condlook.cfm>

- If the condo isn't FHA approved, spot approval may be available for individual units but check with your loan officer to see if that is something they offer.
- Spot approval can take up to 6 weeks or more and requires a significant amount of documentation.

VA – Check for VA condo approval at <https://vip.vba.va.gov/portal/VBAH/VBAHome/condopudsearch>

- VA loans do not allow spot approval for individual units.

Mortgage Considerations

Condo Questionnaire

In the wake of the condo collapse in Florida, Fannie and Freddie added questions to the condo questionnaire about condo reserves and deferred maintenance.



Although it is natural that all buildings have some level of deferred maintenance, underwriters are scrutinizing condo records in much greater detail to try to identify at-risk buildings.

Mortgage Considerations

Condo Questionnaire

Lenders may not review the condo questionnaire until after the financing contingency expires. It could cause significant delays in closing or prevent closing altogether.

What can parties do?

Sellers: Sellers and listing agents should request condo bylaws, covenants, financial statements, and recent board meeting minutes prior to listing.

Buyers:

Buyers in the market for condos can ask their loan officer in advance whether their underwriter(s) have standard language or documentation they request from condo associations.

Buyers should also request copies of the condo association by-laws, covenants, financial statements, notices of special assessments, and most recent meeting minutes.

Even in a cash transaction, buyers should request this information as part of their due diligence.

Have other units closed recently? Who was their lender? Did they have any problems with the condo questionnaire?

Mortgage Considerations

Condo Questionnaire

The condo questionnaire may trigger follow up questions or requests from the lender.

The image shows a screenshot of a document titled "Form 1076 Condominium Project Questionnaire" from Fannie Mae. The document includes instructions for completion and a list of required lender information.

Form 1076
Condominium Project Questionnaire

Fannie Mae

Instructions

Lenders: Complete the instructions below and note the date on which the form should be returned to you.

Homeowners' Association (HOA) or Management Company: This form has been sent to you on behalf of an individual seeking mortgage financing to purchase or refinance a unit in this project. The mortgage lender needs this information to determine the eligibility of the project for mortgage financing purposes. Complete and return this form by _____ to the lender listed below. Questions about this form should be directed to the lender contact.

Lender Name:	Lender Phone Number:
Contact Name:	Lender Email Address:
Lender Address:	

If the association does not provide the requested information, it can create a delay.

As the buyer, use a stipulation to protect yourself in case the lender can't approve the condo.

Mortgage Considerations

Condo Questionnaire Special Stipulations

“All parties acknowledge that lender, as part of the condominium approval, requires appropriate documentation including but not limited to the condo association bylaws and covenants and any amendments thereto, notices of special assessments, financial statements including the most recent budget, and meeting minutes from the most recent [insert number] board meetings. As time is of the essence, Seller shall provide Buyer with any and all such aforementioned documentation and information within ___ days of binding agreement date. Should Seller fail to provide ALL of the above referenced documentation within ___ days of binding agreement date, Buyer shall have the right to terminate this Agreement with no penalty and a refund of all Earnest Money.”

“All parties agree that should the lender not obtain lending approval of condominium (as to the condominium project as a whole and unrelated to Buyer’s loan qualification) by [INSERT CONTINGENCY DATE], Buyer may terminate with no penalty and Buyer shall be entitled to earnest money.”

“This Agreement shall be contingent upon the condominium in which the unit is located being eligible for financing and approved by Buyer’s lender. If Buyer obtains written notice from Buyer’s lender indicating that (1) it is declining Buyer’s loan application because the condominium in which the unit is located is ineligible for financing or (2) Buyer’s lender is unable to determine whether the condominium in which the unit is located is eligible for financing because the association or management company for the condominium has not provided sufficient information (documents) for the lender to make such a determination, then Buyer may terminate this Agreement by providing written notice to Seller, along with the notice from Buyer’s lender, within ___ days from receipt of documents. If Buyer timely provides such notice, then the Earnest Money shall be returned to Buyer. If Buyer does not timely provide such notice, then the contingency contained in this paragraph shall be waived and of no further force or effect. This contingency is applicable irrespective of whether there is any loan, financing, or all cash, contingency exhibit attached hereto and shall survive the expiration, wavier, or satisfaction of the same.”

Mortgage Considerations

Before listing or showing a property, review the condo's status!

Seller – what is the FHA and VA approval status of your condo?

Buyer- are you set on a particular loan product? If you are set on an FHA or VA loan, check the properties status before viewing or making an offer.



Mortgage Considerations

GAR provides two mortgage stipulations specific to condos

SS 526 FHA/VA DEVELOPMENT APPROVAL

Notwithstanding any other provision to the contrary, if it is determined the Property is in a real estate development that is not FHA/VA approved, Buyer may terminate this Agreement upon Notice to Seller and receive a full refund of Buyer's earnest money.

SS 528 CONTINGENCY FOR RECEIVING CONDOMINIUM QUESTIONNAIRE

If the Property is a condominium unit, and if the Buyer is obtaining a loan to purchase the Property, this Agreement shall be contingent upon the condominium in which the unit is located being eligible for financing and approved by Buyer's lender. If Buyer obtains written notice from Buyer's lender indicating that (1) it is declining Buyer's loan application because the condominium in which the unit is located is ineligible for financing or (2) Buyer's lender is unable to determine whether the condominium in which the unit is located is eligible for financing because the HOA or management company for the condominium has not provided sufficient information for the lender to make such a determination, then Buyer may terminate this Agreement by providing written notice to Seller, along with the notice from Buyer's lender, within ___ days from the Binding Agreement Date. If Buyer timely provides such notice, then Buyer shall be entitled to the return of their earnest money. If Buyer does not timely provide such notice, then the contingency contained in this paragraph shall be waived and of no further force or effect. This contingency is applicable irrespective of whether there is any loan, financing, or all cash, contingency exhibit attached hereto and shall survive the expiration, waiver, or satisfaction of the same.

Litigation

Consider the fact pattern and how results could impact each unit owner.

Does this only impact a few units?

Does it involve health, safety, structural integrity, or ability to use your unit?

Known damages? Has the insurance carrier agreed to cover?

Is the association the plaintiff or defendant?

Is the association seeking to recover for a defect? Was the defect remedied and they are seeking reimbursement or is still defective?

Is this a dispute between unit owners?

Is the litigation to enforce past due assessments?

Condo Living



Fee Simple Ownership

Pop Quiz!



Can a condo title be “fee simple”?

Yes! Although “fee simple” is often used colloquially to refer to townhouses or homes the term is not mutually exclusive.

A fee simple title is a legal term used when you have total ownership of the property. In a condo you have fee simple ownership of your unit, the neighbors don’t have a right to it.

Insurance

Often cheaper than single family homes because the association policy protects the common elements.

Georgia law requires that the condo have insurance for specific risks. Lenders are likely to ask for a copy of the condo's policy.



Unit owners still need their own policy! Most will get an HO-6 policy.

An HO-6 policy includes coverage for personal property, unit improvements, and personal injury claims.

Your insurance needs should be evaluated on a case-by-case basis with your insurance agent.

Insurance

Georgia law requires that the master policy cover:

1. Fire and extended coverage for the full insurable replacement cost;
2. All common elements, limited common elements, foundation, roofs, and exterior walls; but
3. Does NOT have to cover water damage or water perils.



Insurance

Condo insurance can be complicated!

Have your buyer speak with their insurance agent.

Never give insurance advice – advise them to speak with the experts!



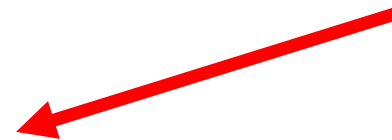
Property Taxes

The condo association itself does not hold title to any real property so there is no property tax bill for the association.

Since each unit owner has an interest in the common elements, taxes for the common elements are assessed to the unit owners.



Tax map for one unit shows the entire condo because the unit owner owns the common elements with the neighbors as tenants in common.



Property Taxes

Your property taxes include your unit and a pro rata share of the common elements.

Taxes for your unit and your share of the common elements are not separated but billed together as they both contribute to the fair market value of your property.



Assessments

Remember that assessments will go up over time.

There may be additional fees paid to the association besides the assessment. Additional fees may include monthly utilities, gate remotes, pool access keys, etc.

Evaluate assessments in light of what they provide: water, sewer, trash, pest control, termite protection, landscaping, concierge.

Know that special assessments are always a future possibility.

What can you do? Join the board!



Best Practices

Ask if open houses or caravans are allowed. Some associations may have restrictions on hours you can show the property or the type of signage you can use –just ask!

Listing agent, include private remarks with information on how to access the unit. Selling agent, review the information before showing – scope it out ahead of your client’s arrival so you can help direct them.

Make sure you know how to view all the amenities so your client can see all the benefits that come with the condo.

Are there any deal breakers for your client? Assigned parking? Pet restrictions? Leasing restrictions? Grills? Decorations? Unit must have a southern exposure?

Questions?
attorneys@cb.law