

The Importance of Disclosure Documents In New Commercial Condominiums

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Whether you are developing a commercial condominium or buying a unit within one, the condominium's disclosure documents require careful attention, since they describe important features of the proposed condominium. Disputes can arise if buyer and seller do not clearly understand their obligations.

Use Restrictions

Municipal zoning bylaws may restrict the kinds of businesses that can be operated in a condominium. Developers may want further operating restrictions or to prohibit certain kinds of businesses altogether. Buyers may want exclusivity for their businesses within the condominium. The declaration should be drafted to give the buyer exclusivity without causing the condominium corporation to overspend in enforcement.

Purchase Price

The purchase price noted in the purchase agreement may be "grossed up" on closing to reflect each unit owner's proportionate share of construction costs for such common elements as elevators, electrical rooms, and stairwells. Several other adjustments will increase the final costs, e.g. utility meter installations, administration fees, and reserve fund deposits.

Occupancy Fees

Developers of commercial condominiums typically construct a shell unit that the unit owner must customize for its own use (leasehold improvements). When the shell units are ready, unit owners must complete the occupancy closing, even if they do not yet have financing for leasehold improvements. On occupancy closing, the unit owner must begin paying monthly occupancy fees until the condominium is registered and ownership conveyed. Occupancy fees are in addition to the final purchase price. They comprise the unit owner's proportionate share of taxes, common expenses, and interest on the unpaid balance due on closing. It can become costly for unit owners if the time between occupancy and final closing is prolonged.

Calculation of Common Expenses

Many buyers believe that unit owners' proportionate shares for common expenses are calculated according to square footage occupied, but this is not always the case. Sometimes larger "anchor" unit owners like grocery stores will pay a lower percentage, because they will bring in customers for other units in the condominium. Consequently, smaller units sometimes slightly subsidize larger ones; the method for allocating common expenses should be clear.



Unit Boundary Definitions

The disclosure should describe what comprises a standard unit and what are considered common elements, such as the roof. The condominium corporation is responsible for repairing common elements, but what about windows—are they common elements or not? It should also be clear whether a unit owner may make alterations, such as installing special ventilation systems or larger loading doors.

Signage

Sometimes the signage area in front of a unit is a common element granted for the unit owner's exclusive use, usually with restrictions on the type of signage permitted and an approval process before installation. There may also be a pylon sign structure at the entrance to the parking lot, with spaces that can be leased or sold to unit owners.

Parking and Garbage Removal

Are parking spots designated for each unit's exclusive use? Where are the loading docks and what are the access rules for deliveries? Must each unit store its own garbage and arrange for its disposal?

Other Businesses

Will other businesses operating in the condominium use more parking or garbage room space, as with a grocery store? Will any business potentially consume more utilities? If so, how does the condominium corporation calculate extra charges for that unit?

Changes

Buyers have the right to terminate a purchase agreement if the developer makes a material change to the disclosure documents, such as significantly increasing the unit owner's share of common expenses. The right to terminate is effective for 10 days after the buyer is notified about the changes.

Whether you are developing a commercial condominium or buying a unit within it, Lawrences can help you close the transaction without making costly mistakes.



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