

More on Certificates of Resale

By James L. Goldsmith, Esquire

The law is clear, and simple. In the case of a property's resale, a certificate of resale and condo/homeowners association documents (the declaration, the bylaws and the rules and regulations) must be provided to a purchaser. The purchaser can terminate the contract before the documents have been provided and for five days thereafter (or until settlement, if settlement would occur first). The law does not require that the purchaser provide a reason for terminating.

A smart seller, or any seller appropriately guided by her salesperson, will order the certificate and documents so that they may be provided to the purchaser no later than the signing of the agreement of sale. A smart purchaser, or any purchaser appropriately guided by their salesperson, will review the certificate to assure that there are no surprises. Pay attention to the fees and the financial viability of the condo or HOA.

Like a title search, a certificate of resale provides information that is accurate as of the date on the certificate. Association fees can change and potential liabilities can result in assessments. Title considerations can also change from the date of the original report. That is why title companies that certify the condition of title to mortgage lenders will perform a bring-down as of the date of settlement.

Bring-downs are not customary when it comes to assessing the viability of the condo or HOA. But maybe they should be. Consider a purchaser who settles months after signing an agreement of sale. It is not the norm, but it happens frequently enough. Will the purchaser be surprised by assessment increases imposed after their review of the original certificate of resale?

Some certificates indicate that they are "good" for a limited period of time, 30 or 60 days. That does not mean that a seller must provide a second certificate/documents closer to settlement. Again, the law is clear: the seller must provide a certificate of resale and documents. "A certificate" means one. So, if the seller has satisfied her legal obligation by providing the appropriate documents (who buys, pays for?) a current set.

Condominium and homeowners associations cannot change the law. If the seller has provided what the seller is required to provide, the purchaser can't require that the seller provide another. But fighting the purchaser on this score may be more expensive than purchasing a more current set of the documents. It would seem, however, that if a second set is required, or more likely, desired, then it should be the purchaser who foots the bill. Just like a title bring-down is paid for by the purchaser (as part of the title package), the condo/HOA "bring-down" is appropriately an expense for the purchaser. The seller has satisfied her legal obligation and now the purchaser is satisfying his due diligence obligation. By assuring that the purchaser has an up-to-date certificate and documents, the purchaser can assess the condition of the association he is buying into.

But what if there is a change between the first issuance of the certificate/documents and the second? That is governed by provisions in the agreement of sale which govern what happens when there is a change in condition or when assessments are imposed after the signing of the

agreement of sale. Generally, the result is determined by negotiations. If seller is willing to pay the assessment (assuming it is a one-time fee), the purchaser is bound to purchase the property. If the change is one in the annual or monthly assessments, a seller may be less likely to accept the burden in which case the purchaser is left with a choice of doing so, or bailing.

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