



## **Luxury Condos- No Amenities and a Lawsuit**

By Denise Lash on April 28, 2011

You wouldn't expect that the purchase of a \$1.4 million luxury condo unit would end up in court over whether the purchase included ownership in the amenities.

But that is what happened when the condo owners of a high end condo project in Hawaii, learned that what they thought they had purchased was not in fact correct. Those owners are now in court fighting over the amenities and other issues relating to the Ko Olina condominium project in Hawaii.



Jeff Stone, owner of the management company and commercial operator of the project, has now resorted to roping off the amenities space to prevent owners from using some of the facilities. As a result of all the legal battles and disputes, Stone's manager ended up quitting after receiving threats. Even Stone and his 73-year old mother have received threats. The owners have denied any wrong doing on their part.

It is not just the amenities that are in dispute. Stone's company had managed the association and the owners are alleging fraud, misuse of the associations funds and according to the auditor for the association, \$750,000 in questionable charges.

Stone is denying all the allegations stating that everything was contained in the budgets given to all owners and that the budgets are in line with a first-class luxury resort.

The major issue is the amenities that serve the 247 residential units. Those owners understood that the amenities would be owned by the association not by a commercial operator as it so turns out.

Stone ended up getting the developer, to transfer ownership of the lobby, lounge, fitness center and beach bar to Stone's company for \$1 after the developer refused to transfer those amenities due to the lawsuit the owners had filed against it for fraud.

The association is now only left with ownership of the pools, gardens, open space and parking lots.

Stone said the sales documents the buyers received from the developer disclosed that certain common areas would be owned by the commercial operator but that the owners did not read the documentation.

The battle still continues. The association has removed all its furniture from the amenity areas that Stone now owns and Stone has closed off access. This leaves the owners without any concierge services for their luxury condo units.



Stone is considering leasing back the facilities to the association for close to \$750,000 a year or would consider selling the amenities at a good price. If the association does not consider one of those options, Stone may end up opening the amenities to the public.

Some owners did read their documents and were aware that the association would not own the amenities but most were not. Now the problem is the decreased market values of their units due to the fall in the real estate market and now with the lawsuits, making it more difficult to sell the units at a good price.

This story highlights the importance of purchasers reviewing the condominium documentation before they purchase their unit. There are many things a purchaser should be aware of which do not directly relate to their condominium unit but may impact on monthly common expenses, use of the facilities and resale value of the unit. Section 72 of the Condominium Act requires that developers disclose very detailed information about their condominium projects by setting out the information in a disclosure statement given to every purchaser of a unit.

Some items to carefully review are:

- Shared facilities, who uses them and what are they?
- Requirement for the condominium corporation to purchase a guest suite and/or a superintendent's unit
- Any leases or agreements with the condominium corporation to buy or purchase equipment?
- Expenses that are not part of the first year budget but would be part of the second year and later budgets
- Restricted uses- what types of uses are permitted in the condominium? i.e. are short term rentals permitted, are units live-work

Spend the time before your purchase to review the documentation and understand the impact that this may have not only on your use and enjoyment, but on your future market value of your unit.

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