

## **Tips to Avoid Common Mistakes on Florida HOA Disclosures**

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Non-compliance with Florida Statute §720.401 can be fatal to the closing of a purchase and sale contract. Given the current real estate climate, sellers of residential property cannot afford to lose a sale, or become involved in a lawsuit due to mistakes associated with the required homeowner's association disclosure ("Disclosure") specified in such statute. By understanding the law and being aware of the mistakes, a seller and his/her agent can increase the odds of closing a sale without an adverse surprise.

### **The Law**

Florida Statute Section 720.401, requires owners of real property subject to a homeowner's association(s), to deliver to a potential purchaser the Disclosure prior to contract execution. The form of the Disclosure must be substantially in the same form as identified in the statute.

### **Non-Compliance**

As a practical matter, the Disclosure is seldom signed before contract execution because the selling agent does not typically know of all the required assessment information to be included in the Disclosure. One way to avoid this problem is to have the seller complete the Disclosure at the time of the listing agreement and include same as an attachment in the property multiple listing service, for use by selling agents.

When the Disclosure is not signed before contract execution, the purchaser may terminate the contract (i) within 3 days after receipt of the Disclosure or (ii) prior to closing, whichever first occurs. From timing prospective, it is imperative that the seller deliver the Disclosure to the purchaser as soon as possible after contract execution to run the clock on the purchaser's rescission period.

### **Common Mistakes**

1. **Non-Delivery of Disclosure.** In my experience, I have seen many seasoned listing agents fail to deliver to the purchaser the Disclosure. In some instances, the Disclosure was purposely not delivered to a buyer who coincidentally lived in the same community as the property under contract. The statute does not provide an exception for non-delivery in such case. Knowledge of the law is key.
2. **Combining Multiple Communities On One Form.** It is not uncommon to view a Disclosure which has combined assessment information for two (2) associations on one (1) Disclosure. Doing so can create a compliance issue, especially if the information is

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presented in a confusing fashion. The preferential practice is to utilize one (1) Disclosure form for each and every homeowner's association in the community.

3. Seller's Delivery of HOA Governing Documents. Many realtors are under the mistaken impression that the statute requires the seller to deliver to a purchaser copies of the association's articles, by-laws or the community's rules and regulations, financials or declaration of restrictive covenants. The seller is not required to deliver these documents under the statute. It is the purchaser's responsibility, unless the parties contractually agree otherwise.

### **Bottom Line**

To prevent an unnecessary contract termination, deliver one (1) Disclosure for each homeowner's association a property is subject to and if a Disclosure is not provided before contract execution, accomplish delivery promptly thereafter.

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