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Winter 2010

Condo Focus

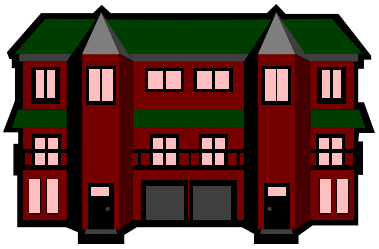
The Only Thing Certain About The New FHA, Fannie Mae and Freddie Mac Guidelines is That They Will Likely be Changed Again!

We've all experienced the effects of the ongoing "credit crunch" and the unavailability of mortgage loans. As such, the question of whether FHA, Fannie Mae and Freddie Mac loan programs will be available to condominium projects, and if so, under what circumstances, is very important to unit owners. After all, if these programs are available to one's condo development, this fact adds to the chances a unit owner can obtain a mortgage loan, and a prospective buyer of a condo unit can get a purchase money mortgage loan to close the deal.

FHA neither builds homes, nor lends money directly -- what it does do is provide mortgage insurance that protects lenders against losses as the result of unit owners defaulting on their mortgage loans. FHA has again revised its guidelines for condo mortgages. The new guidelines went into effect on February 1, 2010, and are extensive (and complicated). The new approval process eliminates the old "spot approval" process that was used by lenders to qualify an individual buyer's condo purchase (where the condo project was not previously approved by HUD/FHA). In its place, is a new process which will certainly affect buyers, sellers, developers and community associations.

FHA projects must be certified, and then re-certified every 2 years. Reserve studies will need to be conducted, to assure adequate funds, which must not be more than 12 months old. The project must be covered by hazard and liability insurance, and, where applicable, flood insurance. No more than 15% of the total units may be in arrears of their Association dues (30 days past due). There are many more requirements -- including the requirement that 50% of the units must be owner-occupied, and not more than 25% of the property's total floor area can be devoted to commercial purposes. Condo-hotel projects, timeshares, houseboat projects and certain other types of projects are now ineligible.

There have been similar changes to the Fannie Mae and "Freddie Mac" regulations which need to be reviewed by your Association.



FNMA ("Fannie Mae") was established in 1938 as a federal agency for the purpose of purchasing FHA loans. Freddie Mac was established in 1970 as a federally chartered corporation for the purpose of purchasing mortgages in the secondary market. Hence both Fannie Mae and Freddie Mac are important to mortgage companies, since these lenders must be able to sell their loans quickly to replenish their cash reserves (and Fannie Mae and Freddie Mac provide that outlet).

Under the new FNMA regulations, not more than 20% of the property can be commercial, there are budget requirements, and 51% owner-occupancy requirements. The new Freddie Mac guidelines went into effect last summer, and set rules for eligible condo projects -- such as the requirement that the project be fully complete, with at least 90% of the units having been conveyed, with the unit owners controlling the Association. Like, the other programs, the new Freddie Mac regulations look at delinquency rates, owner-occupancy, replacement reserve budgeting, and proper insurance coverage.

Since it is critically important in today's mortgage market to try and qualify your condominium development and your Association for each of these mortgage loan programs, we can help assist you in understanding the ever-changing web of legal requirements that you must succeed in complying with. If you don't "do it right" the result is that your development will not be approved for these Federal programs, and your unit owners will not be happy. Call with your questions, and we can help guide you through the certification process.

Inside:

Sweet, Maier & Coletti, S.C., Attorneys Are Featured Speakers at National Community Association Law Seminar

Lowell E. Sweet , John L. Maier Jr., and Anthony A. Coletti, from the Sweet, Maier & Coletti, S.C. Law Firm, were featured speakers at the 31st Annual College of Community Lawyers Law Seminar held January 21-23, 2010, in Tucson, Arizona. This two-day forum put on for lawyers from around the country, explored trends and practices in the law of homeowner and condominium associations and residential cooperatives.

The Sweet, Maier & Coletti, S.C. attorneys instructed attendees on "Integrating Zoning Authorization Language with Condo Declarations (or CCR's in Planned Communities)." The Firm's attorneys have extensive knowledge of condominium law, and years of experience with forming and operating condo and property owner associations. They were invited to speak about their insights in drafting condo documents so that the documents will be consistent with municipal zoning and other land use authorizations.

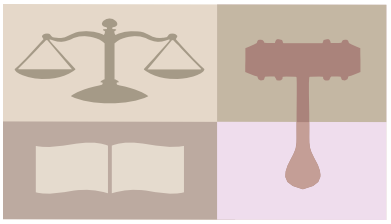
"Everyone knows it's important not to wear striped pants with a plaid jacket, but the same type of dangerous mismatch is often found to be present in the formative documents for our planned communities," commented Attorney John Maier. "The language used in municipal zoning and other governmental land use authorizations and approvals really needs to be consistent with condominium declarations, or the covenants, and restrictions which constitute the community's private organizational documents. Lack of consistency, or unimaginative and narrow drafting, can spell disaster." Maier concluded by saying: "Our workshop was designed to assist lawyers and property managers to avoid such pitfalls."

Lowell Sweet has been actively involved in the writing and revising of the condominium laws for the State of Wisconsin, and has written books and articles on the subject. Attorneys Sweet, Maier and Coletti all routinely lecture on this topic at seminars presented for condo boards, property owner associations, and other lawyers. The Annual Community Association Law Seminar provided a unique opportunity for lawyers to discuss emerging trends, court decisions and legislative issues important to the practice of community association law. Lowell, Tony and John shared their knowledge and experience with their colleagues from around the country, and even had an interesting discussion with a Law Professor from the University of South Wales, who had come all the way from Australia.

Sweet, Maier & Coletti is dedicated to the practice of Wisconsin condominium and homeowner association law. We can help you with…

- .Amendments
- Association Governance
- Formation/Conversion
- Document Interpretation
- Takeover from Developer
- Contracts

What Is The Attorney Client Privilege Anyway...
And how do you protect it?



The communications (written or verbal) between you and your attorney are confidential because our legal system wants to protect your right to share all facts pertinent to your case without fear of disclosure. However, you need to guard against losing this important right.

If your privileged conversations with your attorney are shared with others, or are released to the public, the confidentiality may be lost. Once lost, the disclosure of such otherwise protected information can prove to be disastrous to your case. So what do you do?

First, your Association's minutes, and other records should be specially labeled as privileged when they are to be protected under the rules of attorney-client confidentiality.

Next, confidential records should be kept in a separate, secure, place to guard against accidental disclosure.

Access to the protected records should be limited to those individuals authorized by the Association's attorney.

And when in doubt, consult your attorney.

When is a Pet an Emotional Support Animal?

Frequently, Associations decide upon a "no pet rule" which prohibits residents from having pets. However, the Fair Housing Act requires "reasonable accommodation" and this applies to trained service animals to assist a resident with his or her disability.

This rule was pushed even further in a 2009 case brought in Federal Court for the Southern District of Ohio. There, the board of trustees of a mutual housing corporation adopted a no pet rule which prohibited members and residents from having pets, except for service animals necessary to accommodate a resident's disability.

The board of trustees demanded the resident remove a dog from her unit. The owner requested a reasonable accommodation from the rule on the basis that the resident was currently receiving psychological counseling, and her psychologist had recommended that she have a companion/service dog to facilitate her treatment. The board of trustees rejected the request. The association filed suit requesting a declaratory judgment that the dog was not a service animal and did not qualify as a reasonable accommodation under the Fair Housing Act. The court held that the types of animals that can qualify as reasonable accommodations under the Fair Housing Act include emotional support animals, which need not be individually trained.

The law allows a Board to ask for documentation regarding the resident's disability or medical condition, and the reason an animal is necessary to facilitate the resident's course of treatment.

Sometimes it is difficult to tell a pet from a service animal or now an "emotional support animal" which is required to be allowed as a reasonable accommodation under law. When in doubt about what type of evidence you can ask for, and how to go about making a decision, consult with your attorney. You don't want to held liable for failing to make a reasonable accommodation for the unit owner.

A new feature of our website is the "Ask Your Attorney" column where questions sent in by visitors are answered and posted on our site by one of our attorneys.

Check out our new site today and send in a question of your own to "Ask Your Attorney" at:

www.wisclaw.com

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Cut on the line and return with your name and address.

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To: **John L. Maier, Jr.**
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Your Name: _____
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