

Legal Bulletin

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Homeowner Association Disclosures And Buyer Contingency

When property in a common interest development is sold, the buyer is legally entitled to receive certain information about the association. This forms the basis of the HOA contingency in C.A.R.'s form purchase agreements. This Legal Bulletin will provide a summary of the parties' rights and obligations when selling or purchasing property in an HOA.

What is the HOA Contingency? If a property is in a common interest development (i.e., condominium, PUD, etc.), then the buyer is entitled to certain information about the association, and has a contingency to cancel escrow based upon the information disclosed.

What Information is the Buyer Entitled to Receive? By law, the buyer is entitled to the following information: copies of CC&Rs, Bylaws and rules, a statement of regular and special assessments (current and approved) and fines levied, the association's budgets and reserve study, the most recent 12 months of HOA meeting minutes, disclosure of any anticipated or pending claims of litigation by or against the HOA, a list of known defects, the names and contact information of all HOAs governing the property, and certain other information. You can see a list of the required disclosures on page two of C.A.R. Form HOA.

What Are the Seller's Obligations? Within 7 days after Acceptance, the Seller must disclose to the buyer if the property is a condominium, or is located in a PUD or other common interest subdivision (C.A.R. Form SSD). Within 3 days after Acceptance, the seller must request the HOA disclosures from the association. The seller (or escrow on seller's behalf) makes this request by sending C.A.R. Form HOA (or an equivalent form) to the association or its management company. The association/management company is legally required to respond within 10 days of receiving the seller's request (Civil Code §1368). Once escrow or the seller receives the disclosures, they must forward the documents to the buyer. Although escrow usually performs these tasks for the seller, it is ultimately the seller's legal obligation to request the disclosures from the association and to forward the documents to the buyer once they are provided. Also, if the seller has any required information that the association does not provide, the seller must disclose that information directly to the buyer.

How Long is the Buyer's Contingency Period for HOA Documents? The purchase agreement will specify a contingency period for all buyer contingencies (17 days in the pre-printed form). But unlike physical inspection reports, the buyer has no control over when she will receive the HOA disclosures. The purchase agreement therefore gives her extra time if the HOA documents are not delivered promptly. The buyer has until **the later of 5 days** after actual receipt of the last of the HOA disclosures, or the end of the normal contingency period (whichever is later), to remove the HOA contingency or cancel escrow. If the buyer receives the last of the HOA disclosures less than 5 days before the normal contingency period ends (or even after the contingency period has ended), the buyer has extra time to either remove the HOA contingency or cancel escrow. The buyer is still required to remove the other contingencies (or cancel escrow) by the end of the normal contingency period, just not with respect to the HOA disclosures. But if the buyer receives all of the HOA disclosures more than 5 days prior to the end of the normal contingency period, she is required to remove all contingencies (or cancel escrow) within the normal contingency period.

What Should the Listing Agent Do? The listing agent should confirm that escrow has sent the information request to the association promptly after opening escrow. The listing agent should keep on top of the situation to ensure that the association/management company responds promptly. To confirm that the buyer receives the documents, the listing agent should send a Receipt for Reports form to the buyer's agent with the appropriate box checked for the HOA documents. And of course, the listing agent should closely watch the calendar to ensure that the buyer removes the HOA contingency at the appropriate time, or send a Notice to Buyer to Perform if the buyer does not act.

What Should the Buyer's Agent Do? The buyer's agent should ensure that all of the known HOA disclosures have been received by the buyer before the buyer signs either the Receipt for Reports or the Contingency Removal for this contingency. If an HOA disclosure is missing, or if the buyer does not approve of the information received, the buyer can remove other contingencies but leave this one open while you try to secure the rest of the documents or negotiate a solution to the problem. If the disclosures are slow to get to your buyer, you should send a written notice to the listing agent telling him that the disclosures have not been received. You should continue to follow-up with the listing agent and escrow until all of the known HOA disclosures are received by your client. If the seller tries to shorten your buyer's HOA contingency period by sending a Notice to Buyer to Perform before all of the known HOA disclosures are received, or demands that this contingency be removed less than 5 days after the last of the HOA disclosures are received, you should notify the listing agent in writing that the Notice is not effective and demand delivery of the missing documents (if applicable).

Please speak with your broker if you have any questions on this topic.

IMPORTANT: The discussion in this Bulletin is based upon general legal principles and is not intended to be used as a substitute for consultation with a qualified attorney. Each situation is unique. Specific facts may completely change the applicability of general rules, and this Bulletin cannot possibly deal with all of the variables which may apply in a given case. This Bulletin is intended to help highlight certain issues of general interest. This Bulletin is not intended to be viewed or relied upon as legal advice. Any unauthorized use, distribution, disclosure, copying or dissemination, either in whole or in part, is strictly prohibited. © All rights reserved