

What Not to Sign - Suggestions for Wisconsin Associations and Their Managers

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Practice Area: Community Associations

Title companies, real estate brokers and lenders want to play the game of “Twenty Questions” with Wisconsin condominium associations and their managers. Our suggestion: Don’t play.

You may know that the agent of a condo buyer always sends the association a questionnaire before the sale, and that is proper. Condos have unwritten liens for unpaid assessments. Only answers on the questionnaire reveal those liens and assure payment so that the buyer receives clear title. If that part of the questionnaire is not answered promptly, any unwritten lien on the unit disappears.

But those questionnaires are arriving with more and more questions, and some of them should not be answered by the association. Here is why there are more questions: As a result of bad lending and heavy losses in recent years, lenders must now use more diligence in evaluating loans. What easier way to study the condo than to send the association a list of questions?

But the association is not a party to the real estate transaction or the loan. When an association does the work for the lender, by answering these questions, the association assumes risk it is not required by law to assume. When your manager answers these questions, she also puts the association “on the risk.”

There are only a few questions which the Board must consistently and promptly answer. The most important is: Are there outstanding assessments, and how much? Perhaps the association can state the number of rentals – if it knows – because this is a fact, not an opinion. In most other cases, it is the responsibility of the buyer, the seller, or one of the other actors in the real estate transaction to interpret the documents and to make representations.

Here are questions we regularly see that we would prefer not to answer:

- Are there defects in the property? (That is seller's job to answer. The association will unquestionably sin, by omission or commission, if it addresses this subject.)
- Who is responsible for rebuilding the deck? (Let the lender read the documents itself.)
- Are Rottweiler puppies allowed? (This is typically answered when a director is encountered on his driveway on a pleasant Sunday afternoon. Refer the questioner to the Executive Summary and the condo docs!)
- Does the Association insurance cover the unit interiors? (Ask your agent or lawyer immediately, because you should know, but let the lender reach its own conclusion by contacting the agent directly.)
- What percentage of owners currently has FHA-guaranteed loans? (Lender can look on the FHA website itself.)
- Are special assessments contemplated? (Some people contemplate winning the lottery. So what?)

In summary, just because you are asked a question does not mean you must answer it. The lender wants the loan and will do the research if you don't. We suggest that you do not answer questions that call for opinions or interpretations. Answers create risks which are not part of your job description.

As Dragnet's Sergeant Joe Friday supposedly said, "Just the facts, Ma'am."

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