



SHINE BRIGHT

TRANSACTIONS INVOLVING A HOMEOWNER' ASSOCIATION: WHAT EVERY AGENT SHOULD KNOW

Ask two homeowners what they think about living in a community with a homeowner's association (HOA), and you may find one complaining loudly and the other perfectly happy. The difference in opinion stems from their individual preferences and personalities and the efficiency of their HOA management.

As an agent, you take the time to understand your clients' priorities and guide them toward properties that meet their criteria. You point out the benefits and the drawbacks of life in an HOA community because you are committed to helping your clients make real estate decisions that are right for them.

But what are the risks to you, as the agent, in transactions involving HOAs – and how can you protect yourself against them?

Let's say an HOA has sued the builder because of defects in construction – such as faulty materials or poor drainage. If the suit is successful, the builder pays the association, which either makes the repairs or distributes the funds to the homeowners to get the work done themselves.

What's important is that if the repairs were not completed by the HOA, or by a homeowner who simply pocketed the funds, the hazard may still exist. Agents who sell a unit that was not repaired can be sued if they fail to disclose a past lawsuit and the buyer later discovers the defect.

The good news is that HOAs in every state have specific requirements about disclosures and delivery of documentation, including documents relating to past lawsuits. If you help clients buy and sell in an HOA community, you need to be aware of your state's disclosure requirements.

Generally, HOAs must disclose basic information about the organization – their bylaws and operating budget, for example, as well as any pending or past litigation.

Disclosures must also identify the nature of the lawsuits, which homes were affected, whether funds were received and repairs were made. (If the funds went directly to homeowners, proof of repair must come from the homeowner/seller.)

In states where attorneys handle the escrow process, they typically request and obtain such disclosures for the buyer. In other states, the buyer's agent must seek the information from the HOA or through the escrow or title company, and is responsible for ensuring that copies have been sent to the client.

The agent is not required to personally evaluate the documentation. But for your protection, you should be aware of what HOAs must disclose in your state and refer your buyer to an attorney or accountant or to a company that specializes in reviewing HOA documentation.

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