



BERLIN | PATTEN | EBLING

ATTORNEYS AT LAW

The Obligatory Rescission Disclosures

Condo sales have been on the rise! This is supported by a recently published article by the Realtor Association of Sarasota and Manatee County which in part provided that the total sales for the month of February in Sarasota County "were down 6.4 percent with a 13.2 percent dip in single family sales offset by a 9.6 percent increase in condo sales. Similarly, in Manatee County, total sales were down a mere 2.4 percent, with a 10.7 percent decrease in single family sales offset by an impressive 19.5 percent increase in condo sales." With this increase we have been quick to remind Buyers to carefully review the condominium documentation immediately upon receipt and during the rescission period. Remember the rescission period is different for new condominiums offered by the developer and those that are resales (i.e., offered by the non-developer). Below is a breakdown of each required disclosure:

- Developer Disclosure - Florida Statute 718.503(1)(a)(1) provides:

THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

- Non-Developer Disclosure - Florida Statute 718.503(2)(c)(1) & (2) provides:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

The Developer Disclosure provides the Buyer a 15 day rescission period after the Contract is executed by the Buyer and receipt of all condominium documents required by 718.503 (e.g., Declarations, Articles, Bylaws, Frequently Asked Questions, Rules and Regulations, Budget, Plot and Floor Plan, etc.). Note the 15 day rescission also extends to any amendment which materially alters or modifies the condominium offering in a manner adverse (e.g., substantial deviation in square footage, elimination of amenities, etc.) to the Buyer. On the other hand the Non-Developer Disclosure provides a 3 day rescission period to a Buyer after signing the Contract (excluding Saturdays, Sundays, and Legal Holidays). Many times we find that a Buyer received the condominium documents prior to signing the Contract. If that occurs make sure your Buyer received the condominium documents more than 3 days prior to the execution of the Contract to provide adequate time for review.

Traditionally the biggest mistakes we have seen are:

1. Buyers are unaware of the rescission time periods above;
2. Not all Condominium Documents (including the most recent updates) are received by the Buyers;
3. Buyers believe the rescission period does not begin until the Seller countersigns the Contract;
4. Buyers believe that any change to the condominium offering is adverse and therefore requires another 15 day rescission period;
5. Buyers fail to timely terminate during the rescission period by delivering written notice to the Seller.

As always, should you have any questions about what contract is appropriate for your situation, a real estate attorney, or broker can provide the guidance that you need.

Sincerely,
Berlin Patten Ebling, PLLC

Article Authored by Jamie Ebling, Esq. jebling@berlinpatten.com

This communication is not intended to establish an attorney client relationship, and to the extent anything contained herein could be construed as legal advice or guidance, you are strongly encouraged to consult with your own attorney before relying upon any information contained herein.

All rights reserved. This copyrighted material may not be re-published without permission. Links are encouraged.

www.berlinpatten.com

SARASOTA

3700 South Tamiami Trail, Suite 200, Sarasota, FL 34239 P (941) 954-9991 F (941) 954-9992

VENICE

247 Tamiami Trail South, Suite 201, Venice, FL 34285 P (941) 955-9991 F (941) 484-9992

LAKEWOOD RANCH

8130 Main Street, Suite 206, Lakewood Ranch, FL 34202 P (941) 907-9022 F (941) 907-9024

Sent by:
Jacqueline Mazur
Marketing & Business Development Director
jmazur@berlinpatten.com