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### Protection from Special Assessment Surprises

An issue that seems to come up time and time again is the issue of special assessments that are discussed, contemplated, or even levied after the contract is signed but before the closing date. While the Condominium Rider to the FR/BAR Contract addresses this issue in the context of condominium purchases and sales, the same cannot be said in the context of single family homes subject to homeowner association covenants, conditions and restrictions. In fact, the current FR/BAR Contract does not address the issue.

Changes are under consideration for the current FR/BAR Homeowner's Association ("HOA") Addendum to the **Florida Realtors and The Florida Bar ("FR/BAR") Residential Contract For Sale and Purchase**, which has not been tinkered with in quite some time. We are hopeful these changes will address this issue. In the meantime, the use of the Florida Association of Realtors "CRSP-14" Homeowners Association Addendum J to the **Florida Association of Realtors Form "CRSP" 14a (Contract for Residential Sale and Purchase)**, can offer a short term solution for those transactions in which the property is subject to homeowner association covenants, conditions and restrictions.

The present version of the Homeowner's Association Rider to the FR/BAR Contract simply contains the required Section 720.401 Disclosure, recited verbatim from the Statute, and does not address Buyers' and Sellers' contractual rights and obligations in the event the issue of special assessments arises before closing. Using the "CRSP-14" HOA Addendum J will cover many if not most of the special assessment and other related HOA issues (which are similar to those contained in the FR/Bar Condo Rider), some of which can be significant. One of the more consequential examples of this might be if, left unaddressed, either seller or buyer would be left to pay a special assessment in full at closing.

So, until we have an updated FR/BAR Homeowner's Association ("HOA") Addendum, it is suggested that the parties mix oil and vinegar by using the Florida Association of Realtors "CRSP-14" Homeowners Association Addendum J. However, the additional, beneficial provisions of the "CRSP-14" HOA Addendum J require some relatively minor manual manipulations to "marry" the "CRSP-14" HOA Addendum J to the FR/BAR Contract. We recommend that you confer with your local real estate attorney, familiar with the two "rival" contracts and addenda, to assist in the proper preparation of the Addendum. In this case, "an ounce of prevention" will surely be worth the "pound of cure" occasioned if the contract is not properly prepared.

An experienced real estate attorney can help guide Buyers and Sellers in the preparation of contracts and their addenda. As always, we recommend that you contact your local real estate attorney should you have any questions with respect to rights and obligations associated with homeowners associations.

Sincerely,  
Berlin Patten Ebling, PLLC

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