

Buying and Selling Real Estate in the Community Associations Universe

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Community associations ('COAs') are not typically thought of as property owners outside of perhaps the clubhouse, pool, or tennis courts.

However, COAs can and do own those and other types of real estate in many different scenarios, all of which deserve further explanation. Examples of when issues can

arise are when a COA (1) forecloses on a lot or unit within the community and desires to sell it, (2) tries to purchase a tract of land adjacent to the current community for common use, or (3) tries to sell a portion of its common area/elements.

The COA's Purposes

Primary purposes of any COA are to maintain, repair, and replace the common areas/elements and perform certain duties set forth in the community's governing documents (i.e., Declaration/Covenants, Articles of Incorporation, and Bylaws), but those purposes are more in the nature of polar stars rather than limiting factors. When faced with any opportunity to own, buy, or sell real estate, the COA's board of directors should ask itself how doing so advances or ties into these primary purposes. For example, if the common area/element tennis courts are suffering from settling the ground caused by uncontrollable erosion, repurposing them and/or purchasing a new site for new courts may be consistent with the COA's purposes.

The COA's Power

Before a COA makes any decisions in this regard, it should first determine if it has the authority. That authority flows from the governing documents and the applicable law. Depending on the year the COA was created, all or a portion of the North Carolina Planned Community Act (the "Planned Community Act") or the North Carolina Condominium Act (the "Condominium Act") may apply.

If one of these Acts applies, the COA must make sure that its governing documents are consistent with the Act and follow the controlling requirements before determining to move forward with buying or selling property.

Often, the most critical requirement is obtaining the written approval of a percentage of the COA's members as required by the respective Act and/or the governing documents, particularly if the COA desires to sell a portion of the common areas/elements. The COA, on behalf of the owners, may enter into a contract to sell the common area/element, but the contract is not enforceable until approved in writing by the specified

percentage of owners within the community or condominium.

Real Life Examples

Foreclosure. There may be a situation where a COA institutes foreclosure on a lot or unit to collect delinquent assessments. (Click [HERE](#) for an article on remedies available to associations when lot owners or unit owners do not pay dues.) In most cases, a third-party will purchase the lot or unit in the foreclosure sale, but the COA may also bid on the lot or unit at the foreclosure sale.

Purchase of an Adjacent Tract of Land. The Acts do not specify approval requirements needed from lot or unit owners if a COA seeks to purchase an adjacent tract of land to build an amenity like a pool, or a clubhouse, for example. However, North Carolina case law requires that governing documents specifically grant a COA the power to purchase additional real property. The courts have expressed reservation, absent the specific power to purchase, when the ownership of additional properties may create the need for the COA to increase assessments to fund the purchase of the land or to support its intended use.

Selling Common Area. In a planned community other than a condominium, the COA owns the common area. Under the Planned Community Act, the COA needs to obtain written approval from 80% of owners entitled to cast a vote (or any larger percentage that the declaration specifies). If a limited common element is involved, then all the owners of the lots to which the limited common element is allocated must agree in order to sell that limited common element.

In a condominium, the common area is owned by all of the unit owners as tenants in common. Under the Condominium Act, the COA may sell a portion of the common elements if at least 80% of the unit owners entitled to cast the votes agree to the sale (or any larger percentage that the declaration specifies). However, if there are limited common elements, then all of the unit owners to which the limited common elements are allocated must agree to the sale.

Conclusion

Owning and managing real estate is typically within the purposes of a COA, but it is a complex and nuanced endeavor that deserves meaningful attention. Never forget to take-it-from-the-top and make sure that the COA has the authority under its governing document prior to considering buying or selling any real estate in a COA.

Ward and Smith has a dedicated Community Associations Practice Team with attorneys experienced in representing associations, association members, and developers in all matters related to the creation and operation of community associations.

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