

Never buy a resale condo without reviewing the status certificate



June 14 2014

An acceptable status certificate is as important to the buyers as the purchase agreement itself. Make sure your lawyer reviews the certificate closely.

Why does a lawyer have to review the condominium status certificate on a resale purchase? What are the risks if it's not done?

Although there is no legal obligation to obtain and examine a status certificate before buying a condominium unit, it is extremely risky not to do so.

The wording of the status certificate is mandated by the Condominium Act.

A lawyer's review of the certificate will confirm the unit and level number of the condominium, the amount of common expenses, the existence of a budget and audited financial statements and a reserve fund study.

Other matters disclosed in the certificate are the names of the board members and management company, the building's insurance coverage, whether there are any anticipated special assessments or common expense increases, and whether the corporation is involved in any litigation.

Unfortunately, as many as half of the certificates I examine reveal problems serious enough to require further action.

The most frequent problem I see is where the unit and level number of the suite being purchased as set out in the offer do not match the real numbers on the status certificate.

Typically, this is the result of the failure to verify the unit numbers and incorrectly guessing at the floor number. Some buildings, for example, do not have floors marked 4 or 13, but those levels cannot be ignored when counting the floors up from the ground.

As a result, a suite such as 2507 may be unit 7 on level 23 or level 24. When it is incorrectly shown on the offer as being on level 25, the agreement has to be amended.

Another frequent issue occurs when the common expenses shown on the offer are less than the amount disclosed on the status certificate. This can happen when the listing period overlaps the building's year end, and the expenses are increased but the listing details are not updated.

Last week, I was asked by a client to examine a status certificate for a condominium purchase outside of Toronto. It turned out to be one of the worst ones I have ever seen.

The unit and level number of the suite were missing entirely. No property manager was shown on the certificate.

The reserve fund balance was shown as of last October, while the Condominium Act requires the certificate to show a balance not earlier than a month-end within 90 days of the date of the certificate.

Despite the existence of a recent update to the reserve fund study, the required plan for funding the reserve had apparently not been approved, and the notice of future funding, which the law requires the corporation to deliver to owners, had not been prepared.

I pointed out to the purchasers that this issue alone would likely cause the bank to decline to fund their mortgage, as it was clear the building was not being properly managed.

The purpose of a reserve fund study is to ensure that enough money will be available for required major repairs and replacements in future years. In buildings where major work is required and the reserve fund is not adequate, the owners can face huge special assessments, or the condominium will have to carry the cost of borrowing large amounts of money over a lengthy period.

Sadly, too, in the certificate I examined, the budget and audited financial statements were also missing from the documents attached to the certificate — apparently because they do not exist.

Audited financial statements are a requirement of the legislation, and their absence would be another reason for a purchaser to back out or a bank to decline to fund the mortgage.

In the case of the status certificate I examined, the purchasers decided on their own that they would not be able to obtain financing, and it would be too risky to proceed. They terminated the transaction.

An acceptable status certificate is as important to the buyers as the purchase agreement itself. Never buy a resale condominium without a lawyer's careful review of the certificate while the offer is still conditional.

Would you buy a condominium without audited financial statements or a plan for funding the reserve fund?

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