Registering the New Co-Owner: *the Attorney's Perspective*

By Steve Sowell, Esq.

Whenever a condominium association welcomes a new member/co-owner, it is important that the association set up its records correctly right from the start, as a bad initial set-up can have adverse consequences down the line. As a practicing attorney who has represented condominium associations for thirty years, the author has had to save clients from these adverse consequences on occasion. The adage "an ounce of prevention is worth a pound of cure" is particularly applicable to the initial set-up process.

Is there a difference between a "co-owner" of a condominium unit and a "member" of the condominium association? Stated differently, can a person become a co-owner without also being a member, or vice versa? The short answer is "no," but the two terms have different underpinnings.

Under the Michigan Condominium Act ("MCA"), "Co-owner" means "a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project. Co-owner includes land contract vendees and land contract vendors, who are considered jointly and severally liable under this act and the condominium documents, except as the recorded condominium documents provide otherwise." Thus, the co-owner is the owner of the unit. The owner can be several different types of entities besides natural persons, or can be combinations of those entities or persons. For instance, husband and wife may own a unit jointly. For estate planning purposes, some people put title to their condominium in a trust or, more recently, in a limited liability company. Additionally, the owner of the unit may sell it on a land contract, in which case both the land contract seller and the land contract buyer are considered co-owners.

The MCA does not define a member of a condominium project. The MCA does define "association of co-owners" as "the person designated in the condominium documents to administer the condominium project." While an association of co-owners does not have to be a nonprofit corporation, the author has yet to encounter a condominium that is not administered by a nonprofit corporation.

The Nonprofit Corporation Act ("NPCA") allows nonprofit corporations to be organized on a stock or nonstock basis. If organized on a nonstock basis, the corporation must be organized upon a membership basis or a directorship basis. Condominium associations are invariably organized on a membership basis. The NPCA defines a "member" as "a person having a membership in a corporation in accordance with the provisions of its articles of incorporation or bylaws."

Note that under both the MCA and the NPCA and under most condominium documents, the word "person" is used in the broadest sense to include not only individuals but also all other legal entities, such as corporations, partnerships, trusts, and the like.

While there is some variation between condominium documents, most documents provide that a person becomes a co-owner and a member of the association by acquisition of title to a condominium unit, and his membership continues only so long as he retains title. Most documents also require the new co-owner/member to present "evidence of ownership" of a unit to the association, and to fill out a designated voter representative form. An association's set-up of its unit files should begin with these two documents: the association should insist that the co-owner/member present a copy of the evidence of ownership to the association.

"Evidence of ownership can take many forms."

Evidence of ownership can take many forms. The most common document by which a new co-owner/member obtains title to a condominium unit is by a warranty deed. However, it is not the exclusive method: units may also be transferred by quit claim deeds, by covenant deeds, by sheriff's deeds, by personal representative deeds, by land contracts, and possibly by other forms of conveyance. The important thing for the association to focus on is who is the named grantee in the deed (whatever form of deed it might be) or who is the named purchaser (also called buyer or vendee, or grantee) in a land contract.

For some reason, even though the deed is almost always recorded in the register of deeds' records and therefore public, some new co-owners/members refuse to provide a copy to the association, claiming it is "private," or "confidential," or "none of the association's business." The MCA provides that "[e]ach unit co-owner, tenant, or nonco-owner occupant shall comply with the master deed, bylaws, and rules and regulations of the condominium project and this act." If the bylaws for the condominium require the co-owner/member to provide evidence of ownership, then the MCA obligates them to do so.

Why is it important for the association to insist on a copy of the deed and not rely on information reported by the new co-owner/member? Because, in the event of default in payment of assess-

ments, the MCA requires that the lien contain the "name of the co-owner of record." By insisting upon a copy of the deed or land contract, the association is assured of getting the name of the co-owner of record, rather than some variation thereof.

The author has seen much variation. "Elizabeth" Smith may prefer to be addressed as "Liz," or "Elsie," or "Betty." Mr. and Mrs. Jones may forget that they added their married daughter, Janice "Janie" Klinger to the title. Jennifer L. Smith is not the same person as Jennifer Ann Smith, or Jennifer B. Smith, or .... Getting the name right, and passing the right name on to the attorney, can mean the difference between a valid lien and an invalid lien, or at least the difference between having to record a new lien when a title search ordered in connection with a foreclosure reveals that the name of the owner of record is different than the name on the association's records.

In this day and age when more than 50% of marriages end in divorce, it is not uncommon for a co-owner/member to ask the association to change the name on its records. For instance, John and Janet Jones, husband and wife, purchase a condominium unit. They fall out of love. Janet Jones gets the unit in the divorce, and her maiden name is restored to Janet Smith. She wants her husband off the association's books and her name changed. However, unless a new deed, or the judgment of divorce, is recorded (and often it is not), the "owner of record" of the unit remains John Jones and Janet Jones. Do not change the owner in the association's records simply because the co-owner reports an event like a divorce and demands a change: insist upon a copy of the new deed or the judgment before changing the record.

A land contract is a financing tool: the owner of property sells it to another person on installments; when all of the installments are made, the seller gives a deed to the buyer. In those cases, who

[CONTINUES ON PAGE 28.]

REGISTERING...from page 27.

should notice go to?

Here is where the designation of voter representative form becomes invaluable. The association should insist that the buyer and seller fill out and file with the association a designated voter representative form designating to whom notice should be given.

A land contract seller may contact the association and claim that he has "gotten rid" of his land contract purchaser. Again, don't take the seller's word for it, ask for a copy of the deed or other proof (when in doubt, contact the attorney for the sufficiency of the proof) that the purchaser no longer has an interest in the condominium unit before taking the purchaser's name off the association's records.

Despite these initial precautions, unit owner records can still get mixed up. For estate planning purposes, it sometimes happens that a co-owner conveys an interest in his unit after the initial registration with the association. Mr. and Mrs. Jones convey their unit to their trust or their kids, or they execute a "Lady Bird" deed (a form of estate planning deed where the Joneses retain a life estate in the property but leave the property on their death to someone else). In those instances, it is unlikely that the co-owner will remember to notify the association of the change of ownership, and there is no other practical way for the association to get this information in a timely manner. When these changes happen, there is not much you can do; a title search will reveal the issue and the attorney will take corrective action.

Setting up the unit file properly can eliminate a lot of problems before they have a chance to occur. ■

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