

April 1, 2024

What Documents Must Your Condo/HOA Provide to Potential Buyers?

April 2024

An HOAleader.com reader asks: "A potential buyer of a vacant unit asked for the last 12 months of board meeting minutes. Is this an acceptable practice, or is this confidential?"

Here, we ask our experts what documents condos/HOAs are typically required to provide to potential buyers. We also ask a related question: When does someone searching for a home become a homebuyer—and become entitled to those records? Is it only when an offer is accepted? At some earlier point?

States Have Largely Set These Rules

Most states regulate this issue—at least in terms of what home sellers are required to provide to potential buyers.

"This one is easy in California," says James R. McCormick Jr., CCAL, a partner at Delphi Law Group in Carlsbad, Calif., who has represented association clients for nearly 30 years. "The Davis-Stirling Act, section 4525, lists all the documents to be provided. It's a copy of the most recent this, a statement of this, and a summary of that.

"The statute does include, as one of the things that can be provided, the prior 12 months of minutes approved by the board," he notes. "It also says what fees can be charged to provide that material.

"Normally the request comes in through escrow," says McCormick. "Most homeowners have no idea this law exists. And the association doesn't give these documents to the purchaser, because they're not an owner, but to the seller. The seller technically has to ask the association for the documents. But if the seller has these documents, they can provide them to a prospective buyer."

On the other hand, that year of board meeting minutes *wouldn't* be part of what's provided in Arizona. "We have a state law here that requires a disclosure packet to be provided within 10 days of a pending sale," reports Melissa S. Doolan, an attorney at The Travis Law Firm in Phoenix, who has represented community associations for the last 15 years. "Usually, the title company or real estate agent will reach out to say they're having a sale and need a disclosure packet.

"What's typically provided is the CC&Rs and that kind of stuff," she says. "It's information to help the buyer know how much the assessments will be, along with

the reserves and financials of the association. So they get to see how much money the association has.

"In Arizona, the previous year of meeting minutes wouldn't be part of that packet," says Doolan. "If someone isn't an owner in the community, they're not entitled to those records. The potential buyer could have the seller request those records, and the seller could choose to forward those records.

"If that weren't the case, I don't think an association would mind handing them over," she notes. "Most associations would rather be transparent. And I think getting the documents before you purchase is important. You're agreeing to these rules when you buy, and how can you agree when you don't know what they are?"

That's also the case in Colorado. "I think we're very strange in Colorado," says

Elina Gilbert, a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 24 years. "We have very specific requirements and prohibitions when it comes to association records and who's entitled to have them and how that all looks.

"I don't ever recommend giving records to someone who's not an owner in the community," she states. "We'd really want the selling owner to request it rather than the prospective purchaser or the real estate agent so the association isn't exposed to liability. Really, the owner needs to ask.

"That said, most owners have direct access to that information," says Gilbert. "Minutes are usually kept online in a portal for that association. Often it's the website for the association, and it's typically run by the management company.

"In my mind, it makes sense that the sellers would need a signed contract before providing that information," she adds. "That's because real estate contracts have a provision that states, essentially, 'You acknowledge you're buying in a covenant-controlled community.' So buyers have an out here. If they don't like the terms of the governing documents, they can cancel the purchase contract for the home."

And the Oddest Buyer Questions Are...

It's also true in Florida that, as a rule, people who aren't yet owners in a community shouldn't have access to certain documents, explains Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations.

"Typically, those are association records, so I'd refer that request to an attorney," she says. "My reaction would be that with these situations, it should be the unit owner who requests those records. If they then choose to give those out to anybody else, that's on them. But associations shouldn't give those types of records to nonowners.

Maribona also touched base with some of the managers on her team. "I asked some of the managers I work with to share the oddest thing a buyer has ever asked them to

provide," she explains. "In one case, a buyer asked to meet with and interview the board.

"Luckily, in that particular association, the general manager had a board member who was open to meeting with the buyer to answer general questions," says Maribona. "The general manager also explained to the buyer the board's role and function, along with quorum restrictions for the board to meet.

"In another case, the buyer asked if all the board members had gone through a background check and, if not, asked that they do," she adds. "The general manager explained that the HOA governing documents and state statute didn't require this step. The manager also explained, however, that the documents and state statute both speak to the board's duties in being fiscally responsible and abiding by fiduciary duties."