



Protect Yourself When Buying Real Property

Suggestions for the Prospective Buyer



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This brochure was prepared courtesy of the Georgia Association of REALTORS® to help buyers with the process of purchasing real property. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in buying real property.

There are few things in life as exciting as buying a property. However, since purchasing real estate is one of the most expensive purchases many of us will ever make, buyers should take reasonable steps to protect themselves in the property buying process. This brochure contains some general suggestions on how buyers can do this.

Read and keep a copy of any signed contract. A purchase and sale agreement is a legally binding contract. It should be read in its entirety by the buyer before it is signed to ensure that it reflects the business agreement of the parties. Verbal promises not included in the contract are generally unenforceable. Buyers should comply with all time deadlines in a contract since missing a deadline can leave the buyer in breach of contract. Getting an early start on arranging such things as inspections and financing is the best way for buyers to avoid missing deadlines. The buyer should also keep a complete copy of any contract that he or she has signed in the event a dispute arises regarding the authenticity of the contract.

Have the property inspected by a professional property inspector. Property inspectors help buyers evaluate the condition of the property based upon one or more visual inspections of the property. Most properties have at least a few items that will need to be repaired and/or replaced. A professional property inspector can assist in identifying these items by performing an inspection of the property. Requests for repairs are normally received more favorably by sellers when the need for the repairs has been documented in the report of a professional property inspector. Many property inspectors are members of professional associations that, among other things, require their members to perform a standardized inspection of the property. Buyers are encouraged to ask inspectors about their qualifications and expertise in inspecting properties before selecting an inspector.

Thoroughly investigate the property. Sellers are required to disclose known latent defects in a property. Latent defects are those that a buyer could not discover as the result of a reasonable inspection. Before completing the purchase, buyers should use reasonable diligence to investigate the property. In addition to a professional property inspection, buyers should also check for issues of personal concern. Examples include, but are not limited to, floor condition when covered by area rugs, water staining under plants, missing window screens, and any area made physically or visually inaccessible by the seller.

There are many other tests and studies buyers can do in deciding whether to purchase a property. These include, for example, a radon test to determine if the property has elevated levels of radon, mold tests to determine if the property has high levels of certain kinds of dangerous mold, well water condition and capacity tests when the property is served by well water and septic systems inspections when the property is served by a septic system.

Properties should also be tested for lead-based paint. Normally, this is only an issue in properties built prior to 1978 (since after this time lead-based paint sales were prohibited). Ingestion of lead-based paint chips or particles can cause lead poisoning, a serious health condition, particularly in children. Buyers of an older home should read the EPA brochure entitled "Protect Your Family from Lead in Your Home". Renovators of an older home should read the EPA's Renovate Right brochure and other related materials.

Websites exist that identify certain (but not necessarily all) properties which have been used to manufacture methamphetamine and/or certain other illegal substances. Websites also exist to help identify if a registered sex offender resides in the neighborhood.

Repairs to a property can range from simple cosmetic fixes to repairs done as the result of substantial damage. Some repairs require, and some do not require, a permit from the governmental jurisdiction in which the property is located. Major systems replacement, certain renovations, and/or structural additions to the main dwelling require a permit in Georgia. Permits are issued to ensure public safety and are sometimes completed with the issuing of a certificate of occupancy ("CO") or other documentation showing that the responsible governmental entity has inspected and approved the work. Specific information about permitting requirements for the property you are considering buying may be found online at <https://dca.ga.gov>.

Many factors can affect the value of a property and the ability of an owner to use and enjoy it. These include, for example, the school district in which the property is located, whether the property is subject to flooding, the availability and cost of property insurance, whether the property is subject to recorded covenants and the nature of those covenants, quality of repairs and renovations, permitting issuance, the governmental jurisdiction in which the property is located and whether the property is on an historic registry or in a special tax or zoning district.

Sellers are required to disclose known latent defects in a property; but as a buyer, before completing the purchase of a property, you are encouraged to use reasonable diligence to investigate the property you are buying for issues of special concern to you.

If you are unable to view the property in person prior to your decision to purchase, you are encouraged to have another person (other than your REALTOR®) tour the property for you and attend subsequent inspections. Photos and videos are useful means of viewing a property, but typically will not convey the nuances traditionally associated with a property purchase decision. Because the decision to purchase a property can be highly subjective, the person you choose should be someone who is familiar with you and understands your needs.

Inspect the neighborhood in which the property is located. The neighborhood in which the property is located can be as important as the property itself. Buyers should familiarize themselves with the neighborhood in which the property they are considering buying is located to determine if there are any objectionable conditions nearby. If buyers go far enough away from any property, they will eventually discover some neighborhood condition that they wish were not there. What those conditions are and how far away they need to be from a house before they are no longer a concern is a decision that only the buyer can make. For example, a nearby grocery store may be a convenience for some buyers and a disruptive commercial use for others. Buyers can also contact local governmental planning officials to determine what changes, if any, are anticipated in a neighborhood over time.

Have the property inspected for termites and other wood destroying organisms and obtain an Official Georgia Wood Infestation Inspection Report that can only be prepared by a licensed pest control company. Buyers should have the property they are buying inspected by a licensed Georgia pest control company for evidence of termites and other wood destroying organisms (including powder post beetles, wood boring beetles, dry wood termites and wood decay fungi). In cases where a visual inspection of the entire property is not possible due to visual obstruction, such as, but not limited to, spray-foam and/or roll insulation, floor and walling coverings, and encapsulated spaces, the buyer should consult with a licensed pest control company about preventative treatment measures which may help prevent wood infestation and property damage.

The inspection should be done even if the property has a transferable termite warranty since these warranties normally contain exclusions. As a result, buyers can understand risks they may be assuming in this area by having an inspection performed. Obtaining an Official Georgia Wood Infestation Inspection Report will identify the areas in the house where there is evidence of both active and previous infestation from termites and other wood destroying organisms. Buyers should also review any termite warranty being transferred by the seller to determine what is covered and the cost of maintaining the warranty. Some termite warranties cover both retreatment and repair while others are limited only to re-treatment.

Get a survey of the property. Buyers are encouraged to get surveys of the properties they are considering buying so that they know where the exact boundary lines of the properties are located. Buyers should request that the survey identify the location of any easements of record, whether there are encroachments onto or off of the property and whether the property is in a flood plain. Surveys are not normally done in the sale of condominium units. However, a buyer can review the condominium plat to see the location of the property that is a part of the condominium.

Make sure that an undeveloped lot can be developed. In most parts of Georgia, lots cannot be developed for residential purposes unless they are properly zoned, have access to a public road and are served by water and sewer. If there is no ability to connect the lot to a public sewer, the buyer should verify that the lot can accommodate a septic system. This is done by having a licensed engineer perform a percolation test and evaluate whether the lot is sufficiently large for a septic tank and field to be installed. Similarly, if the lot is serviced by a well or private water system, the buyer should arrange to have the water tested to confirm that it is safe for drinking. Meeting with the local governmental department which issues building permits is a great way to get information about whether and how a vacant lot can be developed.

Buy an Owner's Title Insurance Policy. An owner's title insurance policy protects the buyer if a pre-existing title problem is discovered after the closing. Normally, a title insurance policy is purchased and issued at the closing by the closing attorney. A title problem can be as simple as a neighbor claiming to own a small portion of your property based upon a disputed fence line. However, it can also be a serious problem, such as a forged deed, where you could lose the title to your property. Mortgage lenders require the buyer to pay for title insurance covering the lender's interest in the property. However, in a world where there is an increasing amount of identity theft and the forging of documents, title insurance covering the owner is also recommended. There are different types of title insurance policies offered in Georgia. The most comprehensive are sometimes referred to as "enhanced title policies" and in some cases they protect buyers from title claims arising even after the closing date. Since the premium for title insurance is paid only once, it is recommended that buyers obtain the comprehensive policy.

Consider Purchasing a Home Warranty. Georgia law does not require the seller of either a new or existing home to provide the buyer with a home warranty. If the seller is not offering a warranty, buyers can purchase a limited warranty on both new and existing homes as a part of the purchase of the home. Buyers should review the terms of any warranty that is offered or purchased to understand what it covers and excludes and how to file a claim.

Beware of Cyber Fraud. Fraudulent e-mails attempting to get you to wire money to criminal computer hackers are increasingly common in real estate transactions. Under this scam, computer hackers fraudulently assume the online identity of the actual mortgage lender, closing attorney, and/or real estate broker with whom you are working in the real estate transaction. Posing as a legitimate company, they then direct you to wire money to them. In many cases, the fraudulent e-mail is sent from what appears to be the authentic webpage of the legitimate company responsible for sending the wiring instructions.

You should use great caution in sending or receiving funds based solely on wiring instructions sent to you by e-mail. Independently verifying the wiring instructions with someone from the company sending them is the best way to prevent fraud. In particular, you should treat as highly suspect any follow up e-mails you receive from a mortgage lender, closing attorney, and/or real estate broker directing you to wire funds to a revised account number. Never verify wiring instructions by calling a telephone number provided along with a second set of wiring instructions since you may end up receiving a fraudulent verification from the computer hackers trying to steal your money. Independently look up the telephone number of the company who is supposed to be sending you the wiring instructions to make sure you have the right one.

Be Careful to Avoid Needless Expenses. Some companies who can appear to the untrained eye to be conducting official government business also charge fees to obtain a recorded or certified copy of the deed. This is an unnecessary expense since the closing attorney normally provides a recorded copy of the deed to the buyer as part of the closing. However, it can take up to a month or two for the closing attorney to get the recorded deed back from the courthouse.

Assume the property you are viewing has audio/video surveillance devices in operation. Surveillance technology has advanced to the point where it cannot be seen and more properties have it than ever before. This means that when buyers tour a property they should act and speak in a manner which reflects that they are being recorded. Conversations should be kept to a minimum and should be of a nature which does not harm the buyer's negotiating position. The property is not the place to discuss the terms of the offer the buyer is considering. Buyers should not do or say anything that could jeopardize the buyer's negotiating position or alienate the seller.

Smart Home Technologies. Smart home technology allows for the monitoring, use, control and automation of HVAC thermostats, lighting, video camera, and more. When considering a home with smart devices, you should evaluate or hire a home automation specialist to evaluate the age, functionality, compatibility, cost to operate (including any subscription fees), privacy and security of smart home technologies. While there may be operating costs with such technologies, there may also be offsetting benefits such as energy savings or potential insurance discounts. After closing, consider resetting smart home devices, changing passwords, adding multi-factor authentication and updating firmware to protect your privacy and enhance your security.

Test Your Drinking Water for Lead. Buyers should test their drinking water to confirm that it does not contain unhealthy levels of lead. Water service lines are sometimes constructed of lead or include lead solder which can leach into the water. Lead is a toxic metal, a strong poison and a serious health hazard, particularly for children. If buyers determine during a due diligence period that there are unhealthy levels of lead in the drinking water, buyers may negotiate for the replacement of water service lines which contain lead.

Choose a REALTOR®. Not all licensed real estate salespersons (or brokers) are REALTORS®. REALTORS® agree to abide by a Code of Ethics in their dealings with buyers and sellers. REALTORS® are members of the National Association of REALTORS® and participate in a local Board of REALTORS®. REALTORS® typically have valuable knowledge regarding the price at which other properties in a neighborhood sold, how to negotiate various terms in a purchase and sale agreement and the features of different properties. REALTORS® can also provide buyers with and help them fill out a pre-printed purchase and sale agreement form. REALTORS® routinely work with and, upon request, can provide buyers with the names of attorneys, mortgage lenders, property inspectors, termite companies and persons providing other services relating to real estate transactions. Therefore, when buyers need help in finding the right property, they should always choose a REALTOR® first!

What to Consider When Buying Real Property in a Community Association

This brochure was prepared courtesy of the Georgia Association of REALTORS® to help buyers with the buying process in a community association. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected when buying property in a community association.

Many properties are located in a community where the buyer, as part of purchasing the property, becomes a mandatory member of a Homeowners Association (“HOA”). This brochure will help educate buyers on some of the more important issues to consider when buying a property in this type of community.

What is a HOA? A HOA is usually a non-profit corporation the members of which are the owners of lots in the community. It is normally established by the developer of a subdivision to: (1) own, maintain and operate certain common properties within the community (such as a pool and other recreational amenities, entrance features and common landscaping); (2) enforce covenants designed to protect property values and preserve community standards; and (3) collect assessments to fund the obligations of the HOA. The legal document in which the covenants are contained is typically referred to as a Declaration of Covenants, Conditions and Restrictions (“Declaration” or “CC&Rs”). The HOA is also required to have Bylaws in which the procedures for operating the HOA are described and an Articles of Incorporation which creates the HOA. In addition to covenants, members of a HOA are also typically required to comply with rules and regulations that are normally adopted by the Board of Directors and deal with specific issues within the community such as the use of the swimming pool. Most decisions in a HOA are made by its Board of Directors which is the governing body of the HOA. However, certain important decisions, such as amending the Declaration are usually reserved to the members. Most communities only have one HOA. However, some communities, particularly large master planned communities, will often have both master and sub-associations.

Some HOAs have chosen to be regulated as a Property Owners’ Association (“POA”) under the Georgia Property Owners’ Association Act O.C.G.A. § 44-3-220. Being in a community that is subject to a POA generally means that the association has stronger legal powers to enforce the protective covenants (including the obligation to pay assessments) against violators and that amendments to the community’s legal documents are enforceable against all owners upon a vote of at least 2/3s of the total association vote.

How can a Buyer Determine if the HOA is Well Run?

There are a variety of ways to determine whether the HOA is well run and a community is one in which a buyer would want to live. These include the number of owners who are delinquent in paying their assessments to the HOA, whether the HOA has sufficient capital reserves, the frequency of special assessments, the amount and type of litigation between the HOA and its members and the general appearance of the community. Buyers are also encouraged to talk with other owners in any community with a HOA regarding their experiences and review at least some of the financial and corporate records of the HOA to learn more about the community. In particular, reviewing the minutes of the meetings of the Board of Directors for the last year or two can be quite revealing as to the collegiality and professionalism of the leadership of the HOA and the types of issues facing the community. Since these records can often only be obtained by a present member of the HOA, buyers may have to get their sellers to obtain these records for them.

Are there Special Costs or Fees Typically Paid by Buyers in a Community with a HOA?

Yes. Some fees typically charged by HOA’s to new owners include the following: a capital reserve contribution, an initiation fee, a transfer fee and/or a property management account establishment fee. There are not set rules on the type, amount or even the name of the fees charged to new owners by the HOA. Buyers should ask the HOA property manager, the seller or Declarant (if the community is still Declarant controlled) for confirmation of the fees a new buyer will be obligated to pay. Owners also typically pay ongoing assessments to the HOA. These are usually paid monthly, quarterly or annually. If the HOA has insufficient funds, the HOA also typically has the right to levy a special assessment. If an owner fails to pay his or her assessments a lien can be filed against the owner’s lot and the owner’s right to use the common areas can usually be suspended.

What Kinds of Use Restrictions Typically Exist in a Community with a HOA? The covenants contained in a typical Declaration can be wide-ranging. The covenants normally establish maintenance standards for lots and regulate things like parking, pets, architectural changes to the exterior of buildings, leasing, how many people can occupy a dwelling and whether a property can be used for non-residential purposes. The covenants contained in the Declaration can be as broad or as narrow as the Declarant chooses to make them in causing the initial Declaration to be drafted. Buyers are encouraged to carefully review the Declaration during any due diligence period to confirm that the lifestyle reflected in the covenants is one with which they are going to be comfortable.

How Do I Know What Property is Part of the HOA and Whether the HOA can be Expanded? The Declaration should include a legal description of the property that is subject to the Declaration. Just because the community may appear to be large physically does not necessarily mean that all of that property within the community is a part of the HOA. Again, the legal description of the property submitted to the Declaration that is the key. Any right to expand the community is normally contained in the Declaration. Of course, just because the community can be expanded does not mean that it will be expanded. Sometimes, property that can be added as a future phase to the community is not ultimately made a part of the community or is developed for a completely different use. There is also usually no guarantee that properties built in other parts of the community or in a future phase will be the same size, architectural style, housing type or even in the same price range as houses built in earlier phases.

Does the Developer Get to Control the HOA? When lots are being developed and sold, the developer or “Declarant” of a HOA normally controls the Association by having the right to appoint and remove its directors and officers. This period of Declarant control can last for years and its duration is set forth in the Declaration. When most or all of the lots have been sold, the Declarant normally loses this right to appoint and remove the officers and directors of the HOA Board of Directors and the owners thereafter elect a member controlled Board of Directors. This event is often referred to as the turnover of the Association.

Are the Covenants in the Declaration Enforceable? As a general rule, the covenants in the Declaration, even those pertaining to restrictions on the use of lots, are enforceable. The Declaration is in the nature of a private contract between all property owners that is recorded in the land records and the nature of these private restrictions often go well beyond the type of regulations adopted by local governments. In a HOA, the idea that a person’s home is his castle gives way to the concept that all owners give up certain rights to enjoy the benefits of living in a community with a HOA. As a matter of Georgia law, owners are on constructive notice of and bound by the recorded Declaration whether or not they have actually read it. This is why it is important for buyers to confirm during any due diligence period that there is nothing objectionable in the Declaration.

How Do I Tell Whether I am Buying into a Community with a HOA or a Condominium Association? Most detached single family home communities are organized as HOAs. Townhomes can either be organized as a HOA or a condominium. Most midrise and high-rise residential buildings are condominiums. Reviewing the legal documents for the community is the best way to tell whether it is a condominium or a HOA. If the community is a condominium, the Declaration is required to include the word “Condominium”. Therefore, a Declaration of Covenants, Conditions and Restrictions would normally refer to a HOA while a Declaration of Condominium would refer to a condominium. State law also requires that the name of the condominium association include the words “condominium association” or “unit owners’ association”. Therefore, if the name of the association in the Bylaws includes the words “homeowners’ association”, it is not normally a condominium. However, if it includes the words “condominium association” or “unit owner’s association”, it is normally a condominium.

How Do I Find Out if the Seller Owes Any Money to the HOA? Most HOAs will file a lien against any lot where the owner has not paid the monies owed to the HOA. Other HOA’s have automatic lien rights where no lien needs to be filed in the land records office. A title search and assessment “clearance letter” from the association should reveal whether (and what monies, if any) are owed to the HOA. These are normally obtained by the attorney handling the closing. In many cases, the HOA will charge a fee for issuing the clearance letter.

A Final Word Concerning HOAs. The HOA lifestyle offers owners many benefits. Recreational amenities are often available that few owners could otherwise afford. Covenants tend to ensure a uniformity of exterior appearance in the community and prevent behaviors that are inconsistent with community standards. While this lifestyle is wonderful for most buyers, it is not for everyone. Reading the Declaration is the best way for buyers to decide whether they will be comfortable with the nature and scope of the regulations to which they will be subject.



What to Consider When Buying a Home in a Condominium



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This brochure was prepared courtesy of the Georgia Association of REALTORS® to help buyers with the condominium home buying process. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in buying a home in a condominium.

Condominium living is a great lifestyle choice for many buyers. Exterior maintenance is normally performed by the condominium association allowing owners the freedom to focus on other pursuits. Since owners can leave their homes for extended periods of time, condominiums are often referred to as “lock and leave” homes. Condominiums also typically offer recreational amenities not found in many single family homes and the opportunity for a built-in community of other owners. Many condominiums are located in high density residential areas where residents can enjoy a more “walkable” lifestyle. This brochure will answer some of the more commonly asked questions about condominiums so that buyers can make a more informed decision when purchasing a condominium unit.

What is a Condominium? A condominium is a form of property ownership rather than a particular type of housing. Townhomes, midrise, high-rise and mixed-use buildings are all regularly organized as condominiums. In a condominium, each owner owns his or her home or unit and a percentage of commonly owned property known as the common elements. The common elements consist of all parts of the condominium other than the units and typically includes things like recreational amenities, driveways, landscaping and building exteriors. The Condominium is normally created by filing certain legal documents in the land records office including a Declaration of Condominium, a condominium plat and floor plans.

What is a Condominium Association? A condominium association is a corporation composed of all of the owners of units in the condominium. All owners are required to be members of the condominium association. The association is typically responsible for the overall administration of the Condominium, the maintenance of the common elements and the enforcement of covenants designed to protect property values and preserve harmony within the community.

The Board of Directors is the governing body of a condominium association. This means that the Board is responsible for making all decisions on behalf of the condominium except for certain important decisions reserved to the members. So, for example, under the Georgia Condominium Act, the condominium Declaration can only be amended upon the approval of 2/3 of the total vote in the Association. Until a large percentage of units have been sold or a specified number of years, the developer or declarant of the condominium can appoint and remove the officers and directors of the association and thus control its affairs. After that time, the owners get to elect their own officers and directors. Every owner has a vote in the condominium association (except typically when the owner is delinquent in paying assessments to the condominium association). Many condominium associations hire professional property managers to manage the property and act as the “arms and legs” of the Board of Directors. In addition to the Declaration of Condominium, the legal documents for a condominium include a Bylaws (which sets out the procedures for the operation of the Association) and an Articles of Incorporation (which creates the condominium association). Most condominiums also have rules and regulations adopted by the Board of Directors. In some cases, the condominium association may also be a member of a master condominium association. A master condominium is typically how mixed-use developments are organized. Each of the major land uses in the development are typically one or more master condominium units.

What is it that a Buyer Owns when Buying a Condominium Home? The buyer of a condominium home owns his or her unit plus a pro rata interest in common elements serving all of the owners in the condominium. The boundaries of the unit are normally described three dimensionally with both vertical and horizontal boundaries. So, for example, the outer surface of the sheetrock walls enclosing the unit might be the vertical boundaries of the unit. Similarly, the outer surface of the sheetrock constituting the ceiling of the unit and the middle of a concrete slab constituting the floor of the unit might be the upper and lower horizontal boundaries of the unit. The unit itself is then also shown on recorded floor plans for the condominium. Since the developer has flexibility in defining the boundaries of the unit, the exact boundaries as set out in the Declaration of Condominium should be reviewed by the buyer.

What are Limited Common Elements? A limited common element is a part of the common elements reserved for the exclusive use of one or less than all of the owners. So, for example, parking spaces, storage areas and balconies are often assigned as limited common elements to specific units the owners of which have an exclusive right to use them. Similarly, a hallway on a residential floor in a high-rise building may be assigned as a limited common element only to those owners on the floor with the hallway. Once a limited common element is assigned to a unit owner or owners, it cannot be reassigned or taken away from the owner or owners without their written consent. The limited common element also travels with the unit when it is sold. Therefore, while a limited common element is technically a part of the common elements, an owner assigned a limited common element enjoys many of the same benefits relative to the limited common element as if he or she owned it.

How Do Property Taxes Work in a Condominium? A condominium unit is taxed in the same way as any other piece of real estate. The only difference is that the unit being taxed includes a pro rata interest in the common elements. Since the fair market value of the unit includes the owner's interest in the common elements, the pro rata value of the common elements should not be separately calculated for tax purposes. The condominium association normally pays no property taxes since while it administers the condominium, it normally owns no real property.

What Type of Insurance Does a Buyer Need in Purchasing a Condominium? As one of its many functions, the condominium association is required under state law to insure the condominium (including the condominium units) against certain types of risks. In closing on the purchase of a condominium unit, most lenders will simply want to obtain a copy of the association's insurance policy or a certificate of insurance showing that the association has the required coverages in place. Of course, this does not mean that buyers should not also obtain their own insurance. Buyers of condominium units typically get what is known as a HO-6 policy covering the owner's personal property in the unit, improvements and betterments made to the unit not covered under the association's policy and liability insurance to protect owners against personal injury claims arising in the unit. Buyers should contact their insurance agent for advice regarding their specific condominium insurance needs.

What are Condominium Assessments? In order for the association to maintain the common elements, insure the property and pay for its other expenses, each unit owner pays monetary assessments to the association. Typically, each owner pays a pro rata portion of the total cost of operating the condominium based upon a formula set forth in the Declaration of Condominium. In most cases, assessments are paid on a monthly basis. In addition to assessments, it is common for owners buying the unit the first time it is put into use to pay a capital contribution to the association. This amount is often equal to two months of regular assessments. In the event an Association has an unexpected or costly expense not covered by financial reserves, condominium associations normally have a right to specially assess each member a portion of that expense. This one-time charge raises the funds necessary for a specific purpose or improvement within the complex. If a special assessment is being considered, reference to it is often found in the minutes of meetings of the Board of Directors. Condominium associations have strong legal rights to collect unpaid regular and special assessments from unit owners.

What is a Condominium "Clearance Letter"? Under the Georgia Condominium Act, a condominium association has an automatic lien against any unit the owner of which owes money to the association. Since this lien is not typically filed in the land records of the county in which the property is located, the attorney closing the sale of the unit must check with the association to see if any monies are owed. The closing attorney will also normally obtain from the association what is commonly referred to as a unit clearance letter stating if any monies are owed. Buyers have a right to rely on the information contained in these letters. So, for example, if the unit clearance letter states that \$100 is owed through a particular date the association cannot go back against the new buyer and claim that \$1,000 in assessments is owed for the same time period.

Do Buyers of Condominium Homes Have a Right to Rescind or Cancel Their Purchase and Sale Agreement? Georgia law gives the first buyer of a condominium unit a seven day right to rescind or terminate his or her purchase and sale agreement without penalty. The seven-day period begins to run when the buyer acknowledges receipt of a condominium disclosure package provided by the declarant which contains, among other things, the condominium legal documents, the budget of the condominium association and the floor plan of the unit being purchased by the buyer. This rescission right is unique in Georgia law and is designed to protect buyers by giving them the opportunity to review all of the various legal documents relating to the condominium. The right of rescission only applies to the first sale of the condominium unit. Buyers do not have a right of rescission when they purchase a resale condominium.

What is the Difference between a Condominium Conversion and a New Construction Condominium? A condominium conversion is one where all or part of the building being sold as a condominium was previously occupied by persons for some other use. Many condominium conversions were previously apartments. One benefit of a condominium conversion is that buildings with historic character or architectural interest can often be adaptively reused for residential purposes. In some cases, units in a condominium conversion may be sold at a lower price because they were not necessarily built at today's construction prices. The first buyer of a unit in a condominium conversion receives certain additional disclosures from the developer including a report on the condition of the major systems and components in the building.

Is It Common for Buyers to Contract to Buy a Condominium Home Before It Is Actually Built? The answer to this question is yes. Most construction lenders will only lend money to a developer to build a new condominium if the developer has presold a sufficient number of units to confirm that the condominium development will likely be a success. The purchase and sale agreement is made contingent upon a certain number of other units also being sold by a particular date. During the presale period, the earnest money of the buyer should be held in escrow. If the presale contingency is met, the condominium development goes forward. If it is not met, the buyer's earnest money is typically returned. Most construction lenders now require buyers to deposit larger amounts of earnest money than in the past to discourage buyers from walking away from their contracts if they change their minds about buying before the condominium is finished. Buying prior to the construction of the condominium has both risks and advantages for the buyer. First, the price of the unit prior to construction is often less than what the developer intends to charge for the unit upon the completion of the condominium. Second, there is sometimes the opportunity to customize the layout of a unit since construction has not yet begun. Of course, if the condominium is not successful, the value of the buyer's unit could go down.

Are There any Potential Issues in Obtaining a Mortgage Loan on a Condominium Home? Obtaining a mortgage loan on a condominium unit can be more difficult than obtaining financing on a detached single family home. With a new condominium development or a condominium conversion, the developer will often arrange for financing with particular lenders to make it easier for buyers to purchase units. With an existing condominium, buyers are encouraged to work with a mortgage lender with experience in making condominium loans. Even if the buyer is well-qualified to buy the unit, it can sometimes be difficult to obtain a mortgage loan on a condominium unit if, for example, the condominium has too many leased units or units where owners have not paid their assessments. Buyers are encouraged to meet with a mortgage lender with condominium expertise early in the process to learn more about financing options and limitations.

How Does a Buyer Learn More About a Particular Condominium? If the condominium is an existing development, asking residents about their experiences in living in the condominium is a good way to learn more about the community and any issues it may be facing. Similarly, reviewing minutes of meetings of the Board of Directors and the members of the association and financial records is another good way to learn about the condominium. In this regard, determining whether the association has had a capital reserve study done and is building up sufficient capital reserves to eventually replace items maintained by the association can be a good predictor of whether or not there will be a future special assessment. Finally, reading the condominium legal documents is a great way for a buyer to better understand his or her rights and obligations as a unit owner. Since buyers cannot normally obtain financial or corporate records of a condominium association, buyers may have to get this information from their sellers.

Put All Builder Promises in the Contract. In the event of a contractual dispute, courts will generally only look at the contract in deciding the rights of the parties. Therefore, all builder promises should be written into the contract. So, for example, if the house is going to be served by a septic system, have the builder warrant in the purchase and sale agreement that the system will be designed to serve the number of bedrooms in the house and ask for the warranty to survive the closing. Additionally, if the contract does not state that promises will survive the closing, then the buyer's right to insist that promises be honored usually ends at the closing itself.

Use the Right Contract. REALTORS® recommend that a special new construction purchase and sale agreement be used when a buyer is having a builder construct a new home for the buyer. This is because the contract needs to include or incorporate by reference the plans and specifications describing the scope of work involved in building the house. New construction purchase and sale agreements also typically address other issues unique to building a new home such as what rights the buyer will have to inspect the construction, whether and what type of warranty the builder will provide to the buyer procedures for change orders, delays in construction and the closing date and who will be responsible for obtaining permits and a certificate of occupancy. The GAR New Construction Purchase and Sale Agreement is generally intended to be used in situations where the builder is building a new house and retaining ownership of the property until the house is finished and the closing has occurred. If the house is already completely constructed when the buyer puts it under contract, most REALTORS® recommend that a regular GAR Purchase and Sale Agreement be used in the transaction.