Almost every REALTOR® knows that Florida Statutes mandate disclosure for re-sale of residential condominiums and most know that there are also disclosure requirements for homeowner associations. Unfortunately, some confuse the requirements and others, in an effort to make “full disclosure,” actually put too much information on disclosure forms. Failure to provide disclosure in a proper manner can allow one or both parties to a contract to cancel the contract, refund all deposits and evaporation of sales commission.

This article will explain the required disclosures and some of the mistakes made by REALTORS® that can result in lost sales. A sale lost due to improper disclosure can also result in an ethics complaint and suit for damages by a buyer or seller. With lost income and potential liability riding on the REALTOR®’s shoulders in this area, it is critical that all REALTORS® understand Florida’s disclosure requirements in resale of residential condominium and properties in homeowner associations.

Section 718.503 (2) Fla. Stat. lists the disclosure requirements for a non-developer condominium seller. The statute provides that each prospective purchaser who has entered a contract for purchase of a condominium unit is entitled, at the seller’s expense, to the following:

(a) Current copy of the Declaration of Condominium;

(b) Articles of Incorporation and By Laws of the Association;

(c) Rules of the Association;

(d) Financial Statement for the preceding fiscal year;

(e) Document titled “Frequently Asked Questions and Answers”; and,

(f) Governance Form prepared by the Division of Florida Land Sales, Condominiums, and Mobile Homes.

The statute also requires re-sale contracts include the following language, in conspicuous type:

THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS CONTRACT; or

TENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES
OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

If the contract does not contain the required language, it is voidable by the buyer at any time prior to closing.

Failure to include the disclosure language allows the buyer to void the contract at any time. The mandated disclosure and right to terminate cannot be waived except that the buyer can waive by closing.

If the documents are provided to the buyer at least 3 days, (excluding Saturdays, Sundays and legal holidays), prior to execution of the contract, the buyer has no right to terminate the contract based upon review of documents. If the documents are not provided until after the contract is executed, the buyer has 3 days, (excluding Saturdays, Sundays and legal holidays), after receipt of the documents to terminate the contract and obtain refund of any deposit. The statute requires that contracts for resale of residential condominiums contain the following disclosure language:

"The NABOR® contract contains the required language within its body. The Florida Realtors®/Florida Bar contract and the Florida Realtors® contracts do not include the mandated language and it must be added by addendum or rider. This has been a major stumbling block for the REALTORS® unfamiliar with those forms. So, it is clear that a REALTOR®'s first duty is to make sure the contract form complies with the statute."

Next is the job of gathering documents. Some REALTORS® ask a title company to get them the “condominium documents.” The title company provides the documents it can obtain from the Public Records. But, a lot of the required documents are not in the Public Records. The title company may be able to provide the Declaration, Articles and By Laws and maybe some or all of the Rules (those which have been recorded). The Association’s financial information will not be recorded, the Frequently Asked Questions and Answers Sheet will not be in the Public Records nor will the Governance Form be found there. If those documents are not provided to the buyer, the buyer’s 3-day right of rescission will not start because the package is incomplete.

A REALTOR® is almost always best served by going directly to the condominium association (or management company) to obtain a set of condominium documents. Sadly, even those documents can be incomplete. It is not unusual for an Association to include a budget instead of a financial statement and few provide the Governance Form. It is important to review the package before giving it to a buyer or the buyer’s agent. If the only shortcoming seems to be absence of the Governance Form, that form can be obtained at various third party forms websites such as Forms Simplicity, NABOR®’s website and even the Division’s website.

The statute seems clear, but the devil is in the effort to meet the statutory requirements.

Once you have compiled all of the documents, you must get them to the buyer. That can also be a challenge, proving receipt by the buyer even more so. The good news is that if a buyer signs confirming the buyer has received all of the required documents, the buyer cannot later try to void the contract based upon missing documents. A signed receipt can be a ticket to closing. NABOR® has a receipt form which can be used for the buyers to sign confirming receipt of the required condominium documents.

Mandatory disclosure for residential property within a mandatory membership homeowner association with authority to levy mandatory assessments is also required. A two-step disclosure process must be followed. The buyer has a right to terminate the contract and obtain refund of deposit any time prior to proper completion of the disclosure requirements and, if disclosure is made after contract is executed, 3 days after receipt of the disclosure summary. Buyer’s rights cannot be waived, other than by closing.

First requirement of contract for sale in a qualifying homeowner association community is that the contract contain the following disclosure language in conspicuous type:

"IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER’S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER’S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER’S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING."

The NABOR® contract contains the required language. Florida Realtors®/Florida Bar and the Florida Realtors® contracts do not, and require addition of the language through addendum or rider.

A disclosure summary must also be provided to a buyer. Section 720.401 (1) (a) Fla. Stat. provides “A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale.” If that provision of the statute is met, the buyer does not have a 3-day right of re-
scission. But, the statute implies that the summary might be provided after the contract is signed. In those cases, a 3-day right of rescission applies.

NABOR® has a receipt form that can be used for a buyer to confirm receipt of the homeowner association disclosure summary. Use it, as it is conclusive just like it is with the condominium documents receipt.

The statute includes a disclosure summary form and mandate that the disclosure summary provided to a buyer be in substantially similar form. You should play it safe and make the disclosure summary identical in form. NABOR® has a form that does that, and it follows this article as an attachment. The disclosure summary explains to a buyer the assessments that the buyer will pay as an owner of the property. Once the information is obtained from the homeowner association, the form is relatively simple to complete. But, the statute does not include guidance that can help avoid problems, which might be referred to as “non-statutory rules.” Those rules are: (1) complete a separate disclosure summary form for each applicable homeowner association, (2) do not include any condominium association assessments on a homeowner association disclosure summary.

Some REALTORS® do not follow the above rules. They think it is better disclosure and easier to understand if they lump together all of the assessments which a property owner will pay in a particular development, which can include a condominium association and one or more homeowner associations. When that is done, the statutory requirements are not met and the buyer’s 3 days right to rescind runs until closing. If the sale is lost, so is the commission. Worse, legal and ethical complaints could be filed against the REALTOR®.

Some REALTORS® include condominium association assessments with the homeowner association assessment because there is no comparable form to disclose condominium association information. There is no form because the condominium assessment information is contained in the Frequently Asked Questions and Answers Sheet. Question 4 on the Sheet, reads “How much are my assessments in the condominium association for my unit type and when are they due?”

Many think Florida’s legislature has gone overboard with required disclosures for resellers of condominiums and property in mandatory member homeowner associations with power to assess. Be that as it may, the requirements exist and failure to comply with the disclosure requirements gives a buyer an option to terminate a contract at any time prior to closing. In this area, knowledge is power and power generates close sales. Be sure you understand the law.