



Understanding the Mixed-Use Association

What to Consider Before Purchase

by Bernard S. Meyer

As an increasing number of new community associations are becoming part of the American landscape, a large number of these properties are mixed-use associations. These mixed-use associations have a different structure than the traditional condominium or homeowners association and having clarity on the unique dynamics involved is one of the keys to having a pleasant—and expected—experience when moving into this type of community.

A mixed-use community can be either a horizontal or vertical subdivision and will generally include residential, commercial (hotel or office or both), and retail (shops and restaurants) parcels. The developer, working with legal and budgetary counsel, creates a set of documents that assign the responsibilities and controls within these communities in a way that is designed to ensure that everyone's best interest is protected. However, as we are all aware, that is a task that is never perfect, and it is incumbent on prospective purchasers to be sure that they understand what they are buying into. There are, by their very nature, competing interests within this type of community: Homeowners who want peaceful enjoyment of their property, commercial interests who want the public to have limited access, and retail interests who want unrestricted public access.

In addition to the different interests, there is the question of how to allocate authority and responsibility for the operation of the associations. There are two, often utilized, methods of establishing this allocation: (1) The owner(s) of the parcel with the largest square footage, and (2) The owner(s) of the parcel with the most valuable space.

Most master documents are structured in a way that gives most authority over any of the common areas, shared facilities, and limited

shared facilities to the mixed-use association rather than the residential owner and their condominium/homeowner associations. While the residential owners may carry the largest financial burden, they usually have the least say in the operation of the mixed-use association.

While you, the purchaser, are buying a home, the old saying that you are “King of your own castle” does not completely apply here. Simply stated, unless the master declaration provides otherwise, you (the residential owner) and the condominium/homeowners association that you are part of have very little or no control over such things as:

- Exterior appearance of the building(s)
- Budget for the operation of the association
- Public spaces

- Public access—pedestrian and vehicular
- Security
- Exterior signage
- Parking—resident and guest
- Use of/or restrictions on the amenities
- Special events
- Level of service within the association

While this type of structure may appear to be unfair—in most cases it does work very effectively. The decision making process, for the maintenance and operation of the association, is transferred from a lay board of directors to a responsible party that has a large vested interest in the success of the overall association. This party (usually the hotel parcel or commercial parcel owner) still has the fiduciary responsibility to the community and the membership; however, it is not burdened with the participatory democracy that, at times, can paralyze a board of directors.

There are a number of upfront community items to look for and questions to ask prior to purchasing a residence in a mixed use community:

- Fair treatment on the allocation of common, limited common, shared facilities and limited shared facility expenses. Who pays for what, how are assessments determined?
- Voting allocations and voting rights.
- Controls on other types of users allowed into the mixed use community that may impact quality of life.
- Are there limits on the changes that can be made to the governing documents that would alter the use of the property to the detriment of the residential owners?
- Are there limits on the non-residential parcels as it relates to the hours of operation and ability to have special events?
- What are the boundaries of your individual unit and of the various associations that you will belong to?
- Which of the various associations that you will belong to has ownership for which components of the physical plant?
- What entity or parcel owner is responsible (responsible party) for the maintenance, operation, management, and reconstruction (if needed) of the building and/or property in which the residential unit is located?
- What are the remedies available to the residential owner if the “responsible party” is not performing their function properly? Can the books be audited? Can they (the responsible party) be replaced?
- What is the procedure for dispute resolution?
- What protections are there for the residential owner against the deterioration or adverse use of the other parcels within the mixed-use association?

Armed with this knowledge, along with the counsel of qualified professionals including your Realtor and attorney, your experience as a member within a mixed use association can be an enjoyable and rewarding one. The key, as with most major business decisions—and especially those dealing with your future home or residence—is to do your homework and know the parties with which you are dealing.

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