

Condo owners sue seller, Realtor, Association for nondisclosure of potential \$60K assessment

Posted on December 9, 2016

By Deborah Goonan



Every day I hear or read about outrageous events in Association Governed Housing Communities. And I see the same issues over and over again.

These are not “isolated incidents” as the HOA industry would have the public believe.

Two very common issues I encounter:

- disputes over who should pay for substantial repairs to exterior elements in condominiums and
- failure to disclose important information to homeowners and homebuyers.

A few months ago, I wrote about Mallard Lakes Condominium Association in Selbyville, Delaware, where several condos were damaged by Superstorm Sandy 4 years ago. A group of condo owners are currently locked in a battle with their Association over who will pay to elevate their condo units as required by FEMA and Sussex County, Delaware.

To refresh your memory, or if you've missed it, here's the link to the Previous blog:

[4 years after Sandy, it's a no-win situation at Mallard Lakes](#)

Over the past few months, there have been some new developments.

Another lawsuit at Mallard Lakes

John and Jennifer Mingora, condo owners who purchased their unit in 2013, have filed a lawsuit against the seller, their real estate agent, and Mallard Lakes Condo Association.

Mingoras allege that important (material) facts about their recently remodeled condo unit were not disclosed to them.

According to public court documents, here's a summary:

Mallard Lakes has 477 townhouse condo units. 30 of those condo units are located in five buildings on a barrier island.

Superstorm Sandy slammed the island condos at Mallard Lakes on October 29, 2012, causing coastal flooding, and damage to the first floor of several units.

On April 24, 2013, Mallard Lakes Association opened a claim with FEMA. On May 14, 2013, Sussex County designated Mallard Lakes units as “substantially damaged.” To meet the definition of “substantially damaged,” the cost to repair must exceed 50% of current estimated value of the property.

Both FEMA and Sussex County Flood Control Ordinances require “substantially damaged” structures to be raised to prevent damage from a future flood. Until a “substantially damaged” structure is raised to the required elevation, no certificate of occupancy can be issued.

The formal complaint also states that Mallard Lakes Association failed to timely follow FEMA procedures when applying for funding, therefore, the Association received very little money to use toward extensive repairs.

The Association is required by law to raise 24 condo units to a higher elevation, but there’s not enough money to do the job.

After the owners of those 24 units were told they could return – despite the lack of a certificate of occupancy – they were then told they must contribute \$60,000 *each* to cover the cost of construction to elevate their condo buildings. (4 buildings with 6 units each)

One of those units was owned by Charlotte Hurley of NC. Hurley sold her unit to John and Jennifer Mingora on October 13, 2013.

(In a separate lawsuit, attorneys for Mallard Lakes owners argue that all 477 members of the Association must share in the cost of elevating affected units, see [previous](#) blog.)

The Realtor representing both buyer and seller, Cynthia Spieczny of Resort Quest Real Estate in West Fenwick (DE), has sold many properties in Mallard Lakes and owns a unit in the condo association.

However, Hurley, Spieczny, and Mallard Lakes all failed to disclose to the Mingoras that the condo they purchased did not have a valid certificate of occupancy. The buyers were also not told that, as new owners, they might have to pay a \$60K special assessment to cover their share of the cost of elevating the building.

Non-disclosure of material facts involving a real estate sale is against state law.

In late September of this year, Mingoras filed the following legal complaint. In the exhibits, see if you can spot misrepresentations in the seller disclosure. The complaint lists seven counts against the defendants, including breach of contract, fraudulent misrepresentation, and civil conspiracy between Spieczny and Mallard Lakes Association.

Mingoras paid \$114,900 for the Mallard Lakes property. They seek reimbursement of their purchase price and related costs.

Legal complaint – non-disclosure of material facts

<https://cldup.com/cc8OwXJRzB.pdf>

Association tries to silence condo owners

Melissa Golden and other condo owners are stuck with condos they cannot legally occupy. They want to set the record straight with their neighbors, because Mallard Lakes Association has

misrepresented or omitted key facts in official correspondence with their members. This has led to resentment toward victims of Super Storm Sandy.

But when damaged condo owners tried to communicate with their neighbors, or call attention to the issue at board meetings, Mallard Lakes Association filed a court order to prevent condo owners from speaking out in public.

The gag order was a blatant attempt at stifling free speech, one that was thankfully denied by a Judge this summer.

Judge won't put gag order on Sandy-damaged condo owners

James Fisher , The News Journal 12:12 p.m. EDT July 22, 2016

A bitter disagreement over Superstorm Sandy damage to a set of Selbyville-area condo buildings won't be tamped down by a court-imposed gag order, a Court of Chancery judge has ruled.

Vice Chancellor Sam Glasscock III ruled against the condominium association at Mallard Lakes, which had asked the court to stop some unit owners from speaking publicly about a dispute – and lawsuit – over whether Sandy-damaged structures have to be elevated and who will pay if they must be.

Read more:

<http://www.delawareonline.com/story/news/local/2016/07/22/judge-wont-put-gag-order-sandy-damaged-condo-owners/87379894/>