Ask the Real Estate Lawyer

by Ilyce_Glink

Q: I belong to a homeowners' association. The association, representing 18 owners, was formed about 20 years ago. The developer turned the association over to the owners about 16 years ago. The Articles of Incorporation and Covenants for the association state that the "Developer shall not be obligated for assessments on Lots owned by the Developer." The developer is long gone but his son is a homeowner here and was a partner with his father in the development. The son owns three lots and believes he doesn't have to pay assessments unless he sells the lots. Does the developer have the legal right under the Articles of Incorporation and Covenants to never pay homeowners' assessments? This is a friendly homeowners' association and we're working with the son to determine his rights and ours. A: Some states have passed laws that overrule condominium and other association documents. These laws would require the developer to start paying association fees at the time control of the association is turned over to the homeowners. Generally, as long as a developer is paying certain costs relating to the development of an association, that developer has the right to exempt itself from payment of association dues. In other cases, where a developer has vacant lots, the developer isn't required to pay assessments on the lots. But the developer should start paying assessments once homes have been built on the lots. As your question implies, it seems inherently unjust to have an owner of property receive the benefits the association provides without paying a fair share of the cost. While it isn't clear from your letter where your association is located, you can start your search for information by contacting an attorney with extensive knowledge relating to condominium and homeowner associations. If you want to do some of the legwork yourself, you could get a copy of the statute in your state that regulates homeowner associations and condominiums. In most cases, there will be a provision in the statute that regulates the turnover mechanism and the developer's responsibilities. In doing research, you'll find that developers, in some cases, have done some interesting things in setting up associations to give them the flexibility to keep the properties for a while and not pay association dues. In most cases, however, that right is temporary and lasts only while the initial developer owns the land. The right generally ends when title to the property is conveyed from the initial developer. If the original developer transferred title to the lots from the development company to his son, most likely the son would have to pay assessments from that point on. Q: When my father died, he deeded four rental properties to both me and my sister. My sister's name and my name appear on each deed. Now, we want to split up the properties and put them under our individual names. What's the best way to transfer deeds into an individual's name when two people are listed on a documents? A: If you and your sister inherited four properties, you need to have four new deeds drafted. You and your sister will sign each of the deeds, but you will be the grantee on two of the properties and your sister will be the grantee on the other two. In the end, you will own two properties and your sister will own two. Don't forget to hire an attorney to help you in drafting the deeds and making sure they are recorded with any additional documentation required. You may have transfer tax documents to file, and tax issues to deal with arising from the transfer. Tell your accountant about your plans to make sure you don't fall into any income tax traps through the transfer of these properties. Â© 2006 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by Tribune Media Services.

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