

ATTORNEY JOHN GAW SPEAKING TO PELICAN WATCH HOMEOWNERS REGARDING THE
COMPLEX AND HOW IT IS SET UP AND DEEDED AS CONDOMINIUMS

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McGuinness was the original owner of the tract land that Pelican Watch now sits on. John Gaw represented some of the homeowners when the project was started. The problem in the beginning was the tract of land cost more than it could be developed in single family residential dwellings, which was the primary form of ownership the Town of Southern Shores wanted in its township. To make the land cost work in this development, he needed to put more than one home on each lot. Southern Shores had minimum lot sizes (15,000 sq. ft.) to build single family homes on. It was not economically feasible for him to do this. Duplex homes were larger in size but not exactly double the size of a single family home. Therefore, he looked to putting up duplexes on 12 lots. The only way Southern Shores would let him do this was to make them condominiums. He put a lot of thought into how he would do this. Duplexes would give him two homes on a single lot. It would increase the unit ownership over 12 and decrease the land portion cost of the development per unit. So it became a duplex development. More problems arose. You cannot divide the duplex into separate units involving separate land ownership. That would constitute single family home requiring a minimum lot size that was not available for two homes on that lot. The only way to get two separate units that could be transferred in a sale later on was to make them condominiums. One person can own both sides but in order to sell one side, it must be sold as a duplex condominium. With condo you own airspace within walls. The walls and other aspects of the unit are owned jointly by the unit association owners. All the owners are members within their unit association. You own the area within your condominium. Everything else is owned, maintained, repaired and insured by the Unit Association. Everyone is a member of the Association. No choice. The condominium form of ownership cannot be regulated as to lot size or be banned from being established as a form of ownership by the local government. Thus the duplex does not have a divided lot; there is no separate legal title to individuals in the lot. That is why the developer built duplex units. The owners own separately each half of the duplex and own each lot together and therefore are able to sell it or leave it to their heirs. The lot size and form of ownership is legal. He also wanted other attributes to continue in the development. He wanted the owners to be in as much control of their unit as possible and to make it live, feel, and seem like a separate detached unit of ownership. However, due to the condominium form of ownership, there would need to be some regulations by an Association of owners, who would make regulations that would apply to common area such as the street, sign, walkways, easements, etc. The developer never intended for the association to have a huge responsibility for the maintenance and ownership of a lot of common areas. The project would have necessary common elements but not more than was essential. Then he had a separate condominium imposed on each lot and the duplex. That condominium only applied to the duplex on that lot. It established a separate unit, Unit A & B on that lot. And they could do what they wanted to in their unit subject to declaration

imposed on lot and two units. To keep a feeling of single family ownership, a line divides the duplex in half (unit a & b) and on either side of home, the land is a limited common element. This means the owner on that side has exclusive right to control what is done on his side of that line. So even though he doesn't own it by himself, he has a one half undivided joint interest in the entire lot their duplex is on. They also own a one half undivided joint interest in the condominium common elements that include the roof, walls, and foundation that surrounds the condo unit A & B. So they have joint ownership and common interest. The two lot owners have an unincorporated unit association. They have mutual obligations to each other as joint owners, as set forth in their condominium declaration, through this organization consisting of just them. They vote on things they want to do affecting their jointly owned areas. If there is a deadlock on something they want to do in the joint area, the master association can step in to break the deadlock. This is the organizational format for each duplex. The two owners form an association and decide what happens to their unit condo and lot. They don't have to worry about what happens on the other 11 duplex owners. Having other owners interfere with what you want to do on your property is something the developer wanted to avoid. But there are common areas applying to everyone's property. So there is a master association.

All the unit owners are members of the Master Owners Association. So each lot has two members in the master association. They are responsible for taking care of the street, sign, and any other common amenities, easements, beach accesses, etc. The Master Association must maintain liability insurance on the common elements common to all of you, particularly Pelican Watch Way (PWW). If there is an accident on PWW due to a road condition that was not repaired, then the owner of that road is liable and it should be the master association. By 1991, the developer was supposed to convey title to the master association. Check that this has been done. All the common areas should have been conveyed to the Master Association. There should be general liability insurance on all these common areas, in case anyone is injured on common areas, (street, walkways, steps, etc.). This is in the Declaration of condominium.

Individual associations also need fire, wind, hail, and flood insurance as charged in their declaration of condominium documents. The unit association is supposed to be the insured under those policies. Those policies are supposed to insure both units – Unit 1 A & B, owners are named as the insured together with their mortgage company. Each unit owner of condo decides what type of coverage is needed and they collect the money and pay for the insurance through the insurance. The association is the primary insured under those policies. If there is a loss, the two owners get together and use the insurance proceeds to pay for the damage. If the damage is in unit A, unit B signs over his half of check to unit A to repair the damage in his unit.

There are two administrative layers.

- Master association for the common areas.

- The individual unit associations for your building.

I am aware that there is a difference of opinion as to what type of insurance is needed - Homeowners, second home, or condo insurance. Insurance companies have policies written for condominiums. This is what should be in place. Primary Insured needs to be the unit association, secondary insured are individuals and lenders. What difference does it make? In case of fire, and a unit burns and it is insured as a second home and it is not. It is a condominium. When you file your claim as John Smith and it comes out that you own the condominium unit but the Association owns the structure, and then the Association is not insured, John Smith is the insured. And his space wasn't the insured product. It was the building. He didn't own the building; he just owns a ½ undivided interest in the building. If the association is not named as the insured, the insurance company can deny the claim and refund the premium for the entire year. But that does not help you when your building is lost and coverage is denied. This happens. The wrong insured is listed or the listed insured does not have an insurable interest in the subject insured. The insurance company will not pay.

Condo insurance is more expensive. Shop around. Get together as a group and have some companies specializing in condo coverage come in and explain their coverage. Now there is a named storm deductible, mandatory 1% or more deductible, on the value of the structure. It is recurring for every storm. If there are 3 named storms in one year, you have a 1 % or more deductible of the appraised value each time. There is insurance for covering this deductible. Or you can collect money for reserves. You decide. This applies to all homes, not just condos.

Refinancing issues are due to the blow up in the mortgage market. Condo units hit hard and their money dried up. It is coming back now. With redevelopment of mortgage market, the underwriting standards have gone way up. They used to have almost no standards. Now they look at everything very closely. There are certain events in a condo's existence to make it difficult to refinance. If there is litigation within the association, as plaintiff or defendant, it is a red flag. What is the basis for it? What is happening in the community? Are there problems collecting assessments, liens filed? Unpaid assessments mean there may be problems paying insurance. They are looking at these community issues, not just you and your unit. Are there foreclosures in your project? If there are two or more foreclosures in a 12 unit complex, you have a big problem. Usually passage of time will diminish the weight of that element in the underwriting if there is no new foreclosure. Lien filings and Law suits are problems. If a lender gets wind of any dissatisfied owners, they can decide not to make a loan. It happens. The lender does not want to loan in a community where there is conflict.

Unpaid assessments can be a problem. In a foreclosure, the lender does not pay assessments. The remaining owners have to come up with money to make up the premium deficit. This is a problem because if there is no insurance, the lenders would call their mortgage. Mortgagers

require insurance. So the remaining owners are special assessed to make up the insurance deficit. People not paying assessments don't care, they have already lost their unit..

If a community is not managed properly, even small communities, these issues become big. You don't need a professional manager. The master association has limited responsibility. Individual owners need to get together and see if you are organized right with insurance. Get help. This should avoid refinancing problems in the community.

Questions:

Question: Can we end our bylaws and re-file with the state to dissolve the individual association and master association becomes a homeowners association. Then you have a single family home with a shared wall. Is it possible?

Answer: Yes, but it would cause problems. When you dissolve the condominium form of ownership, you now have two homes on an undersized lot. You have a public law requiring single family homes to have a minimum lot requirement. Today in Southern Shores, the lot requirement for a single family home is 20,000 square feet. Terminating the unit association creates two separate lots and they are less than min lot size giving you an illegal lot. You cannot sell it. You won't get a mortgage on it. You need to keep the Condominium form of ownership.

Question: The 12 individual Associations are required to carry fire, wind and hail, (flood insurance if required). The association needs to be the primary insured of the property, not the individual. Many are not insured properly.

Answer: In a loss, if your insurer of the property finds out the insured is not the owner of the property, you may have a lawsuit on your hands for a claim. If you are the deed owner, you own the space within the walls of your condo. You and your attached neighbor own an undivided interest in the building and ground. Some insurance agents do not understand this and will insure you incorrectly. That does not mean that you will receive payment for a claim. The insured must be the unit association. You are the owner of the inside space of your unit. Your unit owner association number is your lot number, then you are unit A or B. Individuals have contents insurance. Flood insurance for contents is up to you.

Question: Can we merge all unit associations into one master association and have them pay for one condo policy over all as opposed to each of us getting individual unit policies?

Answer: Yes, but it creates other issues. Some condos are a different size, location, value, etc. How do you assess the dues for insurance? The developer thought about this. He wanted to maintain as much independence for you as possible to make it feel more like a single family home. If you dissolve each individual unit condo, the master association now has the right to tell you what you can and cannot do on your lot. Right now your unit association holds that

right to decide when to repair, maintain, and or change something on your lot.

Question: What is the 1% or more mandatory named storm deductible value based on?

Answer: The deductible is based on the insured value of your property.

Question: I just went through mortgage underwriting. I have insurance as a separate unit owner, rather than as a condo owner. So they are not all precise in being sure we get the right coverage. Can the mortgage co. and insurance co. be in conflict? Can there be a problem if new insurance is obtained as a condominium policy?

Answer: The insurance co. will write the policy correctly, but yes, the mortgage co. may question the name of the insured on the policy. You may need to talk to more than one person there. They may not be familiar with this area. There may be issues. It needs to be resolved.

Confirm: I want to confirm that the policy should be written as the unit association as primary insured; additional insured would be unit owners; then lender.

Question: How does the Board change the by-laws?

Answer: There are sections in documents that deal with how to change bylaws and declarations. Look at your constituent documents. Then send out notice to owners and list the purpose of meeting and proposed amendments. All owners can speak at meeting. Then vote and see if majority, super majority or unanimous approval is required. Depends on what is being changed. Most amendments are a simple majority. Then when approved, the change must be recorded in the register of deeds in Manteo. This also applies to declaration of condominium, too.

First generation condo statute is what we are under. It has been repealed, but we are grandfathered. Under that we must record our amendments to be effective.

We may want to include some new operating policies re email, telephone meetings, email, internet, web meetings. You may want to incorporate new procedures into policies on how we will use the internet. You can adopt new policies under the existing laws.

Question: In our bylaws now, the notice for our annual meeting notice needs to be by US mail, 3 weeks, in advance, return receipt requested. Does that need to be amended to allow e-mail.

Answer: Yes, I would recommend it. I would recommend looking at the documents every 10 years or so.