

Property Insurance and Condominiums in Florida. The Legislature has spoken. What happens now?@!

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HOW MANY FEEL WHEN DEALING WITH PROPERTY INSURANCE IN FLORIDA



WE ARE HERE TO HELP



Litigation Economy

- FL: 9% of all property insurance claims in the nation
FL: 79% of all property insurance litigation
- Claim\$: 8% to policyholder and 71% to attorneys
- 750 lawsuits vs. 100,000+
- \$1.5B+ losses in 2020 and 2021



Has resulted in

- In the last three years, property insurance rates in Florida – on average – have more than doubled, from \$2,000 ---> \$4,231.
- Almost 3X the national average of \$1,544.
- Florida has not been struck by a hurricane during that time.



Insolvencies and Restructuring

- 2021 Insolvencies: Gulfstream
- 2021 Restructured: Family Security, FedNat (56K/83K)
- 2022 Insolvencies: Southern Fidelity, Lighthouse, Avatar, St. Johns, Weston, American Capital, FedNat
- **Insurer response: change underwriting guidelines (= less coverage), non-renewals, no new policies, leave Florida**



Why Are Rates So High?

- Florida property insurance rates cannot be “excessive, inadequate, or unfairly discriminatory”
- Essentially, rates must be actuarially sound (justified by at least one wind model)
- But see Citizens Property Insurance Corporation:
 - Rates frozen from 2007 – 2010
 - Rate increases capped at 10% annually from 2011 – 2021
 - 1,000,000+ policies



SB 76 – Effective July 1, 2021

- One-way attorney fees replaced with a schedule based on recovery:
 - < 20% of disputed amount = No attorney fees
 - 21- 49% = proportionate (attorney fee match %)
 - > 50% = all plaintiff attorney fees awarded
- Pre-suit notice + ADR
- Time to file claim 3 --> 2 years after loss
- CPIC rate glidepath raised to 15% by 2026



2022 Special Session – SB 2D – Effective May 26

Civil Remedies Reform

- Eliminates Attorney Fee Awards where policyholder signs AOB
- CFM: Limited to “rare and exceptional” circumstances
- Insurers can recover attorney fees where pre-suit notice not provided
- Bad Faith: Policyholders must establish that property insurer breached the insurance contract



2022 Special Session – SB 2D

CAT Fund Reform

- \$2B appropriated for Reinsurance to Assist Policyholders (RAP) program. This reinsurance coverage is provided at no cost to the insurer:
 - RAP allows insurers to obtain reimbursement for hurricane losses earlier than they normally would under Cat Fund.
 - Participating insurers must reduce policyholder premiums.



2022 Special Session – SB 2D

Roof Reform

- Insurers generally have to insure homes with roofs < 15 years old or have 5 years remaining.
- Insurers can offer a separate roof deductible (optional)
- Lesser of 2% of the policy dwelling limits or 50% of the roof replacement cost.
- Roof deductible does not apply to:
 - Total loss to the primary structure.
 - Roof loss caused by a hurricane.
 - Roof loss resulting from something punctures the roof deck.
 - Where < 50% of the roof needs repair.
- Premium credit or discount where policyholder accepts deductible.



2022 Special Session – SB 2D

Roofing Contractor Disclosures

- Solicitations that encourage consumers to make a property insurance claim for roof damage must include notice that the consumer is responsible for the payment of any deductible.
- Felony for a contractor to pay or waive an insurance deductible.
- Felony to intentionally file an insurance claim containing false, fraudulent, or misleading information.



New Home Hardening Incentive Program

My Safe Florida Home: www.myfloridacfo.com/mysafehome

- \$150M appropriated to help Floridians harden homes
- Homestead single-family residences with an insured valued at \$500,000 or less
- \$1 homeowner = \$2 grant funds. \$10K cap
- Windows, doors, roofs (code+, roof deck, secondary water barriers)
- Builds on but different from the sales tax exemption on impact-resistant windows, doors, and garage doors that is now law



OIR Market Stabilization Agreement

- In response to Demotech's threat to downgrade 17 insurers
- Substitute for acceptable financial stability rating (Fannie & Freddie)
- Citizens acts as reinsurer for 100% of insurer's liability when claims exceed FIGA



Report Insurance Fraud!

<https://myfloridacfo.com/fraudfreeflorida/>



Hurricane Ian

\$100B in damages

\$40 – \$60B in INSURED damages?

Uninsured? Flood.

Wind – Surge – Flood

Property Insurance includes wind and surge - not flood

Mortgage + flood zone = generally NFIP

but if one missing? Policy benefits v aid

Citizens Property Insurance Corporation

estimating 100,000 claims - \$2.5B



Hurricane Ian

Insurers surely to reassess risk (location, age/building codes, flood zone), but for now:

OIR Emergency Order 300997-22-EO (September 28, 2022)

Insurers can't cancel or non-renew policies until November 28

Insurers can't cancel residential policies on damaged homes until 90 days after repairs made

“Use and file” rate and form filings suspended



Possible Legislative Reforms

Repeal one-way attorney fees

CAT Fund – more money, lower retention

Citizens

- return to insurer of last resort

- only homestead properties eligible?

- actuarially sound rates for non-h/s properties?

- actuarially sound rates for new policies?

- flood policies required

Other?



SB4-D

Structural Integrity Reserve Study

- Effective May 26, 2022, Section 718.103(25), Florida Statutes, was added to define “Structural Integrity Reserve Study” as a study required for future major repairs and replacement of the “common areas” based on a visual inspection of the “common areas”.
 - The study must include, at a minimum, the “common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area”.
 - SIRS is required for buildings three stories or higher.



SB4-D

SIRS vs. Milestone Inspection Report

- The milestone inspection report required by Section 553.899, Florida Statutes, evaluates the structure of a building for safety issues.
- The structural integrity reserve study evaluates the deferred costs of maintaining and replacing specifically identified structural components of a building.
- The reports address different components and have different purposes, and they cannot be used interchangeably.



SB4-D

WHAT IS IN A SIRS

1. Roof; 2. Load-bearing walls or other primary structural members; 3. Floor; 4. Foundation; 5. Fireproofing and fire protection systems; 6. Plumbing; 7. Electrical systems; 8. Waterproofing and exterior painting; 9. Windows; **and**

Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the licensed engineer or architect performing the visual inspection.

****Note** that traditional reserves are still required for non-SIRS items, such as recreational amenities.



SB4-D

SIRS Due Date

- For unit owner controlled associations, the SIRS is due by:
December 31, 2024.



SB4-D

Who Needs a SIRS

- The legal requirement applies to condominium and cooperative buildings that are three (3) stories or more.

NOTE:

- There is no definition in the new law as to what constitutes a “story” in this context. For example, is a non-habitable story counted?
- There is no exception for non-residential condominiums.
- There is no exception for timeshares.



SB4-D

DISCLOSURE OF THE SIRS

- Developer and Non-Developer sellers must provide the structural integrity reserve study or a statement that it has not been completed.
- There is no express right of rescission for failure to provide the study or a statement from a non-developer seller.



GETTING IN CONTACT WITH THE ASSOCIATION



CONTACTING ASSOCIATIONS

— WEBSITES:

- Associations managing a condominium with more than 150 units must maintain a website.
 - Substantial majority of associations maintain websites.
 - Effort to require more associations to maintain websites.
- **FLORIDA DEPARTMENT OF STATE; DIVISION OF CORPORATIONS:**
- Search association name on Sunbiz.org to find the name and mailing address of the registered agent of the association.
 - Be careful to locate correct association; there are many with very similar names.



CONTACTING ASSOCIATIONS

- **FARBAR CONDO RIDER:**

- FARBAR Condo rider does not provide for the contact information for the association.
- FARBAR Condo rider requires certain documents to be provided, including year end financials and FAQ sheet. These documents will often have contact information for the association or its management company.

- **ESTOPPEL CERTIFICATE:**

- Must provide a list of, and contact information for, all other associations of which the unit is a member.



THE APPLICATION



THE APPLICATION: TIMELINE

Timeframe: Generally, the authority provided in the governing documents requires that the association provide written response within a specific time period (e.g., 15 days, 30 days, 45 days)...

Determining the Submission Date: The date upon which the association must provide a written response depends upon the date the application is deemed submitted (e.g., the application is deemed submitted when all information and the application fee is received by the association) and the number of days the association has to review the application.

Calendar Days v. Working Days: Calendar days includes weekends and holidays. Whereas, working days (or business days) excludes weekends and holidays.

Deemed Approved: If the association does not approve within the required time, the sale, lease, or other transfer is likely deemed approved because otherwise it would create an unreasonable restriction on the alienation (transfer) of real property.

Right of First Refusal/Substitute*: Timing for association to exercise right of first refusal may be much different than timing for approval/disapproval.



TRANSFER & OTHER FEES AND CHARGES



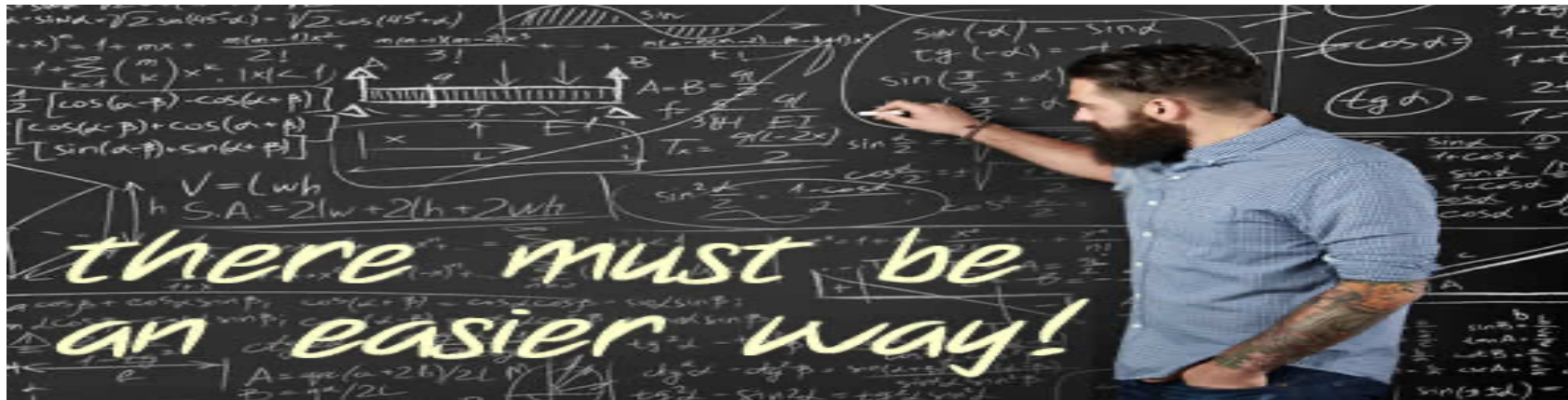
TRANSFER FEES:

- No charge shall be made by the association in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve the transfer **and** a fee for the approval is provided for in the declaration, articles, or bylaws.
- Nevertheless, an application fee cannot exceed \$150 per applicant: husband/wife or parent/dependent child, which are considered one applicant.
- If the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no application fee can be imposed.



ESTOPPEL FEES:

- Established by statute, Fla. Stat. 718.116(8)
- Must have a 30 day validity period, 35 day validity period if mailed
- Flat \$250 fee for delivery of estoppel within 10 business days from receipt of request and if unit account does not owe any delinquent amounts to the association.
- May charge an extra \$100 for delivery within 3 business days from receipt of request, but only if expedited delivery is requested.
- If delinquent amounts are owed to the association, may charge an extra \$150
- Estoppel fees are refundable; must request refund in writing within 30 days from the date the closing for which the estoppel was prepared and provide reasonable documentation



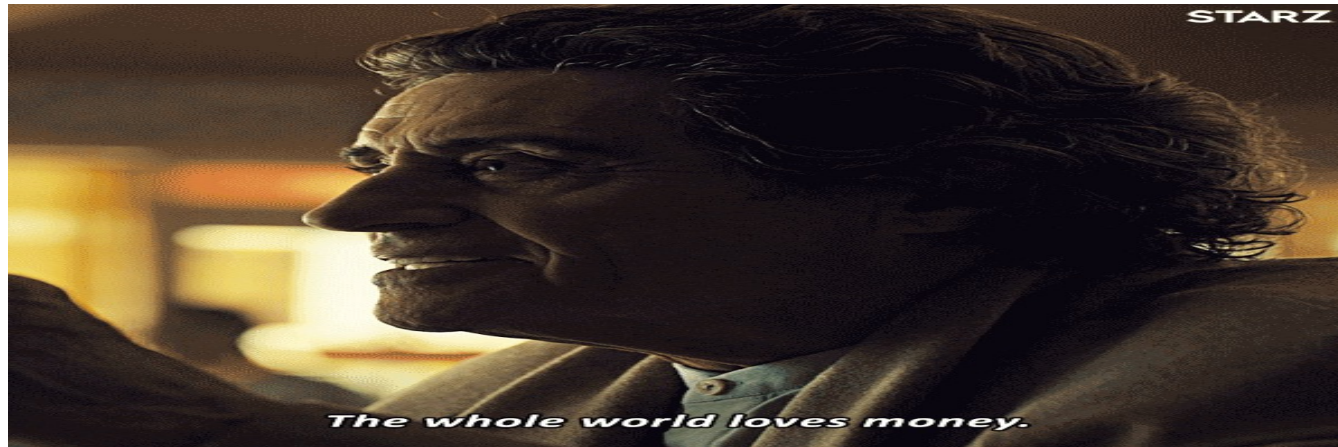
ESTOPPEL INFORMATION:

- Date of issuance
- Name of owner and unit designation and address
- Parking or garage space.
- Attorney contact information if in collection.
- Fee being charged
- Name of requestor
- Assessment information, amount of the assessment, paid assessment paid through, when next assessment is due, itemized list of all monies owed and all monies coming due
- Transfer fee, resale fee or other fees due
- Open violations of rules
- Is board approval required for the sale and has it been obtained
- First right of refusal
- Other association information
- Insurance information



FAQ AND FAQ FEES:

- Association must maintain FAQ as part of its official records.
- May charge \$150 fee for the FAQ.
- Additional requested information that is not required by law may be charged at \$150 fee, plus reasonable costs and reasonable attorneys' fees incurred by the association in responding.
- Must maintain FAQ, adequate number of copies of governing documents and most recent financial statement onsite and may charge actual costs of copies. However, a member or his/her representative can make copies with a smartphone, portable scanner, copier or other device. The association cannot charge for use of the device.



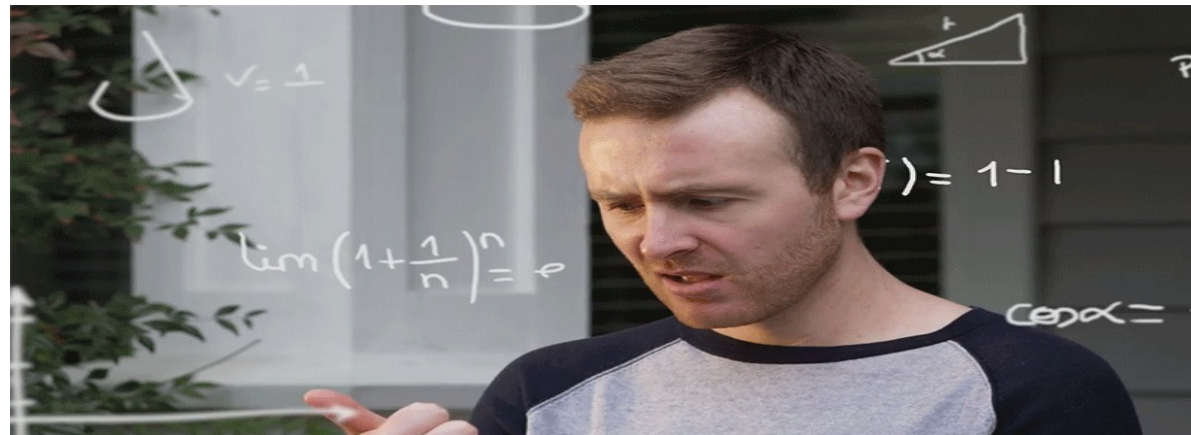
OTHER FEES:

- Not provided for by statute, instead addressed in contract between association and management company.
- Fees are set by the management contract and passed on to the applicant.
- No agency regulates the fees provided for in the management contract.

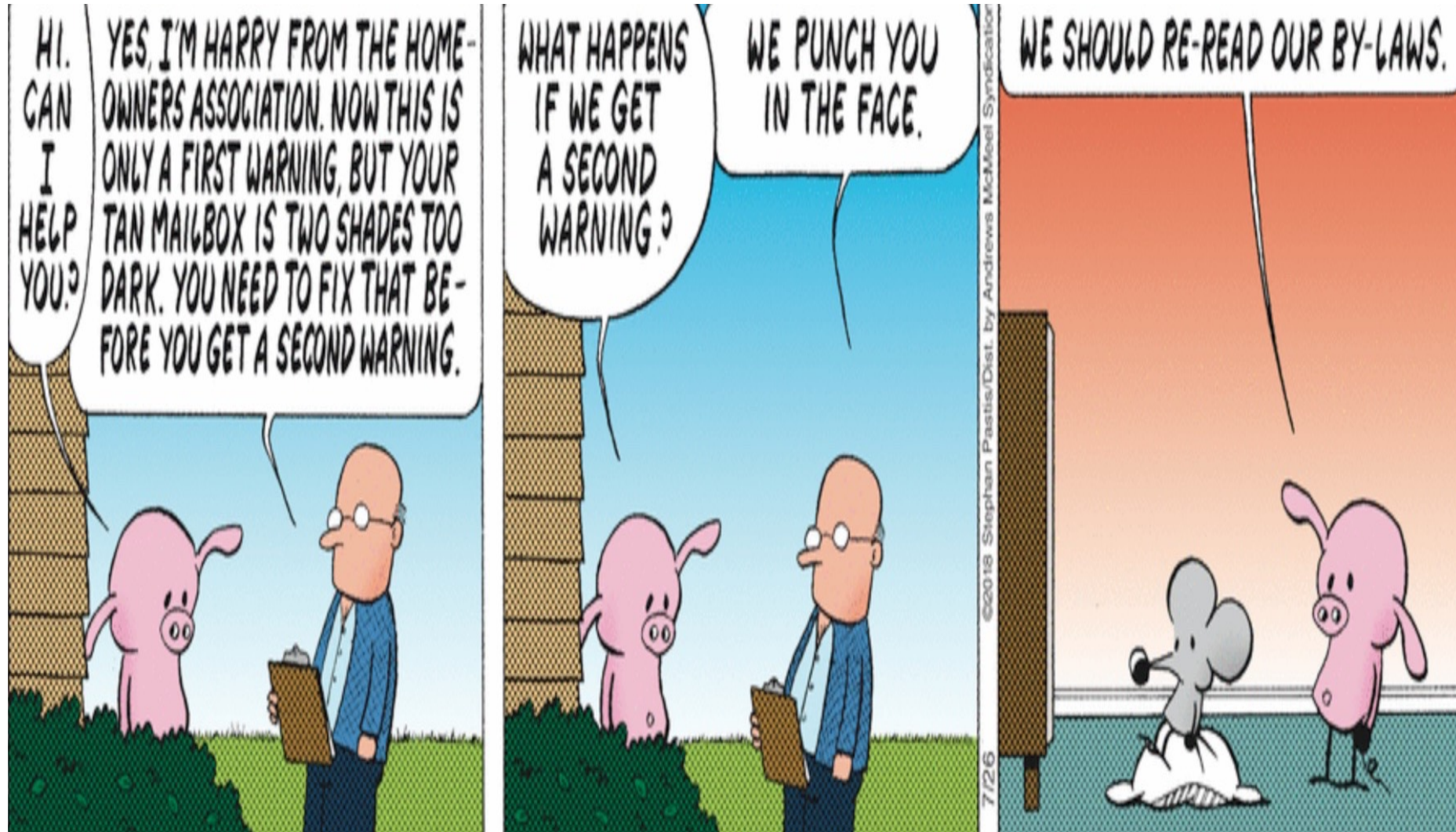


OTHER FEES:

- Examples: account setup fee, move in/move out fee, elevator usage fee, condo doc fee, refinance fee.
- Exclusive use fee- Fla. Stat. 718.111(4).
- NOTE: FARBAR Condo rider requires the providing of the documents in Fla. Stat. 718.111(12)(3) either 3 days prior to entering of contract or delivery with 3 day right of rescission after contract execution. Closing can be extended for 3 days by buyer if documents are not provided prior to closing. Buyer cannot waive this right.



OFFICIAL RECORDS & IMPORTANCE OF DISCLOSURE



OFFICIAL RECORDS OF ASSOCIATION

- Seller's obligation is to provide the information.
 - Assessments
 - Governing Documents
- Buyer's duty is to understand.
 - Budgets/Reserves
 - Buyer's obligation to qualify for membership
 - Restrictions and Rules and Regulations
 - 3 days to understand voluminous documents



BUYER V. SELLER

- Seller's obligation is to provide the information.
 - Assessments
 - Governing Documents
- Buyer's duty is to understand.
 - Budgets/Reserves
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KEY CONCEPTS

- Approval of Buyer may take 30 days or longer.
- Right of first refusal.
- Special assessments
 - Levied vs. Pending
- Litigation involving Association.
 - May prevent loan.
- Governing documents
 - No excuse for not reading and understanding



DOCUMENT DISCLOSURE IS ESSENTIAL

- 3 day cancellation right from date disclosure materials are provided
 - Right terminates at closing
 - Applies to sale of units other than by a developer
- Includes the FAQ Sheet and most recent year end financial statements
 - May prevent loan.
- Buyer has the right to waive receipt of condominium documents





QUESTIONS?

