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When is a condo not a condo? A look at the three most common types of CIRAs

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During the past few decades there has been a significant increase in the number of multifamily housing developments across Long Island and the five boroughs of New York City. These developments consist of high-rise apartment buildings, low-rise multi-family buildings and separate housing units. Often, these homes are referred to as "condos," which is not always an accurate portrayal of the development's legal structure.

The three most common types of Common Interest Realty Associations (CIRA) are: Cooperatives, condominiums and homeowner associations. It is worthy to note that the initial sale of units in each of these CIRAs is covered by a "prospectus" or "offering plan."

Legal Structure and Purpose

Cooperatives (co-ops) are stock corporations, which are incorporated pursuant to New York State law, and qualify under Internal Revenue Code (IR") Section 216(b)(1) as Cooperative Housing Corporations. Condominiums are non-stock unincorporated associations formed pursuant to Article 9-B of the Real Property Law of New York State, and come into existence pursuant to a Declaration of Condominium, which is filed in the local town/village in which the condo is constructed. Homeowner associations (HOA) are non-stock associations, incorporated under the not-for-profit association law of New York State.

The primary purpose of these CIRAs is to manage the operations of the multifamily development, and maintain the common elements (e.g. roadways, roofs, elevator, landscape and amenities).

Ownership

When you acquire a unit in a co-op, you purchase shares of the co-op's stock and occupy the unit pursuant to terms set forth in a proprietary lease and prospectus. The number of shares allocated to each dwelling unit is based upon a combination of factors (e.g. number of apartments, square footage, number of rooms, floor location, etc.). The co-op owns the land, building and residential units (e.g. apartments), and unit owners are called tenant-stockholders. Typically, new purchasers must be approved by the board, prior to closing on their purchase.

When you purchase a unit in a condominium you own the residential living area, and in the case of "free-standing" homes, you also own the real estate underlying your unit. Your purchase is governed by the "declaration" and other terms contained in the offering plan, and house rules.

In an HOA, similar to a condo, you own the residential living area; and, in the case of "free-standing" homes, you also own the real estate underlying your unit, plus additional land surrounding the unit as set forth in the deed/certificate of title.

Condo and HOA associations own and govern the use of all amenities and exterior land (i.e., not owned by the member). Generally, purchasers do not need Board approval prior to purchasing a unit in a condo or HOA and, in both cases, are referred to as "members" of the association.

Governing Body

A cooperative corporation is governed by a board of directors, which is elected by the stockholders (i.e., unit owners). A board of managers governs a condo association and a board of directors governs an HOA; both of which are elected by the members of these associations.

Monthly Fees and Tax Deductions

Unit owners in each of these CIRAs are subject to monthly fees that provide funds for the CIRA's operating expenses, future capital acquisitions, and major repairs and replacements. These fees are based on an annual budget determined by the entity's board, and are allocated to each unit based on calculations in the CIRA's offering plan and/or other governing documents.

In the case of a co-op, the operating expenses also include real estate taxes and mortgage interest, for which the tenant-stockholders receive an annual tax deduction on their individual income tax returns.

With respect to condos and HOAs, since the residential units are owned individually, the owners are responsible for paying their own real estate taxes.

Alterations

In a co-op, board approval is required for interior alterations, such as a new kitchen. In a condo or HOA, alterations to the exterior of units must be approved by the board; whereas interior alterations normally do not require such approval.

Tax Status

These CIRAs are subject to federal, state and local income taxes. For federal purposes, co-ops are required to file form 1120-C, while condos and HOAs may elect to be taxed as a tax-exempt entity under IRC Section 528, or be taxed as a regular corporation; whichever yields the lower income tax. This election may be changed annually.

Mayer CPAs LLP has nearly 20 years of experience with accounting, auditing and taxation for CIRAs. We are large enough to have the depth of experience and expertise that a CIRA requires, yet small enough to maintain a close personal relationship with each of our clients.

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