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Buyers overpay builder for estimated taxes

In 2005, Stuart signed an agreement to purchase a condominium unit for $326,900 in an upscale 20-storey project not far from the Annex area.

He was able to take possession of his unit early in 2008 and final closing occurred on Aug. 12, 2008.

On Stuart's closing, as with every other real estate transaction, the seller's lawyer prepared what's known as a statement of adjustments. The statement is used to calculate the unpaid balance of the purchase price due on closing. In addition, it allocates adjustable items like tax bills between the parties as of the closing date.

As set out in the purchase agreement, the builder adjusted 2008 taxes with Stuart (and the other 215 owners) on the assumption that it would pay all of the taxes for the year of closing when the bills were issued.

On this basis, the builder would be responsible for 222 days of taxes (to Aug. 12), and Stuart would be responsible for the remaining 143 days of the year.

But since the actual 2008 tax bills were unknown at the time of closing, the builder estimated the taxes and adjusted with the purchasers on the assumption that the taxes had been (or would be) paid.

On the builder's closing statement of adjustments, the 2008 taxes were estimated at $3,970.

But when the city finally issued the 2008 tax bill in January 2010, it came in at only $2,107.92. As a result, the builder had over-estimated the 2008 tax bill by a staggering $1,862.08.

Recalculating the tax bill as of Aug. 12, 2008 meant that on closing Stuart had overpaid $720.20 for his portion of the year.

If everyone in the building was overcharged $720 on closing, the windfall to the builder would be about $155,500, minus any refunds it had to pay out to those buyers who were sharp enough to calculate and claim the overpayment or who had their lawyers do it for them.

But that's not the end of the overcharge. Prior to final closing, Stuart was in possession of his unit for almost six months paying interim occupancy fees. Those fees include estimated taxes based on the builder's calculations.

As part of his occupancy fees, Stuart paid taxes of $330.83 a month to the builder, according to the builder's estimate of $3,970 for the year. Using the real tax bill of $2,107.92, Stuart should only have paid $175.66 a month for taxes during the occupancy period, rather than $330.83. He was overpaying $155.17 a month.

As a result, Stuart overpaid the builder an additional $931 or so in interim occupancy fees, making his total overpayment to the builder $1,651.

If this amount is a reasonable average for all the units in the building, the total amount of tax "overestimates" by the builder came to around $350,000.

The issue still has not been resolved.

Stuart may have to file a claim with his title insurer, the same one recommended by the builder for use by all purchasers in the project.

Based on my experience in handling transactions like Stuart's, as many as half of all condominium builders use the same method of overestimating taxes, while the other half arrange it so there is no overcharge at all.

In general, I have no objection to builders charging purchasers whatever they want for the condominium units and for any additional closing costs, as long as the charges are clearly disclosed up front.

This way, a purchaser can choose whether or not to pay the costs or walk away from the deal.

What I find very troubling, however, is builders who take advantage of issues like estimated taxes to scoop large amounts from purchasers presumably expecting that they may not have to account for some or all of it.

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