Disclosures don’t invite problems. They avoid them.

THE DOCTRINE OF caveat emptor (“let the buyer beware”) in residential real estate transactions has significantly eroded over the past 30 years as contrary to modern concepts of justice and fair dealing. Both legislatures and courts have widely recognized a broad exception to the doctrine for sellers and brokers of residential realty. The exception has been coupled with an affirmative duty to disclose facts that materially affect the value of the property, and that are not readily observable and not known to the buyer. Many legislatures have imposed significant disclosure duties on builder-sellers of new units in condominiums and other common interest ownership communities. These expansive disclosure standards go beyond matters that affect the value of the property. In addition to those situations in which disclosure is required, there are also circumstances in which disclosure may be advisable for prophylactic purposes.

WHAT TO DISCLOSE • There are several sources that mandate disclosure, from federal to local law, and of course, case law. At the federal level, you should be aware of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§1701-1720. On a state level, you should know about requirements in state common interest ownership acts, condominium acts, homeowner association acts, coop-

Margaret A. Rolando has been a partner in Shutts & Bowen’s real estate department since 1984. She is also on the Board of Governors of the American College of Real Estate Lawyers and has extensive experience in condominiums, planned developments, mixed-use projects, resorts, clubs, and interval ownership, including regulatory matters, development, structuring, documentation, management and operations. She has assisted developers in evolving flexible and workable legal structures, preparing governing documentation, filing documentation with the appropriate governmental agencies in connection with the sale of units, advising on operation of associations and construction defect claims, conducting meetings of members and of directors, and negotiating resolution of disputes between developers and associations. She can be reached at mrolando@shutts.com.

Margaret A. (“Peggy”) Rolando

Making And Encouraging Pre-Sale Disclosures
ative acts or time share acts. Many states require the developer to make specific disclosures to buyers in a Public Offering Statement (prospectus) or the Purchase and Sale Agreement. For example, Section 4-103, Uniform Common Interest Ownership Act (“UCIOA”) lists a series of items to be disclosed in a Public Offering Statement. Even those states that have not adopted UCIOA or its predecessor have statutorily mandated many of these disclosure requirements.

**UCIOA Disclosures**

The UCIOA minimum requirements for a Public Offering Statement include:

- The name and principal address of the declarant and of the common interest community (“community”), and a statement that the community is either a condominium, cooperative, or planned community;
- A general description of the community, including, to the extent possible, the types, number, and declarant’s schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the community;
- The number of units in the community;
- Copies and brief description of the significant features of the declaration, and any other recorded covenants, conditions, restrictions, and reservations affecting the community, the by-laws, and any rules or regulations of the association, copies of any contracts and leases to be signed by buyers at closing, and a brief description of any contracts or leases that will or may be subject to cancellation by the association;
- Any current balance sheet and a projected budget for the association for a year after the date of the first conveyance to a buyer, and thereafter the current budget of the association, a statement of who prepared the budget, and the assumptions concerning occupancy and inflation factors;
- Any services provided or expenses paid by the declarant that may become a common expense of the association in the future and the projected common expense assessment attributable to those services or expenses for the association and for each type of unit;
- Any initial or special fee due from the buyer at closing, together with a description of the purpose and method of calculating the fee;
- A description of any liens, defects, or encumbrances affecting the title to the community;
- A description of any financing offered or arranged by the declarant;
- The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement of the warranties or on damages;
- The buyer’s right to cancel the contract for a period of 15 days after receipt of a public offering statement;
- Any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the community of which a declarant has actual knowledge;
- A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the buyer if the purchase cancels the contract as permitted by the contract or the statutory right of rescission, together with the name and address of the escrow agent;
- Any restraints on alienation and any restrictions on use, occupancy, and sale of the units, on the amount for which a unit may be sold, or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the community, or on termination of the community;
- A description of the insurance coverage provided for the benefit of unit owners;
• Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the community;
• What financial arrangements have been provided for completion of all improvements which the declarant is obligated to build;
• A brief description of any zoning and other land use requirements affecting the community;
• All unusual and material circumstances, features, and characteristics of the community and the units.

Additional UCIOA Disclosures

UCIOA prescribes additional disclosure in the following situations:
• Phased development and development rights retained by developer or others. Section 4-104 of UCIOA requires disclosure of (1) the maximum number of units or maximum number of units per acre, (2) use restrictions, number/percentage of units restricted to residential use, and floor areas of non-residential uses, (3) description of reserved rights, (4) how a units allocated interest may change, (5) various disclosures regarding limited common elements, and (6) compatibility with surrounding improvements, and whether restrictions on use, occupancy, and alienation will apply to subsequently developed units;
• Common interest ownership community containing times shares. UCIOA §4-105;
• For conversion buildings in common interest ownership communities, disclosure of condition of the building, uncured code and regulation violations, and the cost of curing the violations. UCIOA §4-106.

Florida Requirements

Disclosure requirements for Florida condominiums, cooperatives, time shares, and other common interest ownership communities arise under the following statutes:
• Developer disclosure for sale of a residential condominium unit or lease for more than five years. Fla. Stat. §§718.101 et seq.;
• Developer disclosure for sale of a residential cooperative unit or lease for more than five years. “Cooperative Act” Fla. Stat. §§719.101 et seq.;
• Subdivided land. Fla. Stat. §§498.001 et seq.;
• Time shares and interval ownership. Fla. Stat. §§721.01 et seq.;
• Buyer’s right to have deposits for purchase of one- or two-family dwelling from a builder or developer placed in escrow. Fla. Stat. §501.1375;
• Notice from buyers of pre-suit procedures for claims of defective construction. Fla. Stat. §558.001 et seq.;
• Notice to buyers of homeowner association membership requirement. Fla. Stat. §720.401;
• Resale of a residential condominium unit by unit owner who is not a developer. Fla. Stat. §718.503(2);
• Resale of an interest in a residential cooperative by an owner who is not a developer. Fla. Stat. §719.503(2).

Additional State Statutory Disclosures

Some states have adopted statutes requiring disclosures of defects, malfunctions, hazards, and a variety of other matters affecting the value of residential property. These include:
• Alaska;
• California;
• Indiana;
• Iowa;
• Kentucky;
• Michigan;
• Ohio;
• Pennsylvania;
• Rhode Island;