

## **Indigo Condominium Association, Inc.**

### **Square Footage Litigation against the Developer & Others**

The law firms of Daniell, Upton & Perry, P.C. and Liberis Law are pursuing litigation on behalf of Indigo Condominium Association, Inc., as assignee of the claims of many unit owners at Indigo Condominium. The subject litigation involves alleged discrepancies and misrepresentations created by the Developer, Indigo, LLC and others in the marketing materials and governing documents of the Association as it relates to the square footages of the individual units. The relief demanded in the litigation is based upon the difference in the "heated and cooled" square footages as represented versus the actual "heated and cooled" square footages of the units.

This representation is being provided on a contingency fee basis. Accordingly, there are no prospective assessments to be levied against the unit owners for attorneys' fees associated with this case. Such attorneys' fees would come from any litigation proceeds arising from resolution of the litigation via settlement, judgement or otherwise. In short, if there is no recovery obtained from the Defendants and/or their insurance carriers, there will be no attorneys' fees. Even then, the attorneys' fees are funded by the recovery, not the owners.

### **Suggested Realtor Guidance on Selling Condominiums at Indigo**

1. The Realtor is required to advise potential Indigo Buyers of the Square Footage Litigation against the Developer and other pending litigation. The potential Buyer must be made aware that the Fifth Amendment to the Indigo Condominium Documents corrects the square footage definition listed in the Indigo Condominium Documents.
2. The Realtor to provide potential Indigo Buyers with the link to Indigo's website for relevant condo information: <http://indigo-perdidokey.com/RealtorsBuyers.html> .
3. Check with the **Indigo Seller** to determine if the condo listed for sale is participating in the Square Footage Litigation, as not all condo units are actually in this litigation.
4. Normally the litigation rights are retained by the Original Owner, but this needs to be verified by the **Indigo Seller** and stated clearly in the Contract for Residential Sale and Purchase.
5. **If the Indigo Seller is participating in the Litigation and elects to retain the litigation rights:**
  - a. The Realtor needs to include in Additional Terms section of Contract for Residential Sale and Purchase: "Seller will retain litigation rights and any possible settlement monies in the Square Footage Litigation".
  - b. Buyer shall have no rights to any possible settlement monies in the Square Footage Litigation.
6. **If the Indigo Seller is participating in the Litigation and elects to transfer the litigation rights:**
  - a. The Realtor needs to include in Additional Terms section of the Contract for Residential Sale and Purchase: "Seller transfers to Buyer the litigation rights and any possible settlement monies in the Square Footage Litigation".
  - b. Seller shall have no rights to any possible settlement monies in Square Footage Litigation.
7. **The Indigo Condominium Association, Inc. cannot provide any guidance on the value of any possible settlement monies.**