Best Practices for Buyouts of Unit Owners at Older Condos

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Canvas Miami is a new condo project by NR Investments currently in preconstruction at 1630 Northeast 1st Avenue in Miami.

With so many of the prime locations for new condominium towers scooped up for development in Miami-Dade County, developers are turning to condominium terminations and acquiring older properties by buying out all of the units from their individual owners.

In fact, in the last several weeks we learned of a building in Surfside where the developer successfully bought out all of the units from their owners and another in the Brickell area where the developer purchased 60 of the 61 residences from their owners and is now using the statutory condo termination process to acquire the remaining unit and commence its development plans.

During last year's legislative session, Florida lawmakers made changes to the condominium termination statute that made the process considerably fairer for unit owners. Now owners who are current on their mortgages and association fees must get fair market value, and their entire first-mortgage debt must be satisfied even if it exceeds the current fair market value.

In addition, for the original owners who maintain it as their homestead property, they must be offered their original purchase price regardless of whether it exceeds the current fair market value. The changes also enable some owners to rent their units for a year before moving out and receive a 1 percent relocation fee.

In light of these changes and in an effort to avoid any delays and additional costs due to holdout owners and related litigation, it greatly behooves developers in these buyouts to carefully assess and determine the valuation of the property in order to make very fair and enticing offers to the unit owners.

Keep in mind that the price that is offered to every owner will be based on the same exact price per square foot for every residence in the building, so the square-foot price must be high enough to entice even the owners of the most lavish units with the best views.

Standard Contracts

It is also important for the developer to bear in mind that it is going to take more than an enticing sale price to get as close as possible to having 100 percent of the unit owners agree to sell. In essence, the developer will need to launch a marketing campaign aimed at convincing all of the unit owners that it has the financial wherewithal and track record of success to close quickly on all of the sales and contend with any difficulties and delays that may arise.

The most effective approach is for the developer to work very closely with the association's board of directors in order to get all of the pertinent information into the hands of every owner at the property. Meetings with the owners to answer all of their questions and allay any of their concerns are also a priority.

The contracts that are presented to all of the owners will be identical, except of course for their corresponding unit number, owner's name and purchase price based on the square footage. There are no financing contingencies or property inspections required, but they do include contingency clauses indicating the required critical mass of units that must accept in order for the offers to be valid. They also include extension clauses to enable the developer to extend the deadline in case of litigation or other delays due to some of the logistics of the condo termination process.

In many cases, the only negotiations that take place with some of the individual owners involve their requests to remain in their residences and pay rent to the developer for a number of months after the closing. Developers should remain flexible in accommodating these requests, as typically they will not be able to begin the teardown of the property for months after the closings while other aspects of the condo termination and development processes are underway.

These unit owner buyouts and condo terminations can represent fruitful development opportunities for savvy developers searching for the best possible sites and locations.

By carefully assessing the property valuation, working closely with the association boards of directors and maintaining a level of flexibility in accommodating the unit owners who need to remain in their residences for months after the closing, developers can avoid the costly trials and tribulations of the condo termination process and acquire prime sites with remarkable potential.

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