



COMMERCIAL CONDOMINIUMS

**The Mechanics of Developing, Selling, Lease, and Financing Condominiums
for Office, Retail, Hotel, and other commercial uses**

*2 HOURS OF CONTINUING EDUCATION ~ CE COURSE #30571 ~ PROVIDER #0586
CENTRAL TEXAS COMMERCIAL ASSOCIATION OF REALTORS*

April 20, 2016
1:00 PM -3:00 PM
Camp Mabry
2200 West 35th Street
Texas Military Forces Museum Building
Austin, Texas 78703

Types of Condominium Regimes

- Single building, multiple Units
- Multiple buildings, each as Unit
- Multiple buildings, with multiple Units in each
- Retail shopping centers (Trails at 620)
- Hotels (Aloft at Domain)
- Offices (Rob Roy Office Park)
- Combinations of Use: residential, retail, office and hotel (The W)



Primary Resource:
Chapter 82 of Texas Property Code
UNIFORM CONDOMINIUM ACT

Pieces of the Condo Puzzle

- Developer or Existing Project
- Declaration of Condominium (Condo Dec)
- Condo Plat
- Condominium Owners Association (COA)
- Unit Owners

Condominium Declaration

- Name of Condominium
 - Must include the word “Condominium”
- County of Location
 - Cond Dec is recorded in the real property records of the county in which it is built

Condo Plat

- Survey
- Existing Improvements and Planned Improvements
- Easements
- Vertical Unit Boundaries
- Horizontal Unit Boundaries

Condominium Declaration

- Maximum Number of Units that “MUST BE BUILT” (versus “NEED NOT BE BUILT”)
 - Perspective of Developer
 - Perspective of Purchaser
- Identifying boundaries of each Unit
 - Exterior walls and roofing?
 - Interior walls?
 - Windows and doors?

Condominium Declaration

- Identifying General Common Elements (“GCEs”) and Limited Common Elements (“LCEs”)
- Percentage Allocation of Interest in Common Elements

Common Elements

Shared interest amongst Unit owners

Use for intended purpose without interference with others

May not be partitioned or conveyed separately

Declarant has easement through common elements

General Common Elements

- COA has responsibility to maintain
- Unit owner responsible for share of expenses to maintain and repair (COA Assessments)
- No exclusion by waiver of use

Limited Common Elements

- A common element allocated for the EXCLUSIVE USE of a single Unit owner
- Dec may provide that repair/maintenance is responsibility of Unit owner

Condominium Declaration

- Restrictions on Use or Occupancy
- Method of Amending the Dec
- How and When Condominium Owners Association (COA) will be formed
- Statement as to obligation of COA to rebuild in event of casualty
- Rights reserved to the Declarant (developer)

Amendments to Dec

- By Declarant
 - If Units not yet conveyed
 - As otherwise authorized by Dec
- By vote of Unit owners comprising a minimum of 67% of votes in the COA, or such percentage as otherwise provided in the Dec
 - 67% is absolute minimum for residential use condos
- By COA
 - Reallocation of limited common elements
 - Relocation of unit boundaries

Uncommon Issues

- Subdivision of Units
 - Requires authorization to subdivide in Dec
 - Reallocation of common elements
 - Amendment to Dec
- Relocation of Boundaries Between Units
 - COA approval
 - Reallocation of common elements
 - Amendment to Dec

Condominium Declaration

Potential Pitfalls



Changes to Units, GCEs or LCEs



Amend the Condo Dec

Condominium Declaration

Potential Pitfalls



Restrictions on Use



Long-term view in planning

Condominium Declaration

Potential Pitfalls



Financed Development



Consent of Lienholder for Amendments

Condominium Declaration

Certificate of Formation – Non-profit corporation

Exclusively Unit owners

Powers and Obligations

Adopt/Amend Bylaws and
Create Budgets
[Note: Declaration trumps
inconsistent provisions]

Govern
administration of
buildings that
comprise regime

Designate
authority –
Board
Members and
Officers

Meetings held
at least once a
year

Obligations

Keep records
of receipts,
expenditures
etc.

Maintain
Insurance

Assessments
and Special
Assessments

Labor and
materials to
rebuild/
repair

Powers

Enter into
Contracts

Enter a Unit
for bona
fide
emergency

Grant
Licenses/
Easements

Fees,
interests, late
charges, etc.

Engage in
litigation

Assessment
Lien
Foreclosure

Architectural Control Committee

Enforce Design Guidelines

- Design Guidelines typically included in Condo Dec
- Basis for approval of plans
- Failure of ACC to act
- Authority to grant variances

Purchase/Sale of Unit

How does the purchase of a Condo Unit differ?

- Information required to be provided by Seller:
 - Condo Information Statement
 - Resale Certificate from COA
- Due Diligence by Buyer:
 - Condo Dec
 - COA Rules
 - COA Bylaws
 - Determine if Past-Due Assessments

Leasing of Unit

How does the leasing of a Condo Unit differ?

- Restrictions in Condo Dec
 - Use
 - Parking
 - Signage
- Management of Common Areas
- COA Assessments/Reimbursements

Financing

Construction to Perm Single Close

(long-term hold)

- Up to 90% LTV with SBA 7a
- Lock rate up to 5 yrs with amort over 25 yrs
- Low 4% int rate
- Pre-payment penalties (5-3-1)
- 60% owner occupied for ground up
- 51% owner occupied for existing

Construction to Perm Two Close

(long-term hold)

- Construction loan, then permanent loan through SBA 504
- 20 yr loan locked in low 4% int rate
- Pre-payment penalties (10->1)

Terms for Develop

-> Sell

- Construction loan interest-only in low 4% for 18 months
- Partial releases of lien upon sale of units



Financing of Existing Units

Similar to buying other improved property; terms based upon whether owner-occupied or investment property

Potential Pitfall: May run into underwriting issues if project developed for owner-occupied, and developer retains large chunk for leasing after units convey (fractured condos)



QUESTIONS?

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