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TERMINATING CONDOMINIUMS IN FLORIDA

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One of the hot development trends in Florida are developers terminating existing residential condominium buildings and repurposing such buildings or land. One reason why developers are attempting to gain control of condominium buildings is because the property's highest and best use is not for a condominium building but rather a rental building or some other use. Another reason is because a condominium may have been built in a way that did not maximize the property's potential. For instance, if a building has surface parking or land is being used for recreational areas (such as tennis courts), then the property is probably not using all of its vested density. Another reason why a condominium may be primed for an acquisition is because the building may be approaching its 40 Year Recertification, and the cost to repair the building may be more than what some owners are willing or able to tolerate. There are many reasons for this trend but a couple of common dominators are that these condominiums are typically older buildings and / or the land is underutilized. Whatever the reason, the parties to the transaction need to be mindful of the following:

- What is the best strategy for the developer to approach the proposed transaction? Does the developer seek to gain control of the building "unit by unit" or does the developer offer one price and allow the association to allocate the purchase price?
- What is the best strategy for the association's board of directors to communicate the situation to the unit owners?
- What is the best strategy that effectuates the developer and association's board of directors working harmoniously to present a unified front to the unit owners?
- While the goal in many transactions is for the seller to maximize the purchase price and for the buyer to minimize the purchase price, with terminations the time and efficiency to obtain unit owner approval is sometimes more important than the purchase price. So what is the best strategy of achieving this result?
- What are the termination procedures in the declaration of condominium? How does the Florida Condominium Act, as amended, impact the declaration of condominium? Does the declaration of condominium have the "Kaufman language" which incorporates the revisions and amendments to Chapter 718, Florida Statutes?

The trend of existing condominiums being terminated will not die down anytime soon, and in fact may accelerate given that so many existing buildings are approaching their 40 Year Recertification or the fact that many properties, including waterfront properties, are underutilized. This is why, whether you are a unit owner, an officer or director of the association or the developer, you must be aware of the issues and know when to bring in counsel.

For more information on this topic, please contact Barry Lapides on the firm's Business, Finance and Tax Team.

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