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COVER STORY

Complex condo termination deals could pay off big

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Retired law professor Celestino Pena has lived in his unit at the Brickell Harbour Condominium since 1988 – and has no intention of giving up his spectacular view along Biscayne Bay. But his future in the building may not be up to him.

A developer is attempting to buy out all the units in his building, and if at least 90 percent of the condo owners accept deals, his condominium association could be terminated and Pena could lose his home.

Pena's case highlights a growing trend, as condo termination has become a more common strategy for South Florida developers because there aren't many available sites left to build on in prime locations – especially by the water. But it's a difficult strategy to pull off, both legally and when dealing with residents who are reluctant to sell their units.

When a few owners refuse to sell and wage a legal battle, it can tie up a project for years. And even if the developer should win, forcing longtime residents from their home can negatively impact a company's image.

Star Acquisitions LLC recently sent a letter to the 182 unit owners at Brickell Harbour, built in 1974, offering to acquire all of the units. Lucas Lechuga, a broker with Luxe Living Realty who has a client in the building who's considering the offer, said the contract states the sale would only be executed if 90 percent of the unit owners agree to sell. Ela Sanchez, who manages Star Acquisitions out of her Coral Gables office, did not return a request for comment.

Lechuga said the prospective buyer intends to use that 90 percent control to terminate the condo association, allowing it to tear down the building and redevelop the prime waterfront property.

This means that owners like Pena – steadfast against selling – could still lose their condos. Pena said he doubts the investor will be successful in convincing most Brickell Harbour residents to sell.

"They picked the wrong building," he said. "There is no way they can uproot the families who live here. It is a matter of principle. They're using the wrong arguments and the wrong numbers."

Still, when developers target the right buildings and employ effective strategies, condo termination deals close relatively smoothly.

Getting that 'buy-in'

Approaching condo owners about selling

in bulk is fraught with peril. Some owners will absolutely refuse. Others will drive a hard bargain, often believing they'll receive a lucrative offer if they're one of the few remaining holdouts. No owner wants to find out their neighbor received a bigger payoff for their condo unit.

One of the most high-profile condo terminations occurred in 2015 when a subsidiary of OKO Group, led by billionaire developer Vladislav Doronin, paid \$48 million to buy out 61 individual owners of 25 Bay Tower, at 175 S.E. 25th St. Now that the residents of the 11-story building have moved out, OKO Group is working on plans for a 47-story condo tower. The buyer was represented by brokers Gerard Yetming and Calum Weaver, who worked for CBRE at the time, and Cary Cohen, who was with Flagler Real Estate Services.

Weaver, who is now an executive managing director at Cushman & Wakefield, said they decided against having their client quietly buy up units in the building under the names of different LLCs, as other developers have done elsewhere in South Florida. If the developer could only buy a handful of units in the building, it would have been stuck with them and tied up its money, he said.

They approached the owners at 25 Bay Tower individually and invited them to a group presentation, where they disclosed their client's plan to buy out the building and terminate the condo association, Weaver said. They explained that unit owners would receive a premium over market value and could live there rent-free for nine months while looking for a new place to live.

"For the sellers to get the best price and for the buyer to know there is a road map to do what they want to do, it works in everyone's best interest to be transparent about what is going on," Weaver said.

Yetming, now an executive VP with Colliers International South Florida, said that, after the group meeting, they held individual follow-ups with the owners. The challenge was there were many absentee owners and the condo association wouldn't help the buyer reach them, so brokers had to search through records to contact the owners, he said. One way is to find out where their bills are going. When dealing with buyers who were reluctant to sell, Yetming said they offered incentives to make the deal quickly, and warned what could happen if they waited too long.

When a condo association is terminated, the method of compensating the owners who refused to sell is spelled out in the condo declaration from when the association was established. There's a risk that getting paid through the termination process would be less lucrative than selling to the developer.

Ultimately, 100 percent of the owners in 25 Bay Tower sold to OKO Group. The total price – \$48 million – wasn't split equally among the 61 unit owners. Weaver and Yetming developed a formula that assigned a value to each condo unit based on size, view and location in the building.

Lechuga said his client in Brickell Harbour was offered more than \$500 a square foot for the condo unit, quite favorable compared to the \$345 a square foot that average units in the building netted in sales the past year. Pena, the longtime resident, said the offer is low in comparison to the huge prices developers have recently paid for land in Brickell.

"If people hold out, they can probably get much higher," Lechuga said. "It is a good premium to sell in this market as an individual unit, but the premium is too low to buy the entire property."

Instead of negotiating with individual owners, attorney Howard Vogel, of Rennert Vogel Mandler & Rodriguez, said he worked with the condominium association when he helped Chateau Group and Fortune International Group purchase and terminate the La Playa de Varadero condo in Sunny Isles Beach in 2014. The developers told the association board that if it successfully held a vote to terminate the condo, they would pay the agreed-upon price – in this case, \$112.5 million split among 347 units. Vogel said the deal worked because the La Playa was an older condo-hotel, so owners viewed their units as investments, not homes.

Chateau and Fortune have since secured approval for condos at the La Playa site and demolished the buildings, but they have yet to start construction.

"A lot of these condos are on beach-front properties and are prime development sites with severely underutilized buildings," Vogel said.



PHOTOS BY JOCK FISTICK

Keeping it legal

There are many old condo buildings in prime coastal and urban locations in South Florida, but not all of them are ripe candidates for termination and redevelopment. The considerations are mostly legal and financial.

To ensure there's a significant financial reward, Weaver recommends "reverse engineering" the deal before diving in.

Start by analyzing how much revenue a project at the desired location should generate, Weaver said. In most cases, a condo termination deal would be for a big-money project like a luxury condominium, although it could also work for a high-end hotel or apartments, he said. The revenue would be largely dependent on what the zoning would authorize on the site, so the density must allow for a large-enough project.

"It has got to be in an area where someone feels they can knock down and build with more density and get a healthy interest from buyers," Weaver said.

The developer should then estimate the construction cost, consider how much of that can be assigned to the property acquisition, and then value the site as raw land, he said. That should produce a desired purchase price. The developer should divide that price by the number of units in the existing condo, and see if it's more or less than the values the condos have been trading at, he added.

"The key is you've got to find a building where the density of existing units is not that high, where you can pay a premium [to the condo owners]," Weaver said. "On an acre with 1,000 units, there is no way you can do it because there are too many units."

It also helps if the unit owners are mostly investors, not primary residents, because they don't have an emotional attachment to the condo, Yetming said. Residents are more likely to sell if the sales proceeds would be enough to buy a condo unit nearby.

With such a large inventory of condo listings in Miami-Dade County, it's a buyer's market, Yetming said, so some owners could be quick to sell if they're offered 50 percent above market value.

Developers should also look for older condo buildings that require significant repairs, which are often funded by assessments on unit owners, Yetming said. Some owners would rather sell their units than pay those assessments.

Apartment investors have also sought condo terminations. Joe Hernandez, an attorney with Weiss Serota Helfman Cole & Bierman who has executed several condo terminations, said he's representing a developer who purchased a majority interest in a failed condo conversion in south Miami-Dade out of bankruptcy. The



A developer is attempting to buy out all the units at Brickell Harbour in Miami.

developer hopes to buy out the few units that were sold, terminate the association, and run the complex as a rental, he said.

How many owners must agree to a termination depends on the condo declaration, but there may be some wiggle room.

The voting percentage required to terminate a condo association can range from 80 to 100 percent, depending on the condo declaration, said Helio De La Torre and Lindsey Thurswell, attorneys with Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars and Sobel.

In 2015, the Florida Legislature passed a law setting the required vote to terminate a condo at 80 percent, although a vote of at least 10 percent against termination could block it. However, that doesn't apply to all buildings.

It depends on whether the condo declaration has "Kaufman language," which says that any amendment to the Florida Condominium Act should apply to the association, De La Torre said. In a 2016 Florida appeals court ruling in a case on an attempt to terminate the Tropicana Condominium in Sunny Isles Beach, it was determined that a building without Kaufman language in its condo declaration would retain the terms originally set when the owners acquired their units. Therefore, a 90 percent requirement

would stick.

"The Legislature was broad in their application and tried to make the rule apply to everybody, but you can't impair contracts constitutionally," he said.

In the Tropicana case, the ruling blocked the termination, though it is under appeal to the Florida Supreme Court.

In a recent case, Thurswell represented a group that owned 15 percent of a warehouse condo building in Miami-Dade and didn't want to sell to an investor who owned the other 85 percent because their business was housed there. Her client's litigation caused the investor to withdraw their termination effort.

If the threshold to terminate the condo is too high, there might be another way. Hernandez, said some condo declarations can be amended with an 80 percent vote. So if a developer can acquire 80 percent of the units, it could reduce a 100 percent termination requirement to 80 percent, he said.

If the condo declaration is amended to ease the threshold for termination, in many cases, the opposition owners will file a legal challenge, Hernandez said. These owners realize that, even with the proceeds from selling their unit, they couldn't afford another beachfront condo.

Sometimes it's worth it to pay those



Real estate brokers Calum Weaver and Gerard Yetming represented the buyer in negotiating the sale of 25 Bay Tower in Miami.

owners a premium price.

"A certain number of people in every building know if they are the last hold-out, they have leverage to negotiate a ridiculous number – and that has happened," he said.

Owners push back

In one deal Hernandez worked on with a developer, the condo termination has been stalled by litigation.

In November 2015, JMH Development announced that it acquired the Surf House Condominium in Surfside and would replace it with a new condo. It bought 32 of the 36 units. In September 2016, the owners of the other four units filed a lawsuit against the Surf House Condominium Association, seeking to nullify the termination.

The Florida Condominium Act doesn't allow terminations where at least 10 percent of the owners object, and those four opposing units represent 11 percent, the complaint said. JMH Development appointed a new association board after buying the units.

The condo association offered the four condo owners compensation based on appraisals that were "grossly unfair and unreasonable," according to the complaint. Attorney Michael W. Marcil, who represent the owners, couldn't be reached for comment. Peter Valori, the attorney for the condo association, declined comment, as his client has denied the allegations in its answer to the complaint. The case remains pending.

Meanwhile, JMH Development can't move forward with its condo plan at a crucial time for the market.

Terminations require patience

With condo sales slowing down and more units in new buildings trading at a loss, some developers have delayed or canceled condo plans. Investors seeking a termination and redevelopment should be prepared to sit on the property for years, said Peter Zalewski, principal of both Crane-Spotters.com and CondoVultures.com.

The condo market in coastal Miami-Dade and southeast Broward is overheated with too much inventory and not enough demand from international buyers, Zalewski said. He recommended seeking deals in the northern half of Broward and in Palm Beach County, areas more attractive to domestic buyers.

Declining condo prices could create opportunities for developers seeking a termination to purchase older condos at a discount, Zalewski said.

Yetming said he's working with two condo developers seeking terminations locally, but declined to say exactly where.

"They are trying to buy these things at prices that make sense to develop in the next cycle, three or five years down the road," Yetming said. "Now is the perfect time to secure your position and pick up land that will ultimately be more valuable." ❧