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No Power? No Problem: Completing Real Estate Closings During Irma

Commentary by Alexander J. Faria, Daily Business Review

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Alexander J. Faria of Rennert Vogel Mandler & Rodriguez, in Miami. *Courtesy photo*

By nature, real estate closings can be nerve-wracking for the individuals involved during any time of year in any location. In South Florida, where preconstruction condominium buyers often fund up to 50 percent of the unit purchase price well in advance of a project's completion, the stakes are high when closing time comes. However, in South Florida we face another challenge from June 1 through Nov. 30—hurricane season. Hurricane season can affect many aspects of the closing process, from casualty damage and insurance to logistics, particularly in connection with the fast-paced closings of high-rise condominiums.

For buyers, and developers of new condominium projects, the anxiety level was quite high in the days leading up to and immediately following Hurricane Irma, the largest recorded storm in Atlantic Ocean history. Developers of new condominium towers, especially high-rise towers with hundreds of units, often look to close up to 10 units a day and need an experienced team of closing attorneys to handle these fast-paced, high-volume closings. For developers seeking to pay off construction lenders and minimize carrying costs incurred from date the units are completed though the date the buyers finally close, implementation of an efficient and aggressive closing schedule is often a critical element in the economic success of the project.

Rennert Vogel Mandler & Rodriguez (RVMR) focuses on the representation of developers of high-rise condominiums throughout South Florida. One of RVMR's specialties is high volume closings. Even with such an experienced closing team, a major hurricane, like Hurricane Irma, can potentially have a dramatic effect on the closing process.

In newly constructed condominium towers, the developer typically begins closings once it obtains a temporary certificate of occupancy (TCO) for those units scheduled to close. However, the arrival of a major hurricane, like Irma, can delay issuance of the TCO for all or portions of a project. Following the storm, in some instances contractors have notified developers of a delay in obtaining a partial TCO caused by difficulties in procuring the necessary labor and materials to complete the project due to the effect of Irma. These resources were diverted to those in need in the aftermath of Hurricane Irma. This could result in delays in closing the units to be covered by such TCO.

The threat of an impending hurricane poses additional logistical challenges to developers, buyers and, in some cases, their lenders. Fortunately, South Florida residents were able to get a sense of Irma's size and potential path more than a week in advance of the storm making landfall in the Keys. The forecast gave our clients a much-needed window, albeit a short one, to secure construction sites and expedite closings or reschedule them as necessary. The closing window for any closings where buyers are obtaining financing is effectively closed once an initial tropical storm or hurricane watch is issued, as insurance companies may not allow a new policy to be bound if any part of the state is under such a watch or warning, and buyers will often try to reschedule the closing in such a situation.

One example worth noting is Paramount Fort Lauderdale, a 98-unit luxury condominium located in Fort Lauderdale Beach, where RVMR is currently conducting condominium unit closings. Although Hurricane Irma was disruptive to all of South Florida, particularly beachfront properties like this one, the developer of Paramount Fort Lauderdale was able to proceed with minimal interruption in its closing schedule (other than needing to reschedule a handful of closings scheduled in the days leading up to and immediately after the storm). RVMR maintained constant communication with the developer and buyers in the days leading up to the hurricane, and immediately contacted the developer and buyers once storm conditions cleared. Fortunately, there was no significant damage to the developments represented by RVMR, and although there were some difficulties coordinating closings due to a lack of flights into Florida, access to the property, and electrical service, this was temporary and closing schedules resumed after only minimal delay.

Another challenge is logistically getting buyers to South Florida. Many of the buyers are from out of the state or out of the country. It is quite difficult for a buyer to fly into South Florida as a hurricane is threatening, or immediately after a hurricane. Throughout this period, especially the days immediately following the storm, the objective in our communications with the buyer is to reassure them their unit was unaffected and can be closed as scheduled. Many buyers may elect to close via a "mail away" closing where the buyer does not actually need to be in South Florida and is able to sign all legal documents where they are located, without the need to physically travel to the property.

Living and working in South Florida, we know this will not be the last significant weather event to impact our region—and real estate industry—going forward. Those of us in the business of closing transactions can heed the importance of careful planning and regular communication the next time a major storm comes our way.