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Condo Terminations Expected to Rise as Developers Look to Older Buildings

by Carla Vianna

South Florida's aging condominium stock, especially buildings sitting on prime oceanfront land, is ripe for glitzy redevelopment as developers push to expand a skyline where little to no prime, undeveloped land remains.

Real estate lawyers who specialize in condo terminations reported a busy 2016 season, despite the noted slowdown in the region's luxury condo market. As undeveloped land becomes scarce, builders have turned to more creative measures: Redevelop aged buildings on underutilized sites, preferably near the water.

"Developers are seeing a lot of opportunities particularly along the coast with older condominiums that may have been built in the '50s, '60s and '70s that are now pretty much functionally obsolete," said Joe Hernandez, a real estate lawyer with Weiss Serota Helfman Cole & Bierman.

For unit owners of dilapidated condo properties whose repairs outweigh their existing value, a condo termination may be the only viable option.

"The owners in those condos then face a tough problem because things get

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more and more expensive to maintain," said Hernandez, who is a partner with the firm in Fort Lauderdale.

While condo terminations have been happening for years, the shortage of well-located development sites has catalyzed a recent flurry of activity, said Howard Vogel, a partner with Rennert Vogel Mandler & Rodriguez.

The Miami real estate lawyer said his clients are actively searching for older buildings, particularly those whose condo declarations are most conducive to terminations — even as the market for high-end condos has slowed. Developers are taking a more long-term approach, which points to the development community's confidence in the region's condo market.

"They saw how quickly the market recovered after the last downturn and how important it is to be well-positioned for the recovery," Vogel said.

LAW IN FLUX

The law governing condo terminations has been in a state of flux since the housing market fell to its knees.

Before 2007, the decades-old legislation required unanimous approval before a condo could be terminated, whether for redevelopment or conversion to rental property. The Florida legislature decreased the threshold to 80 percent approval so long as no more than 10 percent of the unit owners rejected the plan.

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"In condo living, one owner shouldn't be able to be a veto power when everybody else wants something," said real estate lawyer Mark Grant, explaining the legislature's thought process for the 2007 amendment.

Getting 100 percent approval was nearly impossible, so the change in law streamlined the process for developers aiming to buy out old buildings and replace them with lucrative towers or convert them to rental projects.

Grant, a shareholder with Greenspoon Marder in Fort Lauderdale, said there have been 200 terminations across Florida, but many of them are still pending. A recent ruling from the Third District Court of Appeal may throw several of those terminations into doubt.

The court found the 2007 amendment applies only to condo building created after the law went into effect. All buildings with condo declarations pre-dating the amendment are subject to the 100 percent approval threshold, unless their governing documents say otherwise, which is rarely the case, Grant said.

Despite the changing legal landscape, real estate attorneys expect to see more condo terminations as developers scour the coast for new opportunity.

Grant said this a trend seen not only in Florida, but all over the country.

"It's going to happen all up and down the coast, where these older projects are on land where they can now build a high-rise with many more units," he said. "As our downtowns grow and as our coastlines become more valuable, putting aside rising tides for the moment, I can see this continuing to happen."

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