CARLTON FIELDS

Condominium Development in a Brave, New World: Three Issues to Consider

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(1) Real Purchasers

Make sure you have real purchasers interested in your new condominium project before you break ground. How do you do that? Restructure deposits. Banish the standard 20 percent deposit. It requires the purchaser to take little risk, while the developer and its lender bear the majority of risk if a purchaser doesn't close. Instead, increase the deposit payments and tie them to building progress to keep purchasers intimately and continually involved in the progress of the project. This approach may not be feasible for all buyer types, so tailor new deposit structures to your purchaser and their resources. **(2) Manage Risk** Construction defect claims or lawsuits are not a question of if, but when. Therefore, it is appropriate to put in place a comprehensive risk management program tailored to your project's characteristics. Use a single-asset, limited liability entity as the developer. You should confirm that your insurance expectations are thoroughly documented in your construction documents, and evaluate whether bonds are appropriate. By planning for an inevitable claim, you can factor the related expense into the proforma and try to avoid heartache at the end of a project. **(3) Planned Exit Strategy**

Avoid the temptation to proceed as if your vision of the project is the only way reality will play out. Too many factors are outside your control. As you move forward to develop new projects, it is important to consider your exit strategy should the project type fail to be accepted by the market. You don't want to be on the hook legally to complete a large project if no market exists. Even if your back-up plan is to operate a large project as a rental community, once the condominium declaration is recorded and there are third party owners in play, there is a significant additional expense for operations alone. This is the time to talk to your development counsel about how to structure your project for maximum flexibility by using the plethora of structuring tools available under Florida condominium law. These include phasing, multi-condominiums, and non-traditional structuring options such as condo within a condo. While there may be an initial additional expense for this flexibility, the ability to adapt development plans quickly to meet rapidly changing market conditions is well worth the upfront cost to avoid long term operating expenses.

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